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FROM

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REPORT OF CASES

DETERMINED IN THE

SUPREME COURT OF THE PHILIPPINES

EN BANC

[A.M. No. 2007-02-SC. February 10, 2010]

RE: COMPLAINT OF JUDGE ROWENA NIEVES A. TAN FOR LATE REMITTANCE BY THE SUPREME COURT OF HER TERMINAL LEAVE PAY TO GSIS TO APPLY FOR PAYMENT OF HER SALARY LOAN TO SAID AGENCY.

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; COURT PERSONNEL; SIMPLE NEGLECT OF DUTY; FAILURE TO DISCHARGE PRIMARY RESPONSIBILITY OF SCRUTINIZING ALL SUPPORTING DOCUMENTS IN THE JOURNAL ENTRY. — The Court finds sufficient evidence only against **Ilagan** for simple neglect of duty. The OAS's sole basis in faulting Minerva, Ilagan's superior, was the affixing of her initials on the journal entry voucher prepared by Ilagan. Without more, the negligence of Ilagan, a subordinate, does not amount to negligence of Minerva, the superior. There is no showing that the supporting documents attached to the journal entry voucher had palpable or patent defects to call for the non-recording of said voucher in the accounting books. Laxity cannot thus be ascribed to Minerva. Given her position, she cannot be expected to *personally* examine every single detail of all the transactions passing through her desk. *Arias v. Sandiganbayan* teaches: …All heads of offices have to rely to a reasonable extent on their subordinates and on the good faith of those

who prepare bids, purchase supplies or enter into negotiations. x x x. There has to be some added reason why he should examine each voucher in such detail. Any executive head of even *small* government agencies or commissions can attest to the volume of papers that must be signed. There are hundreds of documents, letters, memoranda, vouchers and supporting papers that routinely pass through his hands. The number in bigger offices or departments is even more appalling. **There should be other grounds than the mere signature or approval appearing on a voucher to sustain a conspiracy and conviction**. While Ilagan, as a subordinate, may have complied with the minimum requirements in the performance of his duties when he perfunctorily recorded the journal entry voucher, the fact remains that the subject remittance voucher was attached to the original disbursement voucher during the recording of the journal entry voucher in the accounting books. The primary responsibility of scrutinizing all supporting documents in the journal entry thus fell on Ilagan. His failure to discharge said responsibility is evident in his following testimony, during the clarificatory hearing on February 15, 2007.

2. ID.; ID.; ID.; ID.; PREVIOUS INSTANCES WHERE A REMITTANCE VOUCHER WAS ERRONEOUSLY FORWARDED SHOULD HAVE PLACED SUBJECT EMPLOYEE ON GUARD AND NOT MERELY "ASSUMED" THAT SUCH "UNFAMILIAR VOUCHER" IS A MERE DUPLICATE. — It is gathered that that was *not* the first time that Ilagan's office had encountered a situation where a remittance voucher was erroneously forwarded to it. Thus, in his Manifestation the pertinent portions of which are quoted *verbatim*, Ilagan stated: 27. That as far as I remember, there were instances wherein my immediate supervisor, Mr. Valdezco, Jr., had a usual confrontation with the other divisions on how to correct the procedures that normally jeopardized everybody's operation, **one of them was the Zero Balance Vouchers, and we had a series of experience before that these vouchers ended up in the possession of other divisions *which caused delay in the recording and payment of obligations***; x x x; 30. That regardless of being unfamiliar with the form, **granting without admitting** that the remittance voucher was found filed together with the JEV, the undersigned is still not answerable because my superiors had already reviewed my work and that they were **bound to assume** responsibility on the

piece of paper they signed under oath and **my participation is limited being the one who prepares the journal entries**; The attachment to the journal entry voucher of what to Ilagan was an "unfamiliar" remittance voucher, as well as his awareness of previous "series of" experiences of the Accounting Division regarding misdelivered "zero-balance" vouchers, should have put him on guard in processing Judge Tan's remittance voucher. He should not have merely "assumed," to use his word, that such unfamiliar voucher was a mere duplicate.

3. ID.; ID.; ID.; ID.; COMPLAINANT IS NOT WITHOUT FAULT; HER FAILURE TO FOLLOW UP THE REMITTANCE EITHER IN WRITING OR THROUGH AN AUTHORIZED REPRESENTATIVE OR TO CONTINUE PAYING HER MONTHLY AMORTIZATIONS PENDING REMITTANCE AMOUNTS TO CONTRIBUTORY NEGLIGENCE. — The Court notes that Judge Tan is not without fault. For, as early as October 8, 2002, the GSIS had already informed her of her outstanding obligation. It was only in the "early part of 2004" that she followed-up the remittance of her terminal leave pay with the Court. Her preoccupation with her studies abroad did not excuse her from either writing, or sending an authorized representative to the Court to follow up the remittance or to continue paying her monthly loan amortizations directly with the GSIS in order to keep her account current pending the remittance. Suffice it to state then that Judge Tan's act or omission contributed "to a legal cause of what she suffered," which act or omission falls below the standard to which one is required to conform for one's own protection. Given Judge Tan's contributory negligence, the Court sees it fit to only obligate Ilagan to reimburse the amount paid by Judge Tan for the interest and surcharges on the unremitted ₱88,666.00 as of **October 8, 2002**, or the date the GSIS actually informed Judge Tan of her outstanding obligation. Bereft of any record on which a proper assessment of the reimbursable amount can be made, the OAS is directed to coordinate with the Accounting Division and the GSIS for its computation.

4. ID.; ID.; ID.; ID.; IMPOSABLE PENALTY. — Ilagan is thus administratively liable for simple neglect of duty, defined as failure to give *proper attention* to a task expected of an employee resulting from either carelessness or indifference. Under Rule IV, Section 52(B) of the *Uniform Rules on Administrative Cases*

in the Civil Service vis-à-vis Rule XIV, Section 23 of the *Omnibus Civil Service Rules and Regulations* implementing Book V of the Administrative Code of 1987, the penalty for simple neglect of duty is suspension for a period of one (1) month and one (1) day to six (6) months for the first violation. Under Sec. 19, Rule XIV of the same Rules, the penalty of fine, in lieu of suspension, may also be imposed. Considering that this appears to be Ilagan's first administrative offense and following rulings in several cases involving simple neglect of duty, the penalty of fine in the amount of ₱5,000 would suffice.

D E C I S I O N

CARPIO MORALES, *J.*:

Judge Rowena Nieves A. Tan (Judge Tan), Presiding Judge of Branch 42 of the Regional Trial Court of Balangiga, Eastern Samar, complained by Letter-Complaint[1] of October 11, 2006 addressed to Atty. Eden Candelaria, Deputy Clerk of Court and Chief Administrative Officer of the Office of Administrative Services (OAS), about the late remittance of her terminal leave pay to the Government Service Insurance System (GSIS) to partially settle her salary loan therewith.

Thus she wrote:

I write to complain about my terminal leave pay which the Court **remitted to the GSIS only after two (2) years** since the Cash Collection and Disbursement Division, FMBO was supposed to do so. As a result, the balance of my salary loan was not fully paid and **a huge interest was incurred thereon**. I have repeatedly asked said office, through Mr. Fernando "Dong" Montalvo, to settle this matter the soonest possible time. But they have not done so. I am now constrained to file the necessary legal and administrative actions to enforce my rights and seek redress from said office's negligence which have unduly prejudiced me. (Emphasis and underscoring supplied)

It appears that in 2001, Judge Tan, then employed as a court attorney in this Court, obtained a ₱192,064 salary loan from the GSIS. On June 30, 2002, she resigned from the Court at

[1] *Rollo*, pp. 243-244.

which time she had paid the GSIS a total of ₱33,340.93. To settle her outstanding balance, she requested the Court to remit her terminal leave pay of ₱88,666.88 to the GSIS. And she manifested that she would surrender her GSIS policy with a cash surrender value of ₱79,057.73[2] to fully settle her loan.

While Judge Tan was pursuing her Master of Laws in London, she was informed by the GSIS, by letter of October 8, 2002, that she still owed the amount of ₱111,385.90 inclusive of interests and surcharges as of July 31, 2006.[3]

In the *early* part of 2004, Judge Tan repaired to the Court to inquire about the remittance of her terminal leave pay to the GSIS. It was only then that it was discovered that remittance was yet to be made. The remittance was then made on May 13, 2004. Judge Tan thus demanded the

> x x x. … **immediate rectification by the Court's Cash Division by paying the amount of ₱111,311.45 to the GSIS, which amount was incurred due to the negligence and dereliction of duty by said office**.[4] (emphasis and underscoring supplied)

The OAS, through its Complaints and Investigation Division (CID), accordingly directed Fernando Montalvo (Montalvo), Liliane Ulgado (Ulgado), Dexter Ilagan (Ilagan), Minerva Briones (Minerva), Edita Japzon (Edita) and Ursula Editha San Pedro (San Pedro) to explain the delay in the remittance of Judge Tan's terminal leave pay to the GSIS.

Montalvo, then Fiscal Examiner II at the Cash Collection and Disbursement Division (CDD)[5] who was responsible for, among other things, the *preparation of vouchers* for payment of initial salaries, salary differentials, money value of terminal leaves and allowances and those for remittance to the GSIS, Pag-IBIG and Philhealth, recalled that the Cashier Division received an endorsement from the Leave Division for the payment

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[2] *Ibid.*

[3] *Id.* at 244.

[4] *Ibid.*

[5] Now a Supervising Judicial Staff Officer, Checks Disbursement Division.

of the money value of the terminal leave of Judge Tan in the amount of ₱88,666.88; and that the voucher was prepared on August 21, 2002 under DV No. 101-02-08-19596, together with a corresponding remittance voucher for the GSIS (DV No. 101-02-08-19597) representing partial payment of her salary loan, but that the check intended for remittance to the GSIS was never prepared as the remittance voucher was *erroneously forwarded* to the Accounting Division, instead of to the CDD.[6]

Ilagan, then Accountant I at the Accounting Division,[7] admitted preparing the journal entry voucher of Judge Tan for recording in the books. He claimed, however, that his work was subject to review by his immediate supervisor and approval by the chief accountant. And he denied that the remittance voucher intended for the GSIS was filed with the other disbursement vouchers as he was not familiar with a remittance voucher.[8]

Minerva, Ilagan's superior, admitting that the initials appearing in the journal entry voucher prepared by Ilagan were hers, stressed that said voucher was checked "on the basis of correctness of the accounting entry used, the accuracy of the amount and the sufficiency of the basic documents to support a transaction for recording in the books of accounts"; that having verified the journal entry voucher to be in order, she initialed it and forwarded it to the chief accountant for approval; and that she was not aware of any GSIS remittance voucher that was attached to the journal entry voucher as there were then voluminous supporting documents attached to it.[9]

San Pedro, the then Acting Chief of the Accounting Division, for his part posited that the staff of the Financial Services Division should have sorted all the disbursement vouchers processed by their office and determined which should be forwarded to the

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[6] *Rollo*, pp. 214-216.

[7] Now Supervising Judicial Staff Officer, Fiscal Monitoring Division.

[8] *Rollo*, pp. 106-109.

[9] *Id.* at 133-135.

CDD for payment and to the Accounting Division for recording in the books of accounts.[10]

By letter of February 19, 2007, **Edita**, SC Chief Judicial Staff Officer, Financial Services Division, explained how the "oversight" occurred as follows, quoted *verbatim*:

> As reflected in the Flow Chart . . . all disbursement vouchers after being signed/approved by the Chief Justice's authorized representative with zero balances should be forwarded to the Accounting Division, for Journal Entry Voucher preparation done by Bookkeeping Section. Likewise those with approved for payment are forwarded to the Checks Disbursement Division for check preparation.
>
> In the case of Judge Rowena Nieves A. Tan, disbursement vouchers payable and to be remitted to GSIS was *unintentionally* forwarded to the Accounting Division together with disbursement voucher of zero balance. This was stated in the letter of Ms. Lilianne Ulgado, Chief Accountant, Accounting Division.
>
> **The person in charge of sorting, recording to the record book and forwarding to respective divisions was *Mr. Rudin Vengua*, who compulsory retired last August 2006**. However, there were instances also that Mr. Vengua unintentionally delivered the disbursement vouchers with zero balances to Checks Disbursement Division, but Check Disbursement staff would call the attention of our office for misdelivered zero balances disbursement vouchers.
>
> Unfortunately **our 2002 record book was lost together** with some documents when we transferred from our former office 2nd floor Annex Building, on October 2004. x x x. (emphasis, italics and underscoring supplied)[11]

In its May 15, 2007 Report,[12] the OAS, after concluding its investigation, came up with the following findings, quoted *verbatim*:

> This Office issued a memorandum directing the F[inancial] S[ervices] D[ivision] to name the responsible person in their office in 2002 who sorted out, took both the DV No. 101-02-08-19596

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[10] *Id.* at 96-100.

[11] *Id.* at 150.

[12] *Id.* at 1-13.

and 101-02-08-19597 and mistakenly forwarded them to the Accounting Division. **Ms. Edita Japzon, (FSD Chief) wrote a letter and informed this office that the person in charge of sorting, recording [in] the recording book and forwarding the disbursement vouchers to the respective divisions is Mr. *Rudin Vengua*. Said person compulsory retired last August 2006. She further stated that there were instances that Mr. Vengua unintentionally delivered disbursement vouchers with zero balances to CDD, but the Check Disbursement staff would call the attention of FSD for misdelivered zero balances disbursement vouchers**. (emphasis and underscoring supplied)

Due to the retirement of Mr. Vengua in August 2006, a time *prior* to the initiated complaint by Judge Tan, granting *arguendo* that Mr. Vengua may have been negligent in mistakenly forwarding the vouchers to the Accounting Division, it is already beyond the ambit of the administrative arm of the Supreme Court to try him, as administrative case/s cover only employees of the Court at the time the case was lodged. Thus, recourse if proceeded by the aggrieved party against Mr. Vengua rest[s] now, only in the regular Courts in a criminal/ civil action.

As regards Mr. Dexter Ilagan's testimony, he pointed out that his concern as a Bookkeeper is merely to record and not to check the supporting documents:

x x x x x x x x x

Is it just ministerial on the part of the Bookkeeper to merely see the face value of the voucher and input the same in his journal entries? We say in the negative, a definition of the Bookkeeper as appearing in the Supreme Court personnel division files is a person who "*under general supervision, **performs skilled and responsible bookkeeping work; and does related work***".

x x x x x x x x x

In the case at hand, the DV with zero balance and the DV for remittance on its face value do not appear to be the same. What a bookkeeper does for recording is to check box C [approved for payment] of the disbursement voucher if it states "zero only" or not. It was just unfortunate that there is another Disbursement Voucher underneath that contains ₱88,666.00 in box C [approved for payment]. He should have been cautious in making an entry knowing the fact that what he was recording is "Terminal Leave Benefits, **GSIS payable**-Salary Loan." Mr. Ilagan has been doing a bookkeeping job since

1999, formerly assigned to handle the Fiscal Autonomy Accounts, and when he was transferred to handle the General Fund accounts, his role as a Bookkeeper was the same. In year 2002, the time that the incident happened, he was still performing a bookkeeping function and what more, his position is actually an Accountant I whose job definition is "*under general supervision, **assists in performing advanced and specialized accounting tasks** and provides guidance to lower level accounting clerks in work methods and procedures; does related tasks.*" Mr. Ilagan may not have reviewed the function of the Bookkeeper and Accountant by the book, but as an Accountant, it is basic that he knows how to account the difference between a variety of original disbursement vouchers with a zero account and an Eighty Eight Thousand Six Hundred Sixty–Six (₱88,666.00) Pesos payable, in this case the claimant being the GSIS and not Judge Tan.

Ms. Minerva Briones, the designated immediate supervisor of Mr. Ilagan in the Bookkeeping Section was then holding the position of Accountant II. Her position's definition states that, *under general supervision**, performs a variety of advanced and complicated accounting functions** and **supervises the work of lower level accounting personnel**; does related work.* The characteristics of her position among others state: participates in the bookkeeping work of the agency x x x . Ms. Briones should have been cautious of their work, she being the immediate supervisor should have clearly accounted the supporting documents attached to the JEV and the DV, and if the same be found in excess of the basic requirements, they should have checked as to why it was attached. Their laxity in their review and recording of disbursement vouchers led to a catastrophic result, a ballooning interest. It is clearly appearing in the files of the Accounting Division that DV No. 101-02-08-19597 is not a zero balance voucher.

As to Ms. San Pedro, her participation in the second routing was to review the journal entries on JEV No. 02-08-0031 based on the processed DV No. 101-02-08-19596 and ALOBS only. The supporting documents of the DV in the second routing was no longer checked by her because she had already done so in the first routing when she signed box B, hence she will not be held to account for the lapses committed by the employees directly responsible. Mr. Ilagan and Ms. Briones, have received the vouchers the first time in the second routing and they made an entry thereafter, thus they could not be excused from these lapses.

Thus, Mr. Dexter Ilagan and Ms. Minerva Biones (sic) are jointly and severally liable for the payments made by Judge Tan to GSIS. x x x. (Emphasis and underscoring supplied)

Perusing the above quoted breakdown received from the GSIS shows that **no** amount of ₱79,057.73 representing the alleged GSIS policy cash surrender value was deducted by GSIS to apply for the payment of Judge Tan's salary loan as to leave a zero indebtedness of Judge Tan had the money value of her Terminal Leave been applied too. Hence, the balance of ₱70,055.19 also incurred accrued interest which Mr. Ilagan and Ms. Briones have no participation of. The matter of the supposed cash surrender value of the GSIS policy could have been settled in 2002 if GSIS and Judge Tan have properly arranged offsetting and prepared the necessary documentation leave a zero balance. Records from the 201 file further disclosed that Judge Tan returned to the Supreme Court as Court Attorney VI assigned to Justice Corona from December 29, 2003 to August 16, 2005 prior to assuming her current position as Regional Trial Court Judge in Samar. x x x.

Thus, the liability of Mr. Ilagan and Ms. Briones would not cover the current total amount of indebtedness, interest and surcharges of Judge Tan to GSIS but only a portion of it with surcharges and accrued interest. x x x. (Italics, emphasis and underscoring supplied)

The OAS accordingly recommended as follows:

(1) Mr. Dexter **Ilagan** and Ms. Minerva **Briones** be adjudged guilty of **simple neglect of duty** and be **suspended** for one (1) month and one (1) day suspension [*sic*] for their failure to exercise due diligence in the performance of their duties;

(2) Mr. Dexter Ilagan and Ms. Minerva Briones be held **liable to Judge Tan** in the amount equivalent to the interests and surcharges of Eighty Eight Thousand Six Hundred Sixty–Six Pesos and Eighty Eight Centavos (₱88,666.88) imposed by the GSIS from July 2002 until May of 2004 including accrued interests arising therefrom. The Chief of the Accounting Division, FMBO-SC be directed to make the necessary computation of the extent of the liability of said personnel and submit the same to the Court; and

(3) To prevent occurrence of a similar incident in the future, the Checks Disbursement Division be directed to duplicate Disbursement Voucher for remittance as an attachment of the Disbursement Voucher

with zero balance, separate from the independent Original Disbursement Voucher for remittance intended to be transmitted to CDD. In that way, the Original Disbursement Voucher for remittance will not be mistaken to be an attachment to the DV with zero balance.[13] (emphasis and underscoring supplied)

The Court finds sufficient evidence only against **Ilagan** for simple neglect of duty.

The OAS's sole basis in faulting Minerva, Ilagan's superior, was the affixing of her initials on the journal entry voucher prepared by Ilagan. Without more, the negligence of Ilagan, a subordinate, does not amount to negligence of Minerva, the superior.[14]

There is no showing that the supporting documents attached to the journal entry voucher had palpable or patent defects to call for the non-recording of said voucher in the accounting books. Laxity cannot thus be ascribed to Minerva. Given her position, she cannot be expected to *personally* examine every single detail of all the transactions passing through her desk. *Arias v. Sandiganbayan*[15] teaches:

…All heads of offices have to rely to a reasonable extent on their subordinates and on the good faith of those who prepare bids, purchase supplies or enter into negotiations. x x x. There has to be some added reason why he should examine each voucher in such detail. Any executive head of even *small* government agencies or commissions can attest to the volume of papers that must be signed. There are hundreds of documents, letters, memoranda, vouchers and supporting papers that routinely pass through his hands. The number in bigger offices or departments is even more appalling.

There should be other grounds than the mere signature or approval appearing on a voucher to sustain a conspiracy and conviction. (italics in the original; emphasis and underscoring supplied)

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[13] *Id.* at 12-13.

[14] *Reyes v. Rural Bank of San Miguel*, 468 Phil. 254, 262 (2004) citing *Principe v. Fact-Finding and Intelligence Bureau*, G.R. No. 145973, January 23, 2002, 374 SCRA 460.

[15] G.R. Nos. 81563 and 82512, December 19, 1989, 180 SCRA 309.

While Ilagan, as a subordinate, may have complied with the minimum requirements in the performance of his duties when he perfunctorily recorded the journal entry voucher, the fact remains that the subject remittance voucher was attached to the original disbursement voucher during the recording of the journal entry voucher in the accounting books. The primary responsibility of scrutinizing all supporting documents in the journal entry thus fell on Ilagan. His failure to discharge said responsibility is evident in his following testimony, quoted *verbatim*, during the clarificatory hearing on February 15, 2007:

Q. : Whether there was an attachment, you're telling us na you just concentrate on the face *lang*?

A. : ***On the face ho tapos lalagyan ko lang ng entries iyan.*** *Sabi nila lagyan ko ng number para malaman namin kung ilang papers iyan.*

Q. : Assuming without admitting that you really did not receive the said voucher but supposed this (remittance to GSIS – DV101-02-08-19597) was attached to this voucher (Rowena Tan –DV101-02-08-19596) and you have seen that the claimant is GSIS. What would you have done then?

A. : ***Kasi ang tinitingnan ko ho dito ay iyung ibabaw, ina-assume ko kasi na ito ay duplicate (second paper from the top), hindi ako familiar kung ano ang sinasabi na remittance.*** *Nakita ko lang kung ano ang remittance voucher na pumupunta sa ano (Checks Disbursement Division). Noong nandito na ako sa Fiscal Monitoring Division, CMO, when I personally follow up processing of our checks needed for our travel.*

x x x x x x x x x

Q. : So, whether this is original, xerox or whatever you don't care. You did not care then?

A. : ***Hindi iyun ang responsibility ko. And sabi nila lagyan ko lang ng journal entries (JEV), kung zero balance ay ilagay ko sa libro and in the first place hindi naman dapat nakarating sa Accounting itong remittance eh.*** *Sa Internal*

> *Audit pa lang split na yun. Ipapa-receive sa Finance ba iyun? Sa…*[16] *(italics, emphasis and underscoring supplied)*

It is gathered that that was *not* the first time that Ilagan's office had encountered a situation where a remittance voucher was erroneously forwarded to it. Thus, in his Manifestation the pertinent portions of which are quoted *verbatim*, Ilagan stated:

> 27. That as far as I remember, there were instances wherein my immediate supervisor, Mr. Valdezco, Jr., had a usual confrontation with the other divisions on how to correct the procedures that normally jeopardized everybody's operation, **one of them was the Zero Balance Vouchers, and we had a series of experience before that these vouchers ended up in the possession of other divisions *which caused delay in the recording and payment of obligations***; (italics, emphasis and underscoring supplied)
>
> x x x x x x x x x;
>
> 30. That regardless of being unfamiliar with the form, **granting without admitting** that the remittance voucher was found filed together with the JEV, the undersigned is still not answerable because my superiors had already reviewed my work and that they were **bound to assume** responsibility on the piece of paper they signed under oath and **my participation is limited being the one who prepares the journal entries**; (emphasis in the original; underscoring supplied)[17]

The attachment to the journal entry voucher of what to Ilagan was an "unfamiliar" remittance voucher, as well as his awareness of previous "series of" experiences of the Accounting Division regarding misdelivered "zero-balance" vouchers, should have put him on guard in processing Judge Tan's remittance voucher. He should not have merely "assumed," to use his word, that such unfamiliar voucher was a mere duplicate.

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[16] *Rollo,* p. 77.

[17] *Id.* at 283.

It is gathered that Rudin Vengua, in charge of "sorting, recording [in] the record book and forwarding to [the] respective divisions" of the disbursement vouchers, was also responsible for the inadvertence. For he was tasked to separate the remittance voucher from the original disbursement voucher and to forward the same to the CDD for preparation of the check. But he did not.

Vengua, however, had, retired in August 2006 *prior* to the filing of the administrative complaint on October 11, 2006.

Still, the Court notes that Judge Tan is not without fault. For, as early as October 8, 2002, the GSIS had already informed her of her outstanding obligation. It was only in the "early part of 2004" that she followed-up the remittance of her terminal leave pay with the Court. Her preoccupation with her studies abroad did not excuse her from either writing, or sending an authorized representative to the Court to follow up the remittance or to continue paying her monthly loan amortizations directly with the GSIS in order to keep her account current pending the remittance.

Suffice it to state then that Judge Tan's act or omission contributed "to a legal cause of what she suffered," which act or omission falls below the standard to which one is required to conform for one's own protection.[18]

Given Judge Tan's contributory negligence, the Court sees it fit to only obligate Ilagan to reimburse the amount paid by Judge Tan for the interest and surcharges on the unremitted ₱88,666.00 as of **October 8, 2002**, or the date the GSIS actually informed Judge Tan of her outstanding obligation. Bereft of any record on which a proper assessment of the reimbursable amount can be made, the OAS is directed to coordinate with the Accounting Division and the GSIS for its computation.

Ilagan is thus administratively liable for simple neglect of duty, defined as failure to give *proper attention* to a task expected of an employee resulting from either carelessness or indifference.[19]

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[18] *Valenzuela v. Court of Appeals,* 323 Phil. 374, 388 (1996).

[19] *Villanueva-Fabella v. Judge Jose Lee,* 464 Phil. 548, 570-571 (2004).

Under Rule IV, Section 52(B) of the *Uniform Rules on Administrative Cases in the Civil Service vis-à-vis* Rule XIV, Section 23 of the *Omnibus Civil Service Rules and Regulations* implementing Book V of the Administrative Code of 1987,[20] the penalty for simple neglect of duty is suspension for a period of one (1) month and one (1) day to six (6) months for the first violation. Under Sec. 19, Rule XIV of the same Rules, the penalty of fine, in lieu of suspension, may also be imposed.

Considering that this appears to be Ilagan's first administrative offense and following rulings in several cases involving simple neglect of duty,[21] the penalty of fine in the amount of ₱5,000 would suffice.

Respecting the recommendation of the OAS for the issuance of a directive to the Checks Disbursement Division "to duplicate Disbursement Voucher remittance as an attachment of the Disbursement Voucher with zero balance, separate from the independent Original Disbursement Voucher for remittance intended to be transmitted to the C[heck] D[isbursement] D[ivision]," the same is well-taken.

WHEREFORE, DEXTER ILAGAN of this Court is found *GUILTY* of simple neglect of duty and is fined Five Thousand (₱5,000) Pesos, with WARNING that a repetition of the same or similar offense shall be dealt with more severely.

He is also *ORDERED* to reimburse Judge Rowena Nieves Tan the amount paid by her representing interests and penalty surcharges on her loan from the Government Service Insurance System as of October 8, 2002, the amount to be computed by the Office of Administrative Services which is ordered to coordinate with the Accounting Office and the GSIS for the purpose.

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[20] Executive Order No. 292.

[21] *Estoque v. Girado*, A.M. No. P-06-2250, March 24, 2008, 549 SCRA 1, 10-11; *Balanag, Jr. v. Osita*, 437 Phil. 452, 460 (2002); *Casano v. Magat*, 425 Phil. 356, 363 (2002); *Tiongco v. Molina*, 416 Phil. 676, 684 (2001); *Beso v. Daguman*, 380 Phil. 544, 555 (2000).

In line with its recommendation, the Office of Administrative Services, in coordination with the Accounting Division, the Financial Services Division, and the Check Disbursement Division and Cash Division, is *ORDERED* to submit proposed guidelines to prevent a repetition of the same or similar *faux pas* in the processing of remittance vouchers intended for payment of obligations.

SO ORDERED.

Puno, C.J., Carpio, Corona, Velasco, Jr., Nachura, Leonardo-de Castro, Brion, Peralta, Bersamin, Del Castillo, Villarama, Jr., and *Perez, JJ.,* concur.
Abad, J., on official leave.
Mendoza, J., on leave.

FIRST DIVISION

[A.M. No. P-10-2763. February 10, 2010]
(Formerly OCA IPI No. 09-3056-P)

RE: IRREGULARITY IN THE USE OF BUNDY CLOCK BY SOPHIA M. CASTRO AND BABYLIN V. TAYAG, SOCIAL WELFARE OFFICERS II, [1] BOTH OF THE REGIONAL TRIAL COURT, OFFICE OF THE CLERK OF COURT, ANGELES CITY.

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; COURT PERSONNEL; DISHONESTY, DEFINED; DISHONESTY IS PUNISHABLE BY DISMISSAL EVEN FOR THE FIRST

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[1] Sometimes Social Welfare Officer I, II, or III in the records.

OFFENSE. — Respondents are indeed guilty of dishonesty, defined as "the disposition to lie, cheat, deceive, or defraud; untrustworthiness; lack of integrity; lack of honesty, probity or integrity in principle; lack of fairness and straightforwardness; disposition to defraud, deceive or betray." Dishonesty, which is a *grave offense*, is punishable by dismissal even for the first offense.

2. ID.; ID.; ID.; LEAVING THE COURT PREMISES WITHOUT TRAVEL ORDER CONSTITUTES A VIOLATION OF REASONABLE OFFICE RULES AND PROCEDURES. — Respondents are guilty too of violation of reasonable office rules and procedures. In *Estardo-Teodoro v. Segismundo* where the therein respondent court personnel failed to secure permission for his travel to Manila to obtain summons in a civil case in a court and visited the residence of the defendants in that civil case, in violation of an office memorandum issued by the clerk of court and noted by the executive judge, the Court held that the therein respondent violated "reasonable office rules and procedures." Such violation is classified as a *light offense*.

3. ID.; ID.; ID.; PENALTY OF SUSPENSION IMPOSED FOR VIOLATION OF REASONABLE OFFICE RULES AND PROCEDURES AND DISHONESTY. — While respondents committed two offenses — leaving the court premises without any travel order, which is a light offense, and dishonesty for fraudulently punching in their bundy cards, which is a grave offense – the mitigating circumstances considered by the OCA justify the imposition of the recommended penalty of six-month suspension for each respondent.

R E S O L U T I O N

CARPIO MORALES, *J.*:

By letter[2] of October 23, 2008, then Deputy Court Administrator Antonio H. Dujua directed Executive Judge Ma. Angelica B. Quiambao of the Regional Trial Court, Angeles City to report on the bundy cards for the month of August 2008 of Sophia

[2] *Rollo*, p. 9.

Castro and Babylin Tayag, Social Welfare Officers of the Office of the Clerk of Court due to "irregularity of entries in the morning time-in on August 1, 2008 showing '19:30 and 19:31.'" It appeared that the bundy cards were punched in the evening.

Judge Quiambao complied with the directive by submitting her letter-report dated November 12, 2008[3] which the Office of the Court Administrator (OCA) noted as follows, quoted *verbatim*:

> In her November 12, 2008 letter-report, Executive Judge Quiambao narrates that she was able to secure the attendance logbook of the RTC-OCC for August 1, 2008 and the names Castro and Tayag do not appear in the logbook. In their Joint Explanation submitted to Executive Judge Quiambao, Castro and Tayag admit that they did not report to the RTC-OCC in the morning of August 1, 2008 as they had to attend to an adoption matter in Magalang, Pampanga in the afternoon of the same day. Pressed for time, Castro and Tayag reveal that they proceeded to Magalang without the corresponding travel order. Upon realizing that they have not punched in their bundy cards, Castro and Tayag did the same at "19:30" and "19:31," (7:30 p.m., 7:31 p.m. under regular time) thinking it would register as "7:30 a.m." and "7:31 a.m."[4]

The OCA thereupon directed, by separate Indorsements dated February 12, 2009, Castro and Tayag to comment on the allegation of irregularity in the use of bundy card. The two complied with the directive by separate comments which the OCA synthesized as follows, quoted *verbatim*:

> In her Comment dated March 3, 2009, Castro reiterates her earlier claim that she and Tayag had to go to Magalang, Pampanga in the afternoon of August 1, 2008 to conduct an impromptu interview with the parties in an adoption case. She explains that since moving to a new Hall of Justice in June 2008, she and Tayag maintained office at the first floor of the Maintenance Division. As she was also busy preparing to testify in the Family Court that afternoon, Tayag claims she forgot to go upstairs and punch in her bundy card. It was not

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[3] *Id.* at 2.

[4] *Id.* at 21.

until the clock reached "19:30" that she decided to punch in her card, thinking it would register as "7:30 a.m."

In her Comment dated March 4, 2009, Tayag claims she had thought of filing a leave of absence on August 1, 2008 but nixed the idea after she was able to finish the interview with her clients at 11:30 a.m. She went back to the court to punch in her card for the afternoon time slot. Tayag claims she resumed the interview with her clients and the session ended at 4:30 p.m. Tayag claims that it was upon returning to court that she and Castro thought of doing the "despicable act" of punching in their bundy cards to make it appear that they were present the whole day of August 1, 2008.[5] (underscoring supplied)

The OCA thereupon came up with the following evaluation *cum* recommendation in its October 1, 2009 Report:[6]

There is sufficient reason to hold respondents administratively liable.

There was a clear attempt by Castro and Tayag to deceive the Court on their attendance for August 1, 2008**.** The attendance logbook of the RTC-OCC for August 1, 2008 does not contain their names, yet on their bundy cards, Castro and Tayag made it appear that they were present on the day reckoned.

Castro and Tayag can only come up with the excuse that they had an afternoon session with their clients and was so pressed for time that they could no longer punch in their bundy cards. The respondents, however, **admit** that the trip to Magalang, Pampanga for the interview with their clients was **not covered by a travel order**. As if going out of court premises without the required travel order was not enough, Castro and Tayag had the temerity to punch in their bundy cards at "19:30" and "19:31," respectively, in the mistake belief that it would register as "7:30 a.m." and "7:31 a.m." The two punched in their cards after having dinner with their supposed "clients."

The actuations of Castro and Tayag are clearly in violation of OCA Circular No[.] 7-2003, which in part, reads:

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[5] *Id.* at 22.

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

> In the submission of Certificates of Service and Daily Time Records (DTRs)/Bundy Cards by Judges and court personnel, the following guidelines shall be observed:
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> 1. After the end of each month, every official and employee of each court shall accomplish the Daily Time Record (Civil Service Form No. 48)/Bundy Card, indicating therein **truthfully and accurately** the time of arrival in and departure from the office x x x.

The foregoing Circular provides that every court official and employee must truthfully and accurately indicate the time of his or her arrival at and departure from the office.

In Administrative Matter No. P-08-2494 (*Re: Report on the Irregularity in the Use of Bundy Clock by Alberto Salamat, Sheriff IV, RTC, Branch 80, Malolos City; November 27, 2008),* the Court held that "[falsification of the daily time records] is patent dishonesty, reflective of respondent's fitness as an employee to continue in office and of the level of discipline and morale in the service. Falsification of daily time records is an act of dishonesty. For this, respondent must be held administratively liable. Rule XVII, Section 4 of the Omnibus Civil Service Rules and Regulations (Civil Service Rules) provides:

> Section 4. Falsification or irregularities in the keeping of time records will render the guilty officer or employee administratively liable x x x.

Under Rule XIV, Section 21 of the Civil Service Rules, **falsification** of official documents (such as daily time records) and **dishonesty** are both **grave offenses**. As such, they carry the penalty of dismissal from the service with forfeiture of retirement benefits, except accrued leave credits, and perpetual disqualification from reemployment in government service.

However, there had been several administrative cases involving dishonesty wherein the Court meted out a penalty lower than dismissal. In these cases, the Court took cognizance of mitigating circumstances such as the respondent's length of service in the judiciary, the respondent's acknowledgement of his or her infractions and feeling remorse, and family circumstances, among other things.

Castro and Tayag confessed to the irregularities they committed and feverishly sought the forgiveness of the Court. In her March 3, 2009 Comment, Castro revealed that she is suffering from Stage 2 Breast Cancer and is in dire straits financially. For her part, Tayag vowed never to repeat the same mistake. The records of the respondents show that this is their **first time to commit** such an offense.

In A.M. No. P-06-2243 (*Re: Irregularities in the Use of Logbook and Daily Time Record by Clerk of Court Raquel Razon, et al.*,MTC-OCC, Guagua, Pampanga*)*, the Court did not impose the severe penalty of dismissal on the basis of the acknowledgement by respondents therein of their guilt, and also their remorse and long years of service. The Court imposed, instead, the penalty of fine in the amount of ₱2,000.00.

In *Re: Failure of Jose Dante E. Guerrero to Register His Time In and Out in Chronolog Time Recorder Machine [for] Several Times* (A.M. No. 2005-07-SC, 19 April 2006), the Court imposed the penalty of six-month suspension on Guerrero, who was found guilty of dishonesty for falsifying his time record. The Court considers as mitigating circumstances Guerrero's good performance rating, his 13 years of satisfactory service in the judiciary, and his acknowledgment of and remorse for his infractions.

The compassion extended by the Court in these cases was not without legal basis. Section 53, Rule IV of the Uniform Rules on Administrative Cases in the Civil Service (CSC Memorandum Circular No. 991936, August 31, 1999 grants the disciplining authority the discretion to consider mitigating circumstances in the imposition of the proper penalty.

Considering that Castro and Tayag actually committed no less than two (2) offenses, leaving the court premises without any travel order and fraudulently punching in their bundy cards, the penalty of six-month suspension will suffice.[7] (italics in the original; emphasis and underscoring supplied)

By Resolution of January 27, 2010, the Court re-docketed the case as a regular administrative matter.

The Court finds in order the evaluation of the case by the OCA.

[7] *Id.* at 22-24.

Respondents are indeed guilty of dishonesty, defined as "the disposition to lie, cheat, deceive, or defraud; untrustworthiness; lack of integrity; lack of honesty, probity or integrity in principle; lack of fairness and straightforwardness; disposition to defraud, deceive or betray."[8] Dishonesty, which is a *grave offense*, is punishable by dismissal even for the first offense.[9]

Respondents are guilty too of violation of reasonable office rules and procedures. In *Estardo-Teodoro v. Segismundo* where the therein respondent court personnel failed to secure permission for his travel to Manila to obtain summons in a civil case in a court and visited the residence of the defendants in that civil case, in violation of an office memorandum issued by the clerk of court and noted by the executive judge, the Court held that the therein respondent violated "reasonable office rules and procedures." Such violation is classified as a *light offense*.[10]

While respondents committed two offenses — leaving the court premises without any travel order, which is a light offense,[11] and dishonesty for fraudulently punching in their bundy cards, which is a grave offense – the mitigating circumstances considered by the OCA justify the imposition of the recommended penalty of six-months suspension for each respondent.

WHEREFORE, respondents Sophia M. Castro and Babylin V. Tayag, Social Welfare Officers II, Angeles City Regional Trial Court, Office of the Clerk of Court, are *SUSPENDED* for Six Months without pay, with a *STERN WARNING* that a repetition of the same or similar acts shall be dealt with more severely.

SO ORDERED.

Puno, C.J. (Chairperson), Leonardo-de Castro, Bersamin, and *Villarama, Jr., JJ.,* concur.

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[8] *Estardo-Teodoro v. Segismundo*, A.M. No. P-08-2523, April 7, 2009, 584 SCRA 18, 30.

[9] Section 52 (A) (1), CSC Memorandum Circular No. 19, series of 1999.

[10] Section 52 (C) (3), CSC Memorandum Circular No. 19, series of 1999.

[11] *Ibid.*

EN BANC

[G.R. No. 180050. February 10, 2010]

RODOLFO G. NAVARRO, VICTOR F. BERNAL, and RENE O. MEDINA, *petitioners, vs.* **EXECUTIVE SECRETARY EDUARDO ERMITA, representing the President of the Philippines; Senate of the Philippines, represented by the SENATE PRESIDENT; House of Representatives, represented by the HOUSE SPEAKER; GOVERNOR ROBERT ACE S. BARBERS, representing the mother province of Surigao del Norte; GOVERNOR GERALDINE ECLEO VILLAROMAN, representing the new Province of Dinagat Islands,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; MOOT AND ACADEMIC; THE COURTS WILL DECIDE A QUESTION OTHERWISE MOOT AND ACADEMIC IF IT IS CAPABLE OF REPETITION, YET EVADING REVIEW. — In *Coconut Oil Refiners Association, Inc. v. Torres*, the Court held that in cases of paramount importance where serious constitutional questions are involved, the standing requirements may be relaxed and a suit may be allowed to prosper even where there is no direct injury to the party claiming the right of judicial review. In the same vein, with respect to other alleged procedural flaws, even assuming the existence of such defects, the Court, in the exercise of its discretion, brushes aside these technicalities and takes cognizance of the petition considering its importance and in keeping with the duty to determine whether the other branches of the government have kept themselves within the limits of the Constitution. Further, supervening events, whether intended or accidental, cannot prevent the Court from rendering a decision if there is a grave violation of the Constitution. The courts will decide a question otherwise moot and academic if it is capable of repetition, yet evading review.

2. POLITICAL LAW; LOCAL GOVERNMENT CODE; CREATION OF A NEW PROVINCE; REQUISITES. — The constitutional

provision on the creation of a province in Section 10, Article X of the Constitution states: SEC. 10. No province, city, municipality, or *barangay* may be created, divided, merged, abolished, or its boundary substantially altered, except **in accordance with the criteria established in the local government code** and subject to approval by a majority of the votes cast in a plebiscite in the political units directly affected." Pursuant to the Constitution, the Local Government Code of 1991 prescribed the criteria for the creation of a province, thus: SEC. 461. *Requisites for Creation*. — (a) A province may be created if it has an average annual income, as certified by the Department of Finance, of not less than Twenty million pesos (₱20,000,000.00) based on 1991 constant prices **and either of the following requisites**: (i) a **contiguous territory** of at least **two thousand (2,000) square kilometers**, as certified by the Lands Management Bureau; or (ii) a population of not less than two hundred fifty thousand (250,000) inhabitants as certified by the National Statistics Office: *Provided*, That, the creation thereof shall not reduce the land area, population, and income of the original unit or units at the time of said creation to less than the minimum requirements prescribed herein. (b) **The territory need not be contiguous if it comprises two (2) or more islands** or is separated by a chartered city or cities which do not contribute to the income of the province. (c) The average annual income shall include the income accruing to the general fund, exclusive of special funds, trust funds, transfers, and non-recurring income. As a clarification of the territorial requirement, the Local Government Code requires **a contiguous territory of at least 2,000 square kilometers**, as certified by the Lands Management Bureau. However, **the territory need not be contiguous if it comprises two (2) or more islands or is separated by a chartered city or cities that do not contribute to the income of the province**.

3. ID.; ID.; ID.; TERMS "TERRITORY" AND "CONTIGUOUS," DEFINED; THE PROVISION "THE TERRITORY NEED NOT BE CONTIGUOUS IF IT COMPRISES TWO OR MORE ISLANDS," CONSTRUED.— If a proposed province is composed of two or more islands, does "territory," under Sec. 461 of the Local Government Code, include not only the land mass above the water, but also that which is beneath it? xxx [In *Tan v. COMELEC*, the Court held:] The last sentence of the first paragraph of Section 197 is most revealing. As so

stated therein the "*territory need not be contiguous if it comprises two or more islands*." **The use of the word *territory* in this particular provision of the Local Government Code and in the very last sentence thereof, clearly, reflects that "*territory*" as therein used, has reference only to the mass of land area and excludes the waters over which the political unit exercises control**. Said sentence states that the "territory need not be contiguous." Contiguous means (a) in physical contact; (b) touching along all or most of one side; (c) near, [n]ext, or adjacent (Webster's New World Dictionary, 1972 Ed., p. 307). **"Contiguous," when employed as an adjective, as in the above sentence, is only used when it describes physical contact, or a touching of sides of two solid masses of matter**. The meaning of particular terms in a statute may be ascertained by reference to words associated with or related to them in the statute (*Animal Rescue League vs. Assessors*, 138 A.L.R., p. 110). Therefore, in the context of the sentence above, what need not be "contiguous" is the "territory" — the physical mass of land area. **There would arise no need for the legislators to use the word contiguous if they had intended that the term "territory" embrace not only land area but also territorial waters**. **It can be safely concluded that the word territory in the first paragraph of Section 197 is meant to be synonymous with "land area" only.** The words and phrases used in a statute should be given the meaning intended by the legislature (82 C.J.S., p. 636). The sense in which the words are used furnished the rule of construction (In re Winton Lumber Co., 63 p. 2d., p. 664). The discussion of the Court in *Tan* on the definition and usage of the terms "territory," and "contiguous", and the meaning of the provision, "The territory need not be contiguous if it comprises two or more islands", contained in Sec. 197 of the former Local Government Code, which provides for the requisites in the creation of a new province, is applicable in this case since there is no reason for a change in their respective definitions, usage, or meaning in its counterpart provision in the present Local Government Code contained in Sec. 461 thereof.

4. ID.; ID.; ID.; THE PROVISION IN SECTION 2, ARTICLE 9 OF THE IMPLEMENTING RULES AND REGULATIONS STATING THAT "(T)HE LAND AREA REQUIREMENT SHALL NOT APPLY WHERE THE PROPOSED PROVINCE IS COMPOSED OF ONE (1) OR MORE ISLANDS" DECLARED NULL AND

VOID; IN CASE OF DISCREPANCY BETWEEN THE BASIC LAW AND THE RULES AND REGULATIONS IMPLEMENTING THE SAID LAW, THE BASIC LAW PREVAILS. — The territorial requirement in the Local Government Code is adopted in the Rules and Regulations Implementing the Local Government Code of 1991 (IRR), xxx. However, the IRR went beyond the criteria prescribed by Section 461 of the Local Government Code when it added the italicized portion above stating that "[t]he land area requirement shall not apply where the proposed province is composed of one (1) or more islands." Nowhere in the Local Government Code is the said provision stated or implied. Under Section 461 of the Local Government Code, the only instance when the territorial or land area requirement need not be complied with is when there is already compliance with the population requirement. The Constitution requires that the criteria for the creation of a province, **including any exemption from such criteria**, must all be written in the Local Government Code. There is no dispute that in case of discrepancy between the basic law and the rules and regulations implementing the said law, the basic law prevails, because the rules and regulations cannot go beyond the terms and provisions of the basic law. Hence, the Court holds that the provision in Sec. 2, Art. 9 of the IRR stating that "[t]he land area requirement shall not apply where the proposed province is composed of one (1) or more islands" is null and void.

5. ID.; ID.; ID.; PROVISION IN THE IMPLEMENTING RULES AND REGULATIONS WHICH ADDS EXEMPTION IN THE CRITERIA PRESCRIBED BY THE LOCAL GOVERNMENT CODE IN THE CREATION OF A PROVINCE AS REGARDS THE LAND AREA REQUIREMENT IS NULL AND VOID; PROVISIONS IN THE IMPLEMENTING RULES MUST BE GERMANE TO THE PURPOSE OF THE LAW. — Respondents, represented by the Office of the Solicitor General, argue that rules and regulations have the force and effect of law as long as they are germane to the objects and purposes of the law. xxx They assert that in *Holy Spirit Homeowners Association, Inc. v. Defensor*, the Court declared as valid the implementing rules and regulations of a statute, even though the administrative agency added certain provisions in the implementing rules that were not found in the law. In *Holy Spirit Homeowners*

Association, Inc. v. Defensor, the provisions in the implementing rules and regulations, which were questioned by petitioner therein, merely filled in the details in accordance with a known standard. The law that was questioned was R.A. No. 9207, otherwise known as "National Government Center (NGC) Housing and Land Utilization Act of 2003." xxx [T]he provisions in the implementing rules and regulations that were questioned in *Holy Spirit Homeowners Association, Inc.* merely filled in the necessary details to implement the objective of the law in accordance with a known standard, and were thus germane to the purpose of the law. In this case, the pertinent provision in the IRR did not fill in any detail in accordance with a known standard provided for by the law. Instead, the IRR **added an exemption to the standard** or criteria prescribed by the Local Government Code in the creation of a province as regards the land area requirement, **which exemption is not found in the Code**. As such, the provision in the IRR that the land area requirement shall not apply where the proposed province is composed of one or more islands is not in conformity with the standard or criteria prescribed by the Local Government Code; hence, it is null and void. Contrary to the contention of respondents, the extraneous provision cannot be considered as germane to the purpose of the law to develop territorial and political subdivisions into self-reliant communities because, in the first place, it already conflicts with the criteria prescribed by the law in creating a territorial subdivision.

6. ID.; ID.; ID.; THE PROVISION IN ART. 9 (2) OF THE IMPLEMENTING RULES AND REGULATIONS EXEMPTING A PROPOSED PROVINCE COMPOSED OF ONE OR MORE ISLANDS FROM THE LAND-AREA REQUIREMENT CANNOT BE CONSIDERED AN EXECUTIVE CONSTRUCTION OF THE CRITERIA PRESCRIBED BY THE LOCAL GOVERNMENT CODE; INTENT OF THE LAW DETERMINED FROM THE LITERAL LANGUAGE OF THE LAW WITHIN THE LAW'S FOUR CORNERS. — Courts determine the intent of the law from the literal language of the law within the law's four corners. If the language of the law is plain, clear and unambiguous, courts simply apply the law according to its express terms. If a literal application of the law results in absurdity, impossibility or injustice, then courts may resort to extrinsic aids of statutory construction like the legislative history of the law, or may

consider the implementing rules and regulations and pertinent executive issuances in the nature of executive construction. In this case, the requirements for the creation of a province contained in Sec. 461 of the Local Government Code are clear, plain and unambiguous, and its literal application does not result in absurdity or injustice. Hence, the provision in Art. 9(2) of the IRR exempting a proposed province composed of one or more islands from the land-area requirement cannot be considered an executive construction of the criteria prescribed by the Local Government Code. It is an extraneous provision not intended by the Local Government Code and, therefore, is null and void.

7. ID.; ID.; ID.; CRITERIA PRESCRIBED BY THE LOCAL GOVERNMENT CODE FOR THE CREATION OF A PROVINCE MUST BE COMPLIED WITH; REPUBLIC ACT NO. 9355 DECLARED UNCONSTITUTIONAL FOR NON-COMPLIANCE WITH THE CRITERIA FOR THE CREATION OF THE PROVINCE OF DINAGAT ISLANDS. — R.A. No. 9355 expressly states that the Province of Dinagat Islands "contains an approximate land area of eighty thousand two hundred twelve hectares (80,212 has.) or **802.12 sq. km.,** more or less, including Hibuson Island and approximately forty-seven (47) islets x x x." R.A. No. 9355, therefore, failed to comply with the land area requirement of 2,000 square kilometers. The Province of Dinagat Islands also failed to comply with the population requirement of not less than 250,000 inhabitants as certified by the NSO. Based on the 2000 Census of Population conducted by the NSO, the population of the Province of Dinagat Islands as of May 1, 2000 was only 106,951. Although the Provincial Government of Surigao del Norte conducted a special census of population in Dinagat Islands in 2003, which yielded a population count of 371,000, the result was not certified by the NSO as required by the Local Government Code. Moreover, respondents failed to prove that with the population count of 371,000, the population of the original unit (mother Province of Surigao del Norte) would not be reduced to less than the minimum requirement prescribed by law at the time of the creation of the new province. xxx To reiterate, when the Dinagat Islands was proclaimed a new province on December 3, 2006, it had an official population of only **106,951** based on the NSO 2000 Census of Population. Less than a year after the proclamation of the new province, the NSO conducted the **2007** Census of

Population. The NSO certified that as of August 1, 2007, Dinagat Islands had a total population of only **120,813**, which was still below the minimum requirement of 250,000 inhabitants. In fine, R.A. No. 9355 failed to comply with either the territorial or the population requirement for the creation of the Province of Dinagat Islands. The Constitution clearly mandates that the creation of local government units must follow the criteria established in the Local Government Code. Any derogation of or deviation from the criteria prescribed in the Local Government Code violates Sec. 10, Art. X of the Constitution. Hence, R.A. No. 9355 is unconstitutional for its failure to comply with the criteria for the creation of a province prescribed in Sec. 461 of the Local Government Code.

8. ID.; ID.; ID.; POPULATION REQUIREMENT; RESULT OF THE PROVINCIAL GOVERNMENT'S SPECIAL CENSUS MUST BE CERTIFIED BY THE NATIONAL STATISTICS OFFICE. — Although the NSO representative to the Committee on Local Government deliberations dated November 24, 2005 did not object to the result of the provincial government's special census, which was conducted with the assistance of an NSO district census coordinator, it was agreed by the participants that the said result was not certified by the NSO, which is the requirement of the Local Government Code. Moreover, the NSO representative, Statistician II Ma. Solita C. Vergara, stated that based on their computation, the population requirement of 250,000 inhabitants would be attained by the Province of Dinagat Islands by the year 2065. The computation was based on the growth rate of the population, excluding migration.

9. ID.; ID.; ID.; GERRYMANDERING, DEFINED; CREATION OF THE PROVINCE OF DINAGAT ISLAND IS NOT AN ACT OF GERRYMANDERING. — "Gerrymandering" is a term employed to describe an apportionment of representative districts so contrived as to give an unfair advantage to the party in power. Fr. Joaquin G. Bernas, a member of the 1986 Constitutional Commission, defined "gerrymandering" as the formation of one legislative district out of separate territories for the purpose of favoring a candidate or a party. The Constitution proscribes gerrymandering, as it mandates each legislative district to comprise, as far as practicable, a contiguous, compact and adjacent territory. As stated by the Office of the Solicitor General, the Province of Dinagat Islands consists of one island and about

47 islets closely situated together, without the inclusion of separate territories. It is an unsubstantiated allegation that the province was created to favor Congresswoman Glenda Ecleo-Villaroman.

10. ID.; SPECIAL CIVIL ACTIONS; *CERTIORARI*; ALLEGATIONS OF FRAUD AND IRREGULARITIES IN THE CONDUCT OF A PLEBISCITE CANNOT BE THE SUBJECT THEREOF. — Petitioners alleged that R.A. No. 9355 was ratified by a doubtful mandate in a plebiscite held on December 2, 2005, where the "yes votes" were 69,943, while the "no votes" were 63,502. They contend that the 100% turnout of voters in the precincts of San Jose, Basilisa, Dinagat, Cagdianao and Libjo was contrary to human experience, and that the results were statistically improbable. Petitioners admit that they did not file any electoral protest questioning the results of the plebiscite, because they lacked the means to finance an expensive and protracted election case. Allegations of fraud and irregularities in the conduct of a plebiscite are factual in nature; hence, they cannot be the subject of this special civil action for *certiorari* under Rule 65 of the Rules of Court, which is a remedy designed only for the correction of errors of jurisdiction, including grave abuse of discretion amounting to lack or excess of jurisdiction. Petitioners should have filed the proper action with the Commission on Elections. However, petitioners admittedly chose not to avail themselves of the correct remedy.

NACHURA, *J.*, *dissenting opinion:*

1. POLITICAL LAW; CONSTITUTIONAL LAW; JUDICIAL DEPARTMENT; JUDICIAL REVIEW; JUDICIAL INTERFERENCE IS UNNECESSARY ABSENT GENUINE CONSTITUTIONAL ISSUE. — The *ponencia* of Justice Peralta seeks to strike down an act of both the legislative and the executive branches—the law creating the province of Dinagat Islands. I register my dissent to the *ponencia* for I find this judicial interference unnecessary and, in fact, unwarranted in law. Petitioners have not presented a genuine constitutional issue requiring this Court's intervention. In petitioners' earlier and similarly-worded petition—G. R. No. 175158—the Court found no compelling reason to brush aside technicalities of procedure and resolve the merits of the case. Just like G.R.

No. 175158, the present petition deserves the same dismissive treatment from the Court.

2. ID.; ID.; ID.; ID.; RULE; COURT MAY DECLARE A LAW OR PORTIONS THEREOF UNCONSTITUTIONAL WHERE THE PETITIONER HAS SHOWN THAT THERE IS A CLEAR AND UNEQUIVOCAL BREACH OF THE CONSTITUTION, NOT MERELY A DOUBTFUL OR ARGUMENTATIVE ONE; NOT APPLICABLE TO CASE AT BAR; R.A. NO. 9355 NOT VIOLATIVE OF THE CONSTITUTION. — *Cawaling, Jr. v. Commission on Elections* fittingly instructs that every statute enjoys the presumption of constitutionality, owing to the doctrine of separation of powers which imposes upon the three coordinate departments of the Government a becoming courtesy for each other's acts. Every law, being the joint act of the Legislature and the Executive, has passed careful scrutiny to ensure that it is in accord with the fundamental law. Of course, the Court may, nevertheless, declare a law, or portions thereof, unconstitutional, where a petitioner has shown that there is a clear and unequivocal breach of the Constitution, not merely a doubtful or argumentative one. Here, as revealed in the above discussion, petitioners have not shown that Dinagat Islands does not meet the criteria laid down in Section 461 of the LGC for the creation of a province; thus, they cannot assert that R.A. No. 9355 clearly and unequivocally breaches Article X, Section 10 of the Constitution. Absent a genuine constitutional issue, the petition fails in substance. The petition also breaches procedural standards because when the inquiry is focused on the legal existence of a body politic, the action is reserved to the State in a proceeding for *quo warranto*, not through a petition for *certiorari*.

3. ID.; LOCAL GOVERNMENT CODE; CREATION OF THE PROVINCE; ARTICLE 9(A)(2) OF THE RULES AND REGULATIONS IMPLEMENTING THE LOCAL GOVERNMENT CODE; TERRITORIAL REQUIREMENT; THE PROVINCE OF DINAGAT ISLANDS IS EXEMPT FROM COMPLYING WITH THE COMPONENT REQUIREMENTS OF CONTIGUITY AND LAND AREA; REASON. — I cannot [s]ubscribe to the *ponencia*'s holding that Dinagat Islands fails to comply with the territorial requirement because it only has an aggregate land area of 802.12 sq km. Let it be emphasized that the province is comprised of

the municipalities of Basilisa, Cagdianao, Dinagat, Libjo (Albor), Loreto, San Jose and Tubajon, and includes Hibuson Island and approximately 47 islets under the jurisdiction of the said municipalities. This fact relieves it from complying with the criterion that its territory must be contiguous and at least 2,000 sq km in area. Article 9(a)(2) of the Rules and Regulations Implementing (IRR) the LGC of 1991 pertinently provides that the territory need not be contiguous and the land area requirement shall not apply where the proposed province is composed of islands. xxx

4. ID.; ID.; ID.; SECTION 461 OF THE LOCAL GOVERNMENT CODE; TERRITORIAL CONTIGUITY REQUIREMENT AND LAND AREA CRITERION, CONSTRUED. — The province of Dinagat Islands, composed as it is of a group of islands, is exempt from compliance not only with the territorial contiguity requirement but also with the 2,000-sq km land area criterion. This proceeds from no less than Section 461 of the LGC xxx. Section 461. *Requisites for Creation.*—(a) A province may be created if it has an average annual income, as certified by the Department of Finance, of not less than Twenty million pesos (₱20,000,000.00) based on 1991 constant prices and either of the following requisites: (i) a contiguous territory of at least two thousand (2,000) square kilometers, as certified by the Lands Management Bureau; or xxx. *Provided*, That, the creation thereof shall not reduce the land area, population and income of the original unit or units at the time of said creation to less than the minimum requirements prescribed herein. (b) The territory need not be contiguous if it comprises two (2) or more islands or is separated by a chartered city or cities which do not contribute to the income of the province. xxx. Significant in the provision is paragraph (b), underscored above, as it provides for an exemption from the territorial criterion mentioned in paragraph (a). The stipulation in paragraph (b), however, qualifies not merely the word "contiguous" in paragraph (a)(i) in the same provision, but rather **the entirety of the latter paragraph**. Paragraph (a)(i) of the provision, for ready reference, reads: (i) a **contiguous territory of at least two thousand (2,000) square kilometers**, as certified by the Lands Management Bureau[.] This whole paragraph on contiguity and land area, is the one being referred to in the exemption from the territorial requirement in paragraph (b). Thus, if the province to be created is composed of islands, like the one

in this case, then, its territory need not be contiguous and need not have an area of at least 2,000 sq km. This is because, as the law is worded, **contiguity and land area are not two distinct and separate requirements**. They qualify each other. For instance, a territory which is contiguous but which is less than 2,000 sq km in land area will not qualify for provincehood and, conversely, a territory which is 2,000 sq km in area but which is not contiguous cannot become a province, following the general rule in paragraph (a)(1). In other words, contiguity and land area are **two components of a single requirement**—*one cannot exist and serve no purpose without the other, **so much so that a release from compliance with one component results, naturally and logically, in the corresponding exemption from the other***.

5. ID.; ID.; ID.; ID.; EXEMPTION IN PARAGRAPH B THEREOF REFERS TO THE COMPONENT REQUIREMENTS OF CONTIGUITY AND LAND AREA, NOT MERELY TO CONTIGUITY REQUIREMENT. — Indeed, an exemption from one of the two component requirements in paragraph (a)(i) necessitates an exemption from the other component requirement because the nonattendance of one results in the absence of a reason for the other component requirement to effect a qualification. In other words, a component requirement cannot apply without the other because they qualify each other—**one cannot be dissociated from the other**. By rough analogy, the two components are like dicephalic conjoined twins—two heads are attached to a single body. If one head is separated from the other, then the twins die. In the same manner, the law, by providing in paragraph (b) of Section 461 that *the territory need not be contiguous if the same is comprised of islands*, **must be interpreted as intended to exempt such territory from the land area component requirement of 2,000 sq km.** Because the two component requirements are inseparable, the elimination of contiguity from the territorial criterion has the effect of a coexistent eradication of the land area component. The territory of the province of Dinagat Islands, therefore, comprising the major islands of Dinagat and Hibuson, and approximately 47 islets, need not be contiguous and need not have an area of at least 2,000 sq km following Section 461 of the LGC. It will result in superfluity, if not absurdity, if paragraph (b) of the provision is interpreted as referring only to the component requirement of contiguity and not to both component requirements of contiguity and land area. This is

because contiguity does not always mean in contact by land. Thus, in so far as islands are concerned, they are deemed contiguous although separated by wide spans of navigable deep waters, with the exception of the high seas, because all lands separated by water touch one another, in a sense, beneath the water. The provision, then, as worded, only means that the exemption in paragraph (b) refers to both the component requirements on territory, that is, contiguity and land area, and not merely to the first, standing alone. For, indeed, why will the law still exempt the islands from the requirement of contiguity when they are already legally contiguous?

6. ID.; ID.; ID.; ID.; A PROVINCE COMPOSED OF A GROUP OF ISLANDS IS EXEMPT FROM THE CONTIGUITY AND LAND AREA COMPONENTS OF THE TERRITORIAL REQUIREMENT FOR ITS CREATION.— By inference, Section 461, in effect, signifies that, if the proposed province is composed of islands, its territory includes not only the land mass above the water but that which is beneath it. Indeed, theoretically, if this entire territory is measured—the one above and beneath the water, then the 2,000 sq km land area would be met with facility. Separate units of measure are, however, used to calculate dry land and that which is covered by water. For expediency, the law, in providing for the criteria for the creation of a province, has exempted groups of islands from the territorial requirement, and this exemption includes the two component requirements of contiguity and land area.

7. ID.; ID.; ID.; ID.; ECONOMIC VIABILITY IS THE PRIMORDIAL CONSIDERATION IN THE CONSTITUTION OF PROVINCES, NOT POPULATION OR TERRITORY; RATIONALE.— This interpretation of Section 461 is further in line with the law's thrust of enabling the territorial and political subdivisions of the state to attain their fullest development in order to make them more effective partners in the attainment of national goals. The Philippines is composed of 7,107 islands, most of them are small and surrounded by vast bodies of water. The constitution of provinces is aimed at administrative efficiency, effective governance, more equitable delivery of basic services, and economic development. If this Court is to prevent a group of islands, with skyrocketing revenues, from organizing themselves into a province on account alone of their small aggregate land mass, then it would be impeding their

> advancement as self-reliant communities and, in the process, would hamper the growth of the national economy—an eventuality obviously not envisioned by both the Constitution and the LGC. Congress, in fact, during its deliberations on what would later on be enacted as the LGC, had paid, if at all it did, little attention to the territorial requirement for the creation of provinces. Instead, it focused on the income requirement and acknowledged the same to be the primordial criterion of viability xxx. Verily, economic viability is the primordial consideration in the constitution of provinces, not population or territory. As to a province composed of a group of islands separated by stretches of water, like the one in this case, the proposition must apply with greater force. A contrary position would prove to be growth-retardant to an economically viable group of islands which have not yet politically separated from the larger mass of land where the provincial capital sits. In a practical sense, it would also be too cumbersome for the inhabitants to travel great lengths and over unpredictable waters just to reach the capital, do their business and avail of basic government services and facilities that ordinarily do not reach beyond the immediate outskirts of the capital. Thus, Section 461, as discussed above, exempts a proposed province composed of several islands from complying with both the contiguity and land area components of the territorial requirement for its creation. It is this interpretation that, logically, impelled both the executive and legislative departments to enact R.A. No. 9355, the law creating the province of Dinagat Islands. We must accord persuasive effect to this contemporaneous interpretation by the two equal branches of government, and abide by the clear intent of the framers of the law.

APPEARANCES OF COUNSEL

Victor F. Bernal for petitioners.

Edmundo L. Zerda for Gov. Robert Ace S. Barbers.

Simeon T. Silva, Jr. and *Mario P. Menil* for Gov. Geraldine B. Ecleo Villaroman.

Office of the Senate Legal Counsel for the Senate of the Philippines.

D E C I S I O N

PERALTA, *J.*:

This is a petition for *certiorari* under Rule 65 of the Rules of Court seeking to nullify Republic Act (R.A.) No. 9355, otherwise known as *An Act Creating the Province of Dinagat Islands,* for being unconstitutional.

Petitioners Rodolfo G. Navarro, Victor F. Bernal, and Rene O. Medina aver that they are taxpayers and residents of the Province of Surigao del Norte. They have served the Province of Surigao del Norte once as Vice- Governor and members of the Provincial Board, respectively. They claim to have previously filed a similar petition, which was dismissed on technical grounds.[1] They allege that the creation of the Dinagat Islands as a new province, if uncorrected, perpetuates an illegal act of Congress, and unjustly deprives the people of Surigao del Norte of a large chunk of its territory, Internal Revenue Allocation and rich resources from the area.

The facts are as follows:

The mother province of Surigao del Norte was created and established under R.A. No. 2786 on June 19, 1960. The province is composed of three main groups of islands: (1) the Mainland and Surigao City; (2) Siargao Island and Bucas Grande; and (3) Dinagat Island, which is composed of seven municipalities, namely, Basilisa, Cagdianao, Dinagat, Libjo, Loreto, San Jose, and Tubajon.

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[1] On November 14, 2006, petitioners Rodolfo Navarro, Victor F. Bernal, Rohito C. Madelo, Clemente G. Sandigan, Jr., Jerry R. Centro, Jose V. Begil, Jr., Rene O. Medina and Jamar D. Gavino filed before this Court a Petition for *Certiorari* and Prohibition with Prayer for Temporary Restraining Order against Secretary Eduardo Ermita, the Senate of the Philippines, the House of Representatives, the COMELEC and the Provincial Government and Provincial Treasurer of Surigao del Norte. Petitioners sought for the declaration of R.A. No. 9355 as unconstitutional and invalid, and prayed that the COMELEC be enjoined from conducting a plebiscite pending resolution on the constitutionality of R.A. No. 9355. The petition, docketed as G.R. No. 175158, was dismissed on technical grounds.

Based on the official 2000 Census of Population and Housing conducted by the National Statistics Office (NSO),[2] the population of the Province of Surigao del Norte as of May 1, 2000 was 481,416, broken down as follows:

Mainland	281,111
Surigao City	118,534
Siargao Island & Bucas Grande	93,354
Dinagat Island	**106,951**

Under Section 461 of R.A. No. 7610, otherwise known as *The Local Government Code*, a province may be created if it has an average annual income of not less than ₱20 million based on 1991 constant prices as certified by the Department of Finance, and a population of not less than 250,000 inhabitants as certified by the NSO, or a contiguous territory of at least 2,000 square kilometers as certified by the Lands Management Bureau. The territory need not be contiguous if it comprises two or more islands or is separated by a chartered city or cities, which do not contribute to the income of the province.

On April 3, 2002, the Office of the President, through its Deputy Executive Secretary for Legal Affairs, advised the *Sangguniang Panlalawigan* of the Province of Surigao del Norte of the deficient population in the proposed Province of Dinagat Islands.[3]

In July 2003, the Provincial Government of Surigao del Norte conducted a special census, with the assistance of an NSO District Census Coordinator, in the Dinagat Islands to determine its actual population in support of the house bill creating the Province of Dinagat Islands. The special census yielded a population count of 371,576 inhabitants in the proposed province. The NSO, however, did not certify the result of the special census. On July 30, 2003, Surigao del Norte Provincial Governor Robert Lyndon S. Barbers issued Proclamation No. 01, which

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[2] Annex "B-1", *rollo*, p. 89.

[3] Annexes "B", "B-1" to "B-2", *id.* at 88-90.

declared as official, for all purposes, the 2003 Special Census in Dinagat Islands showing a population of 371,576.[4]

The Bureau of Local Government Finance certified that the average annual income of the proposed Province of Dinagat Islands for calendar year 2002 to 2003 based on the 1991 constant prices was ₱82,696,433.23. The land area of the proposed province is 802.12 square kilometers.

On August 14, 2006 and August 28, 2006, the Senate and the House of Representatives, respectively, passed the bill creating the Province of Dinagat Islands. It was approved and enacted into law as R.A. No. 9355 on October 2, 2006 by President Gloria Macapagal-Arroyo.

On December 2, 2006, a plebiscite was held in the mother Province of Surigao del Norte to determine whether the local government units directly affected approved of the creation of the Province of Dinagat Islands into a distinct and independent province comprising the municipalities of Basilisa, Cagdianao, Dinagat, Libjo (Albor), Loreto, San Jose, and Tubajon. The result of the plebiscite yielded 69,943 affirmative votes and 63,502 negative votes.[5]

On December 3, 2006, the Plebiscite Provincial Board of Canvassers proclaimed that the creation of Dinagat Islands into a separate and distinct province was ratified and approved by the majority of the votes cast in the plebiscite.[6]

On January 26, 2007, a new set of provincial officials took their oath of office following their appointment by President Gloria Macapagal-Arroyo. Another set of provincial officials was elected during the synchronized national and local elections held on May 14, 2007. On July 1, 2007, the elected provincial officials took their oath of office; hence, the Province of Dinagat Islands began its corporate existence.[7]

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[4] Annex "C", *id.* at 91.

[5] Annex "E", *id.* at 124.

[6] *Id.*

[7] Memorandum of respondent Governor Robert Ace S. Barbers, *rollo*, p. 676.

Petitioners contended that the creation of the Province of Dinagat Islands under R.A. No. 9355 is not valid because it failed to comply with either the population or land area requirement prescribed by the Local Government Code.

Petitioners prayed that R.A. No. 9355 be declared unconstitutional, and that all subsequent appointments and elections to the new vacant positions in the newly created Province of Dinagat Islands be declared null and void. They also prayed for the return of the municipalities of the Province of Dinagat Islands and the return of the former districts to the mother Province of Surigao del Norte.

Petitioners raised the following issues:

I

WHETHER OR NOT REPUBLIC ACT NO. 9355, CREATING THE NEW PROVINCE OF DINAGAT ISLANDS, COMPLIED WITH THE CONSTITUTION AND STATUTORY REQUIREMENTS UNDER SECTION 461 OF REPUBLIC ACT NO. 7160, OTHERWISE KNOWN AS THE LOCAL GOVERNMENT CODE OF 1991.

II

WHETHER OR NOT THE CREATION OF DINAGAT AS A NEW PROVINCE BY THE RESPONDENTS IS AN ACT OF GERRYMANDERING.

III

WHETHER OR NOT THE RESULT OF THE PLEBISCITE IS CREDIBLE AND TRULY REFLECTS THE MANDATE OF THE PEOPLE.[8]

In her Memorandum, respondent Governor Geraldine B. Ecleo-Villaroman of the Province of Dinagat Islands raises procedural issues. She contends that petitioners do not have the legal standing to question the constitutionality of the creation of the Province of Dinagat, since they have not been directly

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[8] Memorandum of Petitioners, *id.* at 462-463.

injured by its creation and are without substantial interest over the matter in controversy. Moreover, she alleges that the petition is moot and academic because the existence of the Province of Dinagat Islands has already commenced; hence, the petition should be dismissed.

The contention is without merit.

In *Coconut Oil Refiners Association, Inc. v. Torres*,[9] the Court held that in cases of paramount importance where serious constitutional questions are involved, the standing requirements may be relaxed and a suit may be allowed to prosper even where there is no direct injury to the party claiming the right of judicial review. In the same vein, with respect to other alleged procedural flaws, even assuming the existence of such defects, the Court, in the exercise of its discretion, brushes aside these technicalities and takes cognizance of the petition considering its importance and in keeping with the duty to determine whether the other branches of the government have kept themselves within the limits of the Constitution.[10]

Further, supervening events, whether intended or accidental, cannot prevent the Court from rendering a decision if there is a grave violation of the Constitution.[11] The courts will decide a question otherwise moot and academic if it is capable of repetition, yet evading review.[12]

The main issue is whether or not R.A. No. 9355 violates Section 10, Article X of the Constitution.

Petitioners contend that the proposed Province of Dinagat Islands is not qualified to become a province because it failed to comply with the land area or the population requirement, despite its compliance with the income requirement. It has a total land area of only 802.12 square kilometers, which falls

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[9] G.R. No. 132527, July 29, 2005, 465 SCRA 47.

[10] *Id*.

[11] *Province of Batangas v. Romulo*, G.R. No. 152774, May 27, 2004, 429 SCRA 736.

[12] *Id*.

short of the statutory requirement of at least 2,000 square kilometers. Moreover, based on the NSO 2000 Census of Population, the total population of the proposed Province of Dinagat Islands is only 106,951, while the statutory requirement is a population of at least 250,000 inhabitants.

Petitioners allege that in enacting R.A. No. 9355 into law, the House of Representatives and the Senate erroneously relied on paragraph 2 of Article 9 of the Rules and Regulations Implementing the Local Government Code of 1991, which states that "*[t]he land area requirement shall not apply where the proposed province is composed of one (1) or more islands*."[13] The preceding italicized provision contained in the Implementing Rules and Regulations is not expressly or impliedly stated as an exemption to the land area requirement in Section 461 of the Local Government Code. Petitioners assert that when the Implementing Rules and Regulations conflict with the law that they seek to implement, the law prevails.

On the other hand, respondents contend in their respective Memoranda that the Province of Dinagat Islands met the legal standard for its creation.

First, the Bureau of Local Government Finance certified that the average annual income of the proposed Province of Dinagat Islands for the years 2002 to 2003 based on the 1991 constant prices was ₱82,696,433.25.

Second, the Lands Management Bureau certified that though the land area of the Province of Dinagat Islands is 802.12 square kilometers, it is composed of one or more islands; thus, it is exempt from the required land area of 2,000 square kilometers under paragraph 2 of Article 9 of the Rules and Regulations Implementing the Local Government Code.

Third, in the special census conducted by the Provincial Government of Surigao del Norte, with the assistance of a District Census Coordinator of the NSO, the number of inhabitants in the Province of Dinagat Islands as of 2003, or almost three

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[13] Italics supplied.

years before the enactment of R.A. No. 9355 in 2006, was 371,576, which is more than the minimum requirement of 250,000 inhabitants.

In his Memorandum, respondent Governor Ace S. Barbers contends that although the result of the special census conducted by the Provincial Government of Surigao del Norte on December 2, 2003 was never certified by the NSO, it is credible since it was conducted with the aid of a representative of the NSO. He alleged that the lack of certification by the NSO was cured by the presence of NSO officials, who testified during the deliberations on House Bill No. 884 creating the Province of Dinagat Islands, and who questioned neither the conduct of the special census nor the validity of the result.

The Ruling of the Court

The petition is granted.

The constitutional provision on the creation of a province in Section 10, Article X of the Constitution states:

> SEC. 10. No province, city, municipality, or *barangay* may be created, divided, merged, abolished, or its boundary substantially altered, except **in accordance with the criteria established in the local government code** and subject to approval by a majority of the votes cast in a plebiscite in the political units directly affected."[14]

Pursuant to the Constitution, the Local Government Code of 1991 prescribed the criteria for the creation of a province, thus:

> SEC. 461. *Requisites for Creation*. — (a) A province may be created if it has an average annual income, as certified by the Department of Finance, of not less than Twenty million pesos (₱20,000,000.00) based on 1991 constant prices **and <u>either</u> of the following requisites**:
>
> (i) a **contiguous territory** of at least **two thousand (2,000) square kilometers**, as certified by the Lands Management Bureau; or

[14] Emphasis supplied.

(ii) a population of not less than two hundred fifty thousand (250,000) inhabitants as certified by the National Statistics Office:

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

(b) **The territory need not be contiguous if it comprises two (2) or more islands** or is separated by a chartered city or cities which do not contribute to the income of the province.

(c) The average annual income shall include the income accruing to the general fund, exclusive of special funds, trust funds, transfers, and non-recurring income.[15]

As a clarification of the territorial requirement, the Local Government Code requires **a contiguous territory of at least 2,000 square kilometers**, as certified by the Lands Management Bureau. However, **the territory need not be contiguous if it comprises two (2) or more islands or is separated by a chartered city or cities that do not contribute to the income of the province**.

If a proposed province is composed of two or more islands, does "territory", under Sec. 461 of the Local Government Code, include not only the land mass above the water, but also that which is beneath it?

To answer the question above, the discussion in *Tan v. Commission on Elections (COMELEC)*[16] is enlightening.

In *Tan v. COMELEC*, petitioners therein contended that Batas Pambansa Blg. 885, creating the new Province of Negros del Norte, was unconstitutional for it was not in accord with Art. XI, Sec. 3 of the Constitution, and Batas Pambansa Blg. 337, the former Local Government Code. Although what was applicable then was the 1973 Constitution and the former Local Government Code, the provisions pertinent to the case are substantially similar to the provisions in this case.

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[15] Emphasis supplied.

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

Art. XI, Sec. 3 of the 1973 Constitution provides:

> Sec. 3. No province, city, municipality or barrio (*barangay* in the 1987 Constitution) may be created, divided, merged, abolished, or its boundary substantially altered except in accordance with the criteria established in the local government code, and subject to the approval by a majority of the votes in a plebiscite in the unit or units affected.

The requisites for the creation of a province in Sec. 197 of Batas Pambansa Blg. 337 are similar to the requisites in Sec. 461 of the Local Government Code of 1991, but the requirements for population and territory/land area are lower now, while the income requirement is higher. Sec. 197 of Batas Pambansa Blg. 337, the former Local Government Code, provides:

> SEC. 197.—*Requisites for Creation*.—A province may be created if it has **a territory** of at least three thousand five hundred square kilometers, **a population** of at least five hundred thousand persons, an average estimated **annual income**, as certified by the Ministry of Finance, of not less than ten million pesos for the last three consecutive years, and its creation shall not reduce the population and income of the mother province or provinces at the time of said creation to less than the minimum requirements under this section. **The territory need not be contiguous if it comprises two or more islands**.
>
> The average estimated annual income shall include the income allotted for both the general and infrastructure funds, exclusive of trust funds, transfers and nonrecurring income.[17]

In *Tan v. COMELEC*, petitioners therein filed a case for Prohibition for the purpose of stopping the COMELEC from conducting the plebiscite scheduled on January 3, 1986. Since the Court was in recess, it was unable to consider the petition on time. Petitioners filed a supplemental pleading, averring that the plebiscite sought to be restrained by them was held as scheduled, but there were still serious issues raised in the case affecting the legality, constitutionality and validity of such exercise which should properly be passed upon and resolved by the Court.

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[17] Emphasis supplied.

At issue in *Tan* was the land area of the new Province of Negros del Norte, and the validity of the plebiscite, which did not include voters of the parent Province of Negros Occidental, but only those living within the territory of the new Province of Negros del Norte.

The Court held that the plebiscite should have included the people living in the area of the proposed new province and those living in the parent province. However, the Court did not direct the conduct of a new plebiscite, because the factual and legal basis for the creation of the new province did not exist as it failed to satisfy the land area requirement; hence, Batas Pambansa Blg. 885, creating the new Province of Negros del Norte, was declared unconstitutional. The Court found that the land area of the new province was only about 2,856 square kilometers, which was below the statutory requirement then of 3,500 square kilometers.

Respondents in *Tan* insisted that when the Local Government Code speaks of the required territory of the province to be created, what is contemplated is not only the land area, but also the land and water over which the said province has jurisdiction and control. The respondents submitted that in this regard, the marginal sea within the three mile limit should be considered in determining the extent of the territory of the new province.

The Court stated that "[s]uch an interpretation is strained, incorrect and fallacious."[18] It held:

> The last sentence of the first paragraph of Section 197 is most revealing. As so stated therein the "*territory need not be contiguous if it comprises two or more islands*." **The use of the word *territory* in this particular provision of the Local Government Code and in the very last sentence thereof, clearly, reflects that "*territory*" as therein used, has reference only to the mass of land area and excludes the waters over which the political unit exercises control**.
>
> Said sentence states that the "territory need not be contiguous." Contiguous means (a) in physical contact; (b) touching along all or most of one side; (c) near, [n]ext, or adjacent (Webster's New World

[18] *Tan v. Commission on Elections, supra* note 16 at 749.

Dictionary, 1972 Ed., p. 307). **"Contiguous," when employed as an adjective, as in the above sentence, is only used when it describes physical contact, or a touching of sides of two solid masses of matter**. The meaning of particular terms in a statute may be ascertained by reference to words associated with or related to them in the statute (Animal Rescue League vs. Assessors, 138 A.L.R., p. 110). Therefore, in the context of the sentence above, what need not be "contiguous" is the "territory" — the physical mass of land area. **There would arise no need for the legislators to use the word contiguous if they had intended that the term "territory" embrace not only land area but also territorial waters**. **It can be safely concluded that the word territory in the first paragraph of Section 197 is meant to be synonymous with "land area" only.** The words and phrases used in a statute should be given the meaning intended by the legislature (82 C.J.S., p. 636). The sense in which the words are used furnished the rule of construction (In re Winton Lumber Co., 63 p. 2d., p. 664).[19]

The discussion of the Court in *Tan* on the definition and usage of the terms "territory" ,and "contiguous", and the meaning of the provision, "The territory need not be contiguous if it comprises two or more islands," contained in Sec. 197 of the former Local Government Code, which provides for the requisites in the creation of a new province, is applicable in this case since there is no reason for a change in their respective definitions, usage, or meaning in its counterpart provision in the present Local Government Code contained in Sec. 461 thereof.

The territorial requirement in the Local Government Code is adopted in the Rules and Regulations Implementing the Local Government Code of 1991 (IRR),[20] thus:

> ART. 9. *Provinces*.—(a) Requisites for creation—A province shall not be created unless the following requisites on income and either population or land area are present:
>
> (1) Income — An average annual income of not less than Twenty Million Pesos (₱20,000,000.00) for the immediately preceding two (2) consecutive years based on 1991 constant

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[19] *Id.* at 749-750. (Emphasis supplied.)

[20] The IRR was formulated by the Oversight Committee pursuant to Sec. 533 of the Local Government Code:

prices, as certified by DOF. The average annual income shall include the income accruing to the general fund, exclusive of special funds, special accounts, transfers, and nonrecurring income; and

(2) Population or land area — Population which shall not be less than two hundred fifty thousand (250,000) inhabitants, as certified by National Statistics Office; or **land area which must be contiguous with an area of at least two thousand (2,000) square kilometers, as certified by LMB. The territory need not be contiguous if it comprises two (2) or more islands or is separated by a chartered city or cities which do not contribute to the income of the province**. ***The land area requirement shall not apply where the proposed province is composed of one (1) or more islands***. The territorial jurisdiction of a province sought to be created shall be properly identified by metes and bounds.

However, the IRR went beyond the criteria prescribed by Section 461 of the Local Government Code when it added the italicized portion above stating that "[t]he land area requirement shall not apply where the proposed province is composed of one (1) or more islands." Nowhere in the Local Government Code is the said provision stated or implied. Under Section

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SEC. 533. *Formulation of Implementing Rules and Regulations.* — (a) Within one (1) month after the approval of this Code, the President shall convene the Oversight Committee as herein provided for. The said Committee shall formulate and issue the appropriate rules and regulations necessary for the efficient and effective implementation of any and all provisions of this Code, thereby ensuring compliance with the principles of local autonomy as defined under the Constitution.

(b) The Committee shall be composed of the following:

(1) The Executive Secretary, who shall be the Chairman;

(2) Three (3) members of the Senate to be appointed by the President of the Senate, to include the Chairman of the Committee on Local Government;

(3) Three (3) members of the House of Representatives to be appointed by the Speaker, to include the Chairman of the Committee on Local Government;

(4) The Cabinet, represented by the following:

(i) Secretary of the Interior and Local Government;

(ii) Secretary of Finance;

461 of the Local Government Code, the only instance when the territorial or land area requirement need not be complied with is when there is already compliance with the population requirement. The Constitution requires that the criteria for the creation of a province, **including any exemption from such criteria**, must all be written in the Local Government Code.[21] There is no dispute that in case of discrepancy between the basic law and the rules and regulations implementing the said law, the basic law prevails, because the rules and regulations cannot go beyond the terms and provisions of the basic law.[22]

Hence, the Court holds that the provision in Sec. 2, Art. 9 of the IRR stating that "[t]he land area requirement shall not apply where the proposed province is composed of one (1) or more islands" is null and void.

Respondents, represented by the Office of the Solicitor General, argue that rules and regulations have the force and effect of law as long as they are germane to the objects and purposes of the law. They contend that the exemption from the land area requirement of 2,000 square kilometers is germane to the purpose of the Local Government Code to develop political and territorial subdivisions into self-reliant communities and make them more effective partners in the attainment of national goals.[23]

(iii) Secretary of Budget and Management; and

(5) One (1) representative from each of the following:

(i) The League of Provinces;

(ii) The League of Cities;

(iii) The League of Municipalities; and

(iv) The Liga ng mga Barangay.

[21] *League of Cities of the Philippines v. Commission on Elections*, G.R. Nos. 176951, 177499, 178056, November 18, 2008, 571 SCRA 263.

[22] *Hijo Plantation, Inc. v. Central Bank*, G.R. No. L-34526, August 9, 1988, 164 SCRA 192.

[23] Local Government Code, Sec. 2. *Declaration of Policy*. — (a) It is hereby declared the policy of the State that the territorial and political subdivisions of the State shall enjoy genuine and meaningful local autonomy to enable them to attain their fullest development as self-reliant communities and make them more effective partners in the attainment of national goals.

They assert that in *Holy Spirit Homeowners Association, Inc. v. Defensor*,[24] the Court declared as valid the implementing rules and regulations of a statute, even though the administrative agency added certain provisions in the implementing rules that were not found in the law.

In *Holy Spirit Homeowners Association, Inc. v. Defensor*, the provisions in the implementing rules and regulations, which were questioned by petitioner therein, merely filled in the details in accordance with a known standard. The law that was questioned was R.A. No. 9207, otherwise known as "National Government Center (NGC) Housing and Land Utilization Act of 2003." It was therein declared that the "policy of the State [was] to secure the land tenure of the urban poor. Toward this end, lands located in the NGC, Quezon City shall be utilized for housing, socioeconomic, civic, educational, religious and other purposes." Section 5 of R.A. No. 9207 created the National Government Center Administration Committee, which was tasked to administer, formulate the guidelines and policies and implement the land disposition of the areas covered by the law.

Petitioners therein contended that while Sec. 3.2 (a.1) of the IRR fixed the selling rate of a lot at ₱700.00 per sq. m., R.A. No. 9207 did not provide for the price. In addition, Sec. 3.2 (c.1) of the IRR penalizes a beneficiary who fails to execute a contract to sell within six (6) months from the approval of the subdivision plan by imposing a price escalation, while there

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Toward this end, the State shall provide for a more responsive and accountable local government structure instituted through a system of decentralization whereby local government units shall be given more powers, authority, responsibilities, and resources. The process of decentralization shall proceed from the National Government to the local government units.

(b) It is also the policy of the State to ensure the accountability of local government units through the institution of effective mechanisms of recall, initiative and referendum.

(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.

[24] G.R. No. 163980, August 2, 2006, 497 SCRA 581.

is no such penalty imposed by R.A. No. 9207. Thus, they conclude that the assailed provisions conflict with R.A. No. 9207 and should be nullified.

In *Holy Spirit Homeowners Association, Inc.*, the Court held:

> Where a rule or regulation has a provision not expressly stated or contained in the statute being implemented, that provision does not necessarily contradict the statute. A legislative rule is in the nature of subordinate legislation, designed to implement a primary legislation by providing the details thereof. **All that is required is that the regulation should be germane to the objects and purposes of the law; that the regulation be not in contradiction to but in conformity with the standards prescribed by the law**.

In Section 5 of R.A. No. 9207, the Committee is granted the power to administer, *formulate guidelines and policies*, and implement the disposition of the areas covered by the law. Implicit in this authority and the statute's objective of urban poor housing is the power of the Committee to formulate the manner by which the reserved property may be allocated to the beneficiaries. Under this broad power, the Committee is mandated to *fill in the details* such as the qualifications of beneficiaries, the selling price of the lots, the terms and conditions governing the sale and other key particulars necessary to implement the objective of the law. These details are purposely omitted from the statute and their determination is left to the discretion of the Committee because the latter possesses special knowledge and technical expertise over these matters.

The Committee's authority to fix the selling price of the lots may be likened to the rate-fixing power of administrative agencies. In case of a delegation of rate-fixing power, the only standard which the legislature is required to prescribe for the guidance of the administrative authority is that the rate be reasonable and just. However, it has been held that even in the absence of an express requirement as to reasonableness, this standard may be implied. In this regard, petitioners do not even claim that the selling price of the lots is unreasonable.

The provision on the price escalation clause as a penalty imposed to a beneficiary who fails to execute a contract to sell within the prescribed period is also within the Committee's authority to formulate guidelines and policies to implement R.A. No. 9207. The

Committee has the power to lay down the terms and conditions governing the disposition of said lots, provided that these are reasonable and just. There is nothing objectionable about prescribing a period within which the parties must execute the contract to sell. This condition can ordinarily be found in a contract to sell and is not contrary to law, morals, good customs, public order, or public policy.[25]

Hence, the provisions in the implementing rules and regulations that were questioned in *Holy Spirit Homeowners Association, Inc.* merely filled in the necessary details to implement the objective of the law in accordance with a known standard, and were thus germane to the purpose of the law.

In this case, the pertinent provision in the IRR did not fill in any detail in accordance with a known standard provided for by the law. Instead, the IRR **added an exemption to the standard** or criteria prescribed by the Local Government Code in the creation of a province as regards the land area requirement, **which exemption is not found in the Code**. As such, the provision in the IRR that the land area requirement shall not apply where the proposed province is composed of one or more islands is not in conformity with the standard or criteria prescribed by the Local Government Code; hence, it is null and void.

Contrary to the contention of respondents, the extraneous provision cannot be considered as germane to the purpose of the law to develop territorial and political subdivisions into self-reliant communities because, in the first place, it already conflicts with the criteria prescribed by the law in creating a territorial subdivision.

Further, citing *Galarosa v. Valencia*,[26] the Office of the Solicitor General contends that the IRRs issued by the Oversight Committee composed of members of the legislative and executive branches of the government are entitled to great weight and respect, as they are in the nature of executive construction.

The case is not in point. In *Galarosa*, the issue was whether or not Galarosa could continue to serve as a member of the

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[25] *Id.* at 599-601.

[26] G.R. No. 109455, November 11, 1993, 227 SCRA 728.

Sangguniang Bayan beyond June 30, 1992, the date when the term of office of the elective members of the *Sangguniang Bayan* of Sorsogon expired. Galarosa was the incumbent president of the *Katipunang Bayan* or Association of *Barangay* Councils (ABC) of the Municipality of Sorsogon, Province of Sorsogon; and was appointed as a member of the *Sangguniang Bayan* (SB) of Sorsogon pursuant to Executive Order No. 342 in relation to Sec. 146 of Batas Pambansa Blg. 337, the former Local Government Code.

Sec. 494 of the Local Government Code of 1991[27] states that the duly elected presidents of the *liga* [*ng mga barangay*] at the municipal, city and provincial levels, including the component cities and municipalities of Metropolitan Manila, shall serve as *ex officio* members of the *sangguniang bayan, sangguniang panglungsod, and sangguniang panlalawigan*, respectively. They shall serve as such only during their term of office as presidents of the *liga* chapters which, in no case, shall be beyond the term of office of the *sanggunian* concerned. The section, however, does not fix the specific duration of their term as *liga* president. The Court held that this was left to the by-laws of the *liga* pursuant to Art. 211(g) of the Rules and Regulations Implementing the Local Government Code of 1991. Moreover, there was no indication that Secs. 491[28] and 494 should be given retroactive effect to adversely affect the presidents of the ABC; hence, the said provisions were to be applied prospectively.

The Court stated that there is no law that prohibits ABC presidents from holding over as members of the *Sangguniang*

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[27] SEC. 494. *Ex Officio Membership in Sanggunians*. — The duly-elected presidents of the *liga [ng mga barangay]* at the municipal, city and provincial levels, including the component cities and municipalities of Metropolitan Manila, shall serve as *ex-officio* members of the *sangguniang bayan, sangguniang panglungsod, and sangguniang panlalawigan*, respectively. They shall serve as such only during their term of office as presidents of the liga chapters, which in no case shall be beyond the term of office of the *sanggunian* concerned.

[28] SEC. 491. *Purpose of Organization*. —There shall be an organization of all *barangays*, to be known as the *Liga ng mga Barangay*, for the primary

Bayan. On the contrary, the IRR, prepared and issued by the Oversight Committee upon specific mandate of Sec. 533 of the Local Government Code, expressly recognizes and grants the hold-over authority to the ABC presidents under Art. 210, Rule XXIX.[29] The Court upheld the application of the hold-over doctrine in the provisions of the IRR and the issuances of the DILG, whose purpose was to prevent a hiatus in the government pending the time when the successor may be chosen and inducted into office.

The Court held that Sec. 494 of the Local Government Code could not have been intended to allow a gap in the representation of the *barangays*, through the presidents of the ABC, in the *sanggunian*. Since the term of office of the *punong barangays* elected in the March 28, 1989 election and the term of office of the presidents of the ABC had not yet expired, and taking into account the special role conferred upon, and the broader powers and functions vested in the *barangays* by the Code, it was inferred that the Code never intended to deprive the *barangays* of their representation in the *sangguniang bayan* during the interregnum when the *liga* had yet to be formally organized with the election of its officers.

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purpose of determining the representation of the *liga* in the *sanggunians* and for ventilating, articulating and crystallizing issues affecting *barangay* governmental administration and securing, through proper and legal means, solutions thereto.

[29] ART. 210. *Liga ng mga barangay*. —

x x x x x x x x x

(d) *Ex Officio* Membership in the Sanggunian —

(3)The incumbent presidents of the municipal, city, and provincial chapters of the *liga* shall continue to serve as *ex officio* members of the *sanggunian* concerned until the expiration of their term of office, unless sooner revoked for cause.

x x x x x x x x x

(f) Organizational Structure —

(1) x x x Pending election of the presidents of the municipal, city, provincial, and metropolitan chapters of the *liga*, the incumbent presidents of the association of *barangay* councils in the municipality, city, province, and Metropolitan Manila shall continue to act as presidents of the corresponding *liga* chapters under this Rule.

Under the circumstances prevailing in *Galarosa*, the Court considered the relevant provisions in the IRR formulated by the Oversight Committee and the pertinent issuances of the DILG in the nature of executive construction, which were entitled to great weight and respect.

Courts determine the intent of the law from the literal language of the law within the law's four corners.[30] If the language of the law is plain, clear and unambiguous, courts simply apply the law according to its express terms.[31] If a literal application of the law results in absurdity, impossibility or injustice, then courts may resort to extrinsic aids of statutory construction like the legislative history of the law,[32] or may consider the implementing rules and regulations and pertinent executive issuances in the nature of executive construction.

In this case, the requirements for the creation of a province contained in Sec. 461 of the Local Government Code are clear, plain and unambiguous, and its literal application does not result in absurdity or injustice. Hence, the provision in Art. 9(2) of the IRR exempting a proposed province composed of one or more islands from the land-area requirement cannot be considered an executive construction of the criteria prescribed by the Local Government Code. It is an extraneous provision not intended by the Local Government Code and, therefore, is null and void.

Whether R.A. No. 9355 complied with the requirements of Section 461 of the Local Government Code in creating the Province of Dinagat Islands

It is undisputed that R.A. No. 9355 complied with the income requirement specified by the Local Government Code. What is disputed is its compliance with the land area or population requirement.

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[30] *League of Cities of the Philippines v. Commission on Elections*, *supra* note 17.

[31] *Id.*

[32] *Id.*

R.A. No. 9355 expressly states that the Province of Dinagat Islands "contains an approximate land area of eighty thousand two hundred twelve hectares (80,212 has.) or **802.12 sq. km.,** more or less, including Hibuson Island and approximately forty-seven (47) islets x x x."[33] R.A. No. 9355, therefore, failed to comply with the land area requirement of 2,000 square kilometers.

The Province of Dinagat Islands also failed to comply with the population requirement of not less than 250,000 inhabitants as certified by the NSO. Based on the 2000 Census of Population conducted by the NSO, the population of the Province of Dinagat Islands as of May 1, 2000 was only 106,951.

Although the Provincial Government of Surigao del Norte conducted a special census of population in Dinagat Islands in 2003, which yielded a population count of 371,000, the result was not certified by the NSO as required by the Local Government Code.[34] Moreover, respondents failed to prove that with the population count of 371,000, the population of the

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[33] *Rollo,* p. 93. (Emphasis supplied.)

[34] SEC. 7. *Creation and conversion.* — As a general rule, the creation of a local government unit or its conversion from one level to another shall be based on verifiable indicators of viability and projected capacity to provide services, to wit:

(a) Income. — It must be sufficient, based on acceptable standards, to provide for all essential government facilities and services and special functions commensurate with the size of its population, as expected of the local government unit concerned;

(b) Population. — It shall be determined as the total number of inhabitants within the territorial jurisdiction of the local government unit concerned; and

(c) Land area. — It must be contiguous, unless it comprises two (2) or more islands or is separated by a local government unit independent of the others; properly identified by metes and bounds with technical descriptions and sufficient to provide for such basic services and facilities to meet the requirements of its populace.

Compliance with the foregoing indicators shall be attested to by the Department of Finance (DOF), the National Statistics Office (NSO),

and the Lands Management Bureau (LMB) of the Department of Environment and Natural Resources (DENR).

original unit (mother Province of Surigao del Norte) would not be reduced to less than the minimum requirement prescribed by law at the time of the creation of the new province.[35]

Respondents contended that the lack of certification by the NSO was cured by the presence of the officials of the NSO during the deliberations on the house bill creating the Province of Dinagat Islands, since they did not object to the result of the special census conducted by the Provincial Government of Surigao del Norte.

The contention of respondents does not persuade.

Although the NSO representative to the Committee on Local Government deliberations dated November 24, 2005 did not object to the result of the provincial government's special census, which was conducted with the assistance of an NSO district census coordinator, it was agreed by the participants that the said result was not certified by the NSO, which is the requirement of the Local Government Code. Moreover, the NSO representative, Statistician II Ma. Solita C. Vergara, stated that based on their computation, the population requirement of 250,000 inhabitants would be attained by the Province of Dinagat Islands by the year 2065. The computation was based on the growth rate of the population, excluding migration.

The pertinent portion of the deliberation on House Bill No. 884 creating the Province of Dinagat reads:

SEC. 461. *Requisites for Creation.* — (a) A province may be created if it has an average annual income, as certified by the Department of Finance, of not less than Twenty million pesos (₱20,000,000.00) based on 1991 constant prices and either of the following requisites:

(i) a contiguous territory of at least two thousand (2,000) square kilometers, as certified by the Lands Management Bureau; or

(ii) **a population of not less than two hundred fifty thousand (250,000) inhabitants as certified by the National Statistics Office:**

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

[35] Sec. 461, *supra*.

THE CHAIRMAN (Hon. Alfredo S. Lim): . . . There is no problem with the land area requirement and to the income requirement. The problem is with the population requirement.

x x x x x x x x x

Now because of this question, we would like to make it of record the stand and reply of National Statistics Office. Can we hear now from Ms. Solita Vergara?

MS. VERGARA. We only certify population based on the counts proclaimed by the President. And in this case, we only certify the population based on the results of the 2000 census of population and housing.

THE CHAIRMAN. Is that…

MS. VERGARA. *Sir, as per Batas Pambansa, BP 72, we only follow kung ano po 'yong mandated by the law. So, as mandated by the law, we only certify those counts proclaimed official by the President.*

THE CHAIRMAN. But the government of Surigao del Norte is headed by Governor Robert Lyndon Ace Barbers and they conducted this census in year 2003 and yours was conducted in year 2000. So, within that time frame, three years, there could be an increase in population or transfer of residents, is that possible?

MS. VERGARA. Yes, sir, but then we only conduct census of population every 10 years and we conduct special census every five years. So, in this case, maybe by next year, we will be conducting the 2006.

THE CHAIRMAN. But next year will be quite a long time, the matter is now being discussed on the table. So, is that the only thing you could say that it's not authorized by National Statistics Office?

MS. VERGARA. Yes, sir. We have passed a resolution—orders to the provincial offices—to our provincial offices stating that we can provide assistance in the conduct, but then we cannot certify the result of the conduct as official.

THE CHAIRMAN. May we hear from the Honorable Governor Robert Lyndon Ace Barbers, your reply on the statement of the representative from National Statistics Office.

MR. BARBERS. Thank you, Mr. Chairman, good morning.

Yes, your Honor, we have conducted a special census in the year 2003. We were accompanied by one of the employees from the Provincial National Statistics Office. **However, we also admit the fact that our special census or the special census we conducted in 2003 was not validated or certified by the National Statistics Office, as provided by law**. So, we admit on our part that the certification that I have issued based on the submission of records of each locality or each municipality from Dinagat Island[s] were true and correct based on our level, not on National Statistics Office level.

But with that particular objection of Executive Director Ericta on what we have conducted, I believe, your Honor, it will be, however, moot and academic in terms of the provision under the Local Government Code on the requirements in making one area a province because what we need is a minimum of 20 million, as stated by the Honorable Chairman and, of course, the land area. Now, in terms of the land area, Dinagat Island[s] is exempted because xxx the area is composed of more than one island. In fact, there are about 47 low tide and high tide, less than 40? x x x

THE CHAIRMAN. Thank you, Governor. x x x

x x x x x x x x x

THE CHAIRMAN. Although the claim of the governor is, even if we hold in abeyance this questioned requirement, the other two requirements, as mandated by law, is already achieved – the income and the land area.

MS. VERGARA. ***We do not question po the results of any locally conducted census, kasi po talagang we provide assistance while they're conducting their own census. But then, ang requirement po kasi is, basta we will not certify—we will not certify any population count as a result noong kanilang locally conducted census. Eh, sa Local Government Code po, we all know na ang xxx nire-require nila is a certification provided by National Statistics Office. 'Yon po 'yong requirement, di ba po****?*

THE CHAIRMAN. *Oo. But a certification, even though not issued, cannot go against actual reality because that's just a bureaucratic requirement. Ang ibig kong sabihin, ipagpalagay, a couple – isang lalaki, isang babae –nagmamahalan sila. As an offshoot of this undying love, nagkaroon ng mga anak, hindi ba,*

pero hindi kasal, it's a live-in situation. Ang tanong ko lang, whether eventually, they got married or not, that love remains. And we cannot deny also the existence of the offspring out of that love, di ba? Kaya…'yon lang. Okay. So, we just skip on this….

MS. VERGARA. Your Honor.

REP. ECLEO (GLENDA). Mr. Chairman.

THE CHAIRMAN. Please, Ms. Vergara.

VERGARA. *'Yong sinasabi n'yo po, sir, bale* ***we computed the estimated population po ng Dinagat Province for the next years. So, based on our computation, mari-reach po ng Dinagat Province' yong requirement na 250,000 population by the year 2065 pa po*** *based on the growth rates during the period of ….*

THE CHAIRMAN. 2065?

MS. VERGARA. 2065 po.

x x x x x x x x x

THE CHAIRMAN. . . . . *[T]his is not the center of our argument since, as stated by the governor, kahit ha huwag na munang i-consider itong population requirement, eh, nakalagpas naman sila doon sa income and land area, hindi ba?*

Okay. Let's give the floor to Congresswoman Ecleo.

REP. ECLEO (GLENDA). Thank you, Mr. Chairman.

This is in connection with the special census. Before this was done, I went to the NSO. **I talked to Administrator Ericta on the population. Then, I was told that the population, official population of Dinagat is 106,000**. So, I told them that I want a special census to be conducted because there are so many houses that were not reached by the government enumerators, and I want to have my own or our own special census with the help of the provincial government. So, that is how it was conducted. Then, they told me that the official population of the proposed province will be on 2010. **But at this moment, that is the official population of 106,000, even if our special census, we came up with 371,000 plus.**

So, that is it.

THE CHAIRMAN. Thank you, Congresswoman.

Your insights will be reflected in my reply to Senate President Drilon, so that he can also answer the letter of Bishop Cabahug.

MS. VERGARA. *Mr. Chairman, may clarifications lang din po ako.*

THE CHAIRMAN. Please.

MS. VERGARA. *'Yon po sa sinasabi naming estimated population, we only based the computation doon sa growth rate lang po talaga, excluding the migration. x x x*

MR. CHAIRMAN. *No'ng mga residents.*

MS. VERGARA. *Yes, sir, natural growth lang po talaga siya.*[36]

To reiterate, when the Dinagat Islands was proclaimed a new province on December 3, 2006, it had an official population of only **106,951** based on the NSO 2000 Census of Population. Less than a year after the proclamation of the new province, the NSO conducted the **2007** Census of Population. The NSO certified that as of August 1, 2007, Dinagat Islands had a total population of only **120,813**,[37] which was still below the minimum requirement of 250,000 inhabitants.[38]

In fine, R.A. No. 9355 failed to comply with either the territorial or the population requirement for the creation of the Province of Dinagat Islands.

The Constitution clearly mandates that the creation of local government units must follow the criteria established in the Local Government Code.[39] Any derogation of or deviation from the criteria prescribed in the Local Government Code violates Sec. 10, Art. X of the Constitution.[40]

Hence, R.A. No. 9355 is unconstitutional for its failure to comply with the criteria for the creation of a province prescribed in Sec. 461 of the Local Government Code.

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[36] Annex "A", *rollo*, pp. 51-61.

[37] Annex "AA", *id.* at 498. (Emphasis supplied.)

[38] Emphasis supplied.

[39] See *League of Cities of the Philippines v. Commission on Elections*, *supra* note 17.

[40] *Id*.

Whether the creation of the Province of Dinagat Islands is an act of gerrymandering

Petitioners contend that the creation of the Province of Dinagat Islands is an act of gerrymandering on the ground that House Bill No. 884 excluded Siargao Island, with a population of 118,534 inhabitants, from the new province for complete political dominance by Congresswoman Glenda Ecleo-Villaroman. According to petitioners, if Siargao were included in the creation of the new province, the territorial requirement of 2,000 square kilometers would have been easily satisfied and the enlarged area would have a bigger population of 200,305 inhabitants based on the 2000 Census of Population by the NSO. But House Bill No. 884 excluded Siargao Island, because its inclusion would result in uncertain political control. Petitioners aver that, in the past, Congresswoman Glenda Ecleo-Villaroman lost her congressional seat twice to a member of an influential family based in Siargao. Therefore, the only way to complete political dominance is by gerrymandering, to carve a new province in Dinagat Islands where the Philippine Benevolent Members Association (PMBA), represented by the Ecleos, has the numbers.

The argument of petitioners is unsubstantiated.

"Gerrymandering" is a term employed to describe an apportionment of representative districts so contrived as to give an unfair advantage to the party in power.[41] Fr. Joaquin G. Bernas, a member of the 1986 Constitutional Commission, defined "gerrymandering" as the formation of one legislative district out of separate territories for the purpose of favoring a candidate or a party.[42] The Constitution proscribes gerrymandering, as it mandates each legislative district to comprise, as far as practicable, a contiguous, compact and adjacent territory.[43]

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[41] *Ceniza v. Commission on Elections*, G.R. No. 52304, January 28, 1980, 95 SCRA 775.

[42] Bernas, *The 1987 Constitution of the Philippines: A Commentary*, 625 (2006).

[43] *Id.*

As stated by the Office of the Solicitor General, the Province of Dinagat Islands consists of one island and about 47 islets closely situated together, without the inclusion of separate territories. It is an unsubstantiated allegation that the province was created to favor Congresswoman Glenda Ecleo-Villaroman.

Allegations of fraud and irregularities during the plebiscite cannot be resolved in a special civil action for certiorari

Lastly, petitioners alleged that R.A. No. 9355 was ratified by a doubtful mandate in a plebiscite held on December 2, 2005, where the "yes votes" were 69,943, while the "no votes" were 63,502. They contend that the 100% turnout of voters in the precincts of San Jose, Basilisa, Dinagat, Cagdianao and Libjo was contrary to human experience, and that the results were statistically improbable. Petitioners admit that they did not file any electoral protest questioning the results of the plebiscite, because they lacked the means to finance an expensive and protracted election case.

Allegations of fraud and irregularities in the conduct of a plebiscite are factual in nature; hence, they cannot be the subject of this special civil action for *certiorari* under Rule 65 of the Rules of Court, which is a remedy designed only for the correction of errors of jurisdiction, including grave abuse of discretion amounting to lack or excess of jurisdiction.[44] Petitioners should have filed the proper action with the Commission on Elections. However, petitioners admittedly chose not to avail themselves of the correct remedy.

WHEREFORE, the petition is *GRANTED*. Republic Act No. 9355, otherwise known as [*An Act Creating the Province of Dinagat Islands*], is hereby declared unconstitutional. The proclamation of the Province of Dinagat Islands and the election of the officials thereof are declared *NULL* and *VOID*. The provision in Article 9 (2) of the Rules and Regulations Implementing the

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[44] *Cayetano v. Commission on Elections*, G.R. No. 166388, January 23, 2006, 479 SCRA 513.

Local Government Code of 1991 stating, "The land area requirement shall not apply where the proposed province is composed of one (1) or more islands," is declared *NULL* and *VOID*.

No costs.

SO ORDERED.

Carpio, Carpio Morales, Brion, Perez, Castillo, Villarama, Jr., and *Mendoza, JJ.*, concur.

Puno, C.J., in the result.

Corona, Velasco, Jr., Leonardo-de Castro, Bersamin, and Abad, JJ., join the dissent of *J.* Nachura.

Nachura, J., see dissenting opinion.

DISSENTING OPINION

NACHURA, *J.*:

The *ponencia* of Justice Peralta seeks to strike down an act of both the legislative and the executive branches—the law creating the province of Dinagat Islands. I register my dissent to the *ponencia* for I find this judicial interference unnecessary and, in fact, unwarranted in law. Petitioners have not presented a genuine constitutional issue requiring this Courts intervention. In petitioners earlier and similarly-worded petition—G.R. No. 175158— the Court found no compelling reason to brush aside technicalities of procedure and resolve the merits of the case. Just like G.R. No. 175158, the present petition deserves the same dismissive treatment from the Court.

I begin with a brief restatement of the pertinent antecedent events.

On October 2, 2006, the President of the Republic approved Republic Act (R.A.) No. 9355,[1] the law creating the province of Dinagat Islands. On December 3 of the same year, the Commission on Elections conducted the plebiscite for the

[1] Passed by the House of Representatives and the Senate on August 28, 2006 and August 14, 2006, respectively.

ratification of the said creation. This yielded 69,943 affirmative votes and 63,502 negative votes.[2] Having gotten the nod of the people, the President appointed the interim set of provincial officials who consequently took their oath of office on January 26, 2007. Thereafter, in the May 14, 2007 National and Local Elections, the Dinagatnons elected their new set of provincial officials who assumed office on July 1, 2007.[3]

Not amenable to the advancement of their locality, petitioners, former politicians in the mother province of Surigao del Norte, filed before this Court, on November 10, 2006, G.R. No. 175158, a petition for *certiorari* and prohibition assailing the constitutionality of the creation of the province.[4] As aforementioned, the Court dismissed the petition on technical grounds—defect in the verification and certification of non-forum shopping and failure by the petitioners' counsel to indicate an updated Integrated Bar of the Philippines official receipt. On motion for reconsideration, the Court rejected petitioners' entreaty for liberality in the application of procedural rules.[5]

Unperturbed, petitioners filed their new petition, the instant case, contending in the main that R.A. No. 9355 is unconstitutional. They posit that the creation of Dinagat Islands did not meet either the land area or the population requirement for the creation of a province. At the time of the passage of the law, the land area of the locality was only 802.12 square kilometers, and its population, only 106,951.[6] It is petitioners' submission that the enactment of R.A. No. 9355 violates Section

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[2] *Rollo*, pp. 124-127.

[3] *Id*. at 143.

[4] *Rollo* (G.R. No. 175158), pp. 3-20.

[5] In its November 28, 2006 Resolution in G.R. No. 175158, the Court dismissed the petition for *certiorari* as the verification and certification of non-forum shopping were defective or insufficient and the IBP Official Receipt of the counsel for petitioners was dated December 19, 2005. The Court later dismissed the petition with finality in its February 13, 2007 Resolution. The Court further issued the Entry of Judgment on April 11, 2007. (*Id*. at 77A and 112.)

[6] *Rollo*, p. 25.

461 of R.A. No. 7160 or the Local Government Code (LGC) of 1991,[7] and Section 10, Article X of the Constitution.

I find no merit in petitioners contention.

Article X, Section 10 of the Constitution provides that—

> Section. 10. No province, city, municipality, or *barangay* may be created, divided, merged, abolished, or its boundary substantially altered, except in accordance with the criteria established in the local government code and subject to approval by a majority of the votes cast in a plebiscite in the political units directly affected.

For the creation of a province, the LGC provides:

> Section 461. *Requisites for Creation.* — (a) A province may be created if it has an average annual income, as certified by the Department of Finance, of not less than Twenty million pesos (₱20,000,000.00) based on 1991 constant prices and either of the following requisites:
>
> (i) a contiguous territory of at least two thousand (2,000) square kilometers, as certified by the Lands Management Bureau; or
>
> (ii) a population of not less than two hundred fifty thousand (250,000) inhabitants as certified by the National Statistics Office:
>
> *Provided*, That, the creation thereof shall not reduce the land area, population and income of the original unit or units at the time of said creation to less than the minimum requirements prescribed herein.
>
> (b) The territory need not be contiguous if it comprises two (2) or more islands or is separated by a chartered city or cities which do not contribute to the income of the province.
>
> (c) The average annual income shall include the income accruing to the general fund, exclusive of special funds, trust funds, transfers, and non-recurring income.

Here, the Department of Finance certified that the province of Dinagat Islands has an average annual income of ₱82,696,433.22 based on 1991 constant prices.[8] As it already meets the primordial

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[7] Became effective on January 1, 1992.

[8] *Rollo*, p. 207.

income criterion for a province, Dinagat Islands needed only to comply with either the land area or the population criterion.

At this point, I concur with the *ponencia* that Dinagat Islands does not satisfy the 250,000 population requirement. When the law for its creation was passed in 2006, the province only had a population of 106,951 inhabitants (based on the 2000 Census of Population and Housing) as certified by the National Statistics Office.[9] Further, the 2007 Census of Population reveals that it has only 120,813 inhabitants as of August 1, 2007.[10]

I cannot, however, subscribe to the *ponencia*'s holding that Dinagat Islands fails to comply with the territorial requirement because it only has an aggregate land area of 802.12 sq km. Let it be emphasized that the province is comprised of the municipalities of Basilisa, Cagdianao, Dinagat, Libjo (Albor), Loreto, San Jose and Tubajon, and includes Hibuson Island and approximately 47 islets under the jurisdiction of the said municipalities. This fact relieves it from complying with the criterion that its territory must be contiguous and at least 2,000 sq km in area. Article 9(a)(2) of the Rules and Regulations Implementing (IRR) the LGC of 1991 pertinently provides that the territory need not be contiguous and the land area requirement shall not apply where the proposed province is composed of islands, thus:

> Art. 9. *Provinces*. — (a) Requisites for creation—A province shall not be created unless the following requisites on income and either population or land area are present:
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> x x x x x x x x x
>
> (2) Population or land area—Population which shall not be less than two hundred fifty thousand (250,000) inhabitants, as certified by NSO; or land area which must be contiguous with an area of at least two thousand (2,000) square kilometers, as certified by LMB. **The territory need not be contiguous if it comprises two (2) or more islands or is separated by a chartered city or cities which do not**

[9] *Id*. at 209.

[10] *Id*. at 498.

contribute to the income of the province. The land area requirement shall not apply where the proposed province is composed of one (1) or more islands. The territorial jurisdiction of a province sought to be created shall be properly identified by metes and bounds.

The creation of a new province shall not reduce the land area, population, and income of the original LGU or LGUs at the time of said creation to less than the prescribed minimum requirements. All expenses incidental to the creation shall be borne by the petitioners.[11]

The *ponencia*, however, declares that the portion in the IRR, which reads, "[t]he land area requirement shall not apply where the proposed province is composed of one (1) or more islands," is null and void for going beyond the standard or criterion prescribed by Section 461 of the LGC, and, thus, cannot be used as basis for Dinagat Islands' compliance with the territorial requirement. The *ponencia* suggests that for the creation of a province, even one composed of islands like the one in this petition, the 2,000-sq km territorial area requirement should still be met despite the reality that its territory is not contiguous, precisely because portions of its territory are separated by bodies of water.

I do not agree with the *ponencia*'s proposition. The province of Dinagat Islands, composed as it is of a group of islands, is exempt from compliance not only with the territorial contiguity requirement but also with the 2,000-sq km land area criterion. This proceeds from no less than Section 461 of the LGC, which, for ready reference, I again quote —

Section 461. *Requisites for Creation.* — (a) A province may be created if it has an average annual income, as certified by the Department of Finance, of not less than Twenty million pesos (₱20,000,000.00) based on 1991 constant prices and either of the following requisites:

(i) a contiguous territory of at least two thousand (2,000) square kilometers, as certified by the Lands Management Bureau; or

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[11] Emphasis and underscoring supplied.

(ii) a population of not less than two hundred fifty thousand (250,000) inhabitants as certified by the National Statistics Office:

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

(b) The territory need not be contiguous if it comprises two (2) or more islands or is separated by a chartered city or cities which do not contribute to the income of the province.

(c) The average annual income shall include the income accruing to the general fund, exclusive of special funds, trust funds, transfers, and non-recurring income.[12]

Significant in the provision is paragraph (b), underscored above, as it provides for an exemption from the territorial criterion mentioned in paragraph (a).

The stipulation in paragraph (b), however, qualifies not merely the word "contiguous" in paragraph (a)(i) in the same provision, but rather **the entirety of the latter paragraph**. Paragraph (a)(i) of the provision, for ready reference, reads:

(i) a **contiguous territory of at least two thousand (2,000) square kilometers**, as certified by the Lands Management Bureau[.][13]

This whole paragraph on contiguity and land area, I repeat for emphasis, is the one being referred to in the exemption from the territorial requirement in paragraph (b). Thus, if the province to be created is composed of islands, like the one in this case, then, its territory need not be contiguous and need not have an area of at least 2,000 sq km. This is because, as the law is worded, **contiguity and land area are not two distinct and separate requirements**. They qualify each other. For instance, a territory which is contiguous but which is less than 2,000 sq km in land area will not qualify for provincehood and, conversely, a territory which is 2,000 sq km in area but which is not contiguous

[12] Underscoring supplied.

[13] Emphasis supplied.

cannot become a province, following the general rule in paragraph (a)(1). In other words, contiguity and land area are **two components of a single requirement—***one cannot exist and serve no purpose without the other*, ***so much so that a release from compliance with one component results, naturally and logically, in the corresponding exemption from the other***.

Indeed, an exemption from one of the two component requirements in paragraph (a)(i) necessitates an exemption from the other component requirement because the nonattendance of one results in the absence of a reason for the other component requirement to effect a qualification. In other words, a component requirement cannot apply without the other because they qualify each other—**one cannot be dissociated from the other**.

By rough analogy, the two components are like dicephalic conjoined twins—two heads are attached to a single body. If one head is separated from the other, then the twins die. In the same manner, the law, by providing in paragraph (b) of Section 461 that *the territory need not be contiguous if the same is comprised of islands*, **must be interpreted as intended to exempt such territory from the land area component requirement of 2,000 sq km.** Because the two component requirements are inseparable, the elimination of contiguity from the territorial criterion has the effect of a coexistent eradication of the land area component. The territory of the province of Dinagat Islands, therefore, comprising the major islands of Dinagat and Hibuson, and approximately 47 islets, need not be contiguous and need not have an area of at least 2,000 sq km following Section 461 of the LGC.

It will result in superfluity, if not absurdity, if paragraph (b) of the provision is interpreted as referring only to the component requirement of contiguity and not to both component requirements of contiguity and land area. This is because contiguity does not always mean in contact by land. Thus, in so far as islands are concerned, they are deemed contiguous although separated

by wide spans of navigable deep waters,[14] with the exception of the high seas, because all lands separated by water touch one another, in a sense, beneath the water.[15] The provision, then, as worded, only means that the exemption in paragraph (b) refers to both the component requirements on territory, that is, contiguity and land area, and not merely to the first, standing alone. For, indeed, why will the law still exempt the islands from the requirement of contiguity when they are already legally contiguous?

By inference, Section 461, in effect, signifies that, if the proposed province is composed of islands, its territory includes not only the land mass above the water but that which is beneath it. Indeed, theoretically, if this entire territory is measured—the one above and beneath the water, then the 2,000 sq km land area would be met with facility. Separate units of measure are, however, used to calculate dry land and that which is covered by water. For expediency, the law, in providing for the criteria for the creation of a province, has exempted groups of islands from the territorial requirement, and this exemption includes the two component requirements of contiguity and land area.

Parenthetically, the Court, more than two decades ago, in *Tan v. Commission on Elections*,[16] declared in passing that territory means only the mass of land area and excludes the waters over which a political unit exercises control. This pronouncement in *Tan* is an *obiter dictum*, the main issue in the petition for prohibition being the propriety of excluding from the plebiscite for the ratification of the creation of Negros del Norte the inhabitants of the mother province of Negros Occidental. Therefore, *Tan* does not preclude the proper

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[14] *Board of Supervisors of Houghton County v. Blacker*, 92 Mich. 638, 646; 52 N.W. 951, 953 (1892); *Vestal v. City of Little Rock*, 15 S.W. 891, 892 (1891).

[15] *United States v. Hunter*, 80 F.2d 968, 970 (1936). This case clarifies that when the intervening water is the high seas over which neither of the lands has exclusive jurisdiction, they are not contiguous territories though no dry land intervenes.

[16] G.R. No. 73155, July 11, 1986, 142 SCRA 727, 749-750.

interpretation of Section 461 of the LGC as exempting groups of islands from the territorial requirement for the creation of provinces.

This interpretation of Section 461 is further in line with the law's thrust of enabling the territorial and political subdivisions of the state to attain their fullest development in order to make them more effective partners in the attainment of national goals.[17] The Philippines is composed of 7,107 islands; most of them are small and surrounded by vast bodies of water. The constitution of provinces is aimed at administrative efficiency, effective governance, more equitable delivery of basic services, and economic development. If this Court is to prevent a group of islands, with skyrocketing revenues, from organizing themselves into a province on account alone of their small aggregate land mass, then it would be impeding their advancement as self-reliant communities and, in the process, would hamper the growth of the national economy—an eventuality obviously not envisioned by both the Constitution and the LGC.

Congress, in fact, during its deliberations on what would later on be enacted as the LGC, had paid, if at all it did, little attention to the territorial requirement for the creation of

[17] Section 2 of the LGC provides:

Section 2. Declaration of Policy.—(a) It is hereby declared the policy of the State that the territorial and political subdivisions of the State shall enjoy genuine and meaningful local autonomy to enable them to attain their fullest development as self-reliant communities and make them more effective partners in the attainment of national goals. Toward this end, the State shall provide for a more responsive and accountable local government structure instituted through a system of decentralization whereby local government units shall be given more powers, authority, responsibilities, and resources. The process of decentralization shall proceed from the National Government to the local government units.

(b) It is also the policy of the State to ensure the accountability of local government units through the institution of effective mechanisms of recall, initiative and referendum.

(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 peoples organizations, and other concerned sectors of the community before any project or program is implemented in their respective jurisdictions.

provinces. Instead, it focused on the income requirement and acknowledged the same to be the primordial criterion of viability, thus —

HON. ALFELOR: Income is mandatory. We can even have this doubled because we thought . . .

CHAIRMAN CUENCO: In other words, the primordial consideration here is the economic viability of the new local government unit, the new province?

x x x x x x x x x

HON. LAGUADA: The reason why we are willing to increase the income, double than the House version, because we also believe that economic viability is really a minimum. Land area and population are functions really of the viability of the area, because where you have an income level which would be the trigger point for economic development, population will naturally increase because there will be an immigration. However, if you disallow the particular area from being converted into a province because of population problems in the beginning, it will never be able to reach the point where it could become a province simply because it will never have the economic take off for it to trigger off that economic development.

Now, we're saying that maybe Fourteen Million Pesos is a floor area where it could pay for overhead and provide a minimum of basic services to the population. Over and above that, the provincial officials should be able to trigger off economic development which will attract immigration, which will attract new investments from the private sector. This is now the concern of the local officials. But if we are going to tie the hands of the proponents, simply by telling them, "Sorry, you are now at 150 thousand or 200 thousand," you will never be able to become a province because nobody wants to go to your place. Why? Because you never have any reason for economic viability.

x x x x x x x x x

CHAIRMAN PIMENTEL: Okay, what about land area?

HON. LUMAUIG: 1,500 square kilometers

HON. ANGARA: *Walang problema yon, in fact that's not very critical, yong land area because...*

CHAIRMAN PIMENTEL: Okay, ya, our, the Senate version is 3.5, 3,500 square meters, ah, square kilometers.

HON. LAGUADA: Ne, Ne. A province is constituted for the purpose of administrative efficiency and delivery of basic services.

CHAIRMAN PIMENTEL: Right.

HON. LAGUADA: Actually, when you come down to it, when government was instituted, there is only one central government and then everybody falls under that. But it was later on subdivided into provinces for purposes of administrative efficiency.

CHAIRMAN PIMENTEL: Okay.

HON. LAGUADA: Now, what we're seeing now is that the administrative efficiency is no longer there precisely because the land areas that we are giving to our governors is so wide that no one man can possibly administer all of the complex machineries that are needed.

Secondly, when you say "delivery of basic services," as pointed out by Cong. Alfelor, there are sections of the province which have never been visited by public officials, precisely because they don't have the time nor the energy anymore to do that because its so wide. Now, by compressing the land area and by reducing the population requirement, we are, in effect, trying to follow the basic policy of why we are creating provinces, which is to deliver basic services and to make it more efficient in administration.

CHAIRMAN PIMENTEL: Yeah, that's correct, but on the assumption that the province is able to do it without being a burden to the national government. That's the assumption.

HON. LAGUADA: That's why we're going into the minimum income level. As we said, if we go on a minimum income level, then we say, "this is the trigger point at which this administration can take place."[18]

Verily, economic viability is the primordial consideration in the constitution of provinces, not population or territory. As to a province composed of a group of islands separated by stretches of water, like the one in this case, the proposition must apply with greater force. A contrary position would prove to be growth-retardant to an economically viable group of islands which has not yet politically separated from the larger mass of land where the provincial capital sits. In a practical sense, it would also

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[18] Bicameral Conference Committee Meeting of the Committee on Local Government, May 22, 1991, 4th Regular Session, pp. 57-67.

be too cumbersome for the inhabitants to travel great lengths and over unpredictable waters just to reach the capital, do their business and avail of basic government services and facilities that ordinarily do not reach beyond the immediate outskirts of the capital. Thus, Section 461, as discussed above, exempts a proposed province composed of several islands from complying with both the contiguity and land area components of the territorial requirement for its creation. It is this interpretation that, logically, impelled both the executive and legislative departments to enact R.A. No. 9355, the law creating the province of Dinagat Islands. We must accord persuasive effect to this contemporaneous interpretation by the two equal branches of government, and abide by the clear intent of the framers of the law.

Cawaling, Jr. v. Commission on Elections[19] fittingly instructs that every statute enjoys the presumption of constitutionality, owing to the doctrine of separation of powers which imposes upon the three coordinate departments of the Government a becoming courtesy for each other's acts. Every law, being the joint act of the Legislature and the Executive, has passed careful scrutiny to ensure that it is in accord with the fundamental law. Of course, the Court may, nevertheless, declare a law, or portions thereof, unconstitutional, where a petitioner has shown that there is a clear and unequivocal breach of the Constitution, not merely a doubtful or argumentative one. Here, as revealed in the above discussion, petitioners have not shown that Dinagat Islands does not meet the criteria laid down in Section 461 of the LGC for the creation of a province; thus, they cannot assert that R.A. No. 9355 clearly and unequivocally breaches Article X, Section 10 of the Constitution. Absent a genuine constitutional issue, the petition fails in substance. The petition also breaches procedural standards because when the inquiry is focused on the legal existence of a body politic, the action is reserved to the State in a proceeding for *quo warranto*,[20] not through a petition for *certiorari*.

In light of the above disquisition, I vote for the dismissal of the petition.

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[19] 420 Phil. 524, 530-531 (2001).

[20] Herrera, *Remedial Law*, Vol. III (1999 ed.), pp. 295-296.

EN BANC

[G.R. No. 188456. February 10, 2010]

H. HARRY L. ROQUE, JR., JOEL R. BUTUYAN, ROMEL R. BAGARES, ALLAN JONES F. LARDIZABAL, GILBERT T. ANDRES, IMMACULADA D. GARCIA, ERLINDA T. MERCADO, FRANCISCO A. ALCUAZ, MA. AZUCENA P. MACEDA, and ALVIN A. PETERS, *petitioners, vs.* **COMMISSION ON ELECTIONS, Represented by HON. CHAIRMAN JOSE MELO, COMELEC SPECIAL BIDS AND AWARDS COMMITTEE, represented by its CHAIRMAN HON. FERDINAND RAFANAN, DEPARTMENT OF BUDGET AND MANAGEMENT, represented by HON. ROLANDO ANDAYA, TOTAL INFORMATION MANAGEMENT CORPORATION and SMARTMATIC INTERNATIONAL CORPORATION,** *respondents.* **PETE QUIRIÑO-QUADRA,** *petitioner-in-intervention.* **SENATE OF THE PHILIPPINES, represented by its President, JUAN PONCE ENRILE,** *movant-intervenor.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; SPECULATIONS AND CONJECTURES ARE NOT EQUIVALENT TO PROOF.— Petitioners' threshold argument delves on possibilities, on matters that may or may not occur. The conjectural and speculative nature of the first issue raised is reflected in the very manner of its formulation and by statements, such as "the public pronouncements of public respondent COMELEC x x x clearly show that there is a high probability that there will be automated failure of elections"; "there is a high probability that the use of PCOS machines in the May 2010 elections will result in failure of elections"; "the unaddressed logistical nightmares—and the lack of contingency plans that should have been crafted as a result of a pilot test—make an automated failure of elections very probable"; and "COMELEC committed grave abuse of discretion when it signed x x x the contract for full automation x x x despite the likelihood of a failure of elections." Speculations and conjectures are not equivalent

to proof; they have little, if any, probative value and, surely, cannot be the basis of a sound judgment.

2. POLITICAL LAW; ELECTIONS; AUTOMATED ELECTION SYSTEM; EXCLUSIVE SUPERVISION AND CONTROL OF THE ELECTORAL PROCESS IS LODGED WITH THE COMMISSION ON ELECTIONS (COMELEC), NOT ON THE SERVICE PROVIDER.— Petitioners' contention, as well as the arguments, citations, and premises holding it together, is a rehash of their previous position articulated in their memorandum in support of their petition. They have been considered, squarely addressed, and found to be without merit in the Decision subject hereof. The Court is not inclined to embark on another extended discussion of the same issue again. Suffice it to state that, under the automation contract, Smartmatic is given a specific and limited technical task to assist the Comelec in implementing the AES. But at the end of the day, the Smartmatic-TIM joint venture is merely a service provider and lessor of goods and services to the Comelec, which shall have exclusive supervision and control of the electoral process. Art. 6.7 of the automation contract could not have been more clear: 6.7 Subject to the provisions of the General Instructions to be issued by the Commission *En Banc*, **the entire process of voting, counting, transmission, consolidation and canvassing of votes shall [still] be conducted by COMELEC's personnel and officials** and their performance, completion and final results according to specifications and within specified periods shall be the shared responsibility of COMELEC and the PROVIDER. The aforequoted provision doubtless preserves Comelec's constitutional and statutory responsibilities. But at the same time, it realistically recognizes the complexity and the highly technical nature of the automation project and addresses the contingencies that the novelty of election automation brings.

3. REMEDIAL LAW; MOTIONS; MOTION FOR RECONSIDERATION; PETITIONERS SHOULD RAISE MATTERS SUBSTANTIALLY PLAUSIBLE AND COMPELLINGLY PERSUASIVE TO WARRANT THE DESIRED COURSE OF ACTION; CASE AT BAR.— Petitioners' posture anent the third issue, *i.e.*, there is no legal framework to guide Comelec in the appreciation of automated ballots or to govern manual count should PCOS machines fail,

cannot be accorded cogency. *First*, it glosses over the continuity and back-up plans that would be implemented in case the PCOS machines falter during the 2010 elections. The overall fallback strategy and options to address even the worst-case scenario—the wholesale breakdown of the 80,000 needed machines nationwide and of the 2,000 reserved units—have been discussed in some detail in the Decision subject of this recourse. The Court need not belabor them again. While a motion for reconsideration may tend to dwell on issues already resolved in the decision sought to be reconsidered—and this should not be an obstacle for a reconsideration—the hard reality is that petitioners have failed to raise matters substantially plausible or compellingly persuasive to warrant the desired course of action.

4. POLITICAL LAW; ELECTIONS; AUTOMATED ELECTION SYSTEM; IN THE MATTER OF ADMINISTRATION OF LAWS RELATIVE TO THE CONDUCT OF ELECTIONS, THE COURT MUST NOT BY PREEMPTIVE MOVE OR ANY EXCESSIVE ZEAL, TAKE AWAY FROM THE COMELEC THE INITIATIVE THAT BY LAW PERTAINS TO IT.— [P]etitioners' position presupposes that the Comelec is, in the meanwhile, standing idly by, totally unconcerned with that grim eventuality and the scenarios petitioners envision and depict. Comelec, to reiterate, is the constitutional body tasked to enforce and administer all laws and regulations relative to the conduct of an election. In the discharge of this responsibility, Comelec has been afforded enough latitude in devising means and methods that would enable it to accomplish the great objective for which it was created. In the matter of the administration of laws relative to the conduct of elections, the Court—or petitioners for that matter—must not, by any preemptive move or any excessive zeal, take away from Comelec the initiative that by law pertains to it. It should not be stymied with restrictions that would perhaps be justified in the case of an organization of lesser responsibility.

5. ID.; ID.; ID.; ID.; ABSENT COMPELLING PROOF TO THE CONTRARY, THE COURT ACCORDS THE COMELEC, WHICH ENJOYS THE PRESUMPTION OF GOOD FAITH IN THE PERFORMANCE OF ITS DUTIES, THE BENEFIT OF THE DOUBT.— [P]etitioners engage in an entirely speculative exercise, second- guessing what the Comelec can

and will probably do, or what it cannot and probably will not do, with respect to the implementation of a statutory provision. The fact that a source code review is not expressly included in the Comelec schedule of activities is not an indication, as petitioners suggest, that Comelec will not implement such review. Comelec, in its Comment on the Motion for Reconsideration, manifests its intention to make available and open the source code to all political and interested parties, but under a controlled environment to obviate replication and tampering of the source code, thus protecting, in the process, the intellectual proprietary right of Smartmatic to the source code. Absent compelling proof to the contrary, the Court accords the Comelec, which enjoys the presumption of good faith in the performance of its duties in the first place, the benefit of the doubt.

6. REMEDIAL LAW; JUDGMENTS; EFFECT OF DISSENTING OPINION.— [P]etitioners, in support of their position on the lack-of-legal-framework issue, invoke the opinion of Associate, later Chief, Justice Artemio Panganiban in *Loong v. Comelec*, where he made the following observations: "Resort to manual appreciation of the ballots is precluded by the basic features of the automated election system," and "the rules laid down in the Omnibus Election Code (OEC) for the appreciation and counting of ballots cast in a manual election x x x are inappropriate, if not downright useless, to the proper appreciation and reading of the ballots used in the automated system." Without delving on its wisdom and validity, the view of Justice Panganiban thus cited came by way of a dissenting opinion. As such, it is without binding effect, a dissenting opinion being a mere expression of the individual view of a member of the Court or other collegial adjudicating body, while disagreeing with the conclusion held by the majority.

7. ID.; APPEALS; POINTS OF LAW, THEORIES, ISSUES AND ARGUMENTS NOT RAISED IN THE ORIGINAL PROCEEDINGS CANNOT BE BROUGHT OUT ON REVIEW.— [P]etitioners assert that the system certified as having been used in New York was the Dominion Image Cast, a ballot marking device. Petitioners have obviously inserted, at this stage of the case, an entirely new factual dimension to their cause. This we cannot allow for compelling reasons. For starters, the Court cannot plausibly validate this factual assertion

of petitioners. As it is, private respondents have even questioned the reliability of the website whence petitioners base their assertion, albeit the former, citing the same website, state that the Image Cast Precinct tabulation device refers to the Dominion's PCOS machines. Moreover, as a matter of sound established practice, points of law, theories, issues, and arguments not raised in the original proceedings cannot be brought out on review. Basic considerations of fair play impel this rule. The imperatives of orderly, if not speedy, justice frown on a piecemeal presentation of evidence and on the practice of parties of going to trial haphazardly.

8. CIVIL LAW; OBLIGATIONS AND CONTRACTS; A POSSIBLE BREACH OF A CONTRACTUAL STIPULATION IS NOT A LEGAL REASON TO PREMATURELY ANNUL THE CONTRACT.— [P]etitioners claim that "there are very strong indications that Private Respondents will not be able to provide for telecommunication facilities for areas without these facilities." This argument, being again highly speculative, is without evidentiary value and hardly provides a ground for the Court to nullify the automation contract. Surely, a possible breach of a contractual stipulation is not a legal reason to prematurely rescind, much less annul, the contract.

9. POLITICAL LAW; ELECTIONS; AUTOMATED ELECTION SYSTEM; SUBCONTRACTING OF A PORTION OF THE AUTOMATION PROJECT DOES NOT CONSTITUTE GRAVE ABUSE OF DISCRETION SO AS TO NULLIFY THE CONTRACT AWARD.— [P]etitioners argue that, based on news reports, the TIM-Smartmatic joint venture has entered into a new contract with Quisdi, a Shanghai-based company, to manufacture on its behalf the needed PCOS machines to fully automate the 2010 elections. This arrangement, petitioners aver, violates the bid rules proscribing sub-contracting of significant components of the automation project. The argument is untenable, based as it is again on news reports. Surely, petitioners cannot expect the Court to act on unverified reports foisted on it. And, of course, the Court is at a loss to understand how the sub-contract would, in the scheme of things, constitute grave abuse of discretion on the part of Comelec so as to nullify the contract award of the automation project. As petitioners themselves acknowledge, again citing news reports, "Smartmatic

has unilaterally made the new subcontract to the Chinese company." Petitioners admit too, albeit with qualification, that RA 9184 allows subcontracting of a portion of the automation project.

10. ID.; ID.; ID.; AWARD OF THE AUTOMATION CONTRACT TO THE JOINT VENTURE OF PRIVATE RESPONDENTS NOT TAINTED WITH GRAVE ABUSE OF DISCRETION.— The motion of intervenor Quadra deals with the auditability of the results of the automated elections. His concern has already been addressed by the Court in its Decision. As we have said, the AES procured by the Comelec is a paper-based system, which has a provision for system auditability, since the voter would be able, if needed, to verify if the PCOS machine has scanned, recorded, and counted his vote properly. All actions done on the machine can be printed out by the Board of Election Inspectors Chairperson as an audit log. On the basis of the arguments, past and present, presented by the petitioners and intervenor, the Court does not find any grave abuse of discretion on the part of the Comelec in awarding the automation contract to the joint venture of private respondents.

APPEARANCES OF COUNSEL

Roque & Butuyan Law Offices for petitioners.

The Solicitor General for respondents.

Office of the Senate Legal Counsel for the Senate of the Philippines.

DB Law Partnership for Total Information Management, Inc.

Angara Abello Concepcion Regala and Cruz for Smartmatic International, Inc.

R E S O L U T I O N

VELASCO, JR., *J.*:

By Decision dated September 10, 2009, the Court denied the petition of H. Harry L. Roque, Jr., *et al.* for *certiorari*, prohibition, and *mandamus* to nullify the contract-award of the

2010 Election Automation Project to the joint venture of Total Information Management Corporation (TIM) and Smartmatic International Corporation (Smartmatic). The Court also denied the petition-in-intervention of Pete Q. Quadra, praying that the respondents be directed to implement the minimum requirements provided under pars. (f) and (g), Section 6 of Republic Act No. (RA) 8436, or the *Election Modernization Act*, as amended by RA 9369.

Petitioners Roque, *et al.* are again before the Court on a motion for reconsideration, as supplemented, praying, as they did earlier, that the contract award be declared null and void on the stated ground that it was made in violation of the Constitution, statutes, and jurisprudence.[1] Intervening petitioner also interposed a similar motion, but only to pray that the Board of Election Inspectors be ordered to manually count the ballots after the printing and electronic transmission of the election returns.

To both motions, private respondents TIM and Smartmatic, on the one hand, and public respondents Commission on Elections (Comelec), *et al.*, on the other, have interposed their separate comments and/or oppositions.

As may be recalled, the underlying petition for *certiorari*, *etc*. on its face assailed the award by Comelec of the poll automation project to the TIM-Smartmatic joint venture, the challenge basically predicated on the non-compliance of the contract award with the pilot-testing requirements of RA 9369 and the minimum system capabilities of the chosen automated election system (AES), referring to the Precinct Count Optical Scan (PCOS) system. The non-submission of documents to show the existence and scope of a valid joint venture agreement between TIM and Smartmatic was also raised as a nullifying ground, albeit later abandoned or at least not earnestly pursued.

The Court, in its September 10, 2009 Decision, dismissed the petition and the petition-in-intervention on the following main grounds: (1) RA 8436, as amended, does not require that

[1] *Rollo*, pp. 2056-2104.

the AES procured or, to be used for the 2010 nationwide fully automated elections must, as a condition *sine qua non*, have been pilot-tested in the 2007 Philippine election, it being sufficient that the capability of the chosen AES has been demonstrated in an electoral exercise in a foreign jurisdiction; (2) Comelec has adopted a rigid technical evaluation mechanism to ensure compliance of the PCOS with the minimum capabilities standards prescribed by RA 8436, as amended, and its determination in this regard must be respected absent grave abuse of discretion; (3) Comelec retains under the automation arrangement its supervision, oversight, and control mandate to ensure a free, orderly, and honest electoral exercise; it did not, by entering into the assailed automation project contract, abdicate its duty to enforce and administer all laws relative to the conduct of elections and decide, at the first instance, all questions affecting elections; and (4) in accordance with contract documents, continuity and back-up plans are in place to be activated in case the PCOS machines falter during the actual election exercise.

Petitioners Roque, *et al.*, as movants herein, seek a reconsideration of the September 10, 2009 Decision on the following issues or grounds:

1. The Comelec's public pronouncements show that there is a "high probability" that there will be failure of automated elections;

2. Comelec abdicated its constitutional functions in favor of Smartmatic;

3. There is no legal framework to guide the Comelec in appreciating automated ballots in case the PCOS machines fail;

4. Respondents cannot comply with the requirements of RA 8436 for a source code review;

5. Certifications submitted by private respondents as to the successful use of the machines in elections abroad do not fulfill the requirement of Sec. 12 of RA 8436;

6. Private respondents will not be able to provide telecommunications facilities that will assure 100% communications coverage at all times during the conduct of the 2010 elections; and

7. Subcontracting the manufacture of PCOS machines to Quisdi violates the Comelec's bidding rules.

Both public and private respondents, upon the other hand, insist that petitioners' motion for reconsideration should be held devoid of merit, because the motion, for the most part, either advances issues or theories not raised in the petition for *certiorari*, prohibition, and *mandamus*, and argues along speculative and conjectural lines.

Upon taking a second hard look into the issues in the case at bar and the arguments earnestly pressed in the instant motions, the Court cannot grant the desired reconsideration.

Petitioners' threshold argument delves on possibilities, on matters that may or may not occur. The conjectural and speculative nature of the first issue raised is reflected in the very manner of its formulation and by statements, such as "the public pronouncements of public respondent COMELEC[2] x x x clearly show that there is a high probability that there will be automated failure of elections";[3] "there is a high probability that the use of PCOS machines in the May 2010 elections will result in failure of elections";[4] "the unaddressed logistical nightmares—and the lack of contingency plans that should have been crafted as a result of a pilot test—make an automated failure of elections very probable";[5] and "COMELEC committed grave abuse of discretion when it signed x x x the contract for full automation x x x despite the likelihood of a failure of elections."[6]

Speculations and conjectures are not equivalent to proof; they have little, if any, probative value and, surely, cannot be the basis of a sound judgment.

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[2] *Id.* at 2061-2062. Attributed to Comelec Chairperson Melo or Jeanie Flororito, Director of Comelec's IT Department.

[3] *Id.* at 2061.

[4] *Id.* at 2065.

[5] *Id.*

[6] *Id.*

Petitioners, to support their speculative venture *vis-à-vis* the possibility of Comelec going manual, have attributed certain statements to respondent Comelec Chairman Melo, citing for the purpose a news item on *Inquirer.net*, posted September 16, 2009.[7]

Reacting to the attribution, however, respondents TIM and Smartmatic, in their comment, described the Melo pronouncements as made in the context of Comelec's contingency plan. Petitioners, however, the same respondents added, put a misleading spin to the Melo pronouncements by reproducing part of the news item, but omitting to make reference to his succeeding statements to arrive at a clearer and true picture.

Private respondents' observation is well-taken. Indeed, it is easy to selectively cite portions of what has been said, sometimes out of their proper context, in order to assert a misleading conclusion. The effect can be dangerous. Improper meaning may be deliberately attached to innocent views or even occasional crude comments by the simple expediency of lifting them out of context from any publication. At any event, the Court took it upon itself to visit the website, whence petitioners deduced their position on the possible failure of automated elections in problem areas and found the following items:

> Allaying fears of failure of elections in 2010, the x x x [Comelec] said it will prepare for manual balloting, especially for areas with problems in electricity and telecommunications network coverage. x x x
>
> "Aside from preparations for poll automation, Comelec is also preparing for manual elections *sa mga liblib na lugar* [in remote places] x x x, provinces with no electricity and would have issues in electronic transmission. We are ready for manual polls in at least 30 percent or 50 percent of the country as a last contingency measure in case the contingency plans for automation are difficult to implement," said Melo.
>
> **The poll chief was reacting to statements expressing the possibility of failure of elections due to the novelty of poll automation**.

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[7] <http://newsinfo.Inquirer.net/breakingnews/nation/view/20090916-225461/Comelec may go manual in problem areas> (visited January 11, 2010).

"The occurrence of nationwide failure of elections as alleged by doomsayers is impossible. Under the laws of probability, all 80,000 PCOS machines nationwide cannot breakdown. Maybe several would but we have standby units for this and we also have preparations for manual elections," he said.[8] (Emphasis added.)

Petitioners next maintain that the Comelec abdicated its constitutional mandate[9] to decide all questions affecting elections when, under Article 3.3[10] of the poll automation contract, it surrendered control of the system and technical aspects of the 2010 automated elections to Smartmatic in violation of Sec. 26[11] of RA 8436. Comelec, so petitioners suggest, should have stipulated that its Information Technology (IT) Department shall have charge of the technical aspects of the elections.

Petitioners' above contention, as well as the arguments, citations, and premises holding it together, is a rehash of their previous position articulated in their memorandum[12] in support of their petition. They have been considered, squarely addressed, and found to be without merit in the Decision subject hereof. The Court is not inclined to embark on another extended discussion of the same issue again. Suffice it to state that, under the automation contract, Smartmatic is given a specific and

[8] *Id.*

[9] Article IX-C, Sec. 2 of the Constitution provides that the Comelec shall "[e]nforce and administer all laws and regulations relative to the conduct of an election … [and] Decide, except those involving the right to vote, all questions affecting elections x x x."

[10] Article 3.3. The Provider shall be liable for all its obligations under the Project x x x SMARTMATIC, as the joint partner with the greater track record in automated elections, shall be in charge of the technical aspects of the counting and canvassing software and hardware, including transmission configuration and system integration. SMARTMATIC shall also be primary responsible for preventing and troubleshooting technical problems that may arise during the election. x x x

[11] Sec. 26. *Supervision and control.*—The System shall be under the exclusive supervision and control of the [Comelec]. For this purpose, there is hereby created an information technology department in the Commission to carry out the full administration and implementation of the System. x x x

[12] *Rollo,* pp. 1560-1687.

limited technical task to assist the Comelec in implementing the AES. But at the end of the day, the Smarmatic-TIM joint venture is merely a service provider and lessor of goods and services to the Comelec, which shall have exclusive supervision and control of the electoral process. Art. 6.7 of the automation contract could not have been more clear:

> 6.7 Subject to the provisions of the General Instructions to be issued by the Commission *En Banc*, **the entire process of voting, counting, transmission, consolidation and canvassing of votes shall [still] be conducted by COMELEC's personnel and officials** and their performance, completion and final results according to specifications and within specified periods shall be the shared responsibility of COMELEC and the PROVIDER. (Emphasis added.)

The aforequoted provision doubtless preserves Comelec's constitutional and statutory responsibilities. But at the same time, it realistically recognizes the complexity and the highly technical nature of the automation project and addresses the contingencies that the novelty of election automation brings.

Petitioners' posture anent the third issue, *i.e*, there is no legal framework to guide Comelec in the appreciation of automated ballots or to govern manual count should PCOS machines fail, cannot be accorded cogency. *First*, it glosses over the continuity and back-up plans that would be implemented in case the PCOS machines falter during the 2010 elections.[13] The overall fallback strategy and options to address even the worst-case scenario—the wholesale breakdown of the 80,000

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[13] RA 9369, Sec. 11. provides: Section 9 of [RA] 8436 is hereby amended to read as follows: Sec. 13. Continuity Plan.—The AES shall be so designed to include a continuity plan in case of a systems breakdown or any such eventuality which shall result in the delay, obstruction or nonperformance of the electoral process. Activation of such continuity and contingency measures shall be undertaken in the presence of representatives of political parties and citizen's arm of the Commission who shall be notified by the election officer of such activation.

All political parties and party-lists shall be furnished copies of said continuity plan x x x. The list shall be published in at least two newspapers of national circulation and shall be posted at the website of the Commission at least fifteen (15) days prior to the electoral activity concerned.

needed machines nationwide and of the 2,000 reserved units—have been discussed in some detail in the Decision subject of this recourse. The Court need not belabor them again.

While a motion for reconsideration may tend to dwell on issues already resolved in the decision sought to be reconsidered—and this should not be an obstacle for a reconsideration—the hard reality is that petitioners have failed to raise matters substantially plausible or compellingly persuasive to warrant the desired course of action.

Second, petitioners' position presupposes that the Comelec is, in the meanwhile, standing idly by, totally unconcerned with that grim eventuality and the scenarios petitioners envision and depict. Comelec, to reiterate, is the constitutional body tasked to enforce and administer all laws and regulations relative to the conduct of an election. In the discharge of this responsibility, Comelec has been afforded enough latitude in devising means and methods that would enable it to accomplish the great objective for which it was created. In the matter of the administration of laws relative to the conduct of elections, the Court—or petitioners for that matter—must not, by any preemptive move or any excessive zeal, take away from Comelec the initiative that by law pertains to it.[14] It should not be stymied with restrictions that would perhaps be justified in the case of an organization of lesser responsibility.[15]

Significantly, petitioners, in support of their position on the lack-of-legal-framework issue, invoke the opinion of Associate, later Chief, Justice Artemio Panganiban in *Loong v. Comelec*,[16] where he made the following observations: "Resort to manual appreciation of the ballots is precluded by the basic features of the automated election system,"[17] and "the rules laid down in the Omnibus Election Code (OEC) for the appreciation and counting of ballots cast in a manual election x x x are inappropriate,

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[14] *Sumulong v. Comelec*, 73 Phil. 288 (1941).

[15] *Leyaley v. Comelec*, G.R. No. 160061, October 11, 2006, 504 SCRA 217.

[16] G.R. No. 133676, April 14, 1999, 305 SCRA 832.

[17] *Id.* at 880.

if not downright useless, to the proper appreciation and reading of the ballots used in the automated system."[18] Without delving on its wisdom and validity, the view of Justice Panganiban thus cited came by way of a dissenting opinion. As such, it is without binding effect, a dissenting opinion being a mere expression of the individual view of a member of the Court or other collegial adjudicating body, while disagreeing with the conclusion held by the majority.[19]

Petitioners insist next that public respondents cannot comply with the requirement of a source code[20] review as mandated by Sec. 14 of RA 8436, as amended, which provides:

> SEC. 14. *Examination and Testing of Equipment or Device of the AES and Opening of the Source Code of Review*.—Once an AES Technology is selected for implementation, the Commission shall promptly make the source code of that technology available and open to any interested political party or groups which may conduct their own review thereof.

Pursuing the point, after citing a commentary of an IT expert on the importance of a source code review, petitioners state the observation that "there are strong indications of [the inability] to comply x x x since the source code, which runs the PCOS machines, will effectively be kept secret from the people."[21]

Again, petitioners engage in an entirely speculative exercise, second- guessing what the Comelec can and will probably do, or what it cannot and probably will not do, with respect to the implementation of a statutory provision. The fact that a source code review is not expressly included in the Comelec schedule

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[18] *Id.* at 880-881.

[19] *Coca-Cola Bottlers, Inc. Sales Force Union-PTGWO-Balais v. Coca-Cola Bottlers Philippines, Inc.*, G.R. No. 155651, July 28, 2005, 464 SCRA 507; *National Union of Workers in Hotels, Restaurants and Allied Industries v. NLRC*, G.R. No. 125561, March 6, 1988, 287 SCRA 192.

[20] Defined in Sec. 2 of RA 8436 as "human readable instructions [set of numbers, letters and symbols] that define what the computer equipment will do."

[21] Motion for Reconsideration, p. 37.

of activities is not an indication, as petitioners suggest, that Comelec will not implement such review. Comelec, in its Comment on the Motion for Reconsideration, manifests its intention to make available and open the source code to all political and interested parties, but under a controlled environment to obviate replication and tampering of the source code, thus protecting, in the process, the intellectual proprietary right of Smartmatic to the source code. Absent compelling proof to the contrary, the Court accords the Comelec, which enjoys the presumption of good faith in the performance of its duties in the first place, the benefit of the doubt.

And going to another but recycled issue, petitioners would have the Court invalidate the automation contract on the ground that the certifications submitted by Smartmatic during the bidding, showing that the PCOS technology has been used in elections abroad, do not comply with Sec. 12[22] of RA 8436.

We are not convinced.

As stressed in our September 10, 2009 Decision, the AES chosen by Comelec for the 2010 elections has been successfully deployed in previous electoral exercises in foreign countries, such as Ontario, Canada and New York, USA,[23] albeit Smartmatic was not necessarily the system provider.

Roque, *et al.*, in their petition, had questioned the certifications to this effect, arguing that these certifications were not issued to respondent TIM-Smartmatic, but to a third party, Dominion Voting Systems. Resolving the challenge, the Court, in effect, said that the system subject of the certifications was the same

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[22] SEC 12. *Procurement of Equipment and Materials*.—To achieve the purpose of this Act, the Commission is authorized to procure x x x supplies, equipment, materials, software, facilities, and other services, from local or foreign sources x x x. **With respect to the May 10, 2010 elections and succeeding electoral exercises**, **the system procured must have demonstrated capability and been successfully used in prior electoral exercise here or abroad**. **Participation in the 2007 pilot exercise shall not be conclusive of the system's fitness.**

[23] Memorandum, Report/Recommendation on the 2010 Automation Election Project Procurement, Annex "9", Comment on Petition of Public Respondents.

one procured by Comelec for the 2010 elections. And besides, the Licensing Agreement between Smartmatic and the Dominion Voting Systems indicates that the former is the entity licensed by the latter to use the system in the Philippines.

Presently, petitioners assert that the system certified as having been used in New York was the Dominion Image Cast, a ballot marking device.

Petitioners have obviously inserted, at this stage of the case, an entirely new factual dimension to their cause. This we cannot allow for compelling reasons. For starters, the Court cannot plausibly validate this factual assertion of petitioners. As it is, private respondents have even questioned the reliability of the website[24] whence petitioners base their assertion, albeit the former, citing the same website, state that the Image Cast Precinct tabulation device refers to the Dominion's PCOS machines.

Moreover, as a matter of sound established practice, points of law, theories, issues, and arguments not raised in the original proceedings cannot be brought out on review. Basic considerations of fair play impel this rule. The imperatives of orderly, if not speedy, justice frown on a piecemeal presentation of evidence[25] and on the practice of parties of going to trial haphazardly.[26]

Moving still to another issue, petitioners claim that "there are very strong indications that Private Respondents will not be able to provide for telecommunication facilities for areas without these facilities."[27] This argument, being again highly speculative, is without evidentiary value and hardly provides a ground for the Court to nullify the automation contract. Surely, a possible breach of a contractual stipulation is not a legal reason to prematurely rescind, much less annul, the contract.

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[24] <http://www.elections.state.ny.us/>.

[25] *Jacot v. Dal*, G.R. No. 179848, November 27, 2008, 572 SCRA 295.

[26] *Villanueva v. Court of Appeals*, G.R. No. 143286, April 14, 2004, 427 SCRA 439.

[27] Supplemental Motion for Reconsideration, p. 5.

Finally, petitioners argue that, based on news reports,[28] the TIM-Smartmatic joint venture has entered into a new contract with Quisdi, a Shanghai-based company, to manufacture on its behalf the needed PCOS machines to fully automate the 2010 elections.[29] This arrangement, petitioners aver, violates the bid rules proscribing sub-contracting of significant components of the automation project.

The argument is untenable, based as it is again on news reports. Surely, petitioners cannot expect the Court to act on unverified reports foisted on it. And, of course, the Court is at a loss to understand how the sub-contract would, in the scheme of things, constitute grave abuse of discretion on the part of Comelec so as to nullify the contract award of the automation project. As petitioners themselves acknowledge, again citing news reports, "Smartmatic has unilaterally made the new subcontract to the Chinese company."[30] Petitioners admit too, albeit with qualification, that RA 9184 allows subcontracting of a portion of the automation project.[31]

The motion of intervenor Quadra deals with the auditability of the results of the automated elections. His concern has already been addressed by the Court in its Decision. As we have said, the AES procured by the Comelec is a paper-based system, which has a provision for system auditability, since the voter would be able, if needed, to verify if the PCOS machine has scanned, recorded, and counted his vote properly. All actions done on the machine can be printed out by the Board of Election Inspectors Chairperson as an audit log.[32]

On the basis of the arguments, past and present, presented by the petitioners and intervenor, the Court does not find any grave abuse of discretion on the part of the Comelec in awarding the automation contract to the joint venture of private respondents.

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[28] By Aries Rufo <abs-cbnNEWS.com/Newsbreak>.

[29] Supplemental Motion for Reconsideration, p. 11.

[30] *Id.* at 18.

[31] *Id.* at 17.

[32] Concurring Opinion of Chief Justice Puno, p. 65.

In closing, the Court harks back to its parting message embodied in its September 10, 2009 Decision, but this time even more mindful of warnings and apprehensions of well-meaning sectors of society, including some members of the Court, about the possibility of failure of elections. The Court, to repeat, will not venture to say that nothing could go wrong in the conduct of the 2010 nationwide automated elections. Neither will it guarantee, as it is not even equipped with the necessary expertise to guarantee, the effectiveness of the voting machines and the integrity of the counting and consolidation software embedded in them. That difficult and complex undertaking belongs at the first instance to the Comelec as part of its mandate to insure orderly and peaceful elections. The Comelec, as it were, is laboring under a very tight timeline. It would accordingly need the help of all advocates of orderly and honest elections, all men and women of goodwill, to assist Comelec personnel in addressing the fears expressed about the integrity of the system. After all, peaceful, fair, honest, and credible elections is everyone's concern.

WHEREFORE, the instant separate motions for reconsideration of the main and intervening petitioners are *DENIED.*

SO ORDERED.

Puno, C.J., Corona, Nachura, Leonardo-de Castro, Peralta, Bersamin, Del Castillo, Abad, Villarama, Jr., Perez, and *Mendoza, JJ.,* concur.

Carpio and *Brion, JJ.,* reiterate their dissent of 10 Sept. 2009.

*Carpio Morales, J.,*her concurrence with the dissent remains.

EN BANC

[A.M. No. 08-2-01-0. February 11, 2010]

RE: PETITION FOR RECOGNITION OF THE EXEMPTION OF THE GOVERNMENT SERVICE INSURANCE SYSTEM FROM PAYMENT OF LEGAL FEES.

GOVERNMENT SERVICE INSURANCE SYSTEM, *petitioner.*

SYLLABUS

1. REMEDIAL LAW; PLEADINGS AND PRACTICES; LEGAL FEES; RULE 141 OF THE RULES OF COURT; DOES NOT CREATE OR TAKE AWAY A RIGHT BUT REGULATES THE PROCEDURE OF EXERCISING A RIGHT OF ACTION AND ENFORCING A CAUSE OF ACTION.— The power to promulgate rules concerning pleading, practice and procedure in all courts is a traditional power of this Court. It necessarily includes the power to address all questions arising from or connected to the implementation of the said rules. The Rules of Court was promulgated in the exercise of the Court's rule-making power. It is essentially procedural in nature as it does not create, diminish, increase or modify substantive rights. Corollarily, Rule 141 is basically procedural. It does not create or take away a right but simply operates as a means to implement an existing right. In particular, it functions to regulate the procedure of exercising a right of action and enforcing a cause of action. In particular, it pertains to the procedural requirement of paying the prescribed legal fees in the filing of a pleading or any application that initiates an action or proceeding.

2. ID.; ID.; ID.; PAYMENT OF THE PRESCRIBED DOCKET FEE WITHIN THE PRESCRIBED PERIOD IS MANDATORY FOR THE PERFECTION OF AN APPEAL.— Clearly, therefore, the payment of legal fees under Rule 141 of the Rules of Court is an integral part of the rules promulgated by this Court pursuant to its rule-making power under Section 5(5), Article VIII of the Constitution. In particular, it is part of the rules concerning pleading, practice and procedure

in courts. Indeed, payment of legal (or docket) fees is a jurisdictional requirement. It is not simply the filing of the complaint or appropriate initiatory pleading but the payment of the prescribed docket fee that vests a trial court with jurisdiction over the subject-matter or nature of the action. Appellate docket and other lawful fees are required to be paid within the same period for taking an appeal. Payment of docket fees in full within the prescribed period is mandatory for the perfection of an appeal. Without such payment, the appellate court does not acquire jurisdiction over the subject matter of the action and the decision sought to be appealed from becomes final and executory.

3. ID.; ID.; ID.; COLLECTION OF LEGAL FEES, WHEN MAY BE WAIVED BY THE COURT.— An interesting aspect of legal fees is that which relates to indigent or pauper litigants. In proper cases, courts may waive the collection of legal fees. This, the Court has allowed in Section 21, Rule 3 and Section 19, Rule 141 of the Rules of Court in recognition of the right of access to justice by the poor under Section 11, Article III of the Constitution. Mindful that the rule with respect to indigent litigants should not be ironclad as it touches on the right of access to justice by the poor, the Court acknowledged the exemption from legal fees of indigent clients of the Public Attorney's Office under Section 16-D of the Administrative Code of 1987, as amended by RA 9406. This was not an abdication by the Court of its rule-making power but simply a recognition of the limits of that power. In particular, it reflected a keen awareness that, in the exercise of its rule-making power, the Court may not dilute or defeat the right of access to justice of indigent litigants.

4. ID.; ID.; ID.; PAYMENT OF LEGAL FEES DOES NOT TAKE AWAY THE CAPACITY OF THE GOVERNMENT SERVICE INSURANCE SYSTEM (GSIS) TO SUE, BUT IT SIMPLY OPERATES AS A MEANS BY WHICH THAT CAPACITY MAY BE IMPLEMENTED.— The GSIS cannot successfully invoke the right to social security of government employees in support of its petition. It is a corporate entity whose personality is separate and distinct from that of its individual members. The rights of its members are not its rights; its rights, powers and functions pertain to it solely and are not shared by its members. Its capacity to sue and bring actions under Section

41(g) of RA 8291, the specific power which involves the exemption that it claims in this case, pertains to it and not to its members. Indeed, even the GSIS acknowledges that, in claiming exemption from the payment of legal fees, it is not asking that rules be made to enforce the right to social security of its members but that the Court recognize the alleged **right of the GSIS** "to seek relief from the courts of justice sans payment of legal fees." However, the alleged right of the GSIS does not exist. The payment of legal fees does not take away the capacity of the GSIS to sue. It simply operates as a means by which that capacity may be implemented.

5. ID.; ID.; ID.; RULE ON PAYMENT OF LEGAL FEES CANNOT BE VALIDLY ANNULLED, CHANGED OR MODIFIED BY CONGRESS.— Since the payment of legal fees is a vital component of the rules promulgated by this Court concerning pleading, practice and procedure, it cannot be validly annulled, changed or modified by Congress. As one of the safeguards of this Court's institutional independence, the power to promulgate rules of pleading, practice and procedure is now the Court's exclusive domain. That power is no longer shared by this Court with Congress, much less with the Executive.

6. ID.; ID.; ID.; ID.; LEGISLATIVE GRANT TO GOVERNMENT-OWNED OR CONTROLLED CORPORATIONS AND LOCAL GOVERNMENT UNITS OF EXEMPTION FROM THE PAYMENT OF LEGAL FEES IMPAIRS THE COURT'S GUARANTEED FISCAL AUTONOMY AND ERODES ITS INDEPENDENCE.— The separation of powers among the three co-equal branches of our government has erected an impregnable wall that keeps the power to promulgate rules of pleading, practice and procedure within the sole province of this Court. The other branches trespass upon this prerogative if they enact laws or issue orders that effectively repeal, alter or modify any of the procedural rules promulgated by this Court. Viewed from this perspective, the claim of a legislative grant of exemption from the payment of legal fees under Section 39 of RA 8291 necessarily fails. Congress could not have carved out an exemption for the GSIS from the payment of legal fees without transgressing another equally important institutional safeguard of the Court's independence — fiscal autonomy. Fiscal autonomy recognizes the power and authority of the Court to levy, assess and collect fees, including legal

fees. Moreover, legal fees under Rule 141 have two basic components, the Judiciary Development Fund (JDF) and the Special Allowance for the Judiciary Fund (SAJF). The laws which established the JDF and the SAJF expressly declare the identical purpose of these funds to "guarantee the independence of the Judiciary as mandated by the Constitution and public policy." Legal fees therefore do not only constitute a vital source of the Court's financial resources but also comprise an essential element of the Court's fiscal independence. Any exemption from the payment of legal fees granted by Congress to government-owned or controlled corporations and local government units will necessarily reduce the JDF and the SAJF. Undoubtedly, such situation is constitutionally infirm for it impairs the Court's guaranteed fiscal autonomy and erodes its independence.

APPEARANCES OF COUNSEL

GSIS Law Office for petitioner.

R E S O L U T I O N

CORONA, *J.*:

May the legislature exempt the Government Service Insurance System (GSIS) from legal fees imposed by the Court on government-owned and controlled corporations and local government units? This is the central issue in this administrative matter.

The GSIS seeks exemption from the payment of legal fees imposed on government-owned or controlled corporations under Section 22,[1] Rule 141 (Legal Fees) of the Rules of Court. The said provision states:

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[1] The present Section 22 of Rule 141 was originally a single-sentence provision:

SEC. 17. *Government exempt.* – The Republic of the Philippines is exempt from paying the legal fees provided in this Rule.

When Rule 141 was amended effective November 2, 1990, the provision was re-numbered as Section 19 which read as follows:

SEC. 22. *Government exempt.* – The Republic of the Philippines, its agencies and instrumentalities are exempt from paying the legal fees provided in this Rule. Local government corporations and **government-owned or controlled corporations with or without independent charter are not exempt from paying such fees**.

However, all court actions, criminal or civil, instituted at the instance of the provincial, city or municipal treasurer or assessor under Sec. 280 of the Local Government Code of 1991 shall be exempt from the payment of court and sheriff's fees. (emphasis supplied)

The GSIS anchors its petition on Section 39 of its charter, RA[2] 8291 (The GSIS Act of 1997):

SEC. 39. *Exemption from Tax, Legal Process and Lien.* – It is hereby declared to be the policy of the State that the actuarial solvency of the funds of the GSIS shall be preserved and maintained at all times and that contribution rates necessary to sustain the benefits under this Act shall be kept as low as possible in order not to burden the members of the GSIS and their employers. **Taxes imposed on the GSIS tend to impair the actuarial solvency of its funds and increase the contribution rate necessary to sustain the benefits of this Act**. Accordingly, notwithstanding any laws to the contrary, **the GSIS, its assets, revenues including accruals thereto, and benefits paid, shall be exempt from all taxes, assessments, fees, charges or duties of all kinds**. These exemptions shall continue unless expressly and specifically revoked and **any assessment against the GSIS as of the approval of this Act are hereby considered paid**. Consequently, **all laws, ordinances, regulations, issuances, opinions or jurisprudence contrary to or in derogation of this provision are hereby deemed repealed, superseded and rendered ineffective and without legal force and effect**.

Moreover, these exemptions shall not be affected by subsequent laws to the contrary unless this section is expressly, specifically and categorically revoked or repealed by law and a provision is enacted to substitute or replace the exemption referred to herein as an

SEC. 19. *Government exempt.* – The Republic of the Philippines is exempt from paying the legal fees provided in this Rule. Local governments and government-owned or controlled corporations with or without independent charters are not exempt from paying such fees.

[2] Republic Act.

essential factor to maintain and protect the solvency of the fund, notwithstanding and independently of the guaranty of the national government to secure such solvency or liability.

The funds and/or the properties referred to herein as well as the benefits, sums or monies corresponding to the benefits under this Act shall be exempt from attachment, garnishment, execution, levy or other processes issued by the courts, quasi-judicial agencies or administrative bodies including Commission on Audit (COA) disallowances and from all financial obligations of the members, including his pecuniary accountability arising from or caused or occasioned by his exercise or performance of his official functions or duties, or incurred relative to or in connection with his position or work except when his monetary liability, contractual or otherwise, is in favour of the GSIS. (emphasis supplied)

The GSIS then avers that courts still assess and collect legal fees in actions and proceedings instituted by the GSIS notwithstanding its exemption from taxes, assessments, fees, charges, or duties of all kinds under Section 39. For this reason, the GSIS urges this Court to recognize its exemption from payment of legal fees.

According to the GSIS, the purpose of its exemption is to preserve and maintain the actuarial solvency of its funds and to keep the contribution rates necessary to sustain the benefits provided by RA 8291 as low as possible. Like the terms "taxes", "assessments", "charges", and "duties", the term "fees" is used in the law in its generic and ordinary sense as any form of government imposition. The word "fees", defined as "charge[s] fixed by law for services of public officers or for the use of a privilege under control of government," is qualified by the phrase "of all kinds."[3] Hence, it includes the legal fees prescribed by this Court under Rule 141. Moreover, no distinction should be made based on the kind of fees imposed on the GSIS or the GSIS' ability to pay because the law itself does not distinguish based on those matters.

The GSIS argues that its exemption from the payment of legal fees would not mean that RA 8291 is superior to the

[3] Petition, p. 5. *Rollo*, p. 5.

Rules of Court. It would merely show "deference" by the Court to the legislature as a co-equal branch.[4] This deference will recognize the "compelling and overriding" State interest in the preservation of the actuarial solvency of the GSIS for the benefit of its members.[5]

The GSIS further contends that the right of government workers to social security is an aspect of social justice. The right to social security is also guaranteed under Article 22 of the Universal Declaration of Human Rights and Article 9 of the International Covenant on Economic, Social and Cultural Rights. The Court has the power to promulgate rules concerning the protection and enforcement of constitutional rights, including the right to social security, but the GSIS is not compelling the Court to promulgate such rules. The GSIS is merely asking the Court to recognize and allow the exercise of the right of the GSIS "to seek relief from the courts of justice sans payment of legal fees."[6]

Required to comment on the GSIS' petition,[7] the Office of the Solicitor General (OSG) maintains that the petition should be denied.[8] According to the OSG, the issue of the GSIS' exemption from legal fees has been resolved by the issuance by then Court Administrator Presbitero J. Velasco, Jr.[9] of OCA[10] Circular No. 93-2004:

TO : ALL JUDGES, CLERKS OF COURT AND COURT PERSONNEL OF THE METROPOLITAN TRIAL COURTS, MUNICIPAL TRIAL COURTS IN CITIES, MUNICIPAL TRIAL COURTS, MUNICIPAL CIRCUIT TRIAL COURTS, SHARI'A CIRCUIT COURTS

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[4] *Id.* p. 8.

[5] *Id.*

[6] *Id.*, p. 11.

[7] Per resolution dated February 19, 2008.

[8] Comment of the OSG. *Rollo,* pp. 34-46.

[9] Now a member of this Court.

[10] Office of the Court Administrator.

SUBJECT : REMINDER ON THE STRICT OBSERVANCE OF ADMINISTRATIVE CIRCULAR NO. 3-98 (*Re: Payment of Docket and Filing Fees in Extra-Judicial Foreclosure*); SECTION 21, RULE 141 OF THE RULES OF COURT; SECTION 3 OF PRESIDENTIAL DECREE NO. 385; and ADMINISTRATIVE CIRCULAR NO. 07-99 (*Re: Exercise of Utmost Caution, Prudence, and Judiciousness in Issuance of Temporary Restraining Orders and Writs of Preliminary Injunctions*)

Pursuant to the Resolution of the Third Division of the Supreme Court dated 05 April 2004 and to give notice to the concern raised by the [GSIS] to expedite extrajudicial foreclosure cases filed in court, we wish to remind all concerned [of] the pertinent provisions of Administrative Circular No. 3-98, to wit:

> 2. No written request/petition for extrajudicial foreclosure of mortgages, real or chattel, shall be acted upon by the Clerk of Court, as *Ex-Officio* Sheriff, without the corresponding filing fee having been paid and the receipt thereof attached to the request/petition as provided for in Sec. 7(c), of Rule 141 of the Rules of Court.
>
> 3. No certificate of sale shall be issued in favor of the highest bidder until all fees provided for in the aforementioned sections and paragraph 3 of Section 9 (I) of Rule 141 of the Rules of Court shall have been paid. The sheriff shall attach to the records of the case a certified copy of the Official Receipt [O.R.] of the payment of the fees and shall note the O.R. number in the duplicate of the Certificate of Sale attached to the records of the case.

Moreover, to settle any queries as to the status of exemption from payment of docket and legal fees of government entities, Section 21, Rule 141 of the Rules of Court explicitly provides:

> **SEC. 21. *Government exempt*.** – The Republic of the Philippines, its agencies and instrumentalities are exempt from paying the legal fees provided in this Rule. Local governments and **government-owned or controlled corporations with or without independent charters** are **not exempt** from paying such fees.[11]

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[11] Emphasis in the original.

x x x x x x x x x

The OSG contends that there is nothing in Section 39 of RA 8291 that exempts the GSIS from fees imposed by the Court in connection with judicial proceedings. The exemption of the GSIS from "taxes, assessments, fees, charges or duties of all kinds" is necessarily confined to those that do not involve pleading, practice and procedure. Rule 141 has been promulgated by the Court pursuant to its exclusive rule-making power under Section 5(5), Article VIII of the Constitution. Thus, it may not be amended or repealed by Congress.

On this Court's order,[12] the Office of the Chief Attorney (OCAT) submitted a report and recommendation[13] on the petition of the GSIS and the comment of the OSG thereon. According to the OCAT, the claim of the GSIS for exemption from the payment of legal fees has no legal basis. Read in its proper and full context, Section 39 intends to preserve the actuarial solvency of GSIS funds by exempting the GSIS from government impositions through taxes. Legal fees imposed under Rule 141 are not taxes.

The OCAT further posits that the GSIS could not have been exempted by Congress from the payment of legal fees. Otherwise, Congress would have encroached on the rule-making power of this Court.

According to the OCAT, this is the second time that the GSIS is seeking exemption from paying legal fees.[14] The OCAT also points out that there are other government-owned or controlled corporations and local government units which asked

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[12] Per resolution dated July 8, 2008.

[13] Report of the OCAT. *Rollo*, pp. 81-101.

[14] In 1991, the Clerk of Court of the Regional Trial Court of Makati sought clarification of Section 19 (precursor of the present Section 22) of Rule 141 due to the assertion of the GSIS that it did not have to pay legal fees in extrajudicial foreclosure of mortgages. The OCAT, thru then Assistant Chief Attorney (now Associate Justice of this Court) Jose P. Perez, in a memorandum dated April 16, 1985 noted and approved by then Chief Attorney Damasita M. Aquino, rejected the claim of GSIS.

for exemption from paying legal fees citing provisions in their respective charters that are similar to Section 39 of RA 8291.[15] Thus, the OCAT recommends that the petition of GSIS be denied and the issue be settled once and for all for the guidance of the concerned parties.

Faced with the differing opinions of the GSIS, the OSG and the OCAT, we now proceed to probe into the heart of this matter: may Congress exempt the GSIS from the payment of legal fees? No.

The GSIS urges the Court to show deference to Congress by recognizing the exemption of the GSIS under Section 39 of RA 8291 from legal fees imposed under Rule 141. Effectively, the GSIS wants this Court to recognize a power of Congress to repeal, amend or modify a rule of procedure promulgated by the Court. However, the Constitution and jurisprudence do not sanction such view.

Rule 141 (on Legal Fees) of the Rules of Court was promulgated by this Court in the exercise of its rule-making powers under Section 5(5), Article VIII of the Constitution:

> Sec. 5. The Supreme Court shall have the following powers:
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> x x x x x x x x x
>
> (5) **Promulgate rules concerning** the protection and enforcement of constitutional rights, **pleading, practice, and procedure in all courts**, the admission to the practice of law, the Integrated Bar, and legal assistance to the underprivileged. Such rules shall provide a simplified and inexpensive procedure for the speedy disposition of cases, shall be uniform for all courts of the same grade, and shall not diminish, increase, or modify substantive rights. Rules of procedure of special courts and quasi-judicial bodies shall remain effective unless disapproved by the Supreme Court.
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> x x x x x x x x x x x x (emphasis supplied)

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[15] These include the National Home Mortgage Finance Corporation, the National Irrigation Administration and local government units, such as the Province of Batangas.

The power to promulgate rules concerning pleading, practice and procedure in all courts is a traditional power of this Court.[16] It necessarily includes the power to address all questions arising from or connected to the implementation of the said rules.

The Rules of Court was promulgated in the exercise of the Court's rule-making power. It is essentially procedural in nature as it does not create, diminish, increase or modify substantive rights. Corollarily, Rule 141 is basically procedural. It does not create or take away a right but simply operates as a means to implement an existing right. In particular, it functions to regulate the procedure of exercising a right of action and enforcing a cause of action.[17] In particular, it pertains to the procedural requirement of paying the prescribed legal fees in the filing of a pleading or any application that initiates an action or proceeding.[18]

Clearly, therefore, the payment of legal fees under Rule 141 of the Rules of Court is an integral part of the rules promulgated by this Court pursuant to its rule-making power under Section 5(5), Article VIII of the Constitution. In particular, it is part of the rules concerning pleading, practice and procedure in courts. Indeed, payment of legal (or docket) fees is a jurisdictional requirement.[19] It is not simply the filing of the complaint or appropriate initiatory

[16] Bernas, S.J., Joaquin G., *The 1987 Constitution of the Republic of the Philippines: A Commentary*, 969 (2003).

[17] The term "right of action" is the right to commence and maintain an action. In the law of pleadings, right of action is distinguished from a cause of action in that the former is a remedial right belonging to some persons, while the latter is a formal statement of the operational facts that give rise to such remedial right. The former is a matter of right and depends on the substantive law, while the latter is a matter of statute and is governed by the law of procedure. The right of action springs from the cause of action, but does not accrue until all the facts that constitute the cause of action have occurred (*Multi-Realty Development Corporation v. Makati Tuscany Condominium Corporation*, G.R. No. 146726, 16 June 2006, 491 SCRA 9).

[18] In this connection, Section 1, Rule 141 of the Rules of Court provides:

SEC. 1. Payment of fees. – Upon the filing of the pleading or other application which initiates an action or proceeding, the fees prescribed therefor shall be paid in full.

[19] See *Manchester Development Corporation v. Court of Appeals*, 233 Phil. 579 (1987) and *Nestle Philippines, Inc. v. FY Sons, Inc.*, G.R. No. 150780, 05 May 2006, 489 SCRA 624.

pleading but the payment of the prescribed docket fee that vests a trial court with jurisdiction over the subject-matter or nature of the action.[20] Appellate docket and other lawful fees are required to be paid within the same period for taking an appeal.[21] Payment of docket fees in full within the prescribed period is mandatory for the perfection of an appeal.[22] Without such payment, the appellate court does not acquire jurisdiction over the subject matter of the action and the decision sought to be appealed from becomes final and executory.[23]

An interesting aspect of legal fees is that which relates to indigent or pauper litigants. In proper cases, courts may waive the collection of legal fees. This, the Court has allowed in Section 21, Rule 3 and Section 19, Rule 141 of the Rules of Court in recognition of the right of access to justice by the poor under Section 11, Article III of the Constitution.[24] Mindful that the rule with respect to indigent litigants should not be ironclad as it touches on the right of access to justice by the poor,[25] the Court acknowledged the exemption from legal fees of indigent clients of the Public Attorney's Office under Section 16-D of

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[20] *Sun Insurance Office, Ltd., (SIOL) v. Asuncion*, G.R. Nos. 79937-38, 13 February 1989, 170 SCRA 274.

[21] See Section 4, Rule 41 of the Rules of Court:

SEC. 4. Appellate court docket and other lawful fees. – Within the period for taking an appeal, the appellant shall pay to the clerk of court which rendered the judgment or final order appealed from, the full amount of the appellate court docket and other lawful fees. Proof of payment of said fees shall be transmitted to the appellate court together with the original record or the record on appeal.

[22] *Enriquez v. Enriquez*, G.R. No. 139303, 25 August 2005, 468 SCRA 77.

[23] *Id.*

[24] Section 11, Aricle III of the Constitution provides:

Sec. 11. Free access to the courts and quasi-judicial bodies and adequate legal assistance shall not be denied to any person by reason of poverty.

[25] This is an example of a substantive matter embodied in a rule of procedure. (See *Republic v. Gingoyon*, G.R. No. 166429, 01 February 2006, 481 SCRA 457).

the Administrative Code of 1987, as amended by RA 9406.[26] This was not an abdication by the Court of its rule-making power but simply a recognition of the limits of that power. In particular, it reflected a keen awareness that, in the exercise of its rule-making power, the Court may not dilute or defeat the right of access to justice of indigent litigants.

The GSIS cannot successfully invoke the right to social security of government employees in support of its petition. It is a corporate entity whose personality is separate and distinct from that of its individual members. The rights of its members are not its rights; its rights, powers and functions pertain to it solely and are not shared by its members. Its capacity to sue and bring actions under Section 41(g) of RA 8291, the specific power which involves the exemption that it claims in this case, pertains to it and not to its members. Indeed, even the GSIS acknowledges that, in claiming exemption from the payment of legal fees, it is not asking that rules be made to enforce the right to social security of its members but that the Court recognize the alleged **right of the GSIS** "to seek relief from the courts of justice sans payment of legal fees."[27]

However, the alleged right of the GSIS does not exist. The payment of legal fees does not take away the capacity of the GSIS to sue. It simply operates as a means by which that capacity may be implemented.

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[26] SEC. 16-D. *Exemption from Fees and Costs of the Suit.* — The clients of the PAO shall be exempt from payment of docket and other fees incidental to instituting an action in court and other quasi-judicial bodies, as an original proceeding or on appeal. The costs of the suit, attorney's fees and contingent fees imposed upon the adversary of the PAO clients after a successful litigation shall be deposited in the National Treasury as trust fund and shall be disbursed for special allowances of authorized officials and lawyers of the PAO.

(In this connection, see resolution dated June 12, 2007 in A. M. No. 07-5-15-SC [Re: RA 9406, Exempting Clients of PAO From Payment of Docket and Other Fees] and OCA Circular No. 121-2007 dated December 11, 2007 [Re: Exemption of the Indigent Clients of the Public Attorney's Office From the Payment of Docket and Other Fees].)

[27] *Supra* note 3.

Since the payment of legal fees is a vital component of the rules promulgated by this Court concerning pleading, practice and procedure, it cannot be validly annulled, changed or modified by Congress. As one of the safeguards of this Court's institutional independence, the power to promulgate rules of pleading, practice and procedure is now the Court's exclusive domain. That power is no longer shared by this Court with Congress, much less with the Executive.[28]

Speaking for the Court, then Associate Justice (now Chief Justice) Reynato S. Puno traced the history of the rule-making power of this Court and highlighted its evolution and development in *Echegaray v. Secretary of Justice*:[29]

> Under the 1935 Constitution, the power of this Court to promulgate rules concerning pleading, practice and procedure was granted but it appeared to be co-existent with legislative power for it was subject to the power of Congress to repeal, alter or supplement. Thus, its Section 13, Article VIII provides:
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> > Sec. 13. The Supreme Court shall have the power to promulgate rules concerning pleading, practice and procedure in all courts, and the admission to the practice of law. Said rules shall be uniform for all courts of the same grade and shall not diminish, increase, or modify substantive rights. The existing laws on pleading, practice and procedure are hereby repealed as statutes, and are declared Rules of Court, subject to the power of the Supreme Court to alter and modify the same. The Congress shall have the power to repeal, alter or supplement the rules concerning pleading, practice and procedure, and the admission to the practice of law in the Philippines.
>
> The said power of Congress, however, is not as absolute as it may appear on its surface. In *In re Cunanan*, Congress in the exercise of its power to amend rules of the Supreme Court regarding admission to the practice of law, enacted the Bar Flunkers Act of 1953 which considered as a passing grade, the average of 70% in the bar examinations after July 4, 1946 up to August 1951 and 71% in the 1952 bar examinations. **This Court struck down the law as**

[28] *Echegaray v. Secretary of Justice*, 361 Phil. 76 (1999).

[29] *Id.*

unconstitutional. In his *ponencia*, Mr. Justice Diokno held that "x x x the disputed law is not a legislation; it is a judgment —a judgment promulgated by this Court during the aforecited years affecting the bar candidates concerned; and although this Court certainly can revoke these judgments even now, for justifiable reasons, it is no less certain that **only this Court**, and not the legislative nor executive department, that may do so. Any attempt on the part of these departments would be a clear usurpation of its function, as is the case with the law in question." The venerable jurist further ruled: "It is obvious, therefore, that the ultimate power to grant license for the practice of law belongs **exclusively** to this Court, and the law passed by Congress on the matter is of permissive character, or as other authorities say, merely to fix the minimum conditions for the license." **By its ruling, this Court qualified the absolutist tone of the power of Congress** to "repeal, alter or supplement the rules concerning pleading, practice and procedure, and the admission to the practice of law in the Philippines.

The ruling of this Court in *In re Cunanan* was not changed by the **1973 Constitution**. For the **1973 Constitution reiterated** the power of this Court "to promulgate rules concerning pleading, practice and procedure in all courts, x x x which, however, may be repealed, altered or supplemented by the Batasang Pambansa x x x." More completely, Section 5(2)5 of its Article X provided:

x x x x x x x x x

Sec. 5. The Supreme Court shall have the following powers.

x x x x x x x x x

(5) Promulgate rules concerning pleading, practice, and procedure in all courts, the admission to the practice of law, and the integration of the Bar, which, however, may be repealed, altered, or supplemented by the Batasang Pambansa. Such rules shall provide a simplified and inexpensive procedure for the speedy disposition of cases, shall be uniform for all courts of the same grade, and shall not diminish, increase, or modify substantive rights.

Well worth noting is that the **1973 Constitution further strengthened** the independence of the judiciary by giving to it the additional power to promulgate rules governing the integration of the Bar.

The **1987 Constitution** molded an even **stronger and more independent judiciary**. Among others, **it enhanced the rule making power of this Court.** Its Section 5(5), Article VIII provides:

x x x x x x x x x

Section 5. The Supreme Court shall have the following powers:

x x x x x x x x x

(5) **Promulgate rules concerning the protection and enforcement of constitutional rights**, pleading, practice and procedure in all courts, the admission to the practice of law, the Integrated Bar, and legal assistance to the underprivileged. Such rules shall provide a simplified and inexpensive procedure for the speedy disposition of cases, shall be uniform for all courts of the same grade, and shall not diminish, increase, or modify substantive rights. **Rules of procedure of special courts and quasi-judicial bodies shall remain effective unless disapproved by the Supreme Court**.

The rule making power of this Court was expanded. This Court for the **first time** was given the power to promulgate rules concerning the protection and enforcement of constitutional rights. The Court was also granted for the **first time** the power to disapprove rules of procedure of special courts and quasi-judicial bodies. **But most importantly, the 1987 Constitution took away the power of Congress to repeal, alter, or supplement rules concerning pleading, practice and procedure**. In fine, the power to promulgate rules of pleading, practice and procedure is no longer shared by this Court with Congress, more so with the Executive.

The separation of powers among the three co-equal branches of our government has erected an impregnable wall that keeps the power to promulgate rules of pleading, practice and procedure within the sole province of this Court. The other branches trespass upon this prerogative if they enact laws or issue orders that effectively repeal, alter or modify any of the procedural rules promulgated by this Court. Viewed from this perspective, the claim of a legislative grant of exemption from the payment of legal fees under Section 39 of RA 8291 necessarily fails.

Congress could not have carved out an exemption for the GSIS from the payment of legal fees without transgressing another

equally important institutional safeguard of the Court's independence — fiscal autonomy.[30] Fiscal autonomy recognizes the power and authority of the Court to levy, assess and collect fees,[31] including legal fees. Moreover, legal fees under Rule 141 have two basic components, the Judiciary Development Fund (JDF) and the Special Allowance for the Judiciary Fund (SAJF).[32] The laws which established the JDF and the SAJF[33] expressly declare the identical purpose of these funds to "guarantee the independence of the Judiciary as mandated by the Constitution and public policy."[34] Legal fees therefore do not only constitute a vital source of the Court's financial resources but also comprise an essential element of the Court's fiscal independence. Any exemption from the payment of legal fees granted by Congress to government-owned or controlled corporations and local government units will necessarily reduce the JDF and the SAJF. Undoubtedly, such situation is constitutionally infirm for it impairs the Court's guaranteed fiscal autonomy and erodes its independence.

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[30] Under Section 3, Article VIII of the Constitution, "[t]he Judiciary shall enjoy fiscal autonomy."

[31] *Bengzon v. Drilon*, G.R. No. 103524, 15 April 1992, 208 SCRA 133.

[32] See Amended Administrative Circular No. 35-2004 dated August 20, 2004 (Guidelines in the Allocation of the Legal Fees Collected Under Rule 141 of the Rules of Court, as Amended, between the [SAJF] and the [JDF]).

[33] PD 1949 and RA 9227, respectively.

[34] Section 1 of PD 1949 provides:

Section 1. There is hereby established a [JDF], hereinafter referred to as the Fund, for the benefit of the members and personnel of the Judiciary **to help ensure and guarantee the independence of the Judiciary as mandated by the Constitution and public policy** and required by the impartial administration of justice. x x x (emphasis supplied)

Section 1 of RA 9227 provides:

Section 1. *Declaration of Policy*. – It is hereby declared a policy of the State to adopt measures **to guarantee the independence of the Judiciary as mandated by the Constitution and public policy**, and to ensure impartial administration of justice, as well as an effective and efficient system worthy of public trust and confidence. (emphasis supplied)

WHEREFORE, the petition of the Government Service Insurance System for recognition of its exemption from the payment of legal fees imposed under Section 22 of Rule 141 of the Rules of Court on government-owned or controlled corporations and local government units is hereby *DENIED.*

The Office of the Court Administrator is hereby directed to promptly issue a circular to inform all courts in the Philippines of the import of this resolution.

SO ORDERED.

Puno, C.J., Carpio, Carpio Morales, Velasco, Jr., Nachura, Leonardo-de Castro, Brion, Peralta, Bersamin, Del Castillo, Abad, Villarama, Jr., Perez, and *Mendoza, JJ.,* concur.

EN BANC

[A.M. No. MTJ-03-1462. February 11, 2010]
(Formerly OCA IPI No. 02-1515-RTJ)

JUDGE DOLORES L. ESPAÑOL, RTC, BRANCH 90, DASMARIÑAS, CAVITE, *complainant, vs.* **JUDGE LORINDA B. TOLEDO-MUPAS, MTC, DASMARIÑAS CAVITE,** *respondent.*

SYLLABUS

1. LEGAL ETHICS; JUDGES; GROSS IGNORANCE OF THE LAW; DISMISSAL PROPER WHERE A JUDGE WAS FOUND GUILTY OF SEVERAL COUNTS OF GROSS IGNORANCE OF THE LAW AND FOR COMMITTING OTHER SERIOUS OFFENSES. — On three separate occasions prior to the present case, respondent was found guilty of gross ignorance of the law. Aside from that, she was also adjudged guilty of incompetence and gross misconduct in the said cases.

As it is, the instant case finding her guilty, for the fourth time, of gross ignorance of the law would prove her incorrigibility and unfitness as a judge and, as such, would warrant her dismissal from the service. Considering the circumstances of the present case, with more reason should this Court now impose the penalty of dismissal on respondent considering that, aside from this Court's Decisions finding her guilty of gross ignorance in four different instances, the Office of the Court Administrator (OCA), in its Report on the Judicial Audit Conducted at the MTC, Dasmariñas, Cavite, not only found that respondent has again exhibited her gross ignorance of the law, but was also guilty of committing other serious offenses.

2. ID.; ID.; FAILURE TO ACT ON THE MOTIONS FOR EXECUTION OF DECIDED CASES FOR A CONSIDERABLY LONG TIME CONSTITUTES GROSS INEFFICIENCY. — [A]s to the finding that respondent was found guilty of failing to act on motions for execution filed by the prevailing parties in cases which have already become final and executory, suffice it to say that in this Court's Decision of April 19, 2007, it was already held that the respondent "**failed to explain** why there were motions for execution of decided cases which she had not acted upon for a considerably long time." This renders her guilty of gross inefficiency.

3. ID.; ID.; HAS THE DUTY TO DEVISE AN EFFICIENT RECORDING AND FILING SYSTEM IN THEIR COURTS TO ENABLE THEM TO MONITOR THE FLOW OF CASES AND MANAGE THEIR SPEEDY AND TIMELY DISPOSITION. — Respondent judge claims that the failure to promptly transmit the resolution and records of the cases which she dismissed after preliminary investigation is not her fault but that of her clerk of court. However, it remains the duty of a judge to devise an efficient recording and filing system in their courts to enable them to monitor the flow of cases and to manage their speedy and timely disposition. If respondent was diligent in the performance of her obligations and responsibilities, the records of cases which were not forwarded to the OPP would not have reached an alarming number. She should have taken corrective measures to promptly address this problem.

4. ID.; ID.; FAILURE OF THE JUDGE TO FORWARD TO THE OFFICE OF THE PROVINCIAL PROSECUTOR (OPP) THE CASES WHICH SHE DISMISSED AFTER PRELIMINARY INVESTIGATION, WHICH OMISSION REMAINED UNCORRECTED FOR SEVERAL YEARS, CONSTITUTES GROSS MISCONDUCT AND CONDUCT PREJUDICIAL TO THE BEST INTEREST OF THE SERVICE. — Her unjustifiable failure to forward to the OPP the cases which she dismissed after preliminary investigation shows that there is more than meets the eye than what she portrays as simple unawareness. Her supposed omission or oversight which remained uncorrected for a period which spanned as long as seven years smacks of malice and bad faith rather than pure and plain ignorance. Hence, she is liable for gross misconduct and conduct prejudicial to the best interest of the service.

5. ID.; ID.; FALSIFICATION OF ONE'S CERTIFICATE OF SERVICE RENDERS A PUBLIC OFFICER ADMINISTRATIVELY AND CRIMINALLY LIABLE. — [R]espondent neither denied nor refuted the charge that she was able to draw her salaries by submitting fraudulent certificates of service to the effect that she had no undecided cases. Falsification of one's certificate of service, renders a public officer not only administratively liable for serious misconduct under Section 1, Rule 140 of the Rules of Court but also criminally liable under Articles 174 and 175 of the Revised Penal Code.

6. ID.; ID.; FAILURE TO PROMPTLY DECIDE CASES CONSTITUTES GROSS INEFFICIENCY. — Respondent's arguments have again exposed her gross ignorance of the law and mires her even more into a deeper hole from which there was neither reprieve nor escape. Respondent should be aware of the basic rule that once a case is submitted for decision, no further pleadings are required to be filed. Moreover, there is no need to issue an order declaring a case to be submitted for decision in order that the ninety (90) day period in deciding the same shall begin to run. Failure to promptly decide cases in accordance with the Constitution or the Rules of Court constitutes gross inefficiency.

7. ID.; ID.; ACCESS TO RECORD OF CASES IS LIMITED ONLY TO THE JUDGE, THE PARTIES OR THEIR COUNSEL AND THE APPROPRIATE COURT PERSONNEL IN CHARGE OF THE CUSTODY THEREOF. — [R]espondent also failed to

refute the findings of the OCA that the court records in her *sala* were in disarray which compromises their confidentiality and integrity. Records of cases are necessarily confidential, and to preserve their integrity and confidentiality, access thereto ought to be limited only to the judge, the parties or their counsel and the appropriate court personnel in charge of the custody thereof.

8. ID.; ID.; TENACIOUS ADHERENCE TO A WRONG PROCEDURE MADE A JUDGE UNFIT TO DISCHARGE HIS JUDICIAL OFFICE. — [I]n the Court's Decision in the present case, it was noted that respondent judge continued with the practice of issuing documents denominated "Detention Pending Investigation of the Case" even after her attention had been called. Worse, she remained insistent in her erroneous belief that the document was an implied waiver of the rights of the accused under Art. 125 of the Revised Penal Code. This tenacious adherence to a wrong procedure made her unfit to discharge his judicial office. As the Court held in the case of *Zuno, Sr. v. Dizon*, "xxx more than mere ignorance of applicable laws and jurisprudence, [the respondent judge's] intransigence and persistence in error will make people lose their faith in him as an administrator of justice. Having lost his right to be addressed by the respectful appellation of 'Honorable Judge,' he has likewise lost his right to continue in the judicial service."

9. ID.; ID.; THE MAGNITUDE OF THE TRANSGRESSIONS COMMITTED BY THE RESPONDENT JUDGE CASTS A HEAVY SHADOW ON HER MORAL, INTELLECTUAL AND ATTITUDINAL COMPETENCE AND RENDERED HER UNFIT TO PERFORM THE FUNCTIONS OF A MAGISTRATE.— [T]he respondent judge failed to live up to the exacting standards of her office. The magnitude of her transgressions, taken collectively, casts a heavy shadow on respondent's moral, intellectual and attitudinal competence and rendered her unfit to don the judicial robe and to perform the functions of a magistrate. In the fairly recent case of *Republic v. Caguioa*, this Court did not hesitate to impose the penalty of dismissal on the erring respondent-judge who was found guilty of several counts of gross ignorance of the law.

R E S O L U T I O N

PER CURIAM:

This treats of the Urgent Omnibus Motion, which is admitted by respondent Judge as a Second Motion for Reconsideration, dated October 22, 2008, urging the Court to reconsider its Decision dated April 19, 2007 and its Resolution of August 19, 2008. The questioned Decision found her guilty of gross ignorance of the law and imposed upon her the penalty of dismissal from the service with forfeiture of all benefits due her, excluding her accrued leave benefits, and with perpetual disqualification from reinstatement or appointment to any public service including government-owned or controlled corporations. The assailed Resolution denied her Motion for Reconsideration.

Respondent begs the Court for compassion arguing that her act of issuing the "Detention Pending Investigation" Orders were not motivated by bad faith, dishonesty, or some other similar motive, and claiming that the penalty of dismissal is too harsh.

The Court is not persuaded.

On three separate occasions prior to the present case, respondent was found guilty of gross ignorance of the law.[1] Aside from that, she was also adjudged guilty of incompetence and gross misconduct in the said cases. As it is, the instant case finding her guilty, for the fourth time, of gross ignorance of the law would prove her incorrigibility and unfitness as a judge and, as such, would warrant her dismissal from the service.

Considering the circumstances of the present case, with more reason should this Court now impose the penalty of dismissal on respondent considering that, aside from this Court's Decisions

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[1] *Espanol v. Mupas*, A.M. No. MTJ-01-1348, November 11, 2004, 442 SCRA 13; Loss of Court Exhibits at MTC-Dasmariñas, Cavite, A.M. No. MTJ-03-1491, June 8, 2005, 459 SCRA 313; *Bitoon v. Toledo-Mupas*, A.M. No. MTJ-05-1598, August 9, 2005, 466 SCRA 17.

finding her guilty of gross ignorance in four different instances, the Office of the Court Administrator (OCA), in its Report on the Judicial Audit Conducted at the MTC, Dasmarinas, Cavite, not only found that respondent has again exhibited her gross ignorance of the law, but was also guilty of committing other serious offenses.

With respect to these findings, the respondent either offered flimsy defenses or no excuse at all.

First, as to the finding that respondent was found guilty of failing to act on motions for execution filed by the prevailing parties in cases which have already become final and executory, suffice it to say that in this Court's Decision of April 19, 2007, it was already held that the respondent "**failed to explain** why there were motions for execution of decided cases which she had not acted upon for a considerably long time." This renders her guilty of gross inefficiency.[2]

Second, the OCA found that respondent failed to forward to the Office of the Provincial Prosecutor (OPP) of Cavite the records of at least 370 cases which she dismissed after preliminary investigation. Respondent justified such omission on the pretext that her clerk of court and other court personnel secured photocopies of the cases for their own file in order to help litigants who made queries regarding their cases. She even claimed that the expenses for the photocopying were defrayed by the court personnel.

Respondent's excuse is specious.

Section 5, Rule 112[3] of the Rules on Criminal Procedure explicitly states that within ten (10) days after the conclusion of the preliminary investigation, an investigating judge shall

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[2] *Dee C. Chuan & Sons, Inc. v. Peralta*, A.M. No. RTJ-05-1917, April 16, 2009, 585 SCRA 93, 98.

[3] SEC. 5. *Resolution of investigating judge and its review.*– Within ten (10) days after the preliminary investigation, the investigating judge shall transmit the resolution of the case to the provincial or city prosecutor, or to the Ombudsman or his deputy in cases of offenses cognizable by the Sandiganbayan in the exercise of its original jurisdiction, for appropriate action. The resolution

transmit to the provincial or city prosecutor for appropriate action her resolution of the case together with the records thereof. Hence, an investigating judge, after conducting a preliminary investigation, shall perform her ministerial duty which is to transmit within ten days after the conclusion thereof, the resolution of the case together with the entire records to the Provincial Prosecutor, regardless of her belief or opinion that the crime committed, after conducting the preliminary investigation, falls within the original jurisdiction of her court.

Most of the cases which respondent failed to transmit to the OPP were found to be within the jurisdiction of the RTC and were decided as early as January 2000. It is difficult to believe that respondent was not aware of these facts. Worse, some of these cases are drug-related and were dismissed as early as July 2000. Respondent should have been prompted by the gravity of these offenses to forward the records of the cases within the required period to the OPP for appropriate action. Undoubtedly, the parties adversely affected by the dismissal of the complaints after preliminary investigation were denied the statutory right of review that should have been conducted by the provincial prosecutor.

Respondent judge claims that the failure to promptly transmit the resolution and records of the cases which she dismissed after preliminary investigation is not her fault but that of her clerk of court. However, it remains the duty of a judge to devise an efficient recording and filing system in their courts to enable them to monitor the flow of cases and to manage their speedy and timely disposition.[4] If respondent was diligent in the performance of her obligations and responsibilities, the

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shall state the findings of facts and the law supporting his action, together with the record of the case which shall include: (a) the warrant, if the arrest is by virtue of a warrant; (b) the affidavits, counter-affidavits and other supporting evidence of the parties; (c) the undertaking or bail of the accused and the order for his release; (d) the transcripts of the proceedings during the preliminary investigation; and (e) the order of cancellation of his bail bond, if the resolution is for the dismissal of the complaint.

[4] *Torrevillas v. Navidad,* A.M. No. RTJ-06-1976, April 29, 2009, 587 SCRA 39, 58; *Heirs of Spouses Olorga v. Beldia, Jr.*, A.M. No. RTJ-

records of cases which were not forwarded to the OPP would not have reached an alarming number. She should have taken corrective measures to promptly address this problem.

Her unjustifiable failure to forward to the OPP the cases which she dismissed after preliminary investigation shows that there is more than meets the eye than what she portrays as simple unawareness. Her supposed omission or oversight which remained uncorrected for a period which spanned as long as seven years smacks of malice and bad faith rather than pure and plain ignorance. Hence, she is liable for gross misconduct and conduct prejudicial to the best interest of the service.

Third, respondent neither denied nor refuted the charge that she was able to draw her salaries by submitting fraudulent certificates of service to the effect that she had no undecided cases. Falsification of one's certificate of service, renders a public officer not only administratively liable for serious misconduct under Section 1, Rule 140 of the Rules of Court but also criminally liable under Articles 174[5] and 175[6] of the Revised Penal Code.[7]

08-2137, February 10, 2009, 578 SCRA 191, 206; Rules 1.01 and 1.02 of the Code of Judicial Conduct provide that a judge should be the embodiment of competence, integrity and independence and is mandated to administer justice impartially and without delay.

[5] Art. 174. False medical certificates, false certificates of merits or service, *etc.* — The penalties of *arresto mayor* in its maximum period to *prision correccional* in its minimum period and a fine not to exceed 1,000 pesos shall be imposed upon:

1. Any physician or surgeon who, in connection, with the practice of his profession, shall issue a false certificate; and

2. **Any public officer who shall issue a false certificate of merit or service, good conduct or similar circumstances.**

The penalty of *arresto mayor* shall be imposed upon any private person who shall falsify a certificate falling within the classes mentioned in the two preceding subdivisions.

[6] Art. 175. Using false certificates. — **The penalty of *arresto menor* shall be imposed upon any one who shall knowingly use any of the false certificates mentioned in the next preceding article.**

[7] Re: Report on the Judicial Audit Conducted in the Regional Trial Court Branches 61, 134 and 147, Makati, Metro Manila, A.M. No. 93-2-1001-RTC.

Fourth, with respect to cases reported by the OCA which remain undecided even beyond the reglementary period, it appears that in most of these cases, thirty (30) days had elapsed from the date of submission of the case for decision. Respondent insists that the reckoning period should be ninety (90) days as provided under the Constitution. However, the cases enumerated by the OCA appear to fall under the Rules on Summary Procedure, where the required period to decide the same is thirty (30) days.[8] Otherwise, the OCA would not have reported that the decisions in these cases are already overdue.

In her desperate attempt to vindicate herself with respect to supposed decisions of cases which were found to have gone beyond the ninety (90) day reglementary period, respondent tried to mislead the Court in her Comment and Supplemental Comment by arguing that since she has not yet issued an Order declaring the cases as submitted for decision, the same are not yet ready for judicial determination such that the ninety (90) day reglementary period in deciding the said cases does not yet run. She also contended that in determining the period for the decision in the subject cases to become due, the OCA "failed to show whether other pleading[s] have yet to be filed by the parties after the cases [were] deemed submitted for decision."

September 5, 1995, 248 SCRA 5, 31; *Bolalin v. Occiano*, A.M. No. MTJ-96-1104, January 14, 1997, 266 SCRA 203, 210.

Respondent is also liable for violation of Rule 3.09 of the Code of Judicial Conduct which requires a judge to observe at all times the observance of high standards of public service and fidelity.

Moreover, this Court has held in *Office of the Court Administrator v. Trocino* (A.M. No. RTJ-05-1936, May 29, 2007, 523 SCRA 262, 273) that a judge who fails to decide cases within the required period and continues to collect his salaries upon his certification that he has no pending matters to resolve, transgresses the constitutional right of litigants to a speedy disposition of their cases.

[8] Section 10 of the Rules on Summary Procedure provides:

SEC.10. *Rendition of judgment*. – Within thirty (30) days after receipt of the last affidavits and position papers, or the expiration of the period for filing the same, the court shall render judgment.

Respondent's arguments have again exposed her gross ignorance of the law and mires her even more into a deeper hole from which there was neither reprieve nor escape. Respondent should be aware of the basic rule that once a case is submitted for decision, no further pleadings are required to be filed. Moreover, there is no need to issue an order declaring a case to be submitted for decision in order that the ninety (90) day period in deciding the same shall begin to run.

Failure to promptly decide cases in accordance with the Constitution or the Rules of Court constitutes gross inefficiency.[9]

Fifth, respondent also failed to refute the findings of the OCA that the court records in her *sala* were in disarray which compromises their confidentiality and integrity. Records of cases are necessarily confidential, and to preserve their integrity and confidentiality, access thereto ought to be limited only to the judge, the parties or their counsel and the appropriate court personnel in charge of the custody thereof.[10]

Sixth, in the Court's Decision in the present case, it was noted that respondent judge continued with the practice of issuing documents denominated "Detention Pending Investigation of the Case" even after her attention had been called. Worse, she remained insistent in her erroneous belief that the document

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[9] *Balajedeong v. del Rosario*, A.M. No. MTJ-07-1662, June 8, 2007, 524 SCRA 13, 20 citing *Sanchez v. Vestil*, A.M. No. RTJ-08-1419, October 13, 1998, 298 SCRA 1, 17.

Rule 3.05 of the Code of Judicial Conduct admonishes all judges to dispose of the court's business promptly and decide cases within the period fixed by law. Rule 3.01 compels them to be faithful to the law and prompts them to maintain professional competence.

[10] *Anonymous v. Velarde-Laolao*, A.M. No. P-07-2404, December 13, 2007, 540 SCRA 42, 58-59. The Code of Judicial Conduct further provides that:

Rule 3.08. A judge should diligently discharge administrative responsibilities, maintain professional competence in court management and facilitate the performance of the administrative functions of other judges and court personnel.

Rule 3.09. A judge should organize and supervise the court personnel to ensure the prompt and efficient dispatch of business and require at all times the observance of high standards of public service and fidelity.

was an implied waiver of the rights of the accused under Art. 125 of the Revised Penal Code.

This tenacious adherence to a wrong procedure made her unfit to discharge his judicial office.[11] As the Court held in the case of *Zuno, Sr. v. Dizon*,[12] "xxx more than mere ignorance of applicable laws and jurisprudence, [the respondent judge's] intransigence and persistence in error will make people lose their faith in him as an administrator of justice. Having lost his right to be addressed by the respectful appellation of 'Honorable Judge,' he has likewise lost his right to continue in the judicial service."

Lastly, the respondent insists that the report of the OCA did not reflect the true and factual circumstances involved in the cases which were pending and decided by the MTC, Dasmariñas, Cavite while she was its Presiding Judge. However, respondent failed to present substantial and convincing evidence to refute the charges made by the OCA.

All told, the respondent judge failed to live up to the exacting standards of her office. The magnitude of her transgressions, taken collectively, casts a heavy shadow on respondent's moral, intellectual and attitudinal competence and rendered her unfit to don the judicial robe and to perform the functions of a magistrate.

In the fairly recent case of *Republic v. Caguioa*,[13] this Court did not hesitate to impose the penalty of dismissal on the erring respondent-judge who was found guilty of several counts of gross ignorance of the law.

In *Re: Report on the Judicial Audit Conducted in the Regional Trial Court, Branch 4, Dolores, Eastern Samar*,[14] the Court, noting that the respondent judge was found guilty

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[11] *Cantela v. Almoradie*, A.M. No. MTJ-93-749, February 7, 1994, 229 SCRA 712, 717.

[12] A.M. No. RTJ-91-752, June 23, 1993, 223 SCRA 584, 604.

[13] A.M. Nos. RTJ-07-2063, 07-2064, 07-2066, June 26, 2009.

[14] A.M. No. 06-6-340-RTC, October 17, 2007, 536 SCRA 313, 335.

of gross inefficiency in an earlier case, and of gross ignorance of the law in two other cases, again adjudged him guilty of gross ignorance of the law for the third time. The Court held that, taken altogether, the infractions committed by the respondent judge warranted the imposition of the penalty of dismissal.

In the case before us, one member of the Court wrote a separate concurring opinion holding that rigid retraining can cure gross ignorance of the law. However, in the absence of any program devised by the Court which takes into account individuals who cannot accept the possibility that they could be wrong, the concurring justice opined that it is unwise to return respondent judge to the service. The concurring justice also submitted that instead of treating respondent's length of service as a mitigating factor, the same should instead be taken against her on the ground that years in service should have crafted expertise, not deterioration.

On the other hand, four members of the Court concurred as to the findings of gross ignorance of the law but dissented as to the penalty of dismissal, opting to impose the penalty of suspension without salaries, and other benefits for a period of three (3) years, and a fine of ₱40,000.00 with a very stern warning that a commission in the future of the same or similar infraction shall be dealt with more severely, on the ground that her infractions did not involve dishonesty, corruption, or moral depravity, and because she had served the judiciary for thirteen (13) years.

WHEREFORE, the Urgent Omnibus Motion dated October 22, 2008 is hereby *DENIED* there being no compelling reason to warrant a reconsideration of this Court's Decision dated April 19, 2007 and its Resolution dated August 19, 2008.

SO ORDERED.

Carpio, Corona, Carpio Morales, Velasco, Jr., Nachura, Leonardo-de Castro, Brion, Peralta, Bersamin, Del Castillo, Abad, Villarama, Jr., and *Mendoza, JJ.,* concur.

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

SECOND DIVISION

[G.R. No. 164731. February 11, 2010]

GOVERNMENT SERVICE INSURANCE SYSTEM, *petitioner, vs.* **ROSALINDA A. BERNADAS,** *respondent.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; EMPLOYEES' COMPENSATION; CONDITIONS FOR COMPENSABILITY; WHEN THE SICKNESS IS NOT LISTED AS AN OCCUPATIONAL DISEASE, THE CLAIMANT MUST PROVE BY SUBSTANTIAL EVIDENCE THE CAUSAL RELATIONSHIP BETWEEN HER ILLNESS AND HER WORKING CONDITIONS. — Under Section 1(b), Rule III of the Amended Rules on Employees Compensation, "(f)or the sickness and the resulting disability or death to be compensable, the sickness must be the result of an occupational disease listed under Annex 'A' of these Rules with the conditions set therein satisfied; otherwise, proof must be shown that the risk of contracting the disease is increased by the working conditions." Sunlight, or ultraviolet light in particular, has been implicated as a probable major factor in the development of melanoma. Some families who have a high incidence of melanoma are distinguished by the occurrence of multiple and usually large moles that are atypical on clinical and histologic examinations. In this case, melanoma is not listed as an occupational disease under Annex "A" of the Rules on Employees Compensation. Hence, respondent has the burden of proving, by substantial evidence, the causal relationship between her illness and her working conditions. Substantial evidence means such relevant evidence as a reasonable mind might accept to support a conclusion.

2. ID.; ID.; ID.; CLAIMANT MUST PROVE THAT THE RISK OF CONTRACTING THE DISEASE WAS INCREASED BY HER WORKING CONDITIONS; RESPONDENT'S CLAIM FOR COMPENSATION, DENIED. — We agree with the petitioner and the ECC that respondent was not able to positively prove that her ailment was caused by her employment and that the risk of contracting the disease was increased by her working

conditions. While the law requires only a reasonable work-connection and not a direct causal relation, respondent still failed to show that her illness was really brought about by the wound she sustained during the supervised gardening activity in school. The Court of Appeals accepted the allegation that the mole appeared right on the spot where respondent sustained the injury without any further proof that the mole appeared because of the injury. The Court of Appeals further ruled that "the risk of acquiring the said ailment increased by the nature of [respondent's] work in going to school and in returning to her residence during school days x x x." The Court of Appeals failed to consider that in a tropical country like the Philippines, exposure to sunlight is common. Unlike farmers, fishermen or lifeguards, it was not shown that respondent had chronic long-term exposure to the sun that is considered necessary for the development of melanoma. We cannot consider that the risk of contracting the disease was increased by respondent's working conditions simply because she was exposed to sunlight in going to work and returning to her residence. Finally, we note that while respondent was initially diagnosed for malignant melanoma, the final pathological diagnosis revealed that there was no tumor seen on her and that the melanoma was benign. On this basis alone, respondent's claim for compensation should be denied.

APPEARANCES OF COUNSEL

Legal Services Group (GSIS) for petitioner.
E.C. Antiquiera & Associates Law Offices for respondent.

D E C I S I O N

CARPIO, *J.*:

The Case

Before the Court is a petition for review[1] assailing the 29 July 2004 Decision[2] of the Court of Appeals in CA-G.R. SP No. 81353.

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

[2] *Rollo*, pp. 37-40. Penned by Associate Justice Elvi John S. Asuncion

The Antecedent Facts

Rosalinda A. Bernadas (respondent) was a public school teacher at Jibao-an Elementary School, Jibao-an, Pavia, Iloilo City for almost 35 years. On 3 March 2000, she was supervising her students in a gardening activity within the school premises when she accidentally slipped and incurred a wound on the sole of her left foot. Elizabeth Jullado, the school nurse, rendered first aid.

Months later, a black mole appeared on respondent's affected sole, making it difficult for her to walk. It was later diagnosed as malignant melanoma.

In 2002, respondent filed a claim with the Iloilo Branch of the Government Service Insurance System (petitioner) for compensation benefit. On 19 June 2002, petitioner denied the claim on the ground that malignant melanoma was not among those listed by the Employees' Compensation Commission (ECC) as an occupational disease. Respondent moved for reconsideration of the denial of her claim. In its 21 October 2002 Order, petitioner denied the motion.

Respondent filed an appeal before the ECC. On 31 July 2003, as per Board Resolution No. 03-07-594, the ECC rendered a Decision[3] denying the appeal. The ECC ruled that malignant melanoma could not be considered work-related. The ECC ruled that respondent failed to prove that her ailment originated from the wound she incurred when she slipped during the gardening activity in school. The ECC found that there was no evidence that respondent acquired her illness as a result of the performance of her duties, or that the illness persisted that would establish a causal relationship between the disease and her work.

Respondent filed a petition for review before the Court of Appeals, assailing the ECC's Decision.

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with Associate Justices Isaias P. Dicdican and Ramon M. Bato, Jr., concurring.

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

The Decision of the Court of Appeals

In its 29 July 2004 Decision, the Court of Appeals reversed the ECC's Decision.

The Court of Appeals ruled that respondent's ailment was work-connected. The Court of Appeals ruled that respondent sustained her injury while she was supervising the gardening activity in the school. The malignant melanoma originated from the wound that swelled when respondent accidentally slipped. The Court of Appeals ruled that the wound was work-connected since respondent sustained it while doing a school-related activity. The Court of Appeals held:

> WHEREFORE, the petition is hereby GRANTED and the August 6, 2003 Decision of the Employees Compensation Commission is REVERSED. Consequently, the Government Service Insurance System is ORDERED to pay petitioner's claim for compensation benefits as provided under Presidential Decree No. 626, as amended.
>
> No costs.
>
> SO ORDERED.[4]

Petitioner came to this Court for relief via a petition for review.

The Issue

The sole issue in this case is whether the Court of Appeals committed a reversible error in setting aside the ECC's Decision which denied respondent's claim for compensation benefit.

The Ruling of this Court

The petition has merit.

Under Section 1(b), Rule III of the Amended Rules on Employees Compensation, "(f)or the sickness and the resulting disability or death to be compensable, the sickness must be the result of an occupational disease listed under Annex 'A' of these Rules with the conditions set therein satisfied; otherwise,

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[4] *Id.* at 40.

proof must be shown that the risk of contracting the disease is increased by the working conditions."

Sunlight, or ultraviolet light in particular, has been implicated as a probable major factor in the development of melanoma.[5] Some families who have a high incidence of melanoma are distinguished by the occurrence of multiple and usually large moles that are atypical on clinical and histologic examinations.[6]

In this case, melanoma is not listed as an occupational disease under Annex "A" of the Rules on Employees Compensation. Hence, respondent has the burden of proving, by substantial evidence, the causal relationship between her illness and her working conditions.[7] Substantial evidence means such relevant evidence as a reasonable mind might accept to support a conclusion.[8]

We agree with the petitioner and the ECC that respondent was not able to positively prove that her ailment was caused by her employment and that the risk of contracting the disease was increased by her working conditions. While the law requires only a reasonable work-connection and not a direct causal relation,[9] respondent still failed to show that her illness was really brought about by the wound she sustained during the supervised gardening activity in school. The Court of Appeals accepted the allegation that the mole appeared right on the spot where respondent sustained the injury without any further proof that the mole appeared because of the injury. The Court of Appeals further ruled that "the risk of acquiring the said ailment increased by the nature of [respondent's] work in going to school and in returning to her residence during school days x x x." The Court of Appeals failed to consider that in a tropical country

[5] CHARLES M. HASKELL, M.D., FACP, *CANCER TREATMENT*, p. 1158 (5th Edition).

[6] *Id.*

[7] *Orate v. Court of Appeals*, 447 Phil. 654 (2003).

[8] *Id.*

[9] See *Government Service Insurance System v. Cordero*, G.R. No. 171378, 17 March 2009, 581 SCRA 633.

like the Philippines, exposure to sunlight is common. Unlike farmers, fishermen or lifeguards, it was not shown that respondent had chronic long-term exposure to the sun that is considered necessary for the development of melanoma.[10] We cannot consider that the risk of contracting the disease was increased by respondent's working conditions simply because she was exposed to sunlight in going to work and returning to her residence.

Finally, we note that while respondent was initially diagnosed for malignant melanoma, the final pathological diagnosis[11] revealed that there was no tumor seen on her and that the melanoma was benign. On this basis alone, respondent's claim for compensation should be denied.

WHEREFORE, we *GRANT* the petition. We *SET ASIDE* the 29 July 2004 Decision of the Court of Appeals in CA-G.R. SP No. 81353. We *REINSTATE* the 31 July 2003 Decision of the Employees' Compensation Commission.

SO ORDERED.

Brion, Del Castillo, Abad, and *Perez, JJ.*, concur.

SECOND DIVISION

[G.R. No. 169190. February 11, 2010]

CUA LAI CHU, CLARO G. CASTRO, and JUANITA CASTRO, *petitioners, vs.* **HON. HILARIO L. LAQUI, Presiding Judge, Regional Trial Court, Branch 218, Quezon City and PHILIPPINE BANK OF COMMUNICATION,** *respondents.*

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[10] See Charles M. Haskell, M.D., FACP, *CANCER TREATMENT*, *supra* note 5.

[11] *Rollo,* p. 97.

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; FORECLOSURE OF MORTGAGE; RULING IN THE CASES OF *BUSTOS* [403 PHIL. 21 (2001)] AND *LEGASPI* [(169 PHIL. 138 (1977)] INAPPLICABLE TO CASE AT BAR. — At the outset, we must point out that the authorities relied upon by petitioners are not in point and have no application here. In *Bustos v. Court of Appeals*, the Court simply ruled that the issue of possession was intertwined with the issue of ownership in the consolidated cases of unlawful detainer and *accion reinvindicatoria*. In *Vda. De Legaspi v. Avendaño*, the Court merely stated that in a case of unlawful detainer, physical possession should not be disturbed pending the resolution of the issue of ownership. Neither case involved the right to possession of a purchaser at an extrajudicial foreclosure of a mortgage.

2. ID.; ID.; ID.; THE PURCHASER ACQUIRES AN ABSOLUTE RIGHT TO THE WRIT OF POSSESSION ONCE FORECLOSED PROPERTY WAS NOT REDEEMED WITHIN ONE YEAR FROM THE REGISTRATION OF THE EXTRAJUDICIAL FORECLOSURE SALE. — In the present case, the certificate of sale of the foreclosed property was annotated on TCT No. 22990 on 7 June 2002. The redemption period thus lapsed on 7 June 2003, one year from the registration of the sale. When private respondent applied for the issuance of a writ of possession on 18 August 2004, the redemption period had long lapsed. Since the foreclosed property was not redeemed within one year from the registration of the extrajudicial foreclosure sale, private respondent had acquired an absolute right, as purchaser, to the writ of possession. It had become the ministerial duty of the lower court to issue the writ of possession upon mere motion pursuant to Section 7 of Act No. 3135, as amended.

3. ID.; ID.; ID.; ID.; ID.; ISSUANCE OF WRIT OF POSSESSION BECOMES A MINISTERIAL DUTY OF THE COURT ONCE OWNERSHIP HAS BEEN CONSOLIDATED TO THE PURCHASER, UPON PROPER APPLICATION AND PROOF OF TITLE. — Moreover, once ownership has been consolidated, the issuance of the writ of possession becomes a ministerial duty of the court, upon proper

application and proof of title. In the present case, when private respondent applied for the issuance of a writ of possession, it presented a new transfer certificate of title issued in its name dated 8 July 2003. The right of private respondent to the possession of the property was thus founded on its right of ownership. As the purchaser of the property at the foreclosure sale, in whose name title over the property was already issued, the right of private respondent over the property had become absolute, vesting in it the corollary right of possession.

4. ID.; ID.; ID.; ID.; ID.; WRIT OF POSSESSION ISSUES AS A MATTER OF COURSE ONCE THE REQUIREMENTS ARE FULFILLED; NO DISCRETION IS LEFT TO THE COURT. — Petitioners are wrong in insisting that they were denied due process of law when they were declared in default despite the fact that they had filed their opposition to the issuance of a writ of possession. The application for the issuance of a writ of possession is in the form of an *ex parte* motion. It issues as a matter of course once the requirements are fulfilled. No discretion is left to the court.

5. ID.; ID.; ID.; ID.; ID.; COURT'S ORDER GRANTING THE WRIT OF POSSESSION IN AN *EX PARTE* PROCEEDING CANNOT BE OPPOSED; REMEDY OF THE PETITIONERS. — Petitioners cannot oppose or appeal the court's order granting the writ of possession in an *ex parte* proceeding. The remedy of petitioners is to have the sale set aside and the writ of possession cancelled in accordance with Section 8 of Act No. 3135, as amended. xxx

6. ID.; ID.; ID.; ID.; ANY QUESTION REGARDING THE VALIDITY OF THE EXTRAJUDICIAL FORECLOSURE SALE SHOULD NOT BE RAISED AS A JUSTIFICATION FOR OPPOSING THE ISSUANCE OF A WRIT OF POSSESSION. — Any question regarding the validity of the extrajudicial foreclosure sale and the resulting cancellation of the writ may be determined in a subsequent proceeding as outlined in Section 8 of Act No. 3135, as amended. Such question should not be raised as a justification for opposing the issuance of a writ of possession since under Act No. 3135, as amended, the proceeding for this is *ex parte*.

7. ID.; ID.; ID.; ID.; ID.; PENDING CASE QUESTIONING THE

VALIDITY OF THE FORECLOSURE PROCEEDING IS NOT A BAR TO THE PURCHASER'S RIGHT OF POSSESSION. — Further, the right to possession of a purchaser at an extrajudicial foreclosure sale is not affected by a pending case questioning the validity of the foreclosure proceeding. The latter is not a bar to the former. Even pending such latter proceeding, the purchaser at a foreclosure sale is entitled to the possession of the foreclosed property.

8. ID.; ACTIONS; FORUM SHOPPING; NOT PRESENT IN CASE AT BAR; ISSUANCE OF WRIT OF POSSESSION IS NOT A JUDGMENT ON THE MERITS THAT CAN AMOUNT TO *RES JUDICATA*. — [W]e rule that petitioners' claim of forum shopping has no basis. Under Act No. 3135, as amended, a writ of possession is issued *ex parte* as a matter of course upon compliance with the requirements. It is not a judgment on the merits that can amount to *res judicata*, one of the essential elements in forum shopping.

APPEARANCES OF COUNSEL

Bartolome D. Yu for petitioners.
Romeo Leonis Ibarra for Philippine Bank of Communication.

D E C I S I O N

CARPIO, *J.*:

The Case

This is a petition for review[1] of the 29 April 2005 and 4 August 2005 Resolutions[2] of the Court of Appeals in CA-G.R. SP No. 88963. In its 29 April 2005 Resolution, the Court of Appeals dismissed the petition for *certiorari*[3] of petitioner spouses

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

[2] *Rollo*, pp. 37-41, 43-44. Penned by Associate Justice Rosmari D. Carandang, with Associate Justices Rebecca de Guia-Salvador and Estela M. Perlas-Bernabe, concurring.

[3] Under Rule 65 of the Rules of Court.

Claro G. Castro and Juanita Castro and petitioner Cua Lai Chu (petitioners). In its 4 August 2005 Resolution, the Court of Appeals denied petitioners' motion for reconsideration.

The Facts

In November 1994, petitioners obtained a loan in the amount of ₱3,200,000 from private respondent Philippine Bank of Communication. To secure the loan, petitioners executed in favor of private respondent a Deed of Real Estate Mortgage[4] over the property of petitioner spouses covered by Transfer Certificate of Title No. 22990. In August 1997, petitioners executed an Amendment to the Deed of Real Estate Mortgage[5] increasing the amount of the loan by ₱1,800,000, bringing the total loan amount to ₱5,000,000.

For failure of petitioners to pay the full amount of the outstanding loan upon demand,[6] private respondent applied for the extrajudicial foreclosure of the real estate mortgage.[7] Upon receipt of a notice[8] of the extrajudicial foreclosure sale, petitioners filed a petition to annul the extrajudicial foreclosure sale with a prayer for temporary restraining order (TRO). The petition for annulment was filed in the Regional Trial Court of Quezon City and docketed as Q-02-46184.[9]

The extrajudicial foreclosure sale did not push through as originally scheduled because the trial court granted petitioners' prayer for TRO. The trial court subsequently lifted the TRO and reset the extrajudicial foreclosure sale on 29 May 2002. At the foreclosure sale, private respondent emerged as the highest bidder. A certificate of sale[10] was executed on 4 June 2002 in

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[4] *Rollo*, pp. 45-49.

[5] *Id.* at 50-51.

[6] *Id.* at 52.

[7] CA *rollo*, pp. 29-31.

[8] *Rollo*, p. 56.

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

[10] CA *rollo*, p. 44.

favor of private respondent. On 7 June 2002, the certificate of sale was annotated as Entry No. 1855[11] on TCT No. 22990 covering the foreclosed property.

After the lapse of the one-year redemption period, private respondent filed in the Registry of Deeds of Quezon City an affidavit of consolidation to consolidate its ownership and title to the foreclosed property. Forthwith, on 8 July 2003, the Register of Deeds cancelled TCT No. 22990 and issued in its stead TCT No. 251835[12] in the name of private respondent.

On 18 August 2004, private respondent applied for the issuance of a writ of possession of the foreclosed property.[13] Petitioners filed an opposition.[14] The trial court granted private respondent's motion for a declaration of general default and allowed private respondent to present evidence *ex parte*. The trial court denied petitioners' notice of appeal.

Undeterred, petitioners filed in the Court of Appeals a petition for *certiorari*. The appellate court dismissed the petition. It also denied petitioners' motion for reconsideration.

The Orders of the Trial Court

The 8 October 2004 Order[15] granted private respondent's motion for a declaration of general default and allowed private respondent to present evidence *ex parte*. The 6 January 2005 Order[16] denied petitioners' motion for reconsideration of the prior order. The 24 February 2005 Order[17] denied petitioners' notice of appeal.

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[11] *Id.* at 49.

[12] *Id.* at 50.

[13] *Id.* at 17-20.

[14] *Rollo*, pp. 72-75.

[15] CA *rollo*, p. 69.

[16] *Id.* at 74-75.

[17] *Id.* at 79-80.

The Ruling of the Court of Appeals

The Court of Appeals dismissed on both procedural and substantive grounds the petition for *certiorari* filed by petitioners. The appellate court noted that the counsel for petitioners failed to indicate in the petition the updated PTR Number, a ground for outright dismissal of the petition under Bar Matter No. 1132. Ruling on the merits, the appellate court held that a proceeding for the issuance of a writ of possession is *ex parte* in nature. As such, petitioners' right to due process was not violated even if they were not given a chance to file their opposition. The appellate court also ruled that there was no violation of the rule against forum shopping since the application for the issuance of a writ of possession is not affected by a pending case questioning the validity of the extrajudicial foreclosure sale.

The Issue

Petitioners raise the question of whether the writ of possession was properly issued despite the pendency of a case questioning the validity of the extrajudicial foreclosure sale and despite the fact that petitioners were declared in default in the proceeding for the issuance of a writ of possession.

The Court's Ruling

The petition has no merit.

Petitioners contend they were denied due process of law when they were declared in default despite the fact that they had filed their opposition to private respondent's application for the issuance of a writ of possession. Further, petitioners point out that the issuance of a writ of possession will deprive them not only of the use and possession of their property, but also of its ownership. Petitioners cite *Bustos v. Court of Appeals*[18] and *Vda. De Legaspi v. Avendaño*[19] in asserting that physical possession of the property should not be disturbed pending the final determination of the more substantial issue of ownership.

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[18] 403 Phil. 21 (2001).

[19] 169 Phil. 138 (1977).

Petitioners also allege forum shopping on the ground that the application for the issuance of a writ of possession was filed during the pendency of a case questioning the validity of the extrajudicial foreclosure sale.

Private respondent, on the other hand, maintains that the application for the issuance of a writ of possession in a foreclosure proceeding is *ex parte* in nature. Hence, petitioners' right to due process was not violated even if they were not given a chance to file their opposition. Private respondent argues that the issuance of a writ of possession may not be stayed by a pending case questioning the validity of the extrajudicial foreclosure sale. It contends that the former has no bearing on the latter; hence, there is no violation of the rule against forum shopping. Private respondent asserts that there is no judicial determination involved in the issuance of a writ of possession; thus, the same cannot be the subject of an appeal.

At the outset, we must point out that the authorities relied upon by petitioners are not in point and have no application here. In *Bustos v. Court of Appeals*,[20] the Court simply ruled that the issue of possession was intertwined with the issue of ownership in the consolidated cases of unlawful detainer and *accion reinvindicatoria*. In *Vda. De Legaspi v. Avendaño*,[21] the Court merely stated that in a case of unlawful detainer, physical possession should not be disturbed pending the resolution of the issue of ownership. Neither case involved the right to possession of a purchaser at an extrajudicial foreclosure of a mortgage.

Banco Filipino Savings and Mortgage Bank v. Pardo[22] squarely ruled on the right to possession of a purchaser at an extrajudicial foreclosure of a mortgage. This case involved a real estate mortgage as security for a loan obtained from a bank. Upon the mortgagor's default, the bank extrajudicially foreclosed the mortgage. At the auction sale, the bank was the

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[20] *Supra*.

[21] *Supra*.

[22] 235 Phil. 487 (1987).

highest bidder. A certificate of sale was duly issued and registered. The bank then applied for the issuance of a writ of possession, which the lower court dismissed. The Court reversed the lower court and held that the purchaser at the auction sale was entitled to a writ of possession pending the lapse of the redemption period upon a simple motion and upon the posting of a bond.

In *Navarra v. Court of Appeals,*[23] the purchaser at an extrajudicial foreclosure sale applied for a writ of possession after the lapse of the one-year redemption period. The Court ruled that the purchaser at an extrajudicial foreclosure sale has a right to the possession of the property even during the one-year redemption period provided the purchaser files an indemnity bond. After the lapse of the said period with no redemption having been made, that right becomes absolute and may be demanded by the purchaser even without the posting of a bond. Possession may then be obtained under a writ which may be applied for *ex parte* pursuant to Section 7 of Act No. 3135,[24] as amended by Act No. 4118,[25] thus:

> SEC. 7. In any sale made under the provisions of this Act, the purchaser may petition the Court of First Instance 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** x x x 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

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[23] G.R. No. 86237, 17 December 1991, 204 SCRA 850.

[24] AN ACT TO REGULATE THE SALE OF PROPERTY UNDER SPECIAL POWERS INSERTED IN OR ANNEXED TO REAL ESTATE MORTGAGES. Effective 6 March 1924.

[25] AN ACT TO AMEND ACT NUMBERED THIRTY-ONE HUNDRED AND THIRTY-FIVE, ENTITLED "AN ACT TO REGULATE THE SALE OF PROPERTY UNDER SPECIAL POWERS INSERTED IN OR ANNEXED TO REAL ESTATE MORTGAGES." Effective 7 December 1933.

the property is situated, who shall execute said order immediately. (Emphasis supplied)

In the present case, the certificate of sale of the foreclosed property was annotated on TCT No. 22990 on 7 June 2002. The redemption period thus lapsed on 7 June 2003, one year from the registration of the sale.[26] When private respondent applied for the issuance of a writ of possession on 18 August 2004, the redemption period had long lapsed. Since the foreclosed property was not redeemed within one year from the registration of the extrajudicial foreclosure sale, private respondent had acquired an absolute right, as purchaser, to the writ of possession. It had become the ministerial duty of the lower court to issue the writ of possession upon mere motion pursuant to Section 7 of Act No. 3135, as amended.

Moreover, once ownership has been consolidated, the issuance of the writ of possession becomes a ministerial duty of the court, upon proper application and proof of title.[27] In the present case, when private respondent applied for the issuance of a writ of possession, it presented a new transfer certificate of title issued in its name dated 8 July 2003. The right of private respondent to the possession of the property was thus founded on its right of ownership. As the purchaser of the property at the foreclosure sale, in whose name title over the property was already issued, the right of private respondent over the property had become absolute, vesting in it the corollary right of possession.

Petitioners are wrong in insisting that they were denied due process of law when they were declared in default despite the fact that they had filed their opposition to the issuance of a writ of possession. The application for the issuance of a writ of possession is in the form of an *ex parte* motion. It issues as a matter of course once the requirements are fulfilled. No discretion is left to the court.[28]

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[26] *Rosario v. Tayug Rural Bank, Inc.,* 131 Phil. 324 (1968).

[27] *Chailease Finance Corporation v. Spouses Ma*, 456 Phil. 498 (2003).

[28] *De Gracia v. San Jose*, 94 Phil. 623 (1954).

Petitioners cannot oppose or appeal the court's order granting the writ of possession in an *ex parte* proceeding. The remedy of petitioners is to have the sale set aside and the writ of possession cancelled in accordance with Section 8 of Act No. 3135, as amended, to wit:

> SEC. 8. The debtor may, in the proceedings in which possession was requested, but not later than thirty days after the purchaser was given possession, petition that the sale be set aside and the writ of possession cancelled, specifying the damages suffered by him, because the mortgage was not violated or the sale was not made in accordance with the provisions hereof. x x x

Any question regarding the validity of the extrajudicial foreclosure sale and the resulting cancellation of the writ may be determined in a subsequent proceeding as outlined in Section 8 of Act No. 3135, as amended. Such question should not be raised as a justification for opposing the issuance of a writ of possession since under Act No. 3135, as amended, the proceeding for this is *ex parte*.

Further, the right to possession of a purchaser at an extrajudicial foreclosure sale is not affected by a pending case questioning the validity of the foreclosure proceeding. The latter is not a bar to the former. Even pending such latter proceeding, the purchaser at a foreclosure sale is entitled to the possession of the foreclosed property.[29]

Lastly, we rule that petitioners' claim of forum shopping has no basis. Under Act No. 3135, as amended, a writ of possession is issued *ex parte* as a matter of course upon compliance with the requirements. It is not a judgment on the merits that can amount to *res judicata,* one of the essential elements in forum shopping.[30]

The Court of Appeals correctly dismissed the petition for *certiorari* filed by petitioners for lack of merit.

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[29] *PNB v. Sanao Marketing Corporation*, G.R. No. 153951, 29 August 2005.

[30] *Cruz v. Caraos*, G.R. No. 138208, 23 April 2007, 521 SCRA 510.

WHEREFORE, we *DENY* the petition for review. We *AFFIRM* the 29 April 2005 and 4 August 2005 Resolutions of the Court of Appeals in CA-G.R. SP No. 88963.

SO ORDERED.

Brion, Del Castillo, Abad, and *Perez, JJ.,* concur.

THIRD DIVISION

[G.R. No. 172279. February 11, 2010]

VALENTIN MOVIDO, substituted by MARGINITO MOVIDO, *petitioner, vs.* **LUIS REYES PASTOR,** *respondent.*

SYLLABUS

1. CIVIL LAW; OBLIGATIONS AND CONTRACTS; CONTRACTS; RULE ON PRIORITY IN TIME IMMATERIAL TO THE CASE AT BAR; RESPECTIVE RIGHTS AND OBLIGATIONS OF THE PARTIES CLEARLY SPELLED OUT IN THE CONTRACT. — The issue of which of the two contracts was first executed by the parties is immaterial to the resolution of this case. In the first place, *both contracts were executed and notarized on the same day*, December 6, 1993. More importantly, both contracts, even independent of the time of their execution but, taken together, clearly spell out in full the respective rights and obligations of the parties. Indeed, a reading of the *kasunduan sa bilihan ng lupa* and the *kasunduan* would readily reveal that payment of the purchase price does not depend on the survey of the property. In other words, the purchase price should be paid whether or not the property is surveyed. The survey of the property is important only insofar as the right of respondent to the reduction of the purchase price is

concerned. On the other hand, the survey of the property to determine the metes and bounds of the 1,731 sq. m. portion that is excluded from the contract as well as the portions covered by the *kasunduan* which will be subject to reduction of the purchase price, is also not conditioned on the payment of any installment. Petitioner simply has to do it. In fact, under the *kasunduan sa bilihan ng lupa*, the survey should be done before the date of the last installment. Hence, the survey could have been done anytime after the execution of the agreement.

2. ID.; ID.; ID.; THE APPELLATE COURT'S APPLICATION OF A REDUCED PRICE, IN THE ABSENCE OF A SURVEY, CONSTITUTES UNDUE INFRINGEMENT ON THE PARTIES' LIBERTY TO CONTRACT. — If respondent pays a higher amount without the property being surveyed first (compared to what he is liable to pay after the survey of the property) it will not be a problem because the excess of the amount paid can easily be refunded to him. Such would be the plain application of the provisions of the *kasunduan*. On the other hand, petitioner cannot successfully reject respondent's demand for petitioner to perform his obligation to have the property surveyed. Under the *kasunduan sa bilihan ng lupa*, petitioner is obligated to conduct the survey on or before the due date of the last installment. Corollary to this, the CA erred when it proceeded to determine the remaining balance of respondent by applying a reduced rate on certain portions of the property. In effect, the CA disregarded the agreement of the parties that petitioner should first cause the survey of the subject property in order to determine the area excluded from the sale and the portion traversed by the Napocor power line. Petitioner himself admitted that he had this obligation. Thus, the CA's application of a reduced price *in the absence of a survey* was without factual or legal basis. It unduly infringed on the parties' liberty to contract.

3. ID.; ID.; ID.; PETITIONER MUST HAVE THE PROPERTY SURVEYED FIRST WITHIN THE REASONABLE PERIOD AND THEREAFTER RESPONDENT MUST PAY HIS CORRESPONDING BALANCE. — There are two options to resolve this impasse. First, respondent may be ordered to pay his remaining balance in the *kasunduan sa bilihan ng lupa*

representing the 7th and 8th installments or the amount of ₱3.4 million in which case Marginito will be ordered to immediately conduct the survey of the property and thereafter to refund to respondent the excess of the amount paid. Second, Marginito may be ordered to have the property surveyed first within a reasonable period and thereafter respondent will have to pay his corresponding balance (which, naturally, will be less than ₱3.4 million). Prudence dictates that the second option is better as it will prevent further conflict between the parties. Thus, we adopt the second option.

4. ID.; ID.; ID.; ABSENT SUBSTANTIAL OR MATERIAL BREACH, THE RESCISSION OF CONTRACT IS NOT ALLOWED. — Rescission is only allowed when the breach is so substantial and fundamental as to defeat the object of the parties in entering into the contract. We find no such substantial or material breach. It is true that respondent failed to pay the 7th and 8th installments of the purchase price. However, considering the circumstances of the instant case, particularly the provisions of the *kasunduan*, respondent cannot be deemed to have committed a serious breach. In the first place, respondent was not in default as petitioner never made a demand for payment.

5. ID.; ID.; ID.; THE VARIOUS STIPULATIONS IN THE TWO AGREEMENTS MUST BE PROPERLY CONSTRUED SO AS TO GIVE EFFECT TO ALL. — Moreover, the *kasunduan sa bilihan ng lupa* and the *kasunduan* should both be given effect rather than be declared conflicting, if there is a way of reconciling them. Petitioner and respondent would not have entered into either of the agreements if they did not intend to be bound or governed by them. Indeed, taken together, the two agreements actually constitute a single contract pertaining to the sale of a land to respondent by petitioner. Their stipulations must therefore be interpreted together, attributing to the doubtful ones that sense that may result from all of them taken jointly. Their proper construction must be one that gives effect to all. In this connection, the *kasunduan sa bilihan ng lupa* contains the general terms and conditions of the agreement of the parties. On the other hand, the *kasunduan* refers to a particular or specific matter, *i.e.*, that portion of the land that is traversed by a Napocor power line. As the *kasunduan* pertains to a special area of the agreement, it constitutes an exception to the general provisions of the *kasunduan sa bilihan ng lupa*,

particularly on the purchase price for that portion. *Specialibus derogat generalibus*.

6. ID.; ID.; ID.; RIGHT TO RESCIND THE CONTRACT CANNOT BE INVOKED BY ONE WHO IS GUILTY OF BREACH THEREOF. — Under both the *kasunduan sa bilihan ng lupa* and the *kasunduan*, petitioner undertook to cause the survey of the property in order to determine the portion excluded from the sale, as well as the portion traversed by the Napocor power line. Despite repeated demands by respondent, however, petitioner failed to perform his obligation. Thus, considering that there was a breach on the part of petitioner (and no material breach on the part of respondent), he cannot properly invoke his right to rescind the contract.

APPEARANCES OF COUNSEL

Law Firm of Tomas B. Temprosa, Jr. and Associates for petitioner.

Bayani L. Bernardo Law Office for respondent.

D E C I S I O N

CORONA, *J.*:

Respondent Luis Reyes Pastor filed a complaint for specific performance in the Regional Trial Court (RTC) of Imus, Cavite, praying that petitioner Valentin Movido[1] be compelled to cause the survey of a parcel of land subject of their contract to sell.

In his complaint, respondent alleged that he and petitioner executed a *kasunduan sa bilihan ng lupa* where the latter agreed to sell a parcel of land located in Paliparan, Dasmariñas, Cavite with an area of some 21,000 sq. m. out of the 22,731 sq. m. covered by Transfer Certificate of Title (TCT) No. 362995 at ₱400/sq. m. The agreement read:

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[1] Valentin Movido died on March 30, 2001 and was substituted by his son Marginito Movido. For purposes of this case, however, Valentin will be referred to as petitioner.

x x x x x x x x x

1. *Na si MOVIDO ang tunay at ganap na may-ari ng isang (1) parselang lupa sa Paliparan, Dasmariñas, Cavite, na ang nasabing lupa sakop ng* TRANSFER CERTIFICATE OF TITLE No. T-362995, *na ito ay lalong mailalarawan ng tulad ng sumusunod*:

x x x x x x x x x

2. *Na ipinagkakasundo ni MOVIDO na ipagbili kay PASTOR ang 21,000 metro cuadrado humigit-kumulang, ng lupang nakalarawan sa dakong taas sa halagang APAT NA RAANG PISO (₱400.00) bawat metro cuadrado o sa kabuuang halaga na WALONG MILYON AT APAT NA RAANG LIBONG PISO (₱8,400,000.00), na ang nasabing halaga ay babayaran ni PASTOR kay MOVIDO ng gaya ng sumusunod*:

₱500,000.00 – *babayaran sa paglagda ng kasulatang ito*;

₱500,000.00 – *babayaran sa loob ng tatlong (3) buwan mula sa petsa ng unang bayad*;

₱1,000,000.00 – *babayaran sa loob ng tatlong (3) buwan mula sa petsa ng ikalawang bayad*;

₱1,000,000.00 – *babayaran sa loob ng tatlong (3) buwan mula sa petsa ng ikatlong bayad*;

₱1,000,000.00 – *babayaran sa loob ng tatlong (3) buwan mula sa petsa ng ikaapat na bayad*;

₱1,000,000.00 – *babayaran sa loob ng tatlong (3) buwan mula sa petsa ng ikalimang bayad*;

₱1,000,000.00 – *babayaran sa loob ng tatlong (3) buwan mula sa petsa ng ikaanim na bayad*;

₱2,400,000.00 – *babayaran sa loob ng tatlong (3) buwan mula sa petsa ng ikapitong bayad*;

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₱8,400, 000.00 – *Kabuuan*.

3. *Na ang 1,731 metro cuadrado, humigit-kumulang, na hindi kasama sa bilihang ito ay nasasakop ni Leonardo Cuevas, na ito*

ay ipapasukat at ipapahiwalay ni MOVIDO sa kabuuan ng nasabing lupa bago matapos ang huling bayad ng bilihang ito;

4. *Na si MOVIDO ang magbabayad ng lahat ng gastos tungkol sa bilihang ito tulad ng capital gains tax, selyo dokumentaryo, transfer tax, registration fees, bayad sa nagsasaka ng nasabing lupa, sampu ng komisyon ng mga ahente. Ang babayaran ni MOVIDO na* capital gains tax *ay hanggang sa ISANG DAANG PISO (₱100.00) lamang*;

5. *Na kung si PASTOR ay hindi makabayad sa balance sa takdang panahon, ang kalahati ng lahat ng kanyang naibayad ay mapopornada sa kapakanan ni MOVIDO at ang kasulatang ito ay mawawalan ng bisa*;

6. *Na kasabay ng pagbabayad ng huling bayad, si MOVIDO ay lalagda sa kaukulang kasulatan ng ganap na bilihan (Deed of Absolute Sale) ng lupang dito ay tinutukoy*.[2]

Respondent further alleged that another *kasunduan* was later executed supplementing the *kasunduan sa bilihan ng lupa.* It provided that, if a Napocor power line traversed the subject lot, the purchase price would be lowered to ₱200/sq. m. beyond the distance of 15 meters on both sides from the center of the power line while the portion within a distance of 15 meters on both sides from the center of the power line would not be paid. In particular, the *kasunduan* provided:

x x x x x x x x x

1. *Na ipinagkasundo ni MOVIDO na ipagbili kay PASTOR ang kanyang lupa lupa sa Paliparan, Dasmariñas, Cavite na may sukat na 22731 metro kwadrado at sakop ng Transfer Certificate of Title No. T-362995.*

2. *Na kanilang napagkasunduan na kung sakali na ang lupang tinutukoy ay pumailalim sa linya ng kuryente ng NAPOCOR, ang bahagi ng lupa na hindi hihigit sa layo ng LABING LIMANG (15) METRO mula sa kailaliman ng linya ng kuryente ay hindi pababayaran ni MOVIDO kay PASTOR, at ang bahagi ng lupa na pumakabila sa linya ng kuryente mula sa Paliparan Road at hihigit ng LABING LIMANG (15) METRO mula sa kailaliman ng*

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[2] *Rollo,* pp. 60-61.

linya ng kuryente ay pababayaran ni MOVIDO kay PASTOR sa halagang DALAWANG DAANG PISO bawat metro kwadrado.[3] (italics supplied)

Respondent likewise claimed that petitioner undertook to cause the survey of the property in order to determine the portion affected by the Napocor power line.

Lastly, respondent alleged that he already paid petitioner ₱5 million out of the original purchase price of ₱8.4 million stated in the *kasunduan sa bilihan ng lupa*. He was willing and ready to pay the balance of the purchase price but due to petitioner's refusal to have the property surveyed despite incessant demands, his unpaid balance could not be determined with certainty.

In his answer, petitioner alleged that the original negotiation for the sale of his property involved the entire area of 22,731 sq. m. However, as respondent was not sure whether a Napocor power line traversed the property, they then executed the *kasunduan*. After respondent personally inspected the property, a final agreement—the *kasunduan sa bilihan ng lupa*—was executed where the area to be sold was 21,000 sq. m. for ₱400/ sq. m. for a total sum of ₱8.4 million. The final agreement also listed a schedule of payments of the purchase price and included a penalty clause in case of default.

Petitioner also charged respondent with delay in paying several installments due and did not pay the 7th installment in the amount of ₱1 million. This was allegedly a material breach because they agreed that the survey of the property would only be done after respondent would have paid the 7th installment. Due to respondent's failure to fulfill his obligations, petitioner claimed that he had no choice except to rescind the *kasunduan sa bilihan ng lupa*. He, however, was willing to reimburse 50% of whatever respondent had paid him so far.

After hearing, the RTC[4] ruled in favor of petitioner and held that the *kasunduan* preceded the *kasunduan sa bilihan ng lupa*.

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[3] *Id.,* p. 59.

[4] Decision dated December 16, 1999, penned by Judge Cesar A. Mangrobang. *Rollo,* pp. 62-74.

Thus, the RTC dismissed the complaint of respondent for lack of merit and/or cause of action. It also ordered the rescission of the *kasunduan sa bilihan ng lupa* as well as the forfeiture of 50% of the amount already paid by respondent (but ordered petitioner to return to respondent 50% of the amount already paid). The RTC also directed respondent to pay petitioner ₱50,000 attorney's fees and costs of suit.

On appeal, the Court of Appeals (CA)[5] reversed the RTC and held that the *kasunduan sa bilihan ng lupa* was the first document executed by the parties, not the *kasunduan*. Thus, the CA ordered respondent to pay the heirs of petitioner the balance of the purchase price in the amount of ₱2,796,400. The CA also ordered that, upon complete payment by respondent, Marginito Movido (the substitute of petitioner) should execute the necessary deed of absolute sale in favor of respondent and comply with petitioner's other obligations under the *kasunduan sa bilihan ng lupa*.

Marginito Movido's motion for reconsideration did not have its desired result.[6] Hence, this petition for review on *certiorari*,[7] where he insists that it was the *kasunduan*, not the *kasunduan sa bilihan ng lupa*, which was first executed by the parties. He likewise claims that the failure of respondent to pay the 7th and 8th installments of the purchase price gave petitioner the right to rescind the contract.

MISGUIDED SEARCH FOR PRIORITY IN TIME

The issue of which of the two contracts was first executed by the parties is immaterial to the resolution of this case. In the first place, *both contracts were executed and notarized on the same day*, December 6, 1993. More importantly, both contracts,

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[5] Decision dated July 18, 2005, penned by Associate Justice Lucas P. Bersamin (now a member of the Supreme Court) and concurred in by Associate Justices Mariano C. del Castillo (now also a member of this Court) and Celia C. Librea-Leagogo of the Special Fourteenth Division of the Court of Appeals. *Id.*, pp. 33-53.

[6] *Id.*, pp. 56-57.

[7] Under Rule 45 of the Rules of Court. *Id.*, pp. 10-31.

even independent of the time of their execution but, taken together, clearly spell out in full the respective rights and obligations of the parties.

Indeed, a reading of the *kasunduan sa bilihan ng lupa* and the *kasunduan* would readily reveal that payment of the purchase price does not depend on the survey of the property. In other words, the purchase price should be paid whether or not the property is surveyed. The survey of the property is important only insofar as the right of respondent to the reduction of the purchase price is concerned.

On the other hand, the survey of the property to determine the metes and bounds of the 1,731 sq. m. portion that is excluded from the contract as well as the portions covered by the *kasunduan* which will be subject to reduction of the purchase price, is also not conditioned on the payment of any installment. Petitioner simply has to do it. In fact, under the *kasunduan sa bilihan ng lupa*, the survey should be done before the date of the last installment. Hence, the survey could have been done anytime after the execution of the agreement.

If respondent pays a higher amount without the property being surveyed first (compared to what he is liable to pay after the survey of the property) it will not be a problem because the excess of the amount paid can easily be refunded to him. Such would be the plain application of the provisions of the *kasunduan*. On the other hand, petitioner cannot successfully reject respondent's demand for petitioner to perform his obligation to have the property surveyed. Under the *kasunduan sa bilihan ng lupa*, petitioner is obligated to conduct the survey on or before the due date of the last installment.

Corollary to this, the CA erred when it proceeded to determine the remaining balance of respondent by applying a reduced rate on certain portions of the property. In effect, the CA disregarded the agreement of the parties that petitioner should first cause the survey of the subject property in order to determine the area excluded from the sale and the portion traversed by the Napocor power line. Petitioner himself admitted that he had this obligation. Thus, the CA's application of a reduced

price *in the absence of a survey* was without factual or legal basis. It unduly infringed on the parties' liberty to contract.

There are two options to resolve this impasse. First, respondent may be ordered to pay his remaining balance in the *kasunduan sa bilihan ng lupa* representing the 7th and 8th installments or the amount of ₱3.4 million in which case Marginito will be ordered to immediately conduct the survey of the property and thereafter to refund to respondent the excess of the amount paid. Second, Marginito may be ordered to have the property surveyed first within a reasonable period and thereafter respondent will have to pay his corresponding balance (which, naturally, will be less than ₱3.4 million).

Prudence dictates that the second option is better as it will prevent further conflict between the parties. Thus, we adopt the second option.

IMPROPRIETY OF RESCISSION

Rescission is only allowed when the breach is so substantial and fundamental as to defeat the object of the parties in entering into the contract.[8] We find no such substantial or material breach.

It is true that respondent failed to pay the 7th and 8th installments of the purchase price. However, considering the circumstances of the instant case, particularly the provisions of the *kasunduan*, respondent cannot be deemed to have committed a serious breach. In the first place, respondent was not in default as petitioner never made a demand for payment.

Moreover, the *kasunduan sa bilihan ng lupa* and the *kasunduan* should both be given effect rather than be declared conflicting, if there is a way of reconciling them. Petitioner and respondent would not have entered into either of the agreements if they did not intend to be bound or governed by them. Indeed, taken together, the two agreements actually constitute a single contract pertaining to the sale of a land to respondent by petitioner. Their stipulations must therefore be interpreted together, attributing to the doubtful ones that sense that may result from

[8] *Song Fo & Co. v. Hawaiian-Philippine Co.*, 47 Phil. 821 (1925).

all of them taken jointly.[9] Their proper construction must be one that gives effect to all.[10]

In this connection, the *kasunduan sa bilihan ng lupa* contains the general terms and conditions of the agreement of the parties. On the other hand, the *kasunduan* refers to a particular or specific matter, *i.e.*, that portion of the land that is traversed by a Napocor power line. As the *kasunduan* pertains to a special area of the agreement, it constitutes an exception to the general provisions of the *kasunduan sa bilihan ng lupa*, particularly on the purchase price for that portion. *Specialibus derogat generalibus*.

Under both the *kasunduan sa bilihan ng lupa* and the *kasunduan*, petitioner undertook to cause the survey of the property in order to determine the portion excluded from the sale, as well as the portion traversed by the Napocor power line. Despite repeated demands by respondent, however, petitioner failed to perform his obligation. Thus, considering that there was a breach on the part of petitioner (and no material breach on the part of respondent), he cannot properly invoke his right to rescind the contract.

WHEREFORE, the petition is hereby *DENIED*. The July 18, 2005 decision of the Court of Appeals in CA-G.R. CV No. 67207 is *AFFIRMED* with the *MODIFICATION* that Marginito Movido is ordered to cause the survey of the subject lot within a period of three months in order to determine the excluded portion of the sale and the portion traversed by the Napocor power line. If he fails to do so, Luis Reyes Pastor is hereby authorized to have it done with the cost of the survey charged to Marginito Movido.

Luis Reyes Pastor should thereafter pay the balance of the purchase price, after which, Marginito should execute the *kasulatan ng ganap na bilihan ng lupa* (deed of absolute sale) in favor of Luis Reyes Pastor, reflecting as purchase price the amount actually paid by the latter.

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[9] Article 1374, Civil Code.

[10] Section 12, Rule 130, Rules of Court.

Costs against petitioner.

SO ORDERED.

Velasco, Jr., Nachura, Peralta, and *Mendoza, JJ.,* concur.

THIRD DIVISION

[G.R. No. 172927. February 11, 2010]

RONILO SORREDA, *petitioner, vs.* **CAMBRIDGE ELECTRONICS CORPORATION,** [1] *respondent.*

SYLLABUS

1. REMEDIAL LAW; JURISDICTION; A LABOR ARBITER MAY ONLY TAKE COGNIZANCE OF A CASE AND AWARD DAMAGES WHERE THE CLAIM FOR THE DAMAGES ARISES OUT OF AN EMPLOYER-EMPLOYEE RELATIONSHIP. — Jurisdiction over the subject matter of a complaint is determined by the allegations of the complaint. In *Pioneer Concrete Philippines, Inc. v. Todaro,* the Court reiterated that where no employer-employee relationship exists between the parties, and the Labor Code or any labor statute or collective bargaining agreement is not needed to resolve any issue raised by them, it is the Regional Trial Court which has jurisdiction. Thus it has been consistently held that the determination of the existence of a contract as well as the payment of damages is inherently civil in nature. A labor arbiter may only take cognizance of a case and award damages where the claim for such damages arises out of an employer-employee relationship.

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[1] The National Labor Relations Commission was impleaded as respondent but was excluded by the Court pursuant to Section 4, Rule 45 of the Rules of Court.

2. ID.; ID.; QUESTION ON THE EMPLOYEE'S RIGHT TO BE EMPLOYED AGAIN AND THE DETERMINATION OF THE EXISTENCE OF A NEW AND SEPARATE CONTRACT THAT ESTABLISHED THAT RIGHT FALLS WITHIN THE JURISDICTION OF THE REGULAR COURTS, NOT THE LABOR ARBITER. — While there was an employer-employee relationship between the parties under their five-month per-project contract of employment, the present dispute is neither rooted in the aforestated contract nor is it one inherently linked to it. Petitioner insists on a right to be employed again in respondent company and seeks a determination of the existence of a new and separate contract that established that right. As such, his case is within the jurisdiction not of the labor arbiter but of the regular courts.

3. LABOR AND SOCIAL LEGISLATION; EMPLOYMENT; A CONTRACT OF PERPETUAL EMPLOYMENT IS CONTRARY TO PUBLIC POLICY AND GOOD CUSTOMS; REASONS. — Even assuming *arguendo* that the labor arbiter had the jurisdiction to decide the case, the Court cannot countenance petitioner's claim that a contract of perpetual employment was ever constituted. While the Constitution recognizes the primacy of labor, it also recognizes the critical role of private enterprise in nation-building and the prerogatives of management. A contract of perpetual employment deprives management of its prerogative to decide whom to hire, fire and promote, and renders inutile the basic precepts of labor relations. While management may validly waive its prerogatives, such waiver should not be contrary to law, public order, public policy, morals or good customs. An absolute and unqualified employment for life in the mold of petitioner's concept of perpetual employment is contrary to public policy and good customs, as it unjustly forbids the employer from terminating the services of an employee despite the existence of a just or valid cause. It likewise compels the employer to retain an employee despite the attainment of the statutory retirement age, even if the employee has become a "non-performing asset" or, worse, a liability to the employer.

4. ID.; ID.; ID.; FORCING THE EMPLOYER TO ENTER INTO A PERMANENT EMPLOYMENT WITH THE EMPLOYEE IS CONTRARY TO THE CONSENSUALITY PRINCIPLES OF CONTRACTS AND THE MANAGEMENT'S PREROGATIVE

TO CHOOSE ITS EMPLOYEES. — Petitioner cannot validly force respondent to enter into a permanent employment contract with him. Such stance is contrary to the consensuality principle of contracts as well as to the management prerogative of respondent company to choose its employees.

APPEARANCES OF COUNSEL

Noel S. Sorreda for petitioner.
Laguesma Magsalin Consulta & Gastardo for respondent.

D E C I S I O N

CORONA, *J.*:

This petition[2] seeks to reverse and set aside the May 26, 2005 decision[3] of the Court of Appeals (CA) in CA-G.R. SP No. 77303 and its resolution denying reconsideration.[4] The CA affirmed the resolution[5] of the National Labor Relations Commission (NLRC) in NLRC NCR CA No. 028156-01 declaring that petitioner Ronilo Sorreda was not a regular employee of respondent Cambridge Electronics Corporation.

On May 8, 1999, petitioner was hired by respondent as a technician for a period of 5 months at minimum wage.[6] Five weeks into the job (on June 15, 1999), petitioner met an accident in which his left arm was crushed by a machine and had to be amputated.[7]

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

[3] Penned by Associate Justice Amelita G. Tolentino and concurred in by Associate Justices Roberto A. Barrios (deceased) and Vicente S.E. Veloso of the Ninth Division of the Court of Appeals. *Rollo*, pp. 219-231.

[4] Dated October 7, 2005. *Id.*, pp. 238-239.

[5] Dated June 26, 2002 and penned by Commissioner Amelia A. Gacutan and concurred in by Presiding Commissioner Roy N. Señeres and Commissioner Victoriano R. Calaycay. *Id.*, pp. 170-183.

[6] Contract of Employment for Specific Project or Undertaking. *Id.*, p. 135.

[7] Costs of the operation were borne by respondent.

Petitioner claimed that, shortly after his release from the hospital, officers of respondent company called him to a meeting with his common-law wife, father and cousin. There he was assured a place in the company as a regular employee for as long as the company existed and as soon as he fully recovered from his injury.

In September 1999, after he recovered from his injury, petitioner reported for work. Instead of giving him employment, they made him sign a memorandum of resignation to formalize his separation from the company in the light of the expiration of his five-month contract.

On November 16, 1999, petitioner filed in the Regional Arbitration Branch of the NLRC of Dasmariñas, Cavite a complaint[8] for illegal dismissal (later changed to breach of contract). In his position paper, he raised the following issues:

1. whether there was a valid agreement or contract of perpetual employment perfected between the parties concerned;

2. whether respondent corporation was bound thereby and

3. whether [petitioner] has a cause of action for damages against respondent based on the contract.[9]

He claimed that respondent failed to comply with the terms of the contract of perpetual employment which was perfected in June 1999 when he was called to a meeting by management.[10] He prayed that respondent be made to pay compensatory,[11] moral[12] and exemplary damages and attorney's fees for default or breach of contract.

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[8] Docketed as NLRC RAB-IV-1-11869-00-C, *rollo*, p. 136.

[9] *Id.*, p. 138.

[10] Pertinent portion of the Position Paper stated:

"When complainant finally saw that respondent had no intention of making good on their earlier agreement or understanding, and ***re-employing*** him again as a worker, he filed his complaint with the Department of Labor and Employment. Hence, the instant case." (emphasis supplied)

[11] ₱1,053,000, *id.*, p. 6.

[12] ₱200,000, *id.*

Respondent denied that it extended regular employment to petitioner. Only words of encouragement were offered but not perpetual employment. Moreover, it assailed the labor arbiter's jurisdiction over the case, claiming a lack of causal connection between the alleged breach of contract and their employer-employee relationship.

The labor arbiter held that he had jurisdiction to hear and decide the case as it involved the employer-employee relationship of the contending parties. He ruled that petitioner who had been employed on a per-project basis became a regular employee by virtue of the contract of perpetual employment. He stated that the positive declaration of the witnesses (common-law wife, father and cousin) present at the meeting and the parole evidence rule was enough to support the petitioner's claim. Thus, in a decision dated March 9, 2001, the labor arbiter ruled that petitioner was employed by respondent for an indefinite period of employment (that is, on regular status.) He ordered petitioner's reinstatement and the payment of backwages, moral damages and exemplary damages as well as attorney's fees.[13]

Both petitioner and respondent appealed to the NLRC. Petitioner claimed that the labor arbiter erred in finding that he was a regular employee, that the case was based on illegal dismissal and that reinstatement and payment of backwages were the proper reliefs. Respondent, on the other hand, asked for the reversal of the labor arbiter's decision based on grave abuse of discretion for assuming jurisdiction over the case.

The NLRC agreed with respondent.[14] It found that petitioner was not a regular employee; thus, he was neither illegally dismissed nor entitled to reinstatement and backwages. Petitioner sued for compensatory damages because of the accident that befell him. As the contract for per-project employment had already expired, the issue no longer fell under the jurisdiction of the labor arbiter and NLRC. Moreover, the testimonies of petitioner's witnesses were declared self-serving and thus insufficient to

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[13] *Id.*, p. 169.

[14] Docketed as NLRC NCR CA No. 028156-01, *Id.*, pp. 170-183.

prove the contract of perpetual employment. The motion for reconsideration of petitioner was denied.[15]

Aggrieved, petitioner filed a petition for *certiorari*[16] in the CA questioning the NLRC's finding of non-existence of the contract of perpetual employment.

The CA dismissed the petition for lack of merit, stating that the labor arbiter decided the case on an issue that was never raised (*i.e.*, the employment status of petitioner). Moreover, petitioner's principal cause of action, breach of contract, was not cognizable by the labor courts but by the regular courts.[17] The CA concluded that the NLRC did not commit any reversible error in finding that the labor arbiter had no jurisdiction over the case. Furthermore, petitioner failed to prove grave abuse of discretion in the NLRC's exercise of its quasi-judicial function.

Petitioner moved for reconsideration but the motion was denied.[18] Thus, this petition.

We affirm the Court of Appeals.

This case rests on the issue of whether the labor arbiter had the jurisdiction to take cognizance thereof.

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[15] Dated December 11, 2002.

[16] Under Rule 65 of the Rules of Court. Docketed as CA-G.R. SP. No. 77303.

[17] The CA stated:

The petitioner did not ask for any relief under the Labor Code. He sought to recover damages under the alleged JUNE CONTRACT as a redress for the private respondent's breach of its contractual obligation to his prejudice. Indeed, the public respondent has no jurisdiction over the complaint. Thus whether or not an enforceable contract, albeit implied and innominate, had arisen between the respondent corporation and the petitioner under the circumstances of this case, and if so, whether or not it had been breached, are preeminently legal questions, questions not to be resolved by referring to labor legislation, having nothing to do with wages or other terms and conditions of employment, but rather having recourse to our law on contracts.

[18] *Supra*, note 4.

Jurisdiction over the subject matter of a complaint is determined by the allegations of the complaint.[19] In *Pioneer Concrete Philippines, Inc. v. Todaro,*[20] the Court reiterated that where no employer-employee relationship exists between the parties, and the Labor Code or any labor statute or collective bargaining agreement is not needed to resolve any issue raised by them, it is the Regional Trial Court which has jurisdiction. Thus it has been consistently held that the determination of the existence of a contract as well as the payment of damages is inherently civil in nature.[21] A labor arbiter may only take cognizance of a case and award damages where the claim for such damages arises out of an employer-employee relationship.[22]

In this instance, petitioner, from the period May 8, 1999 to October 8, 1999, was clearly a per-project employee of private respondent, resulting in an employer-employee relationship. Consequently, questions or disputes arising out of this relationship fell under the jurisdiction of the labor arbiter.

However, based on petitioner's allegations in his position paper, his cause of action was based on an alleged second contract of employment separate and distinct from the per-project

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[19] *San Miguel Corp. v. NLRC*, G.R. No. 108001, 15 March 1996, 325 Phil. 401, 414.

[20] G.R. No. 154830, 8 June 2007, 524 SCRA 153, 163.

[21] *Dai-chi Electronics Manufacturing Corporation v. Villarama*, G.R. No. 112940, 21 November 1994; *Yusen Air and Sea Service Philippines, Inc. v. Villamor*, G.R. No. 154060, 16 August 2005, 467 SCRA 167, 172.

[22] Article 217(a) LABOR CODE OF THE PHILIPPINES provides:

(a) Except as otherwise provided under this Code, the Labor Arbiters shall have original jurisdiction to hear and decide within thirty (30) calendar days after the submission of the case by the parties for decision without extension, even in the absence of stenographic notes, the following cases involving all workers, whether agricultural or non-agricultural:

x x x x x x x x x

(1) Claims for actual, moral, exemplary and other forms of damages **arising from the employer-employee relations**;

xxx (emphasis supplied)

employment contract. Thus, petitioner insisted that there was a perfected contract of perpetual employment and that respondent was liable to pay him damages.

We note, however, that petitioner filed the case only when respondent **refused to rehire** him.[23]

While there was an employer-employee relationship between the parties under their five-month per-project contract of employment, the present dispute is neither rooted in the aforestated contract nor is it one inherently linked to it. Petitioner insists on a right to be employed again in respondent company and seeks a determination of the existence of a new and separate contract that established that right. As such, his case is within the jurisdiction not of the labor arbiter but of the regular courts. The NLRC and the CA were therefore correct in ruling that the labor arbiter erroneously took cognizance of the case.

Even assuming *arguendo* that the labor arbiter had the jurisdiction to decide the case, the Court cannot countenance petitioner's claim that a contract of perpetual employment was ever constituted. While the Constitution recognizes the primacy of labor, it also recognizes the critical role of private enterprise in nation-building and the prerogatives of management. A contract of perpetual employment deprives management of its prerogative to decide whom to hire, fire and promote, and renders inutile the basic precepts of labor relations. While management may validly waive its prerogatives, such waiver should not be contrary to law, public order, public policy, morals or good customs.[24] An absolute and unqualified employment for life in the mold of petitioner's concept of perpetual employment is contrary to public policy and good customs, as it unjustly forbids the employer from terminating the services of an employee despite the existence of a just or valid cause. It likewise compels the employer to retain an employee despite the attainment of the statutory retirement age, even if the employee has become a "non-performing asset" or, worse, a liability to the employer.

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[23] *See* note 11.

[24] *See* Article 6, NEW CIVIL CODE.

Moreover, aside from the self-serving claim of petitioner, there was no concrete proof to establish the existence of such agreement. Petitioner cannot validly force respondent to enter into a permanent employment contract with him. Such stance is contrary to the consensuality principle of contracts as well as to the management prerogative of respondent company to choose its employees.

WHEREFORE, the petition is hereby *DENIED***.**

Costs against petitioner.

SO ORDERED.

Velasco, Jr., Nachura, Peralta, and *Mendoza, JJ.*, concur.

EN BANC

[G.R. Nos. 177857-58. February 11, 2010]

PHILIPPINE COCONUT PRODUCERS FEDERATION, INC. (COCOFED), MANUEL V. DEL ROSARIO, DOMINGO P. ESPINA, SALVADOR P. BALLARES, JOSELITO A. MORALEDA, PAZ M. YASON, VICENTE A. CADIZ, CESARIA DE LUNA TITULAR, and RAYMUNDO C. DE VILLA, *petitioners, vs.* **REPUBLIC OF THE PHILIPPINES,** *respondent.*

JOVITO R. SALONGA, WIGBERTO E. TAÑADA, OSCAR F. SANTOS, ANA THERESIA HONTIVEROS, and TEOFISTO L. GUINGONA III, *oppositors-intervenors.*

WIGBERTO E. TAÑADA, OSCAR F. SANTOS, SURIGAO DEL SUR FEDERATION OF AGRICULTURAL COOPERATIVES (SUFAC) and MORO FARMERS ASSOCIATION OF ZAMBOANGA DEL SUR (MOFAZS), represented by ROMEO C.

ROYANDOYAN; and PAMBANSANG KILUSAN NG MGA SAMAHAN NG MAGSASAKA (PAKISAMA), represented by VICENTE FABE, *movants-intervenors.*

[G.R. No. 178193. February 11, 2010]

DANILO B. URUSA, *petitioner, vs.* **REPUBLIC OF THE PHILIPPINES,** *respondent.*

[G.R. No. 180705. February 11, 2010]

EDUARDO M. COJUANGCO, JR., *petitioner, vs.* **REPUBLIC OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; ADMINISTRATIVE BODY; PRESIDENTIAL COMMISSION ON GOOD GOVERNMENT (PCGG); ABSENT A CLEAR SHOWING OF GRAVE ABUSE OF DISCRETION, THE DECISION OF THE EXECUTIVE DEPARTMENT MUST BE RESPECTED. — [I]t would appear that oppositors-intervenors seem unable to accept, in particular, the soundness angle of the conversion. But as we have explained, the conversion of the shares along with the safeguards attached thereto will ensure that the value of the shares will be preserved. In effect, due to the nature of stocks in general and the prevailing business conditions, the government, through the Presidential Commission on Good Government (PCGG), chose not to speculate with the CIIF SMC shares, as *prima facie* public property, in the hope that there would be a brighter economy in the future, and that the value of the shares would increase. We must respect the decision of the executive department, absent a clear showing of grave abuse of discretion.

2. ID.; ID.; ID.; ID.; THE COURT IS NOT EMPOWERED TO REVIEW AND GO INTO THE WISDOM OF THE POLICY DECISION OR CHOICES OF EXECUTIVE AGENCIES OF THE GOVERNMENT. — Apropos the separation of powers doctrine and its relevance to this case, it may well be appropriate to again quote the following excerpts from our decision in *JG Summit Holdings, Inc. v. Court of Appeals*, to wit: The role of the Courts is to

ascertain whether a branch or instrumentality of the Government has transgressed its constitutional boundaries. But the Courts will not interfere with executive or legislative discretion exercised within those boundaries. Otherwise, it strays into the realm of policy decision-making. xxx. [W]hile it may, in appropriate cases, look into the question of whether or not the PCGG acted in grave abuse of discretion, the Court is not empowered to review and go into the wisdom of the policy decision or choices of PCGG and other executive agencies of the government. This is the limited mandate of this Court. And as we have determined in our Resolution, the PCGG thoroughly studied and considered the effects of conversion and, based upon such study, concluded that it would best serve the purpose of maintaining and preserving the value of the shares of stock to convert the same. It was proved that the PCGG had exercised proper diligence in reviewing the pros and cons of the conversion. The efforts PCGG have taken with respect to the desired stock conversion argue against the notion of grave abuse of discretion.

3. ID.; ID.; ID.; CONTROL OVER ALL MATTERS PERTAINING TO THE DISPOSITION OF GOVERNMENT PROPERTY, PARTICULARLY THE SEQUESTERED ASSETS, BELONGS TO THE EXECUTIVE BRANCH. — The current administration, or any administration for that matter, cannot be detached from the government. In the final analysis, the seat of executive powers is located in the sitting President who heads the government and/or the "administration." Under the government established under the Constitution, it is the executive branch, either pursuant to the residual power of the President or by force of her enumerated powers under the laws, that has control over all matters pertaining to the disposition of government property or, in this case, sequestered assets under the administration of the PCGG. Surely, such control is neither legislative nor judicial. As the Court aptly held in *Springer v. Government of the Philippine Islands*, resolving the issue as to which between the Governor-General, as head of the executive branch, and the Legislature may vote the shares of stock held by the government: It is clear that they are not legislative in character, and still more clear that they are not judicial. The fact that they do not fall within the authority of either of these two constitutes legal ground for concluding that they do fall within that of the remaining one among which the powers of

the government are divided. The executive branch, through the PCGG, has given its assent to the conversion and such decision may be deemed to be the decision of the government. The notion suggested by oppositors-intervenors that the current administration, thru the PCGG, is without power to decide and act on the conversion on the theory that the head of the current administration is not government, cannot be sustained for lack of legal basis.

4. REMEDIAL LAW; MOTIONS; MOTION FOR RECONSIDERATION; FILING OF ANOTHER MOTION FOR RECONSIDERATION BY WAY OF A SUPPLEMENT TO AN EXISTING MOTION FOR RECONSIDERATION IS A CLEAR DEVIATION FROM THE OMNIBUS MOTION RULE. — [B]efore the Court is the **Motion to Admit Motion for Reconsideration with Motion for Reconsideration [Re: Conversion of SMC Shares]** dated October 16, 2009 filed by movants-intervenors Wigberto E. Tañada; Oscar F. Santos; Surigao del Sur Federation of Agricultural Cooperatives (SUFAC) and Moro Farmers Association of Zamboanga del Sur (MOFAZS); and *Pambansang Kilusan ng mga Samahan ng Magsasaka* (PAKISAMA). xxx Atty. Tañada and Oscar Santos admit having joined oppositors-intervenors Salonga, *et al*. in the latter's October 7, 2009 motion for reconsideration. Accordingly, they should have voiced out all their arguments in the Salonga motion for reconsideration following the Omnibus Motion Rule. The filing of yet another motion for reconsideration by way of supplement to the Salonga motion for reconsideration is a clear deviation from the Omnibus Motion Rule and cannot be countenanced.

5. ID.; INTERVENTION; WHEN ALLOWED; NOT PROPER WHERE MOVANTS FAILED TO DEMONSTRATE THAT NONE OF THE EXISTING PARTIES, THAT ARE SIMILARLY SITUATED AS THEY, WOULD NOT DEFEND THEIR COMMON INTEREST. — Even the joinder of SUFAC, MOFAZS, and PAKISAMA with co-intervenors Tañada and Santos will not cure the flawed motion. In *Heirs of Geronimo Restrivera v. De Guzman*, the Court explained why: Indeed, the right of intervention should be accorded to any one having title to property "which is the subject of litigation, provided that his right will be substantially affected by the direct legal operation and effect of the decision, **and provided also that it is reasonably necessary for him to safeguard an interest of his own which**

no other party on record is interested in protecting." SUFAC, MOFAZS, and PAKISAMA all failed to demonstrate that none of the existing parties, that are similarly situated as they, would not defend their common interest. In the instant case, COCOFED, the federation of farmers' associations recognized by the Philippine Coconut Authority, has actively participated in the instant case, vigorously defending their rights and those of all the coconut farmers who are supposedly stockholders of SMC.

6. POLITICAL LAW; ADMINISTRATIVE LAW; ADMINISTRATIVE BODY; PCGG; RULING IN SAN MIGUEL CORPORATION CASE (G.R. Nos. 104637-38 & 109797), INAPPLICABLE TO CASE AT BAR. — The invocation of *San Miguel Corporation* is quite misplaced, it being inapplicable since it is not on all fours factually with the instant case. xxx An examination of the facts of *San Miguel Corporation* would show the factual dissimilarities of such case to the instant controversy. *First*, in *San Miguel Corporation*, the Court did not even pass upon the validity of the Compromise Agreement, while, in the instant case, the Court approved the conversion. *Second*, in the instant case, court approval was sought before the execution of the conversion, while in *San Miguel Corporation*, no court approval was sought for the Compromise Agreement. And *third*, in *San Miguel Corporation*, both the Republic and COCOFED opposed the Compromise Agreement, while, in the instant case, they both agreed to the conversion. Clearly, *San Miguel Corporation* finds no application to the instant case.

7. ID.; ID.; ID.; ID.; ID.; CONVERSION OF THE SEQUESTERED SAN MIGUEL CORPORATION (SMC) SHARES FROM COMMON TO SERIES I PREFERRED SHARES NOT CONTRARY TO THE RULING IN SAN MIGUEL CORPORATION CASE. — Moreover, our ruling in *San Miguel Corporation* did not per se forbid the conversion of sequestered common shares into preferred/treasury shares. As we held thereat, the changes that are unacceptable are those "of any permanent character that will alter their being sequestered shares and, therefore, in '*custodia legis*,' that is to say, under the control and disposition of this Court." Here, the SMC Series 1 Preferred Shares will also be sequestered in exchange for the common shares originally sequestered. Thus, the approval of the conversion of the subject SMC shares in the instant case

does not run counter, as movants insist otherwise, to the ruling in *San Miguel Corporation.*

8. ID.; ID.; ID.; ID.; LOSS OF THE VOTING RIGHTS DOES NOT AFFECT THE PCGG'S FUNCTION TO RECOVER ILL-GOTTEN WEALTH OR PREVENT DISSIPATION OF SEQUESTERED ASSETS. — Again, by their very nature, shares of common stock, while giving the stockholder the right to vote, do not guarantee that the vote of the stockholder will prevail. That is *non sequitur*. This we explained in the Resolution subject of reconsideration: The mere presence of four (4) PCGG nominated directors in the SMC Board does not mean it can prevent board actions that are viewed to fritter away the company assets. Even under the status quo, PCGG has no controlling sway in the SMC Board, let alone a veto power at 24% of the stockholdings. In relinquishing the voting rights, the government, through the PCGG, is not in reality ceding control. Moreover, PCGG has ample powers to address alleged strategies to thwart recovery of ill-gotten wealth. Thus, the loss of voting rights has no significant effect on PCGG's function to recover ill-gotten wealth or prevent dissipation of sequestered assets.

9. ID.; ID.; ID.; ID.; SALE OF SEQUESTERED PROPERTIES WITHOUT AN AUCTION SALE, WHEN ALLOWED; CONVERSION OF THE SMC SHARES IN QUESTION NOT COVERED BY COA CIRCULAR NO. 89-296. — Movants-intervenors likewise challenge the legality of the conversion in light of Commission on Audit (COA) Circular No. 89-296, which provides that the divestment or disposal of government property shall be undertaken primarily through public auction. The postulation has no merit, for there is, in the first place, no divestment or disposal of the SMC shares. The CIIF companies shall remain the registered owners of the SMC Series 1 Preferred Shares after conversion, although the shares are still subject of sequestration. To state the obvious, these SMC shares are not yet government assets as ownership thereof are still to be peremptorily determined. Hence, COA Circular No. 89-296, which covers only the disposition of government property, cannot plausibly be made to govern the conversion of the SMC shares in question, assuming for the nonce that the challenged conversion is equivalent to disposition. As explained in the September 17, 2009 Resolution, the sequestered

assets are akin to property subject of preliminary attachment or receivership. As stated in the assailed resolution, the Court is authorized to allow the conversion of the subject shares under Rule 57, Sec. 11, in relation to Rule 59, Sec. 6 of the Rules of Court. And as may be recalled, the Court, in *Palm Avenue Realty Development Corporation v. PCGG*, allowed the sale of sequestered properties without an auction sale given that, as here, the sequestered assets would not have fetched the correct market price. In the instant case, the same is also true. It is highly doubtful that anyone other than SMC would purchase the sequestered shares at market value.

10. ID.; ID.; ID.; ID.; NEED NOT OBTAIN THE CONSENT OR ACQUIESCENCE OF THE OWNER OF THE SEQUESTERED ASSETS WITH RESPECT TO ANY OF ITS ACTS INTENDED TO PRESERVE THE SAME. — It should be remembered that the SMC shares allegedly owned by the CIIF companies are sequestered assets under the control and supervision of the PCGG pursuant to Executive Order No. 1, Series of 1986. Be that as it may, it is the duty of the PCGG to preserve the sequestered assets and prevent their dissipation. In the exercise of its powers, the PCGG need not seek or obtain the consent or even the acquiescence of the sequestered assets owner with respect to any of its acts intended to preserve such assets. Otherwise, it would be well-nigh impossible for PCGG to perform its duties and exercise its powers under existing laws, for the owner of the sequestered assets will more often than not oppose or resist PCGG's actions if their consent is a condition precedent. The act of PCGG of proposing the conversion of the sequestered SMC shares to Series 1 Preferred Shares was clearly an exercise of its mandate under existing laws, where the consent of the CIIF Companies is rendered unnecessary.

11. ID.; ID.; ID.; ID.; HAS DISCRETION TO DECIDE ON WHERE TO DEPOSIT ON ESCROW THE NET DIVIDEND EARNINGS OF AND/OR REDEMPTION PROCEEDS FROM SERIES 1 PREFERRED SHARES OF SMC. — Concededly, UCPB is the administrator of the CIIF, which invested in the subject Series 1 Preferred Shares of SMC. UCPB's legal authority as such administrator does not, however, include its being made the exclusive depository bank of the proceeds of dividends, interest, or income from the investments solely with UCPB. To be sure,

the relevant decrees, PD Nos. 775, 961, and 1468, did not constitute UCPB—the bank acquired for the coconut farmers under PD 755—to be the sole depositary of the proceeds of the returns of the investments authorized under Sec. 9, Art. III of PD 1468. Besides, since the subject sequestered SMC shares are under *custodia legis*, the Court has certain control over them and their fruits. Nonetheless, the PCGG, having administrative control over the subject sequestered shares pending resolution of the actual ownership thereof, possesses discretion, taking into account the greater interest of the government and the farmers, to decide on where to deposit on escrow the net dividend earnings of, and/or redemption proceeds from, the Series 1 Preferred Shares of SMC. The depository bank may be the DBP/LBP or the UCPB.

APPEARANCES OF COUNSEL

Angara Abello Concepcion Regala and Cruz for COCOFED, *et al.*

Estelito P. Mendoza for Eduardo M. Cojuangco, Jr. in G.R. No. 180705.

Gregorio S. Diño for Danilo B. Urusa in G.R. No. 178193.

Cesar G. David and *Francisco B.A. Saavedra* for UCPB.

R E S O L U T I O N

VELASCO, JR., *J.*:

Before us is the motion for reconsideration[1] of the Resolution of the Court dated September 17, 2009, interposed by oppositors-intervenors Jovito R. Salonga, Wigberto E. Tañada, Oscar F. Santos, Ana Theresa Hontiveros, and Teofisto L. Guingona III.

As may be recalled, the Court, in its resolution adverted to, approved, upon motion of petitioner Philippine Coconut Producers Federation, Inc. (COCOFED), the conversion of the sequestered 753,848,312 Class "A" and "B" common shares of San Miguel

[1] *Rollo*, pp. 2015-2035, dated October 7, 2009.

Corporation (SMC), registered in the name of Coconut Industry Investment Fund (CIIF) Holding Companies (hereunder referred to as SMC Common Shares), into 753,848,312 SMC Series 1 Preferred Shares.

Oppositors-intervenors Salonga, *et al*. anchor their plea for reconsideration on the following submission or issues:

1

The conversion of the shares is patently disadvantageous to the government and the coconut farmers, given that SMC's option to redeem ensures that the shares will be bought at less than their market value.

2

The honorable court overlooks the value of the fact that the government, as opposed to the current administration, is the winning party in the case below and thus has no incentive to convert.[2]

The Court is not inclined to reconsider.

The two (2) issues and the arguments and citations in support thereof are, for the most part and with slight variations, clearly replications of oppositors-intervenors' previous position presented in opposition to COCOFED's motion for approval of the conversion in question. They have been amply considered, discussed at length, and found to be bereft of merit.

Oppositors-intervenors harp on the perceived economic disadvantages and harm that the government would likely suffer by the approval of the proposed conversion. Pursuing this point, it is argued that the Court missed the fact that the current value of the shares in question is increasing and the "perceived advantages of pegging the issue price at PhP 75 are dwindling on a daily basis."[3]

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[2] *Id*. at 2018.

[3] *Id.* at 2021.

Oppositors-intervenors' concerns, encapsulated above, have been adequately addressed in some detail in the resolution subject of this motion. For reference we reproduce what we wrote:

> Salonga, *et al.* also argue that the proposed redemption is a right to buy the preferred shares at less than the market value. **That the market value of the preferred shares may be higher than the issue price of PhP 75 per share at the time of redemption is possible. But then the opposite scenario is also possible**. Again, the Court need not delve into policy decisions of government agencies because of their expertise and special knowledge of these matters. Suffice it to say that all indications show that SMC will redeem said preferred shares in the third year and not later because the dividend rate of 8% it has to pay on said shares is higher than the interest it will pay to the banks in case it simply obtains a loan. When market prices of shares are low, it is possible that interest rate on loans will likewise be low. On the other hand, if SMC has available cash, it would be prudent for it to use such cash to redeem the shares than place it in a regular bank deposit which will earn lower interests. It is plainly expensive and costly for SMC to keep on paying the 8% dividend rate annually in the hope that the market value of the shares will go up before it redeems the shares. Likewise, the conclusion that respondent Republic will suffer a loss corresponding to the difference between a high market value and the issue price does not take into account the dividends to be earned by the preferred shares for the three years prior to redemption. The guaranteed PhP 6 per share dividend multiplied by three years will amount to PhP 18. If one adds PhP 18 to the issue price of PhP 75, then the holders of the preferred shares will have actually attained a price of PhP 93 which hews closely to the speculative PhP 100 per share price indicated by movants-intervenors.[4] (Emphasis added.)

Elaborating on how the value of the sequestered shares will be preserved and conserved, we said:

> Moreover, the conversion may be viewed as a sound business strategy to preserve and conserve the value of the government's interests in CIIF SMC shares. Preservation is attained by fixing the value today at a significant premium over the market price and ensuring that such value is not going to decline despite negative

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[4] *Id.* at 1907-1908.

market conditions. Conservation is realized thru an improvement in the earnings value via the 8% per annum dividends versus the uncertain and most likely lower dividends on common shares.

In this recourse, it would appear that oppositors-intervenors seem unable to accept, in particular, the soundness angle of the conversion. But as we have explained, the conversion of the shares along with the safeguards attached thereto will ensure that the value of the shares will be preserved. In effect, due to the nature of stocks in general and the prevailing business conditions, the government, through the Presidential Commission on Good Government (PCGG), chose not to speculate with the CIIF SMC shares, as *prima facie* public property, in the hope that there would be a brighter economy in the future, and that the value of the shares would increase. We must respect the decision of the executive department, absent a clear showing of grave abuse of discretion.

Next, oppositors-intervenors argue that:

> The very reason why the PCGG and the OSG [Office of Solicitor General] are before this Honorable Court is precisely because, on their own, they have no authority to alter the nature of the sequestered shares. This fact ought not to be novel to this Honorable Court because it is the Court itself that established such jurisprudence. Thus, the reference to separation of powers is rather gratuitous.[5]

The Court to be sure agrees with the thesis that, under present state of things, the PCGG and the Office of the Solicitor General have no power, by themselves, to convert the sequestered shares of stock. That portion, however, about the reference to the separation of powers being gratuitous does not commend itself for concurrence. As may be noted, the reference to the separation of powers concept was made in the context that the ownership of the subject sequestered shares is the subject of a case before this Court; hence, the need of the Court's approval for the desired conversion is effected.

Apropos the separation of powers doctrine and its relevance to this case, it may well be appropriate to again quote the following

[5] *Id.* at 2026.

excerpts from our decision in *JG Summit Holdings, Inc. v. Court of Appeals*,[6] to wit:

> The role of the Courts is to ascertain whether a branch or instrumentality of the Government has transgressed its constitutional boundaries. But the Courts will not interfere with executive or legislative discretion exercised within those boundaries. Otherwise, it strays into the realm of policy decision-making.

and our complementary holding in *Ledesma v. Court of Appeals*,[7] thus:

> x x x [A] court is without power to directly decide matters over which full discretionary authority has been delegated to the legislative or executive branch of the government. It is not empowered to substitute its judgment for that of Congress or of the President. It may, however, look into the question of whether such exercise has been made in grave abuse of discretion.

The point, in fine, is: while it may, in appropriate cases, look into the question of whether or not the PCGG acted in grave abuse of discretion, the Court is not empowered to review and go into the wisdom of the policy decision or choices of PCGG and other executive agencies of the government. This is the limited mandate of this Court. And as we have determined in our Resolution, the PCGG thoroughly studied and considered the effects of conversion and, based upon such study, concluded that it would best serve the purpose of maintaining and preserving the value of the shares of stock to convert the same. It was proved that the PCGG had exercised proper diligence in reviewing the pros and cons of the conversion. The efforts PCGG have taken with respect to the desired stock conversion argue against the notion of grave abuse of discretion.

Anent the second issue that it is the government, as opposed to the current administration of President Gloria Macapagal-Arroyo, that is the winning party in the case below and has no incentive to convert, the Court finds that this argument has no merit.

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[6] G.R. No. 124293, January 31, 2005, 450 SCRA 169.

[7] G.R. No. 113216, September 5, 1997, 278 SCRA 656.

The current administration, or any administration for that matter, cannot be detached from the government. In the final analysis, the seat of executive powers is located in the sitting President who heads the government and/or the "administration." Under the government established under the Constitution, it is the executive branch, either pursuant to the residual power of the President or by force of her enumerated powers under the laws, that has control over all matters pertaining to the disposition of government property or, in this case, sequestered assets under the administration of the PCGG. Surely, such control is neither legislative nor judicial. As the Court aptly held in *Springer v. Government of the Philippine Islands*,[8] resolving the issue as to which between the Governor-General, as head of the executive branch, and the Legislature may vote the shares of stock held by the government:

> It is clear that they are not legislative in character, and still more clear that they are not judicial. The fact that they do not fall within the authority of either of these two constitutes legal ground for concluding that they do fall within that of the remaining one among which the powers of the government are divided.

The executive branch, through the PCGG, has given its assent to the conversion and such decision may be deemed to be the decision of the government. The notion suggested by oppositors-intervenors that the current administration, thru the PCGG, is without power to decide and act on the conversion on the theory that the head of the current administration is not government, cannot be sustained for lack of legal basis.

Likewise, before the Court is the **Motion to Admit Motion for Reconsideration with Motion for Reconsideration [Re: Conversion of SMC Shares]** dated October 16, 2009[9] filed by movants-intervenors Wigberto E. Tañada; Oscar F. Santos; Surigao del Sur Federation of Agricultural Cooperatives (SUFAC) and Moro Farmers Association of Zamboanga del Sur (MOFAZS);

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[8] 277 U.S. 189, 202-203 (1928).

[9] *Rollo*, pp. 2036-2061.

and *Pambansang Kilusan ng mga Samahan ng Magsasaka* (PAKISAMA).

In filing their motion, movants-intervenors explain that:

> Messrs. Tañada and Santos earlier joined an opposition filed by a group led by former Senate President Jovito R. Salonga, by way of solidarity and without desire or intent of trifling with judicial processes as, in fact, the instant Motion for Reconsideration is filed by herein movants-intervenors, through counsel, Atty. Tañada, and also **by way of supplement and support to the Opposition earlier filed by Salonga, *et al.*,** and the Opposition originally intended to be filed by herein Movants-intervenors.[10] (Emphasis supplied.)

Movants-intervenors argue further that the Court allowed them to intervene in a Resolution in G.R. No. 180702, which also arose from Sandiganbayan Civil Case No. 0033-F and, thus, should similarly be allowed to intervene in the instant case.[11]

This motion of Tañada, *et al*. must fail.

As it were, Atty. Tañada and Oscar Santos admit having joined oppositors-intervenors Salonga, *et al*. in the latter's October 7, 2009 motion for reconsideration. Accordingly, they should have voiced out all their arguments in the Salonga motion for reconsideration following the Omnibus Motion Rule. The filing of yet another motion for reconsideration by way of supplement to the Salonga motion for reconsideration is a clear deviation from the Omnibus Motion Rule and cannot be countenanced.

Even the joinder of SUFAC, MOFAZS, and PAKISAMA with co-intervenors Tañada and Santos will not cure the flawed motion. In *Heirs of Geronimo Restrivera v. De Guzman*,[12] the Court explained why:

> Indeed, the right of intervention should be accorded to any one having title to property "which is the subject of litigation, provided that his right will be substantially affected by the direct legal operation

[10] *Id.* at 2036.

[11] *Id.* at 2118-2119.

[12] G.R. No. 146540, July 14, 2004, 434 SCRA 456.

and effect of the decision, **and provided also that it is reasonably necessary for him to safeguard an interest of his own which no other party on record is interested in protecting**." (Emphasis supplied.)

SUFAC, MOFAZS, and PAKISAMA all failed to demonstrate that none of the existing parties, that are similarly situated as they, would not defend their common interest. In the instant case, COCOFED, the federation of farmers' associations recognized by the Philippine Coconut Authority, has actively participated in the instant case, vigorously defending their rights and those of all the coconut farmers who are supposedly stockholders of SMC.

The Court can extend to the instant motion of Tañada, *et al.* the benefit of the liberal application of procedural rules and entertain the motion and resolve the issues therein. Nonetheless, an examination of the issues raised in the Tañada motion for reconsideration would show that the same have been more than adequately addressed in our Resolution of September 19, 2009.

Movants-intervenors contend that the challenged resolution violates the Court's holding in *San Miguel Corporation v. Sandiganbayan*,[13] as the conversion of the sequestered common shares into treasury shares would destroy the character of the shares of stock.

The invocation of *San Miguel Corporation* is quite misplaced, it being inapplicable since it is not on all fours factually with the instant case.

San Miguel Corporation involved the sale by the 14 CIIF Companies, through the United Coconut Planters Bank (UCPB), of 33,133,266 SMC shares, to the SMC. Before the perfection of the sale, however, the said shares were sequestered. Thus, the SMC group suspended payment of the purchase price of the shares, while the UCPB group rescinded the sale. Later, the SMC and UCPB groups entered into a Compromise Agreement and Amicable Settlement, whereby they undertook to continue

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[13] G.R. Nos. 104637-38 & 109797, September 14, 2000, 340 SCRA 289.

with the sale of the subject shares of stock. The parties, over the opposition of both the Republic and the COCOFED, then moved for the approval of this agreement by the Sandiganbayan where the case was then pending. Later, UCPB and the SMC groups implemented their agreement extra-judicially, withdrawing, at the same time, their petition for the approval of their aforementioned compromise agreement. Thereafter, the Sandiganbayan issued an Order dated August 5, 1991, directing the SMC to deliver to the graft court the sequestered SMC shares that it bought from UCPB. This was followed by another Order dated March 18, 1992, for the delivery to the court of dividends pertaining to the subject SMC shares. It was these two delivery Orders that were submitted for the consideration of the Court.

An examination of the facts of *San Miguel Corporation* would show the factual dissimilarities of such case to the instant controversy. *First*, in *San Miguel Corporation*, the Court did not even pass upon the validity of the Compromise Agreement, while, in the instant case, the Court approved the conversion. *Second*, in the instant case, court approval was sought before the execution of the conversion, while in *San Miguel Corporation*, no court approval was sought for the Compromise Agreement. And *third*, in *San Miguel Corporation*, both the Republic and COCOFED opposed the Compromise Agreement, while, in the instant case, they both agreed to the conversion. Clearly, *San Miguel Corporation* finds no application to the instant case.

Moreover, our ruling in *San Miguel Corporation* did not per se forbid the conversion of sequestered common shares into preferred/treasury shares. As we held thereat, the changes that are unacceptable are those "of any permanent character that will alter their being sequestered shares and, therefore, in '*custodia legis*,' that is to say, under the control and disposition of this Court." Here, the SMC Series 1 Preferred Shares will also be sequestered in exchange for the common shares originally sequestered. Thus, the approval of the conversion of the subject SMC shares in the instant case does not run counter, as movants insist otherwise, to the ruling in *San Miguel Corporation*.

Movants-intervenors also assail the conversion of the SMC shares from common to preferred on another angle, thus:

> Simply, there is no right to vote: There is no greater alteration of the very nature of a common share. In a very real sense, therefore, a common share with all its rights, is reduced to a mere promissory note; worse, an unsecured and conditional promissory note, the returns on which is dependent on available retained earnings and the overall viability of SMC.[14]

The assault is without merit.

Again, by their very nature, shares of common stock, while giving the stockholder the right to vote, do not guarantee that the vote of the stockholder will prevail. That is *non sequitur*. This we explained in the Resolution subject of reconsideration:

> The mere presence of four (4) PCGG nominated directors in the SMC Board does not mean it can prevent board actions that are viewed to fritter away the company assets. Even under the status quo, PCGG has no controlling sway in the SMC Board, let alone a veto power at 24% of the stockholdings. In relinquishing the voting rights, the government, through the PCGG, is not in reality ceding control.
>
> Moreover, PCGG has ample powers to address alleged strategies to thwart recovery of ill-gotten wealth. Thus, the loss of voting rights has no significant effect on PCGG's function to recover ill-gotten wealth or prevent dissipation of sequestered assets.[15]

Movants-intervenors likewise challenge the legality of the conversion in light of Commission on Audit (COA) Circular No. 89-296, which provides that the divestment or disposal of government property shall be undertaken primarily through public auction.

The postulation has no merit, for there is, in the first place, no divestment or disposal of the SMC shares. The CIIF companies shall remain the registered owners of the SMC Series 1 Preferred Shares after conversion, although the shares are still subject of sequestration. To state the obvious, these SMC shares are not yet government assets as ownership thereof are still to be

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[14] *Rollo*, p. 2044.

[15] *Id.* at 1905.

peremptorily determined. Hence, COA Circular No. 89-296, which covers only the disposition of government property, cannot plausibly be made to govern the conversion of the SMC shares in question, assuming for the nonce that the challenged conversion is equivalent to disposition. As explained in the September 17, 2009 Resolution, the sequestered assets are akin to property subject of preliminary attachment or receivership. As stated in the assailed resolution, the Court is authorized to allow the conversion of the subject shares under Rule 57, Sec. 11, in relation to Rule 59, Sec. 6 of the Rules of Court. And as may be recalled, the Court, in *Palm Avenue Realty Development Corporation v. PCGG*,[16] allowed the sale of sequestered properties without an auction sale given that, as here, the sequestered assets would not have fetched the correct market price. In the instant case, the same is also true. It is highly doubtful that anyone other than SMC would purchase the sequestered shares at market value.

Finally, Tañada, *et al*. posit the view that the conversion of shares needs the acquiescence of the 14 CIIF companies.

The contention is untenable.

It should be remembered that the SMC shares allegedly owned by the CIIF companies are sequestered assets under the control and supervision of the PCGG pursuant to Executive Order No. 1, Series of 1986. Be that as it may, it is the duty of the PCGG to preserve the sequestered assets and prevent their dissipation. In the exercise of its powers, the PCGG need not seek or obtain the consent or even the acquiescence of the sequestered assets owner with respect to any of its acts intended to preserve such assets. Otherwise, it would be well-nigh impossible for PCGG to perform its duties and exercise its powers under existing laws, for the owner of the sequestered assets will more often than not oppose or resist PCGG's actions if their consent is a condition precedent. The act of PCGG of proposing the conversion of the sequestered SMC shares to Series 1 Preferred Shares

[16] G.R. No.76296, August 31, 1987, 153 SCRA 579.

was clearly an exercise of its mandate under existing laws, where the consent of the CIIF Companies is rendered unnecessary.

Additionally, the above contention has been rendered moot with the filing on October 26, 2009 of the Manifestation dated October 23, 2009. Attached to such Manifestation is the Secretary's Certificate of the 14 CIIF companies approving the conversion of the SMC Common Shares into Series 1 Preferred Shares.[17]

As a final consideration, the Court also takes note of the **Motion for Leave to Intervene and to File and Admit Attached Motion for Partial Reconsideration** dated October 5, 2009 and the **Motion for Partial Reconsideration** dated October 6, 2009 filed by movant-intervenor UCPB. UCPB claims to have direct interest in the SMC shares subject of the instant case, being the statutory administrator, pursuant to Presidential Decree No. (PD) 1468, of the Coconut Industry Investment Fund and as an investor in the CIIF companies.

UCPB argues that, as the statutory administrator of the CIIF, the proceeds of the net dividend earnings of, and/or redemption proceeds from, the Series 1 Preferred Shares of SMC should be deposited in escrow with it rather than, as directed by the Court in its September 17, 2009 Resolution, with the Development Bank of the Philippines (DBP) or the Land Bank of the Philippines (LBP).

Concededly, UCPB is the administrator of the CIIF, which invested in the subject Series 1 Preferred Shares of SMC. UCPB's legal authority as such administrator does not, however, include its being made the exclusive depository bank of the proceeds of dividends, interest, or income from the investments solely with UCPB. To be sure, the relevant decrees, PD Nos. 775, 961, and 1468, did not constitute UCPB—the bank acquired for the coconut farmers under PD 755—to be the sole depositary of the proceeds of the returns of the investments authorized under Sec. 9, Art. III of PD 1468.

Besides, since the subject sequestered SMC shares are under *custodia legis*, the Court has certain control over them and

[17] *Rollo*, pp. 2234-2266.

their fruits. Nonetheless, the PCGG, having administrative control over the subject sequestered shares pending resolution of the actual ownership thereof, possesses discretion, taking into account the greater interest of the government and the farmers, to decide on where to deposit on escrow the net dividend earnings of, and/or redemption proceeds from, the Series 1 Preferred Shares of SMC. The depository bank may be the DBP/LBP or the UCPB.

WHEREFORE, the Court resolves to *DENY* for lack of merit the: (1) Motion for Reconsideration dated October 7, 2009 filed by oppositors-intervenors Jovito R. Salonga, Wigberto E. Tañada, Oscar F. Santos, Ana Theresa Hontiveros, and Teofisto L. Guingona III; and (2) Motion to Admit Motion for Reconsideration with Motion for Reconsideration [Re: Conversion of SMC Shares] dated October 16, 2009 filed by movants-intervenors Wigberto E. Tañada, Oscar F. Santos, SUFAC, MOFAZS, represented by Romeo C. Royandoyan, and PAKISAMA, represented by Vicente Fabe.

The Court *PARTIALLY GRANTS* the Motion for Leave to Intervene and to File and Admit Attached Motion for Partial Reconsideration dated October 5, 2009, and the Motion for Partial Reconsideration dated October 6, 2009 filed by movant-intervenor UCPB.

The Court *AMENDS* its Resolution dated September 17, 2009 to give to the PCGG the discretion in depositing on escrow the net dividend earnings on, and/or redemption proceeds from, the Series 1 Preferred Shares of SMC, either with the Development Bank of the Philippines/Land Bank of the Philippines or with the United Coconut Planters Bank, having in mind the greater interest of the government and the coconut farmers.

SO ORDERED.

Puno, C.J., Corona, Bersamin, Del Castillo, Abad, Villarama, Jr., Perez, and *Mendoza, JJ.,* concur.

Carpio Morales, J., dissent remains, hence, she is for a grant of the Motion for Reconsideration.

Brion, J., joins Justice Morales.

Carpio, J., no part, due to inhibition in related cases.

Nachura, Leonardo-de Castro, and *Peralta, JJ.,* no part.

THIRD DIVISION

[G.R. No. 181409. February 11, 2010]

INTESTATE ESTATE OF MANOLITA GONZALES *VDA. DE* CARUNGCONG, represented by MEDIATRIX CARUNGCONG, as Administratrix, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES and WILLIAM SATO,** *respondents.*

SYLLABUS

1. CRIMINAL LAW; ABSOLUTORY CAUSE; ARTICLE 332 OF THE REVISED PENAL CODE; LIMITS THE RESPONSIBILITY OF THE OFFENDER TO CIVIL LIABILITY AND FREES HIM FROM CRIMINAL LIABILITY BY VIRTUE OF HIS RELATIONSHIP TO THE OFFENDED PARTY. — Article 332 provides for an absolutory cause in the crimes of theft, estafa (or swindling) and malicious mischief. It limits the responsibility of the offender to civil liability and frees him from criminal liability by virtue of his relationship to the offended party. In connection with the relatives mentioned in the first paragraph, it has been held that included in the exemptions are parents-in-law, stepparents and adopted children. By virtue thereof, no criminal liability is incurred by the stepfather who commits malicious mischief against his stepson; by the stepmother who commits theft against her stepson; by the stepfather who steals something from his stepson; by the grandson who steals from his

grandfather; by the accused who swindles his sister-in-law living with him; and by the son who steals a ring from his mother. Affinity is the relation that one spouse has to the blood relatives of the other spouse. It is a relationship by marriage or a familial relation resulting from marriage. It is a fictive kinship, a fiction created by law in connection with the institution of marriage and family relations.

2. ID.; ID.; ID.; ID.; RELATIONSHIP BY AFFINITY; EFFECT OF DEATH OF ONE OF THE SPOUSES; TERMINATED AFFINITY VIEW *VIS A VIS* CONTINUING AFFINITY VIEW. — Philippine jurisprudence has no previous encounter with the issue that confronts us in this case. That is why the trial and appellate courts acknowledged the "dearth of jurisprudence and/or commentaries" on the matter. In contrast, in the American legal system, there are two views on the subject. The first view (the terminated affinity view) holds that relationship by affinity terminates with the dissolution of the marriage either by death or divorce which gave rise to the relationship of affinity between the parties. Under this view, the relationship by affinity is simply coextensive and coexistent with the marriage that produced it. Its duration is indispensably and necessarily determined by the marriage that created it. Thus, it exists only for so long as the marriage subsists, such that the death of a spouse *ipso facto* ends the relationship by affinity of the surviving spouse to the deceased spouse's blood relatives. The first view admits of an exception. The relationship by affinity continues even after the death of one spouse when there is a surviving issue. The rationale is that the relationship is preserved because of the living issue of the marriage in whose veins the blood of both parties is commingled. The second view (the continuing affinity view) maintains that relationship by affinity between the surviving spouse and the kindred of the deceased spouse continues even after the death of the deceased spouse, regardless of whether the marriage produced children or not. Under this view, the relationship by affinity endures even after the dissolution of the marriage that produced it as a result of the death of one of the parties to the said marriage. This view considers that, where statutes have indicated an intent to benefit step-relatives or in-laws, the "tie of affinity" between

these people and their relatives-by-marriage is not to be regarded as terminated upon the death of one of the married parties.

3. ID.; ID.; ID.; ID.; RELATIONSHIP BY AFFINITY CREATED BETWEEN THE SURVIVING SPOUSE AND THE BLOOD RELATIVES OF THE DECEASED SPOUSE SURVIVES THE DEATH OF EITHER PARTY TO THE MARRIAGE; CONTINUING AFFINITY VIEW, ADOPTED. — xxx After due consideration and evaluation of the relative merits of the two views, we hold that the second view is more consistent with the language and spirit of Article 332(1) of the Revised Penal Code. First, the terminated affinity view is generally applied in cases of jury disqualification and incest. On the other hand, the continuing affinity view has been applied in the interpretation of laws that intend to benefit step-relatives or in-laws. Since the purpose of the absolutory cause in Article 332(1) is meant to be beneficial to relatives by affinity within the degree covered under the said provision, the continuing affinity view is more appropriate. Second, the language of Article 332(1) which speaks of "*relatives by affinity in the same line*" is couched in general language. The legislative intent to make no distinction between the spouse of one's living child and the surviving spouse of one's deceased child (in case of a son-in-law or daughter-in-law with respect to his or her parents-in-law) can be drawn from Article 332(1) of the Revised Penal Code without doing violence to its language. Third, the Constitution declares that the protection and strengthening of the family as a basic autonomous social institution are policies of the State and that it is the duty of the State to strengthen the solidarity of the family. Congress has also affirmed as a State and national policy that courts shall preserve the solidarity of the family. In this connection, the spirit of Article 332 is to preserve family harmony and obviate scandal. The view that relationship by affinity is not affected by the death of one of the parties to the marriage that created it is more in accord with family solidarity and harmony. Fourth, the fundamental principle in applying and in interpreting criminal laws is to resolve all doubts in favor of the accused. *In dubio pro reo*. When in doubt, rule for the accused. This is in consonance with the constitutional guarantee that the accused shall be presumed innocent unless and until his guilt is established beyond reasonable doubt. Intimately related to the

in dubio pro reo principle is the rule of lenity. The rule applies when the court is faced with two possible interpretations of a penal statute, one that is prejudicial to the accused and another that is favorable to him. The rule calls for the adoption of an interpretation which is more lenient to the accused. Lenity becomes all the more appropriate when this case is viewed through the lens of the basic purpose of Article 332 of the Revised Penal Code to preserve family harmony by providing an absolutory cause. Since the goal of Article 332(1) is to benefit the accused, the Court should adopt an application or interpretation that is more favorable to the accused. In this case, that interpretation is the continuing affinity view. Thus, for purposes of Article 332(1) of the Revised Penal Code, we hold that the relationship by affinity created between the surviving spouse and the blood relatives of the deceased spouse survives the death of either party to the marriage which created the affinity.

4. ID.; ID.; ID.; SCOPE. — The absolutory cause under Article 332 of the Revised Penal Code only applies to the felonies of theft, swindling and malicious mischief. Under the said provision, the State condones the criminal responsibility of the offender in cases of theft, swindling and malicious mischief. As an act of grace, the State waives its right to prosecute the offender for the said crimes but leaves the private offended party with the option to hold the offender civilly liable. However, the coverage of Article 332 is strictly limited to the felonies mentioned therein. The plain, categorical and unmistakable language of the provision shows that it applies exclusively to the simple crimes of theft, swindling and malicious mischief. It does not apply where any of the crimes mentioned under Article 332 is complexed with another crime, such as theft through falsification or estafa through falsification.

5. REMEDIAL LAW; CRIMINAL PROCEDURE; INFORMATION; REAL NATURE OF THE OFFENSE IS DETERMINED BY THE FACTS ALLEGED IN THE INFORMATION, NOT BY THE DESIGNATION OF THE OFFENSE; THE PROSECUTOR'S DETERMINATION OF THE CRIME COMMITTED, NOT BINDING ON THE COURT. — The Information against Sato charges him with estafa. However, the real nature of the offense is determined by the facts alleged in the Information, not by the designation of the offense. What controls is not the title

of the Information or the designation of the offense but the actual facts recited in the Information. In other words, it is the recital of facts of the commission of the offense, not the nomenclature of the offense, that determines the crime being charged in the Information. It is the exclusive province of the court to say what the crime is or what it is named. The determination by the prosecutor who signs the Information of the crime committed is merely an opinion which is not binding on the court.

6. CRIMINAL LAW; ABSOLUTORY CAUSE; ARTICLE 332 OF THE REVISED PENAL CODE; CANNOT BE AVAILED OF WHEN ANY OF THE CRIMES MENTIONED THEREIN IS COMPLEXED WITH ANOTHER CRIME. — A reading of the facts alleged in the Information reveals that Sato is being charged not with simple estafa but with the *complex crime of estafa through falsification of public documents.* xxx [T]he allegations in the Information essentially charged a crime that was not simple estafa. Sato resorted to falsification of public documents (particularly, the special power of attorney and the deeds of sale) as a necessary means to commit the estafa. Since the crime with which respondent was charged was not simple estafa but the complex crime of estafa through falsification of public documents, Sato cannot avail himself of the absolutory cause provided under Article 332 of the Revised Penal Code in his favor.

7. ID.; ID.; ID.; CONSTRUED; COMPLEX CRIME OF ESTAFA THROUGH FALSIFICATION OF PUBLIC DOCUMENTS IS NOT COVERED BY THE WAIVER. — The question may be asked: if the accused may not be held criminally liable for simple estafa by virtue of the absolutory cause under Article 332 of the Revised Penal Code, should he not be absolved also from criminal liability for the complex crime of estafa through falsification of public documents? No. True, the concurrence of all the elements of the two crimes of estafa and falsification of public document is required for a proper conviction for the complex crime of estafa through falsification of public document. That is the ruling in *Gonzaludo v. People*. It means that the prosecution must establish that the accused resorted to the falsification of a public document as a necessary means to commit the crime of estafa. However, a proper

appreciation of the scope and application of Article 332 of the Revised Penal Code and of the nature of a complex crime would negate exemption from criminal liability for the complex crime of estafa through falsification of public documents, simply because the accused may not be held criminally liable for simple estafa by virtue of the absolutory cause under Article 332. The absolutory cause under Article 332 is meant to address specific crimes against property, namely, the simple crimes of theft, swindling and malicious mischief. Thus, **all other crimes, whether simple or complex, are not affected by the absolutory cause provided by the said provision**. To apply the absolutory cause under Article 332 of the Revised Penal Code to one of the component crimes of a complex crime for the purpose of negating the existence of that complex crime is to unduly expand the scope of Article 332. In other words, to apply Article 332 to the complex crime of estafa through falsification of public document would be to mistakenly treat the crime of estafa as a separate simple crime, not as the component crime that it is in that situation. It would wrongly consider the indictment as separate charges of estafa and falsification of public document, not as a single charge for the single (complex) crime of estafa through falsification of public document.

8. ID.; ID.; ID.; DOES NOT APPLY WHEN THE VIOLATION OF THE RIGHT TO PROPERTY IS ACHIEVED THROUGH A BREACH OF THE PUBLIC INTEREST IN THE INTEGRITY AND PRESUMED AUTHENTICITY OF PUBLIC DOCUMENTS. — Under Article 332 of the Revised Penal Code, the State waives its right to hold the offender criminally liable for the simple crimes of theft, swindling and malicious mischief and considers the violation of the juridical right to property committed by the offender against certain family members as a private matter and therefore subject only to civil liability. The waiver does not apply when the violation of the right to property is achieved through (and therefore inseparably intertwined with) a breach of the public interest in the integrity and presumed authenticity of public documents. **For, in the latter instance, what is involved is no longer simply the property right of a family relation but a paramount public interest**.

9. ID.; ID.; ID.; PURPOSE; OFFENDER IS REMOVED FROM THE PROTECTIVE MANTLE THEREOF WHEN HE RESORTS TO AN ACT THAT BREACHES PUBLIC INTEREST IN THE INTEGRITY OF PUBLIC DOCUMENTS AS A MEANS TO VIOLATE THE PROPERTY RIGHTS OF A FAMILY MEMBER. — The purpose of Article 332 is to preserve family harmony and obviate scandal. Thus, the action provided under the said provision simply concerns the private relations of the parties as family members and is limited to the civil aspect between the offender and the offended party. When estafa is committed through falsification of a public document, however, the matter acquires a very serious public dimension and goes beyond the respective rights and liabilities of family members among themselves. Effectively, when the offender resorts to an act that breaches public interest in the integrity of public documents as a means to violate the property rights of a family member, he is removed from the protective mantle of the absolutory cause under Article 332.

10. ID.; COMPLEX CRIME; CONCEPT; FORMAL PLURALITY AND MATERIAL PLURALITY OF CRIMES, DISTINGUISHED. — In considering whether the accused is liable for the complex crime of estafa through falsification of public documents, it would be wrong to consider the component crimes separately from each other. **While there may be two component crimes** (estafa and falsification of documents), both felonies are animated by and result from one and the same criminal intent for which **there is only one criminal liability**. That is the concept of a complex crime. In other words, while there are two crimes, **they are treated only as one, subject to a single criminal liability**. As opposed to a simple crime where only one juridical right or interest is violated (*e.g.*, homicide which violates the right to life, theft which violates the right to property), a complex crime constitutes a violation of diverse juridical rights or interests by means of diverse acts, each of which is a simple crime in itself. Since only a single criminal intent underlies the diverse acts, however, the component crimes are considered as elements of a single crime, the complex crime. This is the correct interpretation of a complex crime as treated under Article 48 of the Revised Penal Code. In the case of a complex crime, therefore, there is a formal (or ideal) plurality of crimes where

the same criminal intent results in two or more component crimes constituting a complex crime for which there is only one criminal liability. (The complex crime of estafa through falsification of public document falls under this category.) This is different from a material (or real) plurality of crimes where different criminal intents result in two or more crimes, for each of which the accused incurs criminal liability. The latter category is covered neither by the concept of complex crimes nor by Article 48.

11. ID.; ID.; FORMAL PLURALITY OF CRIMES, ELABORATED; APPLICATION IN THE COMPLEX CRIME OF ESTAFA THROUGH FALSIFICATION OF PUBLIC DOCUMENT. — Under Article 48 of the Revised Penal Code, the formal plurality of crimes (*concursus delictuorum* or *concurso de delitos*) gives rise to a single criminal liability and requires the imposition of a single penalty: Although [a] complex crime quantitatively consists of two or more crimes, **it is only one crime in law** on which a single penalty is imposed and the two or more crimes constituting the same are more conveniently termed as component crimes. x x x x x x x x x In [a] complex crime, although two or more crimes are actually committed, they constitute only *one* crime in the eyes of the law as well as in the conscience of the offender. The offender has *only one* criminal intent. Even in the case where an offense is a necessary means for committing the other, the evil intent of the offender is only one. For this reason, while a conviction for estafa through falsification of public document requires that the elements of both estafa and falsification exist, it does not mean that the criminal liability for estafa may be determined and considered independently of that for falsification. **The two crimes of estafa and falsification of public documents are not separate crimes but component crimes of the single complex crime of estafa and falsification of public documents**. Therefore, it would be incorrect to claim that, to be criminally liable for the complex crime of estafa through falsification of public document, the liability for estafa should be considered separately from the liability for falsification of public document. Such approach would disregard the nature of a complex crime and contradict the letter and spirit of Article 48 of the Revised Penal Code. It would wrongly disregard the distinction between formal plurality and material plurality, as it improperly treats the plurality of

crimes in the complex crime of estafa through falsification of public document as a mere material plurality where the felonies are considered as separate crimes to be punished individually.

12. ID.; ESTAFA UNDER ARTICLE 315 (3[A]) OF THE REVISED PENAL CODE; ELEMENTS. — The elements of the offense of estafa punished under Article 315 (3[a]) of the Revised Penal Code are as follows: (1) the offender induced the offended party to sign a document; (2) deceit was employed to make the offended party sign the document; (3) the offended party personally signed the document and (4) prejudice is caused to the offended party.

13. ID.; ESTAFA THROUGH FALSIFICATION OF PUBLIC DOCUMENT; PHRASE "NECESSARY MEANS," CONSTRUED. — While in estafa under Article 315(a) of the Revised Penal Code, the law does not require that the document be falsified for the consummation thereof, it does not mean that the falsification of the document cannot be considered as a necessary means to commit the estafa under that provision. The phrase "necessary means" does not connote indispensable means for if it did, then the offense as a "necessary means" to commit another would be an indispensable element of the latter and would be an ingredient thereof. In *People v. Salvilla*, the phrase "necessary means" merely signifies that one crime is committed to facilitate and insure the commission of the other. In this case, the crime of falsification of public document, the SPA, was such a "necessary means" as it was resorted to by Sato to facilitate and carry out more effectively his evil design to swindle his mother-in-law. In particular, he used the SPA to sell the Tagaytay properties of Manolita to unsuspecting third persons.

14. ID.; ID.; CRIME OF FALSIFICATION WAS COMMITTED PRIOR TO THE CONSUMMATION OF THE CRIME OF ESTAFA; DAMAGE TO ANOTHER IS CAUSED BY THE COMMISSION OF ESTAFA, NOT BY THE FALSIFICATION OF THE DOCUMENT. — When the offender commits in a public document any of the acts of falsification enumerated in Article 171 of the Revised Penal Code as a necessary means to commit another crime, like estafa, theft or malversation, the two crimes form a complex crime under Article 48 of the same Code. The falsification of a public, official or

commercial document may be a means of committing estafa because, **before the falsified document is actually utilized to defraud another, the crime of falsification has already been consummated**, damage or intent to cause damage not being an element of the crime of falsification of a public, official or commercial document. In other words, the crime of falsification was committed **prior** to the consummation of the crime of estafa. Actually utilizing the falsified public, official or commercial document to defraud another is estafa. The damage to another is caused by the commission of estafa, not by the falsification of the document.

15. ID.; ID.; ID.; DAMAGE OR PREJUDICE TO THE OFFENDED PARTY WAS CAUSED NOT BY THE FALSIFICATION BUT BY THE SUBSEQUENT USE OF THE FALSIFIED DOCUMENT. — [T]he allegations in the Information show that the falsification of public document was consummated when Sato presented a ready-made SPA to Manolita who signed the same as a statement of her intention in connection with her taxes. While the falsification was consummated upon the execution of the SPA, the consummation of the estafa occurred only when Sato later utilized the SPA. He did so particularly when he had the properties sold and thereafter pocketed the proceeds of the sale. Damage or prejudice to Manolita was caused not by the falsification of the SPA (as no damage was yet caused to the property rights of Manolita at the time she was made to sign the document) but by the subsequent use of the said document. That is why the falsification of the public document was used to facilitate and ensure (that is, as a necessary means for) the commission of the estafa. The situation would have been different if Sato, using the same inducement, had made Manolita sign a deed of sale of the properties either in his favor or in favor of third parties. In that case, the damage would have been caused by, and at exactly the same time as, the execution of the document, not prior thereto. Therefore, the crime committed would only have been the simple crime of estafa. On the other hand, absent any inducement (such as if Manolita herself had been the one who asked that a document pertaining to her taxes be prepared for her signature, but what was presented to her for her signature was an SPA), the crime would have only been the simple crime of falsification.

APPEARANCES OF COUNSEL

Franco L. Loyola for petitioner.
The Solicitor General for public respondent.
Agabin Verzola & Layaoen Law Offices for private respondent.

D E C I S I O N

CORONA, *J.*:

Article 332 of the Revised Penal Code provides:

ART. 332. *Persons exempt from criminal liability.* – No criminal, but only civil liability shall result from the commission of the crime of theft, swindling, or malicious mischief committed or caused mutually by the following persons:

1. Spouses, ascendants and descendants, or **relatives by affinity in the same line**;
2. The widowed spouse with respect to the property which belonged to the deceased spouse before the same shall have passed into the possession of another; and
3. Brothers and sisters and brothers-in-law and sisters-in-law, if living together.

The exemption established by this article shall not be applicable to strangers participating in the commission of the crime. (emphasis supplied)

For purposes of the aforementioned provision, is the relationship by affinity created between the husband and the blood relatives of his wife (as well as between the wife and the blood relatives of her husband) dissolved by the death of one spouse, thus ending the marriage which created such relationship by affinity? Does the beneficial application of Article 332 cover the complex crime of estafa thru falsification?

Mediatrix G. Carungcong, in her capacity as the duly appointed administratrix[1] of petitioner intestate estate of her deceased mother

[1] Per letters of administration dated June 22, 1995 issued by the Regional

Manolita Gonzales *vda*. *de* Carungcong, filed a complaint-affidavit[2] for estafa against her brother-in-law, William Sato, a Japanese national. Her complaint-affidavit read:

I, MEDIATRIX CARUNGCONG *Y* GONZALE[S], Filipino, of legal age, single, and resident of Unit 1111, Prince Gregory Condominium, 105 12th Avenue, Cubao, Quezon City, after being duly sworn, depose and state that:

1. I am the duly appointed Administratrix of the Intestate Estate of Manolita Carungcong *Y* Gonzale[s], docketed as Spec. Procs. No. [Q]-95-23621[,] Regional Trial Court of Quezon City, Branch 104, being one (1) of her surviving daughters. Copy of the Letters of Administration dated June 22, 1995 is hereto attached as Annex "A" to form an integral part hereof.

2. As such Administratrix, I am duty bound not only to preserve the properties of the Intestate Estate of Manolita Carungcong *Y* Gonzale[s], but also to recover such funds and/or properties as property belonging to the estate but are presently in the possession or control of other parties.

3. After my appointment as Administratrix, I was able to confer with some of the children of my sister Zenaida Carungcong Sato[,] who predeceased our mother Manolita Carungcong *Y* Gonzales, having died in Japan in 1991.

4. In my conference with my nieces Karen Rose Sato and Wendy Mitsuko Sato, age[d] 27 and 24 respectively, I was able to learn that prior to the death of my mother Manolita Carungcong *Y* Gonzale[s], [s]pecifically on o[r] about November 24, 1992, their father William Sato, through fraudulent misrepresentations, was able to secure the signature and thumbmark of my mother on a Special Power of Attorney whereby my niece Wendy Mitsuko Sato, who was then only twenty (20) years old, was made her attorney-in-fact, to sell and dispose four (4) valuable pieces of land in Tagaytay City. Said Special Power of Attorney, copy of which is attached as ANNEX "A" of the Affidavit of Wendy Mitsuko Sato, was signed and thumbmark[ed] by my mother because William Sato told her that the documents she was being made to sign involved her taxes. At

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Trial Court of Quezon City, Branch 104 in SP. Proc. Q-95-23621.

[2] Docketed as I.S. No. 96-19651. *Rollo*, pp. 89-90.

that time, my mother was completely blind, having gone blind almost ten (10) years prior to November, 1992.

5. The aforesaid Special Power of Attorney was signed by my mother in the presence of Wendy, my other niece Belinda Kiku Sato, our maid Mana Tingzon, and Governor Josephine Ramirez who later became the second wife of my sister's widower William Sato.

6. Wendy Mitsuko Sato attests to the fact that my mother signed the document in the belief that they were in connection with her taxes, not knowing, since she was blind, that the same was in fact a Special Power of Attorney to sell her Tagaytay properties.

7. On the basis of the aforesaid Special Power of Attorney, William Sato found buyers for the property and made my niece Wendy Mitsuko Sato sign three (3) deeds of absolute sale in favor of (a) Anita Ng (Doc. 2194, Page No. 41, Book No. V, Series of 1992 of Notary Public Vicente B. Custodio), (b) Anita Ng (Doc. No. 2331, Page No. 68, Book No. V, Series of 1992 of Notary Public Vicente B. Custodio) and (c) Ruby Lee Tsai (Doc. No. II, Page No. 65, Book No. II, Series of 1993 of Notary Public Toribio D. Labid). x x x

8. Per the statement of Wendy Mitsuko C. Sato, the considerations appearing on the deeds of absolute sale were not the true and actual considerations received by her father William Sato from the buyers of her grandmother's properties. She attests that Anita Ng actually paid ₱7,000,000.00 for the property covered by TCT No. 3148 and ₱7,034,000.00 for the property covered by TCT No. 3149. All the aforesaid proceeds were turned over to William Sato who undertook to make the proper accounting thereof to my mother, Manolita Carungcong Gonzale[s].

9. Again, per the statement of Wendy Mitsuko C. Sato, Ruby Lee Tsai paid ₱8,000,000.00 for the property covered by Tax Declaration No. GR-016-0735, and the proceeds thereof were likewise turned over to William Sato.

10. The considerations appearing on the deeds of sale were falsified as Wendy Mitsuko C. Sato has actual knowledge of the true amounts paid by the buyers, as stated in her Affidavit, since she was the signatory thereto as the attorney-in-fact of Manolita Carungcong *Y* Gonzale[s].

11. Wendy was only 20 years old at the time and was not in any position to oppose or to refuse her father's orders.

12. After receiving the total considerations for the properties sold under the power of attorney fraudulently secured from my mother, which total ₱22,034,000.00, William Sato failed to account for the same and never delivered the proceeds to Manolita Carungcong *Y* Gonzale[s] until the latter died on June 8, 1994.

13. Demands have been made for William Sato to make an accounting and to deliver the proceeds of the sales to me as Administratrix of my mother's estate, but he refused and failed, and continues to refuse and to fail to do so, to the damage and prejudice of the estate of the deceased Manolita Carungcong *Y* Gonzale[s] and of the heirs which include his six (6) children with my sister Zenaida Carungcong Sato. x x x[3]

Wendy Mitsuko Sato's supporting affidavit and the special power of attorney allegedly issued by the deceased Manolita Gonzales *vda. de* Carungcong in favor of Wendy were attached to the complaint-affidavit of Mediatrix.

In a resolution dated March 25, 1997, the City Prosecutor of Quezon City dismissed the complaint.[4] On appeal, however, the Secretary of Justice reversed and set aside the resolution dated March 25, 1997 and directed the City Prosecutor of Quezon City to file an Information against Sato for violation of Article 315, paragraph 3(a) of the Revised Penal Code.[5] Thus, the following Information was filed against Sato in the Regional Trial Court of Quezon City, Branch 87:[6]

INFORMATION

The undersigned accuses WILLIAM SATO of the crime of ESTAFA under Article 315[,] par. 3(a) of the Revised Penal Code, committed as follows:

That on or about the 24th day of November, 1992, in Quezon City, Philippines, the above-named accused, by means of deceit, did, then

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[3] *Id.*

[4] *Id.*, pp. 85-88.

[5] Resolution No. 313, s. 2000 dated February 17, 2000. *Id.*, pp. 81-84.

[6] Docketed as Criminal Case No. Q-00-91385. *Id.*, pp. 91-92.

and there, wil[l]fully, unlawfully and feloniously defraud MANOLITA GONZALES *VDA. DE* CARUNGCONG in the following manner, to wit: the said accused induced said Manolita Gonzales *Vda. De* Carungcong[,] who was already then blind and 79 years old[,] to sign and thumbmark a special power of attorney dated November 24, 1992 in favor of Wendy Mitsuko C. Sato, daughter of said accused, making her believe that said document involved only her taxes, accused knowing fully well that said document authorizes Wendy Mitsuko C. Sato, then a minor, to sell, assign, transfer or otherwise dispose of to any person or entity of her properties all located at Tagaytay City, as follows:

1. One Thousand Eight Hundred Seven(ty) One (1,871) square meters more or less and covered by T.C.T. No. 3147;
2. Five Hundred Forty (540) square meters more or less and covered by T.C.T. No. 3148 with Tax Declaration No. GR-016-0722, Cadastral Lot No. 7106;
3. Five Hundred Forty (540) square meters more or less and covered by T.C.T. No. 3149 with Tax Declaration No. GR-016-0721, Cadastral Lot No. 7104;
4. Eight Hundred Eighty Eight (888) square meters more or less with Tax Declaration No. GR-016-1735, Cadastral Lot No. 7062;

registered in the name of Manolita Gonzales *Vda. De* Carungcong, and once in the possession of the said special power of attorney and other pertinent documents, said accused made Wendy Mitsuko Sato sign the three (3) Deeds of Absolute Sale covering Transfer Certificate of Title [TCT] No. 3148 for ₱250,000.00, [TCT] No. 3149 for ₱250,000.00 and [Tax Declaration] GR-016-0735 for ₱650,000.00 and once in possession of the proceeds of the sale of the above properties, said accused, misapplied, misappropriated and converted the same to his own personal use and benefit, to the damage and prejudice of the heirs of Manolita Gonzales *Vda. De* Carungcong who died in 1994.

Contrary to law.[7]

Subsequently, the prosecution moved for the amendment of the Information so as to increase the amount of damages from ₱1,150,000, the total amount stated in the deeds of sale, to ₱22,034,000, the actual amount received by Sato.

[7] *Id.*

Sato moved for the quashal of the Information, claiming that under Article 332 of the Revised Penal Code, his relationship to the person allegedly defrauded, the deceased Manolita who was his mother-in-law, was an exempting circumstance.

The prosecution disputed Sato's motion in an opposition dated March 29, 2006.

In an order dated April 17, 2006,[8] the trial court granted Sato's motion and ordered the dismissal of the criminal case:

> The Trial Prosecutor's contention is that the death of the wife of the accused severed the relationship of affinity between accused and his mother-in-law. Therefore, the mantle of protection provided to the accused by the relationship is no longer obtaining.
>
> A judicious and thorough examination of Article 332 of the Revised Penal Code convinces this Court of the correctness of the contention of the [d]efense. While it is true that the death of Zenaida Carungcong-Sato has extinguished the marriage of accused with her, it does not erase the fact that accused and Zenaida's mother, herein complainant, are still son[-in-law] and mother-in-law and they remained son[-in-law] and mother-in-law even beyond the death of Zenaida.
>
> Article 332(1) of the Revised Penal Code, is very explicit and states *no proviso*. "No criminal, but only civil liability[,] shall result from the commission of the crime of theft, swindling or malicious mischief committed or caused mutually by xxx 1) spouses, ascendants and descendants, or relatives by affinity in the same line."
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> Article 332, according to Aquino, in his Commentaries [to] Revised Penal Code, preserves family harmony and obviates scandal, hence even in cases of theft and malicious mischief, where the crime is committed by a stepfather against his stepson, by a grandson against his grandfather, by a son against his mother, no criminal liability is incurred by the accused only civil (*Vicente Alavare*, 52 Phil. 65; *Adame*, CA 40 OG 12th Supp. 63; *Cristoba*l, 84 Phil. 473).
>
> Such exempting circumstance is applicable herein.
>
> WHEREFORE, finding the Motion to Quash Original Information meritorious, the same is GRANTED and, as prayed for, case is hereby DISMISSED.

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[8] Penned by Judge Fatima Gonzales-Asdala. *Id.*, pp. 126-129.

SO ORDERED.[9] (underlining supplied in the original)

The prosecution's motion for reconsideration[10] was denied in an order dated June 2, 2006.[11]

Dissatisfied with the trial court's rulings, the intestate estate of Manolita, represented by Mediatrix, filed a petition for *certiorari* in the Court of Appeals[12] which, however, in a decision[13] dated August 9, 2007, dismissed it. It ruled:

> [W]e sustain the finding of [the trial court] that the death of Zenaida did not extinguish the relationship by affinity between her husband, private respondent Sato, and her mother Manolita, and does not bar the application of the exempting circumstance under Article 332(1) of the Revised Penal Code in favor of private respondent Sato.
>
> We further agree with the submission of the [Office of the Solicitor General (OSG)] that nothing in the law and/or existing jurisprudence supports the argument of petitioner that the fact of death of Zenaida dissolved the relationship by affinity between Manolita and private respondent Sato, and thus removed the protective mantle of Article 332 of the Revised Penal Code from said private respondent; and that notwithstanding the death of Zenaida, private respondent Sato remains to be the son-in-law of Manolita, and a brother-in-law of petitioner administratrix. As further pointed out by the OSG, the filing of the criminal case for estafa against private respondent Sato already created havoc among members of the Carungcong and Sato families as private respondent's daughter Wendy Mitsuko Sato joined cause with her aunt [Mediatrix] Carungcong *y* Gonzales, while two (2) other children of private respondent, William Francis and Belinda Sato, took the side of their father.
>
> There is a dearth of jurisprudence and/or commentaries elaborating on the provision of Article 332 of the Revised Penal Code. However, from the plain language of the law, it is clear that the exemption

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[9] *Id.*

[10] Dated April 26, 2006. *Id.*, pp. 130-131.

[11] *Id.*, p. 131.

[12] Docketed as CA-G.R. S.P. No. 95260.

[13] Penned by Associate Justice Celia C. Librea-Leagogo and concurred in by Associate Justices Regalado E. Maambong (retired) and Sixto C. Marella, Jr. of the Seventeenth Division of the Court of Appeals. *Rollo*, pp. 28-40.

from criminal liability for the crime of swindling (estafa) under Article 315 of the Revised Penal Code applies to private respondent Sato, as son-in-law of Manolita, they being "relatives by affinity in the same line" under Article 332(1) of the same Code. We cannot draw the distinction that following the death of Zenaida in 1991, private respondent Sato is no longer the son-in-law of Manolita, so as to exclude the former from the exempting circumstance provided for in Article 332 (1) of the Revised Penal Code.

Ubi lex non distinguit nec nos distinguere debemos. Basic is the rule in statutory construction that where the law does not distinguish, the courts should not distinguish. There should be no distinction in the application of law where none is indicated. The courts could only distinguish where there are facts or circumstances showing that the lawgiver intended a distinction or qualification. In such a case, the courts would merely give effect to the lawgiver's intent. The solemn power and duty of the Court to interpret and apply the law does not include the power to correct by reading into the law what is not written therein.

Further, it is an established principle of statutory construction that penal laws are strictly construed against the State and liberally in favor of the accused. Any reasonable doubt must be resolved in favor of the accused. In this case, the plain meaning of Article 332 (1) of the Revised Penal Code's simple language is most favorable to Sato.[14]

The appellate court denied reconsideration.[15] Hence, this petition.

Petitioner contends that the Court of Appeals erred in not reversing the orders of the trial court. It cites the commentary of Justice Luis B. Reyes in his book on criminal law that the rationale of Article 332 of the Revised Penal Code exempting the persons mentioned therein from criminal liability is that **the law recognizes the presumed co-ownership of the property between the offender and the offended party**. Here, the properties subject of the estafa case were owned by Manolita whose daughter, Zenaida Carungcong-Sato (Sato's wife), died on January 28, 1991. Hence, **Zenaida never became a co-owner because, under the law, her right to the three parcels**

[14] *Id.*

[15] *Id.*, pp. 42-43.

of land could have arisen only after her mother's death. Since Zenaida *predeceased* her mother, Manolita, no such right came about and the mantle of protection provided to Sato by the relationship no longer existed.

Sato counters that Article 332 makes no distinction that the relationship may not be invoked in case of death of the spouse at the time the crime was allegedly committed. Thus, while the death of Zenaida extinguished her marriage with Sato, it did not dissolve the son-in-law and mother-in-law relationship between Sato and Zenaida's mother, Manolita.

For his part, the Solicitor General maintains that Sato is covered by the exemption from criminal liability provided under Article 332. Nothing in the law and jurisprudence supports petitioner's claim that Zenaida's death dissolved the relationship by affinity between Sato and Manolita. As it is, the criminal case against Sato created havoc among the members of the Carungcong and Sato families, a situation sought to be particularly avoided by Article 332's provision exempting a family member committing theft, estafa or malicious mischief from criminal liability and reducing his/her liability to the civil aspect only.

The petition has merit.

The resolution of this case rests on the interpretation of Article 332 of the Revised Penal Code. In particular, it calls for the determination of the following: (1) the effect of death on the relationship by affinity created between a surviving spouse and the blood relatives of the deceased spouse and (2) the extent of the coverage of Article 332.

EFFECT OF DEATH ON RELATIONSHIP BY AFFINITY AS ABSOLUTORY CAUSE

Article 332 provides for an absolutory cause[16] in the crimes of theft, estafa (or swindling) and malicious mischief. It

[16] An absolutory cause is a circumstance which is present prior to or simultaneously with the offense by reason of which the accused who acts with criminal intent, freedom and intelligence does not incur criminal liability

limits the responsibility of the offender to civil liability and frees him from criminal liability by virtue of his relationship to the offended party.

In connection with the relatives mentioned in the first paragraph, it has been held that included in the exemptions are parents-in-law, stepparents and adopted children.[17] By virtue thereof, no criminal liability is incurred by the stepfather who commits malicious mischief against his stepson;[18] by the stepmother who commits theft against her stepson;[19] by the stepfather who steals something from his stepson;[20] by the grandson who steals from his grandfather;[21] by the accused who swindles his sister-in-law living with him;[22] and by the son who steals a ring from his mother.[23]

Affinity is the relation that one spouse has to the blood relatives of the other spouse. It is a relationship by marriage or a familial relation resulting from marriage.[24] It is a fictive kinship, a fiction created by law in connection with the institution of marriage and family relations.

If marriage gives rise to one's relationship by affinity to the blood relatives of one's spouse, does the extinguishment of marriage by the death of the spouse dissolve the relationship by affinity?

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for an act that constitutes a crime (Regalado, Florenz, *CRIMINAL LAW CONSPECTUS,* Third Edition, 61-62 [2007]).

[17] *Id.*, p. 736.

[18] *People v. Alvarez*, 52 Phil. 65 (1928).

[19] Aquino, Ramon and Carolina Griño Aquino, *THE REVISED PENAL CODE*, Volume III, 374 (1997), citing *People v. Adame*, CA 40 O.G. Supp. No. 12, p. 63.

[20] *Id.* citing *People v. Tupasi*, 36 O.G. 2086.

[21] *Id.* citing *People v. Patubo*, CA-G.R. No. 10616-R, 15 August 1953.

[22] *Id.* citing *People v. Navas*, CA 51 O.G. 219.

[23] *Id.* citing *People v. Cristobal*, 84 Phil. 473 (1949).

[24] *Blodget v. Brinsmaid*, 9 Vt. 27, 1837 WL 1956 (Vt.).

Philippine jurisprudence has no previous encounter with the issue that confronts us in this case. That is why the trial and appellate courts acknowledged the "dearth of jurisprudence and/or commentaries" on the matter. In contrast, in the American legal system, there are two views on the subject. As one Filipino author observed:

> In case a marriage is terminated by the death of one of the spouses, there are conflicting views. There are some who believe that relationship by affinity is not terminated whether there are children or not in the marriage (Carman vs. Newell, *N.Y.* 1 [Denio] 25, 26). However, the better view supported by most judicial authorities in other jurisdictions is that, if the spouses have no living issues or children and one of the spouses dies, the relationship by affinity is dissolved. It follows the rule that relationship by affinity ceases with the dissolution of the marriage which produces it (Kelly v. Neely, 12 Ark. 657, 659, 56 Am Dec. 288). On the other hand, the relationship by affinity is continued despite the death of one of the spouses where there are living issues or children of the marriage "in whose veins the blood of the parties are commingled, since the relationship of affinity was continued through the medium of the issue of the marriage" (Paddock vs. Wells, 2 Barb. Ch. 331, 333).[25]

The first view (the terminated affinity view) holds that relationship by affinity terminates with the dissolution of the marriage either by death or divorce which gave rise to the relationship of affinity between the parties.[26] Under this view, the relationship by affinity is simply coextensive and coexistent with the marriage that produced it. Its duration is indispensably and necessarily determined by the marriage that created it. Thus, it exists only for so long as the marriage subsists, such

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[25] Sta. Maria, Melencio, *PERSONS AND FAMILY RELATIONS LAW*, Fourth Edition, 228-229 (2004).

[26] *Back v. Back*, L.R.A. 1916C,752, 148 Iowa 223, 125 N.W. 1009, Am.Ann.Cas. 1912B, 1025 citing *Blodget v. Brinsmaid*, 9 Vt. 27; *Noble v. State*, 22 Ohio St. 541; *State v. Brown*, 47 Ohio St. 102, 23 N. E. 747, 21 Am. St. Rep. 790; *Wilson v. State*, 100 Tenn. 596, 46 S. W. 451, 66 Am. St. Rep. 789; *Johnson v. State*, 20 Tex. App. 609, 54 Am. Rep. 535; *Pegues v. Baker*, 110 Ala. 251, 17 South. 943; *Tagert v. State*, 143 Ala. 88, 39 South. 293, 111 Am. St. Rep. 17; *Bigelow v. Sprague*, 140 Mass. 425, 5 N. E. 144; *Vannoy v. Givens*, 23 N. J. Law, 201; 1 Bishop, New Crim. Procedure, § 901; 26 Cyc. 845.

that the death of a spouse *ipso facto* ends the relationship by affinity of the surviving spouse to the deceased spouse's blood relatives.

The first view admits of an exception. The relationship by affinity continues even after the death of one spouse when there is a surviving issue.[27] The rationale is that the relationship is preserved because of the living issue of the marriage in whose veins the blood of both parties is commingled.[28]

The second view (the continuing affinity view) maintains that relationship by affinity between the surviving spouse and the kindred of the deceased spouse continues even after the death of the deceased spouse, regardless of whether the marriage produced children or not.[29] Under this view, the relationship by affinity endures even after the dissolution of the marriage that produced it as a result of the death of one of the parties to the said marriage. This view considers that, where statutes have indicated an intent to benefit step-relatives or in-laws, the "tie of affinity" between these people and their relatives-by-marriage is not to be regarded as terminated upon the death of one of the married parties.[30]

After due consideration and evaluation of the relative merits of the two views, we hold that the second view is more consistent with the language and spirit of Article 332(1) of the Revised Penal Code.

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[27] In this connection, one of the commentators on the Revised Penal Code wrote:

Death of the spouse terminates the relationship by affinity (Kelly v. Neely, 12 Ark. 6[5]7, 659, 56 AmD 288; Chase v. Jennings, 38 Me. 44, 45) unless the *marriage has resulted in issue who is still living*, in which case the relationship of affinity continues (Dearmond v. Dearmond, 10 Ind. 191; Bigelow v. Sprague, 140 Mass. 425, 5 NE 144).

See Reyes, Luis B., *REVISED PENAL CODE*, Book I, Fifteenth Edition Revised 188, (2001).

[28] *In re Bourdeux' Estate*, 37 Wash. 2d 561, 225 P.2d 433, 26 A.L.R. 2d 249.

[29] *Carman v. Newell*, N.Y. 1 Denio 25.

[30] *In re Bourdeux' Estate, supra*. This view has been adopted and applied in *Security Union Casualty Co. v. Kelly*, Tex.Civ.App., 299 S.W.

First, the terminated affinity view is generally applied in cases of jury disqualification and incest.[31] On the other hand, the continuing affinity view has been applied in the interpretation of laws that intend to benefit step-relatives or in-laws. Since the purpose of the absolutory cause in Article 332(1) is meant to be beneficial to relatives by affinity within the degree covered under the said provision, the continuing affinity view is more appropriate.

Second, the language of Article 332(1) which speaks of "*relatives by affinity in the same line*" is couched in general language. The legislative intent to make no distinction between the spouse of one's living child and the surviving spouse of one's deceased child (in case of a son-in-law or daughter-in-law with respect to his or her parents-in-law)[32] can be drawn from Article 332(1) of the Revised Penal Code without doing violence to its language.

Third, the Constitution declares that the protection and strengthening of the family as a basic autonomous social institution are policies of the State and that it is the duty of the State to strengthen the solidarity of the family.[33] Congress has

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286; *American General Insurance Co. v. Richardson*, Tex.Civ.App., 132 S.W.2d 161; *Simcoke v. Grand Lodge of A. O. U. W. of Iowa*, 84 Iowa 383, 51 N.W. 8, 15 L.R.A. 114; *Faxon v. Grand Lodge Brotherhood of Locomotive Firemen and M. E. Rhea*, 87 Ill.App. 262; *McGaughey v. Grand Lodge A. O. U. W. of State of Minnesota*, 148 Minn. 136, 180 N.W. 1001; *Hernandez v. Supreme Forest Woodmen Circle*, Tex.Civ.App., 80 S.W.2d 346; *Renner v. Supreme Lodge of Bohemian Slavonian Benevolent Society*, 89 Wis. 401, 62 N.W. 80 following *Jones v. Mangan*, 151 Wis. 215, 138 N.W. 618; *Steele v. Suwalski*, 7 Cir., 75 F.2d 885, 99 A.L.R. 588; *Benefield v. United States*, D.C., 58 F.Supp. 904; *Lewis v. O'Hair*, Tex.Civ.App., 130 S.W.2d 379.

[31] Indeed, *Kelly v. Neely*, *supra* note 27, *Paddock v. Wells*, 2 Barb. Ch. 331, 333, *Chase v. Jennings*, *supra* note 27, *Dearmond v. Dearmond*, *supra* note 27 and *Bigelow v. Sprague*, *supra* note 27 are all jury disqualification cases.

[32] Or between the child of a living parent and the surviving child of a deceased parent (in case of a stepchild with respect to the stepparent).

[33] Section 12, Article II and Section 1, Article 15.

also affirmed as a State and national policy that courts shall preserve the solidarity of the family.[34] In this connection, the spirit of Article 332 is to preserve family harmony and obviate scandal.[35] The view that relationship by affinity is not affected by the death of one of the parties to the marriage that created it is more in accord with family solidarity and harmony.

Fourth, the fundamental principle in applying and in interpreting criminal laws is to resolve all doubts in favor of the accused. *In dubio pro reo*. When in doubt, rule for the accused.[36] This is in consonance with the constitutional guarantee that the accused shall be presumed innocent unless and until his guilt is established beyond reasonable doubt.[37]

Intimately related to the *in dubio pro reo* principle is the rule of lenity.[38] The rule applies when the court is faced with two possible interpretations of a penal statute, one that is prejudicial to the accused and another that is favorable to him. The rule calls for the adoption of an interpretation which is more lenient to the accused.

Lenity becomes all the more appropriate when this case is viewed through the lens of the basic purpose of Article 332 of the Revised Penal Code to preserve family harmony by providing an absolutory cause. Since the goal of Article 332(1) is to benefit the accused, the Court should adopt an application or interpretation that is more favorable to the accused. In this case, that interpretation is the continuing affinity view.

Thus, for purposes of Article 332(1) of the Revised Penal Code, we hold that the relationship by affinity created between

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[34] Section 2, Republic Act No. 8369 (Family Courts Act of 1997).

[35] Aquino and Griño Aquino, *supra* note 19.

[36] *See* Justice Renato C. Corona's separate (concurring) opinion in *People v. Temporada* (G.R. No. 173473, 17 December 2008, 574 SCRA 258, 318-328).

[37] *See* Section 14 (2), Article III, Constitution.

[38] Justice Corona's separate (concurring) opinion in *People v. Temporada*, *supra*.

the surviving spouse and the blood relatives of the deceased spouse survives the death of either party to the marriage which created the affinity. (The same principle applies to the justifying circumstance of defense of one's relatives under Article 11[2] of the Revised Penal Code, the mitigating circumstance of immediate vindication of grave offense committed against one's relatives under Article 13[5] of the same Code and the absolutory cause of relationship in favor of accessories under Article 20 also of the same Code.)

SCOPE OF ARTICLE 332 OF THE REVISED PENAL CODE

The absolutory cause under Article 332 of the Revised Penal Code only applies to the felonies of theft, swindling and malicious mischief. Under the said provision, the State condones the criminal responsibility of the offender in cases of theft, swindling and malicious mischief. As an act of grace, the State waives its right to prosecute the offender for the said crimes but leaves the private offended party with the option to hold the offender civilly liable.

However, the coverage of Article 332 is strictly limited to the felonies mentioned therein. The plain, categorical and unmistakable language of the provision shows that it applies exclusively to the simple crimes of theft, swindling and malicious mischief. It does not apply where any of the crimes mentioned under Article 332 is complexed with another crime, such as theft through falsification or estafa through falsification.[39]

The Information against Sato charges him with estafa. However, the real nature of the offense is determined by the facts alleged in the Information, not by the designation of the offense.[40] What controls is not the title of the Information or the designation of the offense but the actual facts recited in the Information.[41]

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[39] Regalado, Florenz, *supra* note 16, p. 736.

[40] *Malto v. People*, G.R. No. 164733, 21 September 2007, 533 SCRA 643.

[41] *Id.* citing *People v. Resayaga*, G.R. No. 49536, 30 March 1988, 159 SCRA 426 and *Santos v. People*, G.R. No. 77429, 29 January 1990, 181 SCRA 487.

In other words, it is the recital of facts of the commission of the offense, not the nomenclature of the offense, that determines the crime being charged in the Information.[42] It is the exclusive province of the court to say what the crime is or what it is named.[43] The determination by the prosecutor who signs the Information of the crime committed is merely an opinion which is not binding on the court.[44]

A reading of the facts alleged in the Information reveals that Sato is being charged not with simple estafa but with the *complex crime of estafa through falsification of public documents.* In particular, the Information states that Sato, by means of deceit, intentionally defrauded Manolita committed as follows:

(a) Sato presented a document to Manolita (who was already blind at that time) and induced her to sign and thumbmark the same;

(b) he made Manolita believe that the said document was in connection with her taxes when it was in fact a special power of attorney (SPA) authorizing his minor daughter Wendy to sell, assign, transfer or otherwise dispose of Manolita's properties in Tagaytay City;

(c) relying on Sato's inducement and representation, Manolita signed and thumbmarked the SPA in favor of Wendy Mitsuko Sato, daughter of Sato;

(d) using the document, he sold the properties to third parties but he neither delivered the proceeds to Manolita nor accounted for the same and

(d) despite repeated demands, he failed and refused to deliver the proceeds, to the damage and prejudice of the estate of Manolita.

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[42] *Id.* citing *People v. Elesterio*, G.R. No. 63971, 09 May 1989, 173 SCRA 243.

[43] Herrera, Oscar, *Remedial Law*, Volume Four – Criminal Procedure, 59 (1992 Edition reprinted in 2001).

[44] *People v. Gorospe*, 53 Phil. 960 (1928).

The above averments in the Information show that the estafa was committed by attributing to Manolita (who participated in the execution of the document) statements other than those in fact made by her. Manolita's acts of signing the SPA and affixing her thumbmark to that document were the very expression of her specific intention that something be done about her taxes. Her signature and thumbmark were the affirmation of her statement on such intention as she only signed and thumbmarked the SPA (a document which she could not have read) because of Sato's representation that the document pertained to her taxes. In signing and thumbmarking the document, Manolita showed that she believed and adopted the representations of Sato as to what the document was all about, *i.e.*, that it involved her taxes. Her signature and thumbmark, therefore, served as her conformity to Sato's proposal that she execute a document to settle her taxes.

Thus, by inducing Manolita to sign the SPA, Sato made it appear that Manolita granted his daughter Wendy a special power of attorney for the purpose of selling, assigning, transferring or otherwise disposing of Manolita's Tagaytay properties when the fact was that Manolita signed and thumbmarked the document presented by Sato in the belief that it pertained to her taxes. Indeed, the document itself, the SPA, and everything that it contained were falsely attributed to Manolita when she was made to sign the SPA.

Moreover, the allegations in the Information that

(1) "once in the possession of the said special power of attorney and other pertinent documents, [Sato] made Wendy Mitsuko Sato sign the three (3) Deeds of Absolute Sale" and

(2) "once in possession of the proceeds of the sale of the above properties, said accused, misapplied, misappropriated and converted the same to his own personal use and benefit"

raise the presumption that Sato, as the possessor of the falsified document and the one who benefited therefrom, was the author thereof.

Furthermore, it should be noted that the prosecution moved for the amendment of the Information so as to increase the amount of damages from ₱1,150,000 to ₱22,034,000. This was granted by the trial court and was affirmed by the Court of Appeals on *certiorari*. This meant that the amended Information would now state that, while the total amount of consideration stated in the deeds of absolute sale was only ₱1,150,000, Sato actually received the total amount of ₱22,034,000 as proceeds of the sale of Manolita's properties.[45] This also meant that the deeds of sale (which were public documents) were also falsified by making untruthful statements as to the amounts of consideration stated in the deeds.

Therefore, the allegations in the Information essentially charged a crime that was not simple estafa. Sato resorted to falsification of public documents (particularly, the special power of attorney and the deeds of sale) as a necessary means to commit the estafa.

Since the crime with which respondent was charged was not simple estafa but the complex crime of estafa through falsification of public documents, Sato cannot avail himself of the absolutory cause provided under Article 332 of the Revised Penal Code in his favor.

EFFECT OF ABSOLUTORY CAUSE UNDER ARTICLE 332 ON CRIMINAL LIABILITY FOR THE COMPLEX CRIME OF ESTAFA THROUGH FALSIFICATION OF PUBLIC DOCUMENTS

The question may be asked: if the accused may not be held criminally liable for simple estafa by virtue of the absolutory cause under Article 332 of the Revised Penal Code, should he not be absolved also from criminal liability for the complex crime of estafa through falsification of public documents? No.

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[45] While the parties as well as the CA and RTC decisions spoke of an amended Information, the said amended Information was not included in the records of this case.

True, the concurrence of all the elements of the two crimes of estafa and falsification of public document is required for a proper conviction for the complex crime of estafa through falsification of public document. That is the ruling in *Gonzaludo v. People*.[46] It means that the prosecution must establish that the accused resorted to the falsification of a public document as a necessary means to commit the crime of estafa.

However, a proper appreciation of the scope and application of Article 332 of the Revised Penal Code and of the nature of a complex crime would negate exemption from criminal liability for the complex crime of estafa through falsification of public documents, simply because the accused may not be held criminally liable for simple estafa by virtue of the absolutory cause under Article 332.

The absolutory cause under Article 332 is meant to address specific crimes against property, namely, the simple crimes of theft, swindling and malicious mischief. Thus, **all other crimes, whether simple or complex, are not affected by the absolutory cause provided by the said provision**. To apply the absolutory cause under Article 332 of the Revised Penal Code to one of the component crimes of a complex crime for the purpose of negating the existence of that complex crime is to unduly expand the scope of Article 332. In other words, to apply Article 332 to the complex crime of estafa through falsification of public document would be to mistakenly treat the crime of estafa as a separate simple crime, not as the component crime that it is in that situation. It would wrongly consider the indictment as separate charges of estafa and falsification of public document, not as a single charge for the single (complex) crime of estafa through falsification of public document.

Under Article 332 of the Revised Penal Code, the State waives its right to hold the offender criminally liable for the simple crimes of theft, swindling and malicious mischief and considers the violation of the juridical right to property committed by the offender against certain family members as a private matter

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[46] G.R. No. 150910, 06 February 2006, 481 SCRA 569.

and therefore subject only to civil liability. The waiver does not apply when the violation of the right to property is achieved through (and therefore inseparably intertwined with) a breach of the public interest in the integrity and presumed authenticity of public documents. **For, in the latter instance, what is involved is no longer simply the property right of a family relation but a paramount public interest**.

The purpose of Article 332 is to preserve family harmony and obviate scandal.[47] Thus, the action provided under the said provision simply concerns the private relations of the parties as family members and is limited to the civil aspect between the offender and the offended party. When estafa is committed through falsification of a public document, however, the matter acquires a very serious public dimension and goes beyond the respective rights and liabilities of family members among themselves. Effectively, when the offender resorts to an act that breaches public interest in the integrity of public documents as a means to violate the property rights of a family member, he is removed from the protective mantle of the absolutory cause under Article 332.

In considering whether the accused is liable for the complex crime of estafa through falsification of public documents, it would be wrong to consider the component crimes separately from each other. **While there may be two component crimes** (estafa and falsification of documents), both felonies are animated by and result from one and the same criminal intent for which **there is only one criminal liability**.[48] That is the concept of a complex crime. In other words, while there are two crimes, **they are treated only as one, subject to a single criminal liability**.

As opposed to a simple crime where only one juridical right or interest is violated (*e.g.*, homicide which violates the right to life, theft which violates the right to property),[49] a complex

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[47] Aquino, Ramon and Carolina Griño Aquino, *THE REVISED PENAL CODE*, Volume III, 374 (1997).

[48] Regalado, *supra* note 16, p. 172.

[49] Aquino, Ramon and Carolina Griño Aquino, *supra* note 47 at p. 662.

crime constitutes a violation of diverse juridical rights or interests by means of diverse acts, each of which is a simple crime in itself.[50] Since only a single criminal intent underlies the diverse acts, however, the component crimes are considered as elements of a single crime, the complex crime. This is the correct interpretation of a complex crime as treated under Article 48 of the Revised Penal Code.

In the case of a complex crime, therefore, there is a formal (or ideal) plurality of crimes where the same criminal intent results in two or more component crimes constituting a complex crime for which there is only one criminal liability.[51] (The complex crime of estafa through falsification of public document falls under this category.) This is different from a material (or real) plurality of crimes where different criminal intents result in two or more crimes, for each of which the accused incurs criminal liability.[52] The latter category is covered neither by the concept of complex crimes nor by Article 48.

Under Article 48 of the Revised Penal Code, the formal plurality of crimes (*concursus delictuorum* or *concurso de delitos*) gives rise to a single criminal liability and requires the imposition of a single penalty:

> Although [a] complex crime quantitatively consists of two or more crimes, **it is only one crime in law** on which a single penalty is imposed and the two or more crimes constituting the same are more conveniently termed as component crimes.[53] (emphasis supplied)
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> x x x x x x x x x
>
> In [a] complex crime, although two or more crimes are actually committed, they constitute only *one* crime in the eyes of the law as well as in the conscience of the offender. The offender has *only one* criminal intent. Even in the case where an offense is a necessary means for committing the other, the evil intent of the offender is only one.[54]

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50 *Id.*

51 Regalado, *supra* note 6, p. 172.

52 *Id.*

53 *Id.*, p. 176.

54 Reyes, *supra* note 8, p. 650.

For this reason, while a conviction for estafa through falsification of public document requires that the elements of both estafa and falsification exist, it does not mean that the criminal liability for estafa may be determined and considered independently of that for falsification. **The two crimes of estafa and falsification of public documents are not separate crimes but component crimes of the single complex crime of estafa and falsification of public documents**.

Therefore, it would be incorrect to claim that, to be criminally liable for the complex crime of estafa through falsification of public document, the liability for estafa should be considered separately from the liability for falsification of public document. Such approach would disregard the nature of a complex crime and contradict the letter and spirit of Article 48 of the Revised Penal Code. It would wrongly disregard the distinction between formal plurality and material plurality, as it improperly treats the plurality of crimes in the complex crime of estafa through falsification of public document as a mere material plurality where the felonies are considered as separate crimes to be punished individually.

FALSIFICATION OF PUBLIC DOCUMENTS MAY BE A NECESSARY MEANS FOR COMMITTING ESTAFA EVEN UNDER ARTICLE 315 (3[A])

The elements of the offense of estafa punished under Article 315 (3[a]) of the Revised Penal Code are as follows:

(1) the offender induced the offended party to sign a document;

(2) deceit was employed to make the offended party sign the document;

(3) the offended party personally signed the document and

(4) prejudice is caused to the offended party.

While in estafa under Article 315(a) of the Revised Penal Code, the law does not require that the document be falsified for the consummation thereof, it does not mean that the falsification

of the document cannot be considered as a necessary means to commit the estafa under that provision.

The phrase "necessary means" does not connote indispensable means for if it did, then the offense as a "necessary means" to commit another would be an indispensable element of the latter and would be an ingredient thereof.[55] In *People v. Salvilla*,[56] the phrase "necessary means" merely signifies that one crime is committed to facilitate and insure the commission of the other.[57] In this case, the crime of falsification of public document, the SPA, was such a "necessary means" as it was resorted to by Sato to facilitate and carry out more effectively his evil design to swindle his mother-in-law. In particular, he used the SPA to sell the Tagaytay properties of Manolita to unsuspecting third persons.

When the offender commits in a public document any of the acts of falsification enumerated in Article 171 of the Revised Penal Code as a necessary means to commit another crime, like estafa, theft or malversation, the two crimes form a complex crime under Article 48 of the same Code.[58] The falsification of a public, official or commercial document may be a means of committing estafa because, **before the falsified document is actually utilized to defraud another, the crime of falsification has already been consummated**, damage or intent to cause damage not being an element of the crime of falsification of a public, official or commercial document.[59] In other words, the crime of falsification was committed **prior** to the consummation of the crime of estafa.[60] Actually utilizing the falsified public, official or commercial document to defraud another is estafa.[61]

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[55] *People v. Salvilla*, G.R. No. 86163, 26 April 1989, 184 SCRA 671.

[56] *Id.*

[57] *Id.*

[58] Reyes, *supra* note 20 at p. 226.

[59] *Id.*

[60] *Id.*

[61] *Id.*

The damage to another is caused by the commission of estafa, not by the falsification of the document.[62]

Applying the above principles to this case, the allegations in the Information show that the falsification of public document was consummated when Sato presented a ready-made SPA to Manolita who signed the same as a statement of her intention in connection with her taxes. While the falsification was consummated upon the execution of the SPA, the consummation of the estafa occurred only when Sato later utilized the SPA. He did so particularly when he had the properties sold and thereafter pocketed the proceeds of the sale. Damage or prejudice to Manolita was caused not by the falsification of the SPA (as no damage was yet caused to the property rights of Manolita at the time she was made to sign the document) but by the subsequent use of the said document. That is why the falsification of the public document was used to facilitate and ensure (that is, as a necessary means for) the commission of the estafa.

The situation would have been different if Sato, using the same inducement, had made Manolita sign a deed of sale of the properties either in his favor or in favor of third parties. In that case, the damage would have been caused by, and at exactly the same time as, the execution of the document, not prior thereto. Therefore, the crime committed would only have been the simple crime of estafa.[63] On the other hand, absent any inducement (such as if Manolita herself had been the one who asked that a document pertaining to her taxes be prepared for her signature, but what was presented to her for her signature was an SPA), the crime would have only been the simple crime of falsification.[64]

WHEREFORE, the petition is hereby *GRANTED*. The decision dated August 9, 2007 and the resolution dated January 23, 2008 of the Court of Appeals in CA-G.R. S.P. No. 95260 are

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[62] *Id.*

[63] See *United States v. Berry*, 5 Phil. 370 (1905) and *United States v. Malong*, 36 Phil. 821 (1917).

[64] See *United States v. Capule*, 24 Phil. 12 (1913).

REVERSED and *SET ASIDE*. The case is remanded to the trial court which is directed to try the accused with dispatch for the complex crime of estafa through falsification of public documents.

SO ORDERED.

Velasco, Jr., Nachura, Peralta, and *Mendoza, JJ.*, concur.

FIRST DIVISION

[G.R. No. 184197. February 11, 2010]

RAPID CITY REALTY AND DEVELOPMENT CORPORATION, *petitioner, vs.* ORLANDO VILLA and LOURDES PAEZ-VILLA, [1] *respondents.*

SYLLABUS

1. REMEDIAL LAW; PLEADINGS AND PRACTICES; SUMMONS; EVEN ABSENT VALID SERVICE OF SUMMONS, THE COURT CAN STILL ACQUIRE JURISDICTION OVER THE PERSON OF THE DEFENDANT BY VIRTUE OF THE LATTER'S VOLUNTARY APPEARANCE; EXCEPTION; CONDITIONAL APPEARANCE, CONCEPT THEREOF. — It is settled that if there is no valid service of summons, the court can still acquire jurisdiction over the person of the defendant by virtue of the latter's voluntary appearance. Thus Section 20 of Rule 14 of the Rules of Court provides: Sec. 20. *Voluntary appearance.* — The defendant's voluntary appearance in the action shall be equivalent to service of summons. The inclusion in a motion to dismiss of other grounds aside from lack of

[1] The Court of Appeals was originally impleaded as respondent. Pursuant however to Rule 45, Sec. 4 of the Rules of Court, the courts or judges rendering the assailed judgment shall not be impleaded as respondents in a petition for review on *certiorari.*

jurisdiction over the person shall not be deemed a voluntary appearance. xxx And *Philippine Commercial International Bank v. Spouses Wilson Dy Hong Pi and Lolita Dy, et al.* enlightens: Preliminarily, jurisdiction over the defendant in a civil case is acquired either by the coercive power of legal processes exerted over his person, or his voluntary appearance in court. As a general proposition, one who seeks an affirmative relief is deemed to have submitted to the jurisdiction of the court. It is by reason of this rule that we have had occasion to declare that the filing of motions to admit answer, for additional time to file answer, for reconsideration of a default judgment, and to lift order of default with motion for reconsideration, is **considered voluntary submission to the court's jurisdiction**. This, however, *is tempered by the concept of conditional appearance*, such that a party who makes a **special appearance** to challenge, among others, the court's jurisdiction over his person cannot be considered to have submitted to its authority. Prescinding from the foregoing, it is thus clear that: (1) **Special appearance** operates as an exception to the general rule on voluntary appearance; (2) Accordingly, objections to the jurisdiction of the court **over the person of the defendant** must be **explicitly made**, *i.e.*, set forth in an unequivocal manner; and (3) **Failure to do so** constitutes voluntary submission to the jurisdiction of the court, especially in instances where a pleading or motion seeking affirmative relief is filed and submitted to the court for resolution.

2. ID.; ID.; ID.; ID.; PARTIES DEEMED TO HAVE ACQUIESCED TO THE JURISDICTION OF THE COURT WHERE THEY FAILED TO ALLEGE THAT THEIR FILING OF THE MOTION WAS A SPECIAL APPEARANCE TO QUESTION THE COURT'S JURISDICTION OVER THEIR PERSONS. — In their *first* Motion to Lift the Order of Default dated January 30, 2006, respondents alleged: xxx Respondents did not, in said motion, allege that their filing thereof was a special appearance for the purpose only to question the jurisdiction over their persons. Clearly, they had acquiesced to the jurisdiction of the court.

APPEARANCES OF COUNSEL

Marbibi and Associates Law Office for petitioner.
Salomon and Gonong Law Offices for respondents.

D E C I S I O N

CARPIO MORALES, *J.*:

Sometime in 2004, Rapid City Realty and Development Corporation (petitioner) filed a complaint for declaration of nullity of subdivision plans . . . *mandamus* and damages against several defendants including Spouses Orlando and Lourdes Villa (respondents). The complaint, which was docketed at the Regional Trial Court of Antipolo City as Civil Case No. 04-7350, was lodged at Branch 71 thereof.

After one failed attempt at personal service of summons, Gregorio Zapanta (Zapanta), court process server, resorted to substituted service by serving summons upon respondents' househelp who did not acknowledge receipt thereof and refused to divulge their names. Thus Zapanta stated in the Return of Summons:

> THIS IS TO CERTIFY that on September 24, 2004, the undersigned caused the service of summons together with a copy of the complaint with its annexes to defendant Spouses Lourdes Estudillo Paez-Cline and Orlando Villa at their given address at 905 Padre Faura Street, Ermita Manila, as per information given by two lady househelps who are also residing at the said address, **the defendant spouses are not around** at that time. On the 27th of September, 2004, I returned to the same place to serve the summons. I served the summons and the copy of the complaint with its annexes to the two ladies (**The same lady househelp I met on Sept. 24, 2004) but they refused to sign to acknowledge receipt and they refused to tell their name as per instruction of the defendants**. With me who can attest to the said incident is Mr. Jun Llanes, who was with me at that time.[2] x x x (emphasis and underscoring supplied)

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[2] Records, p. 219.

Despite substituted service, respondents failed to file their Answer, prompting petitioner to file a "Motion to Declare Defendants[-herein respondents] in Default" which the trial court granted by Order of May 3, 2005.

More than eight months thereafter or on January 30, 2006, respondents filed a Motion to Lift Order of Default,[3] claiming that on January 27, 2006 they "**officially received** all pertinent papers such as Complaint and Annexes. Motion to Dismiss of the Solicitor General and the ORDER dated May 3, 2005 granting the Motion to Declare [them] in Default." And they denied the existence of two women helpers who allegedly refused to sign and acknowledge receipt of the summons. In any event, they contended that assuming that the allegation were true, the helpers had no authority to receive the documents.[4]

By Order of July 17, 2006, the trial court set aside the Order of Default and gave herein respondents five days to file their Answer. Respondents just the same did not file an Answer, drawing petitioner to *again* file a Motion to declare them in default, which the trial court *again* granted by Order of February 21, 2007.

On April 18, 2007, respondents filed an Omnibus Motion for reconsideration of the second order declaring them in default and to vacate proceedings, this time claiming that the trial court did not acquire jurisdiction over their persons due to invalid service of summons.

The trial court denied respondents' Omnibus Motion by Order of May 22, 2007 and proceeded to receive *ex-parte* evidence for petitioner.

Respondents, via *certiorari*, challenged the trial court's February 21, 2007 and April 18, 2007 Orders before the Court of Appeals.

In the meantime, the trial court, by Decision of September 4, 2007, rendered judgment in favor of petitioner.

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[3] *Id.* at 367-372.

[4] *Rollo*, pp. 70-71.

By Decision of April 29, 2008,[5] the appellate court annulled the trial court's Orders declaring respondents in default for the second time in this wise:

> In assailing the orders of the trial court through their *Motion to Lift*… and later their *Omnibus Motion*… the petitioners [herein-respondents] never raised any other defense in avoidance of the respondents' [herein petitioners] claim, and instead focused all their energies on questioning the said court's jurisdiction. The **latter motion** clearly stated prefatorily their counsel's reservation or "special appearance to question jurisdiction" over the persons of the petitioners. "A party who makes a special appearance in court challenging the jurisdiction of said court based on the ground of invalid service of summons is not deemed to have submitted himself to the jurisdiction of the court."[6] (citation omitted; italics, emphasis and underscoring supplied)

Petitioner's motion for reconsideration having been denied by the appellate court by Resolution of August 12, 2008, it comes to the Court via a petition for review on *certiorari*, arguing in the main that respondents, in filing the *first* Motion to Lift the Order of Default, voluntarily submitted themselves to the jurisdiction of the court.

The petition is impressed with merit.

It is settled that if there is no valid service of summons, the court can still acquire jurisdiction over the person of the defendant by virtue of the latter's voluntary appearance. Thus Section 20 of Rule 14 of the Rules of Court provides:

> Sec. 20. *Voluntary appearance*. – The defendant's voluntary appearance in the action shall be equivalent to service of summons. The inclusion in a motion to dismiss of other grounds aside from lack of jurisdiction over the person shall not be deemed a voluntary appearance.

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[5] Penned by Associate Justice Apolinario O. Bruselas, Jr. with the concurrence of Associate Justices Rebecca de Guia-Salvador and Vicente S.E. Veloso.

[6] *Supra* note 4.

And *Philippine Commercial International Bank v. Spouses Wilson Dy Hong Pi and Lolita Dy, et al.* enlightens:

> Preliminarily, jurisdiction over the defendant in a civil case is acquired either by the coercive power of legal processes exerted over his person, or his voluntary appearance in court. As a general proposition, one who seeks an affirmative relief is deemed to have submitted to the jurisdiction of the court. It is by reason of this rule that we have had occasion to declare that the filing of motions to admit answer, for additional time to file answer, for reconsideration of a default judgment, and to lift order of default with motion for reconsideration, is **considered voluntary submission to the court's jurisdiction**. This, however, *is tempered by the concept of conditional appearance*, such that a party who makes a **special appearance** to challenge, among others, the court's jurisdiction over his person cannot be considered to have submitted to its authority.
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> Prescinding from the foregoing, it is thus clear that:
>
> (1) **Special appearance** operates as an exception to the general rule on voluntary appearance;
>
> (2) Accordingly, objections to the jurisdiction of the court **over the person of the defendant** must be **explicitly made**, *i.e.*, set forth in an unequivocal manner; and
>
> (3) **Failure to do so** constitutes voluntary submission to the jurisdiction of the court, especially in instances where a pleading or motion seeking affirmative relief is filed and submitted to the court for resolution.[7] (italics and underscoring supplied)

In their *first* Motion to Lift the Order of Default[8] dated January 30, 2006, respondents alleged:

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> 4. In the case of respondents, there is no reason why they should not receive the Orders of this Honorable Court since the subject of the case is their multi-million real estate property and naturally they would not want to be declared in default or lose the same outright without the benefit of a trial on the merits;

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[7] G.R. No. 171137, June 5, 2009.

[8] Records, pp. 367-371.

5. It would be the height of injustice if the respondents is [*sic*] denied the equal protection of the laws[;]

6. Respondents must be afforded "Due process of Law" as enshrined in the New Constitution, which is a basic right of every Filipino, since they were not furnished copies of pleadings by the plaintiff and the Order dated May 3, 2005;

x x x x x x x x x[9]

and accordingly prayed as follows:

WHEREFORE, . . . it is most respectfully prayed . . . that the Order dated May 5, 2005 declaring [them] in default be LIFTED.[10]

Respondents did not, in said motion, allege that their filing thereof was a special appearance for the purpose only to question the jurisdiction over their persons. Clearly, they had acquiesced to the jurisdiction of the court.

WHEREFORE, the petition is *GRANTED*. The assailed Court of Appeals Decision of April 29, 2008 is *REVERSED* and *SET ASIDE*.

Let the original records of Civil Case No. 04-7350 be remanded to the court of origin, Regional Trial Court of Antipolo City, Branch 71.

SO ORDERED.

Puno, C.J. (Chairperson), Nachura,[*] *Bersamin,* and *Villarama, Jr., JJ.,* concur.

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[9] *Id.* at 368-369.

[10] *Id.* at 370.

[*] Additional member per Special Order No. 821.

EN BANC

[G.R. No. 184740. February 11, 2010]

DENNIS A. B. FUNA, *petitioner, vs.* **EXECUTIVE SECRETARY EDUARDO R. ERMITA, Office of the President, SEC. LEANDRO R. MENDOZA, in his official capacity as Secretary of the Department of Transportation and Communications, USEC. MARIA ELENA H. BAUTISTA, in her official capacities as Undersecretary of the Department of Transportation and Communications and as Officer-in-Charge of the Maritime Industry Authority (MARINA),** *respondents.*

SYLLABUS

1. POLITICAL LAW; CONSTITUTIONAL LAW; JUDICIAL DEPARTMENT; JUDICIAL REVIEW; LIMITATIONS. — The courts' power of judicial review, like almost all other powers conferred by the Constitution, is subject to several limitations, namely: (1) there must be an actual case or controversy calling for the exercise of judicial power; (2) the person challenging the act must have "standing" to challenge; he must have a personal and substantial interest in the case, such that he has sustained or will sustain, direct injury as a result of its enforcement; (3) the question of constitutionality must be raised at the earliest possible opportunity; and (4) the issue of constitutionality must be the very *lis mota* of the case. Respondents assert that the second requisite is absent in this case.

2. ID.; ID.; ID.; ID.; LEGAL STANDING; REQUISITES; PRESENT IN CASE AT BAR. — Generally, a party will be allowed to litigate only when (1) he can show that he has personally suffered some actual or threatened injury because of the allegedly illegal conduct of the government; (2) the injury is fairly traceable to the challenged action; and (3) the injury is likely to be redressed by a favorable action. The question on standing is whether such parties have "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 *David v. Macapagal-Arroyo*, summarizing the rules culled from jurisprudence, we held that taxpayers, voters, concerned citizens, and legislators may be accorded standing to sue, provided that the following requirements are met: (1) cases involve **constitutional issues;** (2) for taxpayers, there must be a claim of illegal disbursement of public funds or that the tax measure is unconstitutional; (3) for voters, there must be a showing of obvious interest in the validity of the election law in question; (4) for **concerned citizens,** there must be a showing that the **issues raised are of transcendental importance** which must be settled early; and (5) for legislators, there must be a claim that the official action complained of infringes upon their prerogatives as legislators. Petitioner having alleged a grave violation of the constitutional prohibition against Members of the Cabinet, their deputies and assistants holding two (2) or more positions in government, the fact that he filed this suit as a concerned citizen sufficiently confers him with standing to sue for redress of such illegal act by public officials.

3. ID.; APPEALS; MOOT AND ACADEMIC; EVEN IN CASES WHERE SUPERVENING EVENTS HAD MADE THE CASES MOOT, THE SUPREME COURT WILL NOT HESITATE TO RESOLVE THE LEGAL, OR CONSTITUTIONAL ISSUES RAISED TO FORMULATE CONTROLLING PRINCIPLES TO GUIDE THE BENCH, BAR AND PUBLIC. — A moot and academic case is one that ceases to present a justiciable controversy by virtue of supervening events, so that a declaration thereon would be of no practical use or value. Generally, courts decline jurisdiction over such case or dismiss it on ground of mootness. However, as we held in *Public Interest Center, Inc. v. Elma*, supervening events, whether intended or accidental, cannot prevent the Court from rendering a decision if there is a grave violation of the Constitution. Even in cases where supervening events had made the cases moot, this Court did not hesitate to resolve the legal or constitutional issues raised to formulate controlling principles to guide the bench, bar, and public.

4. ID.; ID.; ID.; EXCEPTION TO THE RULE ON MOOTNESS. — As a rule, the writ of prohibition will not lie to enjoin acts already done. However, as an exception to the rule on mootness, courts will decide a question otherwise moot if it is capable

of repetition yet evading review. In the present case, the mootness of the petition does not bar its resolution. The question of the constitutionality of the President's appointment or designation of a Department Undersecretary as officer-in-charge of an attached agency will arise in every such appointment.

5. POLITICAL LAW; CONSTITUTIONAL LAW; EXECUTIVE DEPARTMENT; SECTION 13, ARTICLE VII OF THE 1987 CONSTITUTION; PROHIBITION AGAINST HOLDING OF DUAL OR MULTIPLE OFFICES; DISQUALIFICATION IMPOSED UPON THE PRESIDENT AND HIS OFFICIAL FAMILY IS ABSOLUTE; RESPONDENT-UNDERSECRETARY IS COVERED BY THE STRICTER PROHIBITION. — Resolution of the present controversy hinges on the correct application of Section 13, Article VII of the 1987 Constitution xxx. Sec. 13. **The President, Vice-President, the Members of the Cabinet, and their deputies or assistants shall not, unless otherwise provided in this Constitution, hold any other office or employment during their tenure.** They shall not, during said tenure, directly or indirectly practice any other profession, participate in any business, or be financially interested in any contract with, or in any franchise, or special privilege granted by the Government or any subdivision, agency, or instrumentality thereof, including government-owned or controlled corporations or their subsidiaries. They shall strictly avoid conflict of interest in the conduct of their office. xxx. xxx Noting that the prohibition imposed on the President and his official family is all-embracing, the disqualification was held to be absolute, as the holding of "any other office" is not qualified by the phrase "in the Government" unlike in Section 13, Article VI prohibiting Senators and Members of the House of Representatives from holding "any other office or employment in the Government"; and when compared with other officials and employees such as members of the armed forces and civil service employees, we concluded thus: These sweeping, all-embracing prohibitions imposed on the President and his official family, which prohibitions are not similarly imposed on other public officials or employees such as the Members of Congress, members of the civil service in general and members of the armed forces, are proof of **the intent of the 1987 Constitution to treat the President and his official**

family as a class by itself and to impose upon said class stricter prohibitions. xxx Thus, **while all other appointive officials in the civil service are allowed to hold other office or employment in the government during their tenure when such is allowed by law or by the primary functions of their positions, members of the Cabinet, their deputies and assistants may do so only when expressly authorized by the Constitution itself.** In other words, Section 7, Article IX-B is meant to lay down the general rule applicable to all elective and appointive public officials and employees, while **Section 13, Article VII is meant to be the exception applicable only to the President, the Vice-President, Members of the Cabinet, their deputies and assistants. xxx** Respondent Bautista being then the appointed Undersecretary of DOTC, she was thus covered by the *stricter* prohibition under Section 13, Article VII and consequently she cannot invoke the exception provided in Section 7, paragraph 2, Article IX-B where holding another office is allowed by law or the primary functions of the position. Neither was she designated OIC of MARINA in an *ex-officio* capacity, which is the exception recognized in *Civil Liberties Union.*

6. ID.; ID.; ID.; ID.; ID.; NOT APPLICABLE TO POSTS OCCUPIED BY THE EXECUTIVE OFFICIALS SPECIFIED THEREIN, WITHOUT ADDITIONAL COMPENSATION IN AN *EX-OFFICIO* CAPACITY, AS PROVIDED BY LAW AND AS REQUIRED BY THE PRIMARY FUNCTIONS OF SAID OFFICE; RATIONALE. — The prohibition against holding dual or multiple offices or employment under Section 13, Article VII of the 1987 Constitution was held inapplicable to posts occupied by the Executive officials specified therein, without additional compensation in an *ex-officio* capacity as provided by law and as required by the primary functions of said office. The reason is that these posts do not comprise "any other office" within the contemplation of the constitutional prohibition but are properly an imposition of additional duties and functions on said officials. Apart from their bare assertion that respondent Bautista did not receive any compensation when she was OIC of MARINA, respondents failed to demonstrate clearly that her designation as such OIC was in an *ex-officio* capacity *as required by the primary functions of her office as DOTC Undersecretary for Maritime Transport.*

7. ID.; ID.; ID.; ID.; ID.; TERMS "APPOINTMENT AND DESIGNATION," DISTINGUISHED.— [T]he Court similarly finds respondents' theory that being just a "designation," and temporary at that, respondent Bautista was never really "appointed" as OIC Administrator of MARINA, untenable. In *Binamira v. Garrucho, Jr.,* we distinguished between the terms *appointment* and *designation*, as follows: Appointment may be defined as the selection, by the authority vested with the power, of an individual who is **to exercise the functions of a given office.** When completed, usually with its confirmation, the appointment results in security of tenure for the person chosen unless he is replaceable at pleasure because of the nature of his office. Designation, on the other hand, connotes merely the imposition by law of additional duties on an incumbent official, as where, in the case before us, the Secretary of Tourism is designated Chairman of the Board of Directors of the Philippine Tourism Authority, or where, under the Constitution, three Justices of the Supreme Court are designated by the Chief Justice to sit in the Electoral Tribunal of the Senate or the House of Representatives. It is said that appointment is essentially executive while designation is legislative in nature. Designation may also be loosely defined as an appointment because it likewise involves the naming of a particular person to a specified public office. That is the common understanding of the term. However, where the person is **merely designated** and not appointed, the implication is that he shall **hold the office** only in a temporary capacity and may be replaced at will by the appointing authority. In this sense, the designation is considered only an acting or temporary appointment, which does not confer **security of tenure** on the person named.

8. ID.; ID.; ID.; ID.; ID.; REFERS TO THE HOLDING OF OFFICE AND NOT TO THE NATURE OF THE APPOINTMENT OR DESIGNATION; PHRASE "TO HOLD AN OFFICE," CONSTRUED. — [R]espondents' reliance on the definitions [in the case of *Binamira v. Garrucho, Jr.*] is misplaced considering that the above-cited case addressed the issue of whether petitioner therein acquired valid title to the disputed position and so had the right to security of tenure. It must be stressed though that while the designation was in the nature of an acting and temporary capacity, the words "*hold the office*" were employed. Such holding of office pertains to both appointment

and designation because the appointee or designate *performs the duties and functions* of the office. The 1987 Constitution in prohibiting dual or multiple offices, as well as incompatible offices, refers to the holding of the office, and not to the nature of the appointment or designation, words which were not even found in Section 13, Article VII nor in Section 7, paragraph 2, Article IX-B. To "hold" an office means to "possess or occupy" the same, or "to be in possession and administration," which implies nothing less than the actual discharge of the functions and duties of the office.

9. ID.; ID.; ID.; ID.; RATIONALE BEHIND THE PROHIBITION AGAINST THE HOLDING OF DUAL OR MULTIPLE OFFICES IN THE GOVERNMENT. — The disqualification laid down in Section 13, Article VII is aimed at preventing the concentration of powers in the Executive Department officials, specifically the President, Vice-President, Members of the Cabinet and their deputies and assistants. *Civil Liberties Union* traced the history of the times and the conditions under which the Constitution was framed, and construed the Constitution consistent with the object sought to be accomplished by adoption of such provision, and the evils sought to be avoided or remedied. We recalled the practice, during the Marcos regime, of designating members of the Cabinet, their deputies and assistants as members of the governing bodies or boards of various government agencies and instrumentalities, including government-owned or controlled corporations. This practice of holding multiple offices or positions in the government led to abuses by unscrupulous public officials, who took advantage of this scheme for purposes of self-enrichment. The blatant betrayal of public trust evolved into one of the serious causes of discontent with the Marcos regime. It was therefore quite inevitable and in consonance with the overwhelming sentiment of the people that the 1986 Constitutional Commission would draft into the proposed Constitution the provisions under consideration, which were envisioned to remedy, if not correct, the evils that flow from the holding of multiple governmental offices and employment. xxx Such laudable intent of the law will be defeated and rendered sterile if we are to adopt the semantics of respondents. It would open the veritable floodgates of circumvention of an important constitutional disqualification of officials in the Executive Department and of limitations on the President's power of appointment in the guise of temporary

designations of Cabinet Members, undersecretaries and assistant secretaries as officers-in-charge of government agencies, instrumentalities, or government-owned or controlled corporations.

CARPIO MORALES, *J., concurring opinion:*

1. REMEDIAL LAW; APPEALS; MOOT AND ACADEMIC; COURT WILL TAKE COGNIZANCE OF THE CASE DESPITE ITS MOOTNESS WHERE THE DECLARATION THEREON WILL BE OF PRACTICAL USE OR VALUE.— Bautista thus now claims mootness of the case. A moot and academic case is one that ceases to present a justiciable controversy by virtue of supervening events, so that a declaration thereon would be of no practical use or value. Aside from the formulation of controlling principles, the grave violation of the Constitution, and the susceptibility of recurrence as pointed out by Justice Villarama, there is the presence of practical use or value to impel the Court to take cognizance of this case. Its mootness notwithstanding, the present petition which involves the issue of holding dual positions still calls for a resolution, for there remains the practical use or value of identifying whether one was a *de facto* or *de jure* officer in terms of the legal signification of the public officer's acts, remuneration and accountability.

2. POLITICAL LAW; CONSTITUTIONAL LAW; EXECUTIVE DEPARTMENT; PROHIBITION AGAINST HOLDING OF DUAL OR MULTIPLE OFFICES; *DE FACTO* DOCTRINE; RESPONDENT UNDERSECRETARY IS CONSIDERED A *DE FACTO* OFFICER FROM THE TIME SHE WAS DESIGNATED AS OIC ADMINISTRATOR OF MARITIME INDUSTRY AUTHORITY (MARINA) UNTIL HER SUBSEQUENT APPOINTMENT AS ADMINISTRATOR THEREOF.— Bautista, during her tenure as OIC Administrator of MARINA, cannot be considered as a *de jure* officer due to the unconstitutionality of the designation. At best, she can be regarded as a *de facto* officer in such capacity from September 1, 2008 until she assumed her subsequent appointment as MARINA Administrator on February 2, 2009. *National Amnesty Commission v. Commission on Audit* espouses the view that one who was not appointed but merely designated to act as such cannot be considered as a *de facto* officer. To

sustain this view, however, would place in limbo the legal effects of a designated officer's acts and would negate the *raison d'etre* of the *de facto* doctrine which is basically to protect the sanctity of dealings by the public with persons whose ostensible authority emanates from the State. To deduce that Bautista, as a designated OIC Administrator, was not a *de facto* officer would effectively categorize her as an intruder or a mere volunteer, which she was not because she had a color of right or authority.

3. ID.; ID.; ID.; ID.; ID.; A *DE FACTO* OFFICER NEED NOT SHOW THAT SHE WAS ELECTED OR APPOINTED, FOR A SHOWING OF A COLOR OF RIGHT TO THE OFFICE SUFFICES. — A *de facto* officer need not show that she was elected or "appointed in its strict sense," for a showing of a color of right to the office suffices. Designation may be loosely defined as an appointment because it likewise involves the naming of a particular person to a specified public office. In fact, even without a known appointment or election, the *de facto* doctrine comes into play if the duties of the office were exercised under such circumstances of reputation or acquiescence as were calculated to induce people, without inquiry, to submit to or invoke his action, supposing him to be the officer he assumed to be.

4. ID.; ID.; ID.; ID.; CIVIL LIBERTIES RULE *VIS-À-VIS* PUBLIC INTEREST CENTER RULE. — Where a person is prohibited from holding two offices at the same time, his appointment or election to a second office may operate to vacate the first *or* he may be ineligible for the second. The proposition that a person shall be declared ineligible for the second position was followed in *Civil Liberties Union v. Executive Secretary* where the Court ordered certain cabinet members, except those who were no longer occupying the positions complained of, "to immediately relinquish their other offices or employment, as herein defined, in the government, including government-owned and controlled corporations and their subsidiaries." **Under this principle, Bautista would only be directed to relinquish the post of MARINA Administrator, if still being occupied, and concentrate on her functions as DOTC Undersecretary.** The other proposition – that a person who assumes a second and incompatible office is deemed to have resigned from the first office – was applied in *Public Interest Center, Inc. v. Elma* where the Court, by Resolution of March 5,

2007, clarified that the ruling did not render both appointments void. It held that "[f]ollowing the common-law rule on incompatibility of offices, respondent Elma had, in effect, vacated his first office as PCGG Chairman when he accepted the second office" as Chief Presidential Legal Counsel. **Under this rule, Bautista would be deemed to have vacated her first office as DOTC Undersecretary when she accepted the post of OIC Administrator of MARINA.**

5. ID.; ID.; ID.; ID.; IMPLICATIONS THEREOF.— Upon a closer examination of *Public Interest Center, Inc*. which espouses the *ipso facto* vacancy rule, there appears a vacuity in such a situation where the Court nullifies the appointment to a second office for being unconstitutional and likewise deems the first office as having been vacated. In the end, the public officer is left without an office. In the present case, Bautista eventually voluntarily gave up her first post when she was *subsequently appointed* as MARINA Administrator, after five months of concurrently discharging the functions of an appointed DOTC Undersecretary and a designated MARINA Officer-in-Charge. It bears noting that what is being nullified is her designation and not the subsequent appointment as Administrator. Her current position as MARINA Administrator was conferred not by virtue of the assailed designation but by the *subsequent appointment* which effectively stands. Thus, notwithstanding the implication of *Public Interest Center*, the scenario of vacancy will not occur in this peculiar case. With respect to the proposition under *Civil Liberties Union* – ineligibility for the second position only – the only peculiarity of the present case is that the reverse thing transpired in the meantime, with Bautista giving up the Undersecretary position and accepting the subsequent regular appointment as MARINA Administrator. The supposed continued validity of her position as DOTC Undersecretary has been rendered nugatory by her voluntary relinquishment of said position. xxx On the one hand, following the *Public Interest Center* rule that deems her first office vacated upon her holding of a second position, Bautista had become a *de facto* DOTC Undersecretary from September 1, 2008 (when she assumed the position of MARINA OIC Administrator) until she resigned therefrom. On the other hand, following the *Civil Liberties Union* rule that merely deems her ineligible for the second position, Bautista remained a *de jure* DOTC Undersecretary during her entire tenure as such. IN FINE, I

submit that the two cases provide sound formulations for two distinct situations. The ***Civil Liberties Union*** rule applies to cases involving dual or multiple positions under Section 13 of Article VII of the Constitution while the ***Public Interest Center*** rule covers those under Section 7 of Article IX-B of the Constitution.

6. ID.; ID.; ID.; ID.; ID.; RULE OF *IPSO FACTO* VACANCY OF A PUBLIC OFFICE BY ACCEPTANCE OF A SECOND PUBLIC OFFICE DOES NOT APPLY WHERE, UNDER APPLICABLE LAW, THE HOLDER OF THE PUBLIC OFFICE IS RENDERED INELIGIBLE FOR A SPECIFIED TIME FOR A SECOND PUBLIC OFFICE.— The *Civil Liberties Union* formulation rendering the public officer ineligible for the second position comes into play, since Bautista was a department undersecretary, a position covered by the prohibition under Section 13, Article VII of the Constitution. This principle underscores the primacy of the "President, Vice-President, the Members of the Cabinet, and their deputies or assistants" as a class by itself, necessitating the disallowance of any implied vacancy in such offices. The *Public Interest Center* rule of implied resignation does not apply since it speaks of "incompatibility of office" which is irrelevant in determining a violation of Section 13, Article VII of the Constitution. It has also been observed that the rule of *ipso facto* vacancy of a public office by acceptance of a second public office does not apply where, under applicable constitutional or statutory provisions, the holder of a public office is rendered ineligible for a specified time for a second public office; under such circumstances it is the second office which is considered vacant rather than the first office.

7. ID.; ID.; ID.; ID.; RATIONALE BEHIND THE RULE AGAINST HOLDING OF MULTIPLE POSITIONS.— The present case, in which the constitutional question posed is no longer an unchartered sea, should once again remind all civil servants of the rationale behind the general rule against the holding of multiple positions. One manifest purpose of a restriction on multiple holdings is to prevent offices of public trust from accumulating in a single person. Indeed, no one can claim a monopoly of skills. Being head of an executive department is no mean job. It is more than a full-time job, requiring full attention, specialized knowledge, skills and expertise. If maximum benefits are to be derived from a department head's ability and

expertise, he should be allowed to attend to his duties and responsibilities without the distraction of other governmental offices or employment. He should be precluded from dissipating his efforts, attention and energy among too many positions of responsibility, which may result in haphazardness and inefficiency. Surely the advantages to be derived from this concentration of attention, knowledge and expertise, particularly at this stage of our national and economic development, far outweigh the benefits, if any, that may be gained from a department head spreading himself too thin and taking in more than what he can handle.

APPEARANCES OF COUNSEL

Funa Tantuan & Fortes for petitioner.
The Solicitor General for respondents.

D E C I S I O N

VILLARAMA, JR., *J.*:

This is a petition for *certiorari*, prohibition and *mandamus* under Rule 65 with prayer for the issuance of a temporary restraining order and/or writ of preliminary injunction, to declare as unconstitutional the designation of respondent Undersecretary Maria Elena H. Bautista as Officer-in-Charge (OIC) of the Maritime Industry Authority (MARINA).

The Antecedents

On October 4, 2006, President Gloria Macapagal-Arroyo appointed respondent Maria Elena H. Bautista (Bautista) as Undersecretary of the Department of Transportation and Communications (DOTC), vice Agustin R. Bengzon. Bautista was designated as Undersecretary for Maritime Transport of the department under Special Order No. 2006-171 dated October 23, 2006.[1]

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[1] *Rollo*, pp. 99 and 101.

On September 1, 2008, following the resignation of then MARINA Administrator Vicente T. Suazo, Jr., Bautista was designated as Officer-in-Charge (OIC), Office of the Administrator, MARINA, in concurrent capacity as DOTC Undersecretary.[2]

On October 21, 2008, Dennis A. B. Funa in his capacity as taxpayer, concerned citizen and lawyer, filed the instant petition challenging the constitutionality of Bautista's appointment/designation, which is proscribed by the prohibition on the President, Vice-President, the Members of the Cabinet, and their deputies and assistants to hold any other office or employment.

On January 5, 2009, during the pendency of this petition, Bautista was appointed Administrator of the MARINA vice Vicente T. Suazo, Jr.[3] and she assumed her duties and responsibilities as such on February 2, 2009.[4]

The Case

Petitioner argues that Bautista's concurrent positions as DOTC Undersecretary and MARINA OIC is in violation of Section 13, Article VII of the 1987 Constitution, as interpreted and explained by this Court in *Civil Liberties Union v. Executive Secretary*,[5] and reiterated in *Public Interest Center, Inc. v. Elma*.[6] He points out that while it was clarified in *Civil Liberties Union* that the prohibition does not apply to those positions held in *ex-officio* capacities, the position of MARINA Administrator is not *ex-officio* to the post of DOTC Undersecretary, as can be gleaned from the provisions of its charter, Presidential Decree (P.D.) No. 474,[7] as amended by

[2] *Id.* at 100.

[3] *Id.* at 102.

[4] *Id.* at 103-104.

[5] G.R. Nos. 83896 and 83815, February 22, 1991, 194 SCRA 317.

[6] G.R. No. 138965, June 30, 2006, 494 SCRA 53.

[7] PROVIDING FOR THE REORGANIZATION OF MARITIME FUNCTIONS IN THE PHILIPPINES, CREATING THE MARITIME

Executive Order (EO) No. 125-A.[8] Moreover, the provisions on the DOTC in the Administrative Code of 1987, specifically Sections 23 and 24, Chapter 6, Title XV, Book IV do not provide any *ex-officio* role for the undersecretaries in any of the department's attached agencies. The fact that Bautista was extended an appointment naming her as OIC of MARINA shows that she does not occupy it in an *ex-officio* capacity since an *ex-officio* position does not require any "further warrant or appoint."[9]

Petitioner further contends that even if Bautista's appointment or designation as OIC of MARINA was intended to be merely temporary, still, such designation must not violate a standing constitutional prohibition, citing the rationale in *Achacoso v. Macaraig*.[10] Section 13, Article VII of the 1987 Constitution does not enumerate temporariness as one (1) of the exceptions thereto. And since a temporary designation does not have a maximum duration, it can go on for months or years. In effect, the temporary appointment/designation can effectively circumvent the prohibition. Allowing undersecretaries or assistant secretaries to occupy other government posts would open a Pandora's Box as to let them feast on choice government positions. Thus, in case of vacancy where no permanent appointment could as yet be made, the remedy would be to designate one (1) of the two (2) Deputy Administrators as the Acting Administrator. Such would be the logical course, the said officers being in a better position in terms of knowledge and experience to run the agency in a temporary capacity. Should none of them merit the President's confidence, then the practical remedy would be for Undersecretary Bautista to first resign as Undersecretary in order to qualify her as Administrator of MARINA. As to whether she in fact does not receive or has waived any remuneration, the same does not matter because remuneration

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INDUSTRY AUTHORITY, AND FOR OTHER PURPOSES, approved on June 1, 1974.

[8] Approved on April 13, 1987.

[9] *Rollo,* pp. 14-27.

[10] G.R. No. 93023, March 13, 1991, 195 SCRA 235.

is not an element in determining whether there has been a violation of Section 13, Article VII of the 1987 Constitution.[11]

Petitioner likewise asserts the incompatibility between the posts of DOTC Undersecretary and MARINA Administrator. The reason is that with respect to the affairs in the maritime industry, the recommendations of the MARINA may be the subject of counter or opposing recommendations from the Undersecretary for Maritime Transport. In this case, the DOTC Undersecretary for Maritime Transport and the OIC of MARINA have become one (1) and the same person. There is no more checking and counter-checking of powers and functions, and therein lies the danger to the maritime industry. There is no longer a person above the Administrator of MARINA who will be reviewing the acts of said agency because the person who should be overseeing MARINA, the Undersecretary for Maritime Transport, has effectively been compromised.[12]

Finally, petitioner contends that there is a strong possibility in this case that the challenge herein can be rendered moot through the expediency of simply revoking the temporary appointment/designation. But since a similar violation can be committed in the future, there exists a possibility of "evading review," and hence supervening events should not prevent the Court from deciding cases involving grave violation of the 1987 Constitution, as this Court ruled in *Public Interest Center*. Notwithstanding its mootness therefore, should it occur, there is a compelling reason for this case to be decided: the issue raised being "capable of repetition, yet evading review."[13]

On the other hand, the respondents argue that the requisites of a judicial inquiry are not present in this case. In fact, there no longer exists an actual controversy that needs to be resolved in view of the appointment of respondent Bautista as MARINA Administrator effective February 2, 2009 and the relinquishment of her post as DOTC Undersecretary for Maritime Transport,

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[11] *Rollo,* pp. 34-37.

[12] *Id.* at 38-40.

[13] *Id.* at 40-42.

which rendered the present petition moot and academic. Petitioner's prayer for a temporary restraining order or writ of preliminary injunction is likewise moot and academic since, with this supervening event, there is nothing left to enjoin.[14]

Respondents also raise the lack of legal standing of petitioner to bring this suit. Clear from the standard set in *Public Interest Center* is the requirement that the party suing as a taxpayer must prove that he has sufficient interest in preventing illegal expenditure of public funds, and more particularly, his personal and substantial interest in the case. Petitioner, however, has not alleged any personal or substantial interest in this case. Neither has he claimed that public funds were actually disbursed in connection with respondent Bautista's designation as MARINA OIC. It is to be noted that respondent Bautista did not receive any salary while she was MARINA OIC. As to the alleged transcendental importance of an issue, this should not automatically confer legal standing on a party.[15]

Assuming for the sake of argument that the legal question raised herein needs to be resolved, respondents submit that the petition should still be dismissed for being unmeritorious considering that Bautista's concurrent designation as MARINA OIC and DOTC Undersecretary was constitutional. There was no violation of Section 13, Article VII of the 1987 Constitution because respondent Bautista was merely designated acting head of MARINA on September 1, 2008. She was designated MARINA OIC, not appointed MARINA Administrator. With the resignation of Vicente T. Suazo, Jr., the position of MARINA Administrator was left vacant, and pending the appointment of permanent Administrator, respondent Bautista was designated OIC in a temporary capacity for the purpose of preventing a hiatus in the discharge of official functions. Her case thus falls under the recognized exceptions to the rule against multiple offices, *i.e.,* without additional compensation (she did not receive any emolument as MARINA OIC) and as required by the primary functions of the office. Besides, Bautista held the position for

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[14] *Id.* at 86-87.

[15] *Id.* at 88-89.

four (4) months only, as in fact when she was appointed MARINA Administrator on February 2, 2009, she relinquished her post as DOTC Undersecretary for Maritime Transport, in acknowledgment of the proscription on the holding of multiple offices.[16]

As to petitioner's argument that the DOTC Undersecretary for Maritime Transport and MARINA Administrator are incompatible offices, respondents cite the test laid down in *People v. Green*,[17] which held that "[T]he offices must subordinate, one [over] the other, and they must, *per se*, have the right to interfere, one with the other, before they are compatible at common law." Thus, respondents point out that any recommendation by the MARINA Administrator concerning issues of policy and administration go to the MARINA Board and not the Undersecretary for Maritime Transport. The Undersecretary for Maritime Transport is, in turn, under the direct supervision of the DOTC Secretary. Petitioner's fear that there is no longer a person above the Administrator of MARINA who will be reviewing the acts of said agency (the Undersecretary for Maritime Transport) is, therefore, clearly unfounded.[18]

In his Reply, petitioner contends that respondents' argument on the incompatibility of positions was made on the mere assumption that the positions of DOTC Undersecretary for Maritime Transport and the administratorship of MARINA are "closely related" and is governed by Section 7, paragraph 2, Article IX-B of the 1987 Constitution rather than by Section 13, Article VII. In other words, it was a mere secondary argument. The fact remains that, incompatible or not, Section 13, Article VII still does not allow the herein challenged designation.[19]

The sole issue to be resolved is whether or not the designation of respondent Bautista as OIC of MARINA, concurrent with the position of DOTC Undersecretary for Maritime Transport

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[16] *Id.* at 90-93.

[17] 13 Sickels 295, 58 N.Y. 295, 1874 WL 11282 (N.Y.).

[18] *Id.* at 93-95.

[19] *Id.* at 127-128.

to which she had been appointed, violated the constitutional proscription against dual or multiple offices for Cabinet Members and their deputies and assistants.

Our Ruling

The petition is meritorious.

Requisites for Judicial Review

The courts' power of judicial review, like almost all other powers conferred by the Constitution, is subject to several limitations, namely: (1) there must be an actual case or controversy calling for the exercise of judicial power; (2) the person challenging the act must have "standing" to challenge; he must have a personal and substantial interest in the case, such that he has sustained or will sustain, direct injury as a result of its enforcement; (3) the question of constitutionality must be raised at the earliest possible opportunity; and (4) the issue of constitutionality must be the very *lis mota* of the case.[20] Respondents assert that the second requisite is absent in this case.

Generally, a party will be allowed to litigate only when (1) he can show that he has personally suffered some actual or threatened injury because of the allegedly illegal conduct of the government; (2) the injury is fairly traceable to the challenged action; and (3) the injury is likely to be redressed by a favorable action.[21] The question on standing is whether such parties have "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."[22]

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[20] *Francisco, Jr. v. Nagmamalasakit na mga Manananggol ng mga Manggagawang Pilipino, Inc.*, G.R. Nos. 160261-160263, 160277, 160292, 160295, 160310, 160318, 160342, 160343, 160360, 160365, 160370, 160376, 160392, 160397, 160403 and 160405, November 10, 2003, 415 SCRA 44, 133 citing *Angara v. Electoral Commission*, 63 Phil. 139 (1936).

[21] *Tolentino v. COMELEC*, 465 Phil. 385, 402 (2004).

[22] *Kilosbayan, Incorporated v. Morato*, G.R. No. 118910, July 17, 1995, 246 SCRA 540, 562-563, citing *Baker v. Carr*, 369 U.S. 186, 7 L.Ed.2d 663 (1962).

In *David v. Macapagal-Arroyo*,[23] summarizing the rules culled from jurisprudence, we held that taxpayers, voters, concerned citizens, and legislators may be accorded standing to sue, provided that the following requirements are met:

(1) cases involve **constitutional issues;**

(2) for taxpayers, there must be a claim of illegal disbursement of public funds or that the tax measure is unconstitutional;

(3) for voters, there must be a showing of obvious interest in the validity of the election law in question;

(4) for **concerned citizens,** there must be a showing that the **issues raised are of transcendental importance** which must be settled early; and

(5) for legislators, there must be a claim that the official action complained of infringes upon their prerogatives as legislators. [EMPHASIS SUPPLIED.]

Petitioner having alleged a grave violation of the constitutional prohibition against Members of the Cabinet, their deputies and assistants holding two (2) or more positions in government, the fact that he filed this suit as a concerned citizen sufficiently confers him with standing to sue for redress of such illegal act by public officials.

The other objection raised by the respondent is that the resolution of this case had been overtaken by events considering the effectivity of respondent Bautista's appointment as MARINA Administrator effective February 2, 2009 and her relinquishment of her former position as DOTC Undersecretary for Maritime Transport.

A moot and academic case is one that ceases to present a justiciable controversy by virtue of supervening events, so that a declaration thereon would be of no practical use or value. Generally, courts decline jurisdiction over such case or dismiss

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[23] G.R. No. 171396 and six (6) other cases, May 3, 2006, 489 SCRA 160, 220-221.

it on ground of mootness.[24] However, as we held in *Public Interest Center, Inc. v. Elma*,[25] supervening events, whether intended or accidental, cannot prevent the Court from rendering a decision if there is a grave violation of the Constitution. Even in cases where supervening events had made the cases moot, this Court did not hesitate to resolve the legal or constitutional issues raised to formulate controlling principles to guide the bench, bar, and public.[26]

As a rule, the writ of prohibition will not lie to enjoin acts already done. However, as an exception to the rule on mootness, courts will decide a question otherwise moot if it is capable of repetition yet evading review.[27] In the present case, the mootness of the petition does not bar its resolution. The question of the constitutionality of the President's appointment or designation of a Department Undersecretary as officer-in-charge of an attached agency will arise in every such appointment.[28]

Undersecretary Bautista's designation as MARINA OIC falls under the stricter

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[24] *David v. Macapagal-Arroyo, supra* at 213-214, citing *Province of Batangas v. Romulo,* G.R. No. 152774, May 27, 2004, 429 SCRA 736, *Banco Filipino Savings and Mortgage Bank v. Tuazon, Jr.,* G.R. No. 132795, March 10, 2004, 425 SCRA 129, *Vda. de Dabao v. Court of Appeals,* G.R. No. 116526, March 23, 2004, 426 SCRA 91; *Paloma v. Court of Appeals,* G.R. No. 145431, November 11, 2003, 415 SCRA 590, *Royal Cargo Corporation v. Civil Aeronautics Board,* G.R. Nos. 103055-56, January 26, 2004, 421 SCRA 21 and *Lacson v. Perez,* G.R. No. 147780, May 10, 2001, 357 SCRA 756.

[25] G.R. No. 138965, June 30, 2006, 494 SCRA 53.

[26] *Id.* at 58, citing *Province of Batangas v. Romulo, supra* at 757 and *Chavez v. Public Estates Authority,* 433 Phil. 506, 522 (2002).

[27] *Pimentel, Jr. v. Ermita,* G.R. No. 164978, October 13, 2005, 472 SCRA 587, 593, citing *Tolentino v. Commission on Elections,* G.R. No. 148334, January 21, 2004, 420 SCRA 438, *Gil v. Benipayo,* G.R. No. 148179, June 26, 2001 (Unsigned Resolution), *Chief Supt. Acop v. Secretary Guingona, Jr.,* 433 Phil. 62 (2002), *Viola v. Hon. Alunan III,* 343 Phil. 184 (1997) and *Alunan III v. Mirasol,* 342 Phil. 467 (1997).

[28] *Id.* at 593.

prohibition under Section 13, Article VII of the 1987 Constitution.

Resolution of the present controversy hinges on the correct application of Section 13, Article VII of the 1987 Constitution, which provides:

Sec. 13. **The President, Vice-President, the Members of the Cabinet, and their deputies or assistants shall not, unless otherwise provided in this Constitution, hold any other office or employment during their tenure.** They shall not, during said tenure, directly or indirectly practice any other profession, participate in any business, or be financially interested in any contract with, or in any franchise, or special privilege granted by the Government or any subdivision, agency, or instrumentality thereof, including government-owned or controlled corporations or their subsidiaries. They shall strictly avoid conflict of interest in the conduct of their office.

On the other hand, Section 7, paragraph (2), Article IX-B reads:

Sec. 7. x x x

Unless otherwise allowed by law or the primary functions of his position, no appointive official shall hold any other office or employment in the Government or any subdivision, agency or instrumentality thereof, including government-owned or controlled corporations or their subsidiaries.

In *Civil Liberties Union*, a constitutional challenge was brought before this Court to nullify EO No. 284 issued by then President Corazon C. Aquino on July 25, 1987, which included Members of the Cabinet, undersecretaries and assistant secretaries in its provisions limiting to two (2) the positions that appointive officials of the Executive Department may hold in government and government corporations. Interpreting the above provisions in the light of the history and times and the conditions and circumstances under which the Constitution was framed, this Court struck down as unconstitutional said executive issuance, saying that it actually allows them to hold multiple offices or employment in direct contravention of the express

mandate of Section 13, Article VII of the 1987 Constitution prohibiting them from doing so, unless otherwise provided in the 1987 Constitution itself.

Noting that the prohibition imposed on the President and his official family is all-embracing, the disqualification was held to be absolute, as the holding of "any other office" is not qualified by the phrase "in the Government" unlike in Section 13, Article VI prohibiting Senators and Members of the House of Representatives from holding "any other office or employment in the Government"; and when compared with other officials and employees such as members of the armed forces and civil service employees, we concluded thus:

> These sweeping, all-embracing prohibitions imposed on the President and his official family, which prohibitions are not similarly imposed on other public officials or employees such as the Members of Congress, members of the civil service in general and members of the armed forces, are proof of **the intent of the 1987 Constitution to treat the President and his official family as a class by itself and to impose upon said class stricter prohibitions.**
>
> Such intent of the 1986 Constitutional Commission to be stricter with the President and his official family was also succinctly articulated by Commissioner Vicente Foz after Commissioner Regalado Maambong noted during the floor deliberations and debate that there was no symmetry between the Civil Service prohibitions, originally found in the General Provisions and the anticipated report on the Executive Department. Commissioner Foz Commented, "We actually have to be stricter with the President and the members of the Cabinet because they exercise more powers and, therefore, more checks and restraints on them are called for because there is more possibility of abuse in their case."
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> Thus, **while all other appointive officials in the civil service are allowed to hold other office or employment in the government during their tenure when such is allowed by law or by the primary functions of their positions, members of the Cabinet, their deputies and assistants may do so only when expressly authorized by the Constitution itself.** In other words, Section 7, Article IX-B is meant to lay down the general rule applicable to all elective and appointive public officials and employees, while **Section 13, Article VII is meant**

to be the exception applicable only to the President, the Vice-President, Members of the Cabinet, their deputies and assistants.

x x x x x x x x x

Since the evident purpose of the framers of the 1987 Constitution is to impose a **stricter prohibition** on the President, Vice-President, members of the Cabinet, their deputies and assistants with respect to holding multiple offices or employment in the government during their tenure, the exception to this prohibition must be read with equal severity. On its face, the language of Section 13, Article VII is prohibitory so that it must be understood as intended to be a positive and unequivocal negation of the privilege of holding multiple government offices or employment. Verily, wherever the language used in the constitution is prohibitory, it is to be understood as intended to be a positive and unequivocal negation. The phrase "unless otherwise provided in this Constitution" must be given a literal interpretation to refer only to those particular instances cited in the Constitution itself, to wit: the Vice-President being appointed as a member of the Cabinet under Section 3, par. (2), Article VII; or acting as President in those instances provided under Section 7, pars. (2) and (3), Article VII; and, the Secretary of Justice being *ex-officio* member of the Judicial and Bar Council by virtue of Section 8 (1), Article VIII.[29] [EMPHASIS SUPPLIED.]

Respondent Bautista being then the appointed Undersecretary of DOTC, she was thus covered by the *stricter* prohibition under Section 13, Article VII and consequently she cannot invoke the exception provided in Section 7, paragraph 2, Article IX-B where holding another office is allowed by law or the primary functions of the position. Neither was she designated OIC of MARINA in an *ex-officio* capacity, which is the exception recognized in *Civil Liberties Union.*

The prohibition against holding dual or multiple offices or employment under Section 13, Article VII of the 1987 Constitution was held inapplicable to posts occupied by the Executive officials specified therein, without additional compensation in an *ex-officio* capacity as provided by law and as required by the primary functions of said office. The reason

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[29] *Civil Liberties Union v. Executive Secretary, supra* at 328-329, 331.

is that these posts do not comprise "any other office" within the contemplation of the constitutional prohibition but are properly an imposition of additional duties and functions on said officials.[30] Apart from their bare assertion that respondent Bautista did not receive any compensation when she was OIC of MARINA, respondents failed to demonstrate clearly that her designation as such OIC was in an *ex-officio* capacity *as required by the primary functions of her office as DOTC Undersecretary for Maritime Transport*.

MARINA was created by virtue of P.D. No. 474 issued by President Ferdinand E. Marcos on June 1, 1974. It is mandated to undertake the following:

> (a) Adopt and implement a practicable and coordinated Maritime Industry Development Program which shall include, among others, the early replacement of obsolescent and uneconomic vessels; modernization and expansion of the Philippine merchant fleet, enhancement of domestic capability for shipbuilding, repair and maintenance; and the development of reservoir of trained manpower;
>
> (b) Provide and help provide the necessary; (i) financial assistance to the industry through public and private financing institutions and instrumentalities; (ii) technological assistance; and (iii) in general, a favorable climate for expansion of domestic and foreign investments in shipping enterprises; and
>
> (c) Provide for the effective supervision, regulation and rationalization of the organizational management, ownership and operations of all water transport utilities, and other maritime enterprises.[31]

The management of MARINA is vested in the Maritime Administrator, who shall be directly assisted by the Deputy Administrator for Planning and a Deputy Administrator for Operations, who shall be appointed by the President for a term of six (6) years. The law likewise prescribes the qualifications for the office, including such "adequate training and experience

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[30] *Id.* at 331-332.

[31] P.D. No. 474, Sec. 2.

in economics, technology, finance, law, management, public utility, or in other phases or aspects of the maritime industry," and he or she is entitled to receive a fixed annual salary.[32] The Administrator shall be directly responsible to the Maritime Industry Board, MARINA's governing body, and shall have powers, functions and duties as provided in P.D. No. 474, which provides, under Sections 11 and 12, for his or her general and specific functions, respectively, as follows:

SEC. 11. *General Powers and Functions of the Administrator*. — Subject to the general supervision and control of the Board, the Administrators shall have the following general powers, functions and duties;

a. To implement, enforce and apply the policies, programs, standards, guidelines, procedures, decisions and rules and regulations issued, prescribed or adopted by the Board pursuant to this Decree;

b. To undertake researches, studies, investigations and other activities and projects, on his own initiative or upon instructions of the Board, and to submit comprehensive reports and appropriate recommendations to the Board for its information and action;

c. To undertake studies to determine present and future requirements for port development including navigational aids, and improvement of waterways and navigable waters in consultation with appropriate agencies;

d. To pursue continuing research and developmental programs on expansion and modernization of the merchant fleet and supporting facilities taking into consideration the needs of the domestic trade and the need of regional economic cooperation schemes; and

e. To manage the affairs of the Authority subject to the provisions of this Decree and applicable laws, orders, rules and regulations of other appropriate government entities.

Sec. 12. *Specific Powers and Functions of the Administrator*. — In addition to his general powers and functions, the Administrator shall;

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[32] *Id.*, Secs. 8 and 9.

a. Issue Certificate of Philippine Registry for all vessels being used in Philippine waters, including fishing vessels covered by Presidential Decree No. 43 except transient civilian vessels of foreign registry, vessels owned and/or operated by the Armed Forces of the Philippines or by foreign governments for military purposes, and bancas, sailboats and other watercraft which are not motorized, of less than three gross tons;

b. Provide a system of assisting various officers, professionals, technicians, skilled workers and seamen to be gainfully employed in shipping enterprises, priority being given to domestic needs;

c. In collaboration and coordination with the Department of Labor, to look into, and promote improvements in the working conditions and terms of employment of the officers and crew of vessels of Philippine registry, and of such officers and crew members who are Philippine citizens and employed by foreign flag vessels, as well as of personnel of other shipping enterprises, and to assist in the settlement of disputes between the shipowners and ship operators and such officers and crew members and between the owner or manager of other shipping enterprises and their personnel;

d. To require any public water transport utility or Philippine flag vessels to provide shipping services to any coastal areas in the country where such services are necessary for the development of the area, to meet emergency sealift requirements, or when public interest so requires;

e. Investigate by itself or with the assistance of other appropriate government agencies or officials, or experts from the private sector, any matter within its jurisdiction, except marine casualties or accidents which shall be undertaken by the Philippine Coast Guard;

f. Impose, fix, collect and receive in accordance with the schedules approved by the Board, from any shipping enterprise or other persons concerned, such fees and other charges for the payment of its services;

g. Inspect, at least annually, the facilities of port and cargo operators and recommend measures for adherence to prescribed standards of safety, quality and operations;

h. Approve the sale, lease or transfer of management of vessels owned by Philippine Nationals to foreign owned or controlled enterprises;

i. Prescribe and enforce rules and regulations for the prevention of marine pollution in bays, harbors and other navigable waters of the Philippines, in coordination with the government authorities concerned;

j. Establish and maintain, in coordination with the appropriate government offices and agencies, a system of regularly and promptly producing, collating, analyzing and disseminating traffic flows, port operations, marine insurance services and other information on maritime matters;

k. Recommend such measures as may be necessary for the regulation of the importation into and exportation from the Philippines of vessels, their equipment and spare parts;

l. Implement the rules and regulations issued by the Board of Transportation;

m. Compile and codify all maritime laws, orders, rules and regulations, decisions in leasing cases of courts and the Authority's procedures and other requirements relative to shipping and other shipping enterprises, make them available to the public, and, whenever practicable to publish such materials;

n. Delegate his powers in writing to either of the Deputy Administrators or any other ranking officials of the Authority; *Provided*, That he informs the Board of such delegation promptly; and

o. Perform such other duties as the Board may assign, and such acts as may be necessary and proper to implement this Decree.

With the creation of the Ministry (now Department) of Transportation and Communications by virtue of EO No. 546, MARINA was attached to the DOTC for policy and program coordination on July 23, 1979. Its regulatory function was likewise increased with the issuance of EO No. 1011 which abolished the Board of Transportation and transferred the quasi-judicial functions pertaining to water transportation to MARINA. On

January 30, 1987, EO No. 125 (amended by EO No. 125-A) was issued reorganizing the DOTC. The powers and functions of the department and the agencies under its umbrella were defined, further increasing the responsibility of MARINA to the industry. Republic Act No. 9295, otherwise known as the "The Domestic Shipping Development Act of 2004,"[33] further strengthened MARINA's regulatory powers and functions in the shipping sector.

Given the vast responsibilities and scope of administration of the Authority, we are hardly persuaded by respondents' submission that respondent Bautista's designation as OIC of MARINA was merely an imposition of additional duties related to her primary position as DOTC Undersecretary for Maritime Transport. It appears that the DOTC Undersecretary for Maritime Transport is not even a member of the Maritime Industry Board, which includes the DOTC Secretary as Chairman, the MARINA Administrator as Vice-Chairman, and the following as members: Executive Secretary (Office of the President), Philippine Ports Authority General Manager, Department of National Defense Secretary, Development Bank of the Philippines General Manager, and the Department of Trade and Industry Secretary.[34]

Finally, the Court similarly finds respondents' theory that being just a "designation," and temporary at that, respondent Bautista was never really "appointed" as OIC Administrator of MARINA, untenable. In *Binamira v. Garrucho, Jr.*,[35] we distinguished between the terms *appointment* and *designation*, as follows:

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[33] AN ACT PROMOTING THE DEVELOPMENT OF PHILIPPINE DOMESTIC SHIPPING, SHIPBUILDING, SHIP REPAIR AND SHIP BREAKING, ORDAINING REFORMS IN GOVERNMENT POLICIES TOWARDS SHIPPING IN THE PHILIPPINES, AND FOR OTHER PURPOSES, approved on May 3, 2004.

[34] Reference: 2006 MARINA Annual Report, sourced from the Internet at http://www.marina.gov.ph/services/results.aspx?k=MARINA%20annual%20report&start1=1>.

[35] G.R. No. 92008, July 30, 1990, 188 SCRA 154.

> Appointment may be defined as the selection, by the authority vested with the power, of an individual who is **to exercise the functions of a given office.** When completed, usually with its confirmation, the appointment results in security of tenure for the person chosen unless he is replaceable at pleasure because of the nature of his office. Designation, on the other hand, connotes merely the imposition by law of additional duties on an incumbent official, as where, in the case before us, the Secretary of Tourism is designated Chairman of the Board of Directors of the Philippine Tourism Authority, or where, under the Constitution, three Justices of the Supreme Court are designated by the Chief Justice to sit in the Electoral Tribunal of the Senate or the House of Representatives. It is said that appointment is essentially executive while designation is legislative in nature.
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> Designation may also be loosely defined as an appointment because it likewise involves the naming of a particular person to a specified public office. That is the common understanding of the term. However, where the person is **merely designated** and not appointed, the implication is that he shall **hold the office** only in a temporary capacity and may be replaced at will by the appointing authority. In this sense, the designation is considered only an acting or temporary appointment, which does not confer **security of tenure** on the person named.[36] [EMPHASIS SUPPLIED.]

Clearly, respondents' reliance on the foregoing definitions is misplaced considering that the above-cited case addressed the issue of whether petitioner therein acquired valid title to the disputed position and so had the right to security of tenure. It must be stressed though that while the designation was in the nature of an acting and temporary capacity, the words "*hold the office*" were employed. Such holding of office pertains to both appointment and designation because the appointee or designate *performs the duties and functions* of the office. The 1987 Constitution in prohibiting dual or multiple offices, as well as incompatible offices, refers to the holding of the office, and not to the nature of the appointment or designation, words which were not even found in Section 13, Article VII nor in Section 7, paragraph 2, Article IX-B. To "hold" an office means to

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[36] *Id.* at 158-159.

"possess or occupy" the same, or "to be in possession and administration,"[37] which implies nothing less than the actual discharge of the functions and duties of the office.

The disqualification laid down in Section 13, Article VII is aimed at preventing the concentration of powers in the Executive Department officials, specifically the President, Vice-President, Members of the Cabinet and their deputies and assistants. *Civil Liberties Union* traced the history of the times and the conditions under which the Constitution was framed, and construed the Constitution consistent with the object sought to be accomplished by adoption of such provision, and the evils sought to be avoided or remedied. We recalled the practice, during the Marcos regime, of designating members of the Cabinet, their deputies and assistants as members of the governing bodies or boards of various government agencies and instrumentalities, including government-owned or controlled corporations. This practice of holding multiple offices or positions in the government led to abuses by unscrupulous public officials, who took advantage of this scheme for purposes of self-enrichment. The blatant betrayal of public trust evolved into one of the serious causes of discontent with the Marcos regime. It was therefore quite inevitable and in consonance with the overwhelming sentiment of the people that the 1986 Constitutional Commission would draft into the proposed Constitution the provisions under consideration, which were envisioned to remedy, if not correct, the evils that flow from the holding of multiple governmental offices and employment.[38] Our declaration in that case cannot be more explicit:

> But what is indeed significant is the fact that although Section 7, Article IX-B already contains a blanket prohibition against the holding of multiple offices or employment in the government subsuming both elective and appointive public officials, the Constitutional Commission should see it fit to formulate another provision, Sec. 13, Article VII, specifically prohibiting the President, Vice-President, members of the Cabinet, their deputies and assistants

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[37] *BLACK'S LAW DICTIONARY*, Eighth Edition, p. 749.

[38] *Civil Liberties Union v. Executive Secretary, supra* at 326-327.

from holding any other office or employment during their tenure, unless otherwise provided in the Constitution itself.

Evidently, from this move as well as in the different phraseologies of the constitutional provisions in question, **the intent of the framers of the Constitution was to impose a stricter prohibition on the President and his official family in so far as holding other offices or employment in the government or elsewhere is concerned.**[39] [EMPHASIS SUPPLIED.]

Such laudable intent of the law will be defeated and rendered sterile if we are to adopt the semantics of respondents. It would open the veritable floodgates of circumvention of an important constitutional disqualification of officials in the Executive Department and of limitations on the President's power of appointment in the guise of temporary designations of Cabinet Members, undersecretaries and assistant secretaries as officers-in-charge of government agencies, instrumentalities, or government-owned or controlled corporations.

As to respondents' contention that the concurrent positions of DOTC Undersecretary for Maritime Transport and MARINA OIC Administrator are not incompatible offices, we find no necessity for delving into this matter. Incompatibility of offices is irrelevant in this case, unlike in the case of PCGG Chairman Magdangal Elma in *Public Interest Center, Inc. v. Elma*.[40] Therein we held that Section 13, Article VII is not applicable to the PCGG Chairman or to the Chief Presidential Legal Counsel, as he is *not* a cabinet member, undersecretary or assistant secretary.[41]

WHEREFORE, the petition is *GRANTED*. The designation of respondent Ma. Elena H. Bautista as Officer-in-Charge, Office of the Administrator, Maritime Industry Authority, in a concurrent capacity with her position as DOTC Undersecretary for MaritimeTransport, is hereby declared *UNCONSTITUTIONAL*

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[39] *Id.* at 327.

[40] *Supra* note 6.

[41] *Id.* at 62.

for being violative of Section 13, Article VII of the 1987 Constitution and therefore, *NULL and VOID.*

No costs.

SO ORDERED.

Puno, C.J., Carpio, Velasco, Jr., Nachura, Leonardo-de Castro, Brion, Peralta, Bersamin, Del Castillo, Abad, Perez, and *Mendoza, JJ.,* concur.

Carpio Morales, J., please see concurring opinion.

Corona, J., no part.

CONCURRING OPINION

CARPIO MORALES, *J.*:

I concur with Justice Martin Villarama, Jr. in his *ponencia* declaring unconstitutional the designation of respondent Maria Elena Bautista (Bautista) as Officer-in-Charge (OIC) of the Office of the Administrator of the Maritime Industry Authority (MARINA) in a concurrent capacity with her position as Undersecretary for Maritime Transport of the Department of Transportation and Communications (DOTC).

A quick rundown of the facts shows that Bautista was appointed as DOTC Undersecretary in October 2006 and was designated as OIC Administrator of MARINA on September 1, 2008. On January 5, 2009, she was appointed as Administrator of MARINA, the duties and responsibilities of which position she assumed on February 2, 2009 following her relinquishment of the position of DOTC Undersecretary.

Bautista thus now claims mootness of the case. A moot and academic case is one that ceases to present a justiciable controversy by virtue of supervening events, so that a declaration thereon would be of no practical use or value. Aside from the formulation of controlling principles, the grave violation of the Constitution, and the susceptibility of recurrence as pointed out by Justice Villarama, there is the presence of practical use or value to impel the Court to take cognizance of this case.

Its mootness notwithstanding, the present petition which involves the issue of holding dual positions still calls for a resolution, for there remains the practical use or value of identifying whether one was a *de facto* or *de jure* officer in terms of the legal signification of the public officer's acts, remuneration and accountability.

Bautista, during her tenure as OIC Administrator of MARINA, cannot be considered as a *de jure* officer due to the unconstitutionality of the designation. At best, she can be regarded as a *de facto* officer in such capacity from September 1, 2008 until she assumed her subsequent appointment as MARINA Administrator on February 2, 2009.

National Amnesty Commission v. Commission on Audit[1] espouses the view that one who was not appointed but merely designated to act as such cannot be considered as a *de facto* officer. To sustain this view, however, would place in limbo the legal effects of a designated officer's acts and would negate the *raison d'etre* of the *de facto* doctrine which is basically to protect the sanctity of dealings by the public with persons whose ostensible authority emanates from the State.[2] To deduce that Bautista, as a designated OIC Administrator, was not a *de facto* officer would effectively categorize her as an intruder or a mere volunteer, which she was not because she had a color of right or authority.

A *de facto* officer need not show that she was elected or "appointed in its strict sense," for a showing of a color of right to the office suffices.

Designation may be loosely defined as an appointment because it likewise involves the naming of a particular person to a specified public office.[3] In fact, even without a known appointment or

[1] G.R. No. 156982, September 8, 2004, 437 SCRA 655, 670.

[2] *Vide Topacio v. Ong*, G.R. No. 179895, December 18, 2008, 574 SCRA 817, 830.

[3] *Binamira v. Garrucho, Jr.*, G.R. No. 92008, July 30, 1990, 188 SCRA 154, 159, where the person is merely designated and not appointed, the implication is that he shall hold the office only in a temporary capacity and may be replaced at will by the appointing authority.

election, the *de facto* doctrine comes into play if the duties of the office were exercised under such circumstances of reputation or acquiescence as were calculated to induce people, without inquiry, to submit to or invoke his action, supposing him to be the officer he assumed to be.[4]

I submit that the pronouncement in *National Amnesty Commission* comes in the form of an *obiter dictum*[5] since it was not necessary to the disposition of that case where the Court disallowed the payment of honoraria to the representatives of the *ex-officio* members of the National Amnesty Commission and ruled that the restrictions[6] covering the *ex-officio* members apply with equal force to their representatives since the representative cannot have a better right than his or her principal.

Civil Liberties Union vis-à-vis Public Interest Center

With respect to the legal complexion of Bautista's position as DOTC Undersecretary, there is a need to explore the implication of nullifying the holding of a second position.

Where a person is prohibited from holding two offices at the same time, his appointment or election to a second office may operate to vacate the first *or* he may be ineligible for the second.[7]

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[4] *Vide Lino Luna v. Rodriguez and De los Angeles*, 37 Phil. 186, 192 (1917).

[5] An *obiter dictum* has been defined as an opinion expressed by a court upon some question of law which is not necessary to the decision of the case before it. It is a remark made, or opinion expressed, by a judge, in his decision upon a cause, "by the way," that is, incidentally or collaterally, and not directly upon the question before him, or upon a point not necessarily involved in the determination of the cause, or introduced by way of illustration, or analogy or argument. Such are not binding as precedent. (*Delta Motors Corporation v. Court of Appeals*, G.R. No. 121075, July 24, 1997, 276 SCRA 212, 223).

[6] With respect to the exception enunciated in the *Civil Liberties Union* case allowing posts occupied by the Executive officials specified therein without additional compensation in an *ex-officio* capacity as provided by law and as *required* by the primary functions of said officials' office.

[7] HECTOR DE LEON & HECTOR DE LEON, JR., *THE LAW ON PUBLIC OFFICERS AND ELECTION LAW*. 45 (2000).

The proposition that a person shall be declared ineligible for the second position was followed in *Civil Liberties Union v. Executive Secretary*[8] where the Court ordered certain cabinet members, except those who were no longer occupying the positions complained of, "to immediately relinquish their other offices or employment, as herein defined, in the government, including government-owned and controlled corporations and their subsidiaries."[9]

Under this principle, Bautista would only be directed to relinquish the post of MARINA Administrator, if still being occupied, and concentrate on her functions as DOTC Undersecretary.

The other proposition – that a person who assumes a second and incompatible office is deemed to have resigned from the first office – was applied in *Public Interest Center, Inc. v. Elma*[10] where the Court, by Resolution of March 5, 2007, clarified that the ruling did not render both appointments void. It held that "[f]ollowing the common-law rule on incompatibility of offices, respondent Elma had, in effect, vacated his first office as PCGG Chairman when he accepted the second office"[11] as Chief Presidential Legal Counsel.

Under this rule, Bautista would be deemed to have vacated her first office as DOTC Undersecretary when she accepted the post of OIC Administrator of MARINA.

The Implications of the Two Propositions

Upon a closer examination of *Public Interest Center, Inc.* which espouses the *ipso facto* vacancy rule, there appears a vacuity in such a situation where the Court nullifies the appointment to a second office for being unconstitutional and likewise deems the first office as having been vacated. In the end, the public officer is left without an office.

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

[9] *Id.* at 339.

[10] G.R. No. 138965, June 30, 2006, 494 SCRA 53.

[11] G.R. No. 138965, March 5, 2007, 517 SCRA 336, 339.

In the present case, Bautista eventually voluntarily gave up her first post when she was *subsequently appointed* as MARINA Administrator, after five months of concurrently discharging the functions of an appointed DOTC Undersecretary and a designated MARINA Officer-in-Charge. It bears noting that what is being nullified is her designation and not the subsequent appointment as Administrator. Her current position as MARINA Administrator was conferred not by virtue of the assailed designation but by the *subsequent appointment* which effectively stands. Thus, notwithstanding the implication of *Public Interest Center*, the scenario of vacancy will not occur in this peculiar case.

With respect to the proposition under *Civil Liberties Union* – ineligibility for the second position only – the only peculiarity of the present case is that the reverse thing transpired in the meantime, with Bautista giving up the Undersecretary position and accepting the subsequent regular appointment as MARINA Administrator. The supposed continued validity of her position as DOTC Undersecretary has been rendered nugatory by her voluntary relinquishment of said position.

Further quandary lies in the five-month interregnum.

On the one hand, following the *Public Interest Center* rule that deems her first office vacated upon her holding of a second position, Bautista had become a *de facto* DOTC Undersecretary from September 1, 2008 (when she assumed the position of MARINA OIC Administrator) until she resigned therefrom. On the other hand, following the *Civil Liberties Union* rule that merely deems her ineligible for the second position, Bautista remained a *de jure* DOTC Undersecretary during her entire tenure as such.

IN FINE, I submit that the two cases provide sound formulations for two distinct situations. The ***Civil Liberties Union*** rule applies to cases involving dual or multiple positions under Section 13 of Article VII of the Constitution[12] while the

[12] SECTION 13. The President, Vice-President, the Members of the Cabinet, and their deputies or assistants shall not, unless otherwise provided

Public Interest Center rule covers those under Section 7 of Article IX-B of the Constitution.[13]

The *Civil Liberties Union* formulation rendering the public officer ineligible for the second position comes into play, since Bautista was a department undersecretary, a position covered by the prohibition under Section 13, Article VII of the Constitution. This principle underscores the primacy of the "President, Vice-President, the Members of the Cabinet, and their deputies or assistants" as a class by itself, necessitating the disallowance of any implied vacancy in such offices.

The *Pubic Interest Center* rule of implied resignation does not apply since it speaks of "incompatibility of office" which is irrelevant in determining a violation of Section 13, Article VII of the Constitution.

It has also been observed that the rule of *ipso facto* vacancy of a public office by acceptance of a second public office does not apply where, under applicable constitutional or statutory provisions, the holder of a public office is rendered ineligible for a specified time for a second public office; under such circumstances it is the second office which is considered vacant rather than the first office.[14]

I, therefore, vote to GRANT the petition and further declare that Bautista was a *de facto* officer during her brief stint as MARINA OIC Administrator and a *de jure* DOTC Undersecretary during her entire tenure as such.

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in this Constitution, hold any other office or employment during their tenure. x x x.

[13] SECTION 7. No elective official shall be eligible for appointment or designation in any capacity to any public office or position during his tenure.

Unless otherwise allowed by law or by the primary functions of his position, no appointive official shall hold any other office or employment in the Government or any subdivision, agency or instrumentality thereof, including government-owned or controlled corporations or their subsidiaries.

[14] 63C Am. Jur. 2d §61 p. 504, that is, not merely on the ground of the incompatibility of office.

Concluding Words

The present case, in which the constitutional question posed is no longer an unchartered sea, should once again remind all civil servants of the rationale behind the general rule against the holding of multiple positions.

One manifest purpose of a restriction on multiple holdings is to prevent offices of public trust from accumulating in a single person.[15] Indeed, no one can claim a monopoly of skills.

> Being head of an executive department is no mean job. It is more than a full-time job, requiring full attention, specialized knowledge, skills and expertise. If maximum benefits are to be derived from a department head's ability and expertise, he should be allowed to attend to his duties and responsibilities without the distraction of other governmental offices or employment. He should be precluded from dissipating his efforts, attention and energy among too many positions of responsibility, which may result in haphazardness and inefficiency. Surely the advantages to be derived from this concentration of attention, knowledge and expertise, particularly at this stage of our national and economic development, far outweigh the benefits, if any, that may be gained from a department head spreading himself too thin and taking in more than what he can handle.[16]

The same norm holds true to that of a DOTC Undersecretary for Maritime Transport. Now as always, the country cannot afford to have a public official who cannot devote full time on the crucial problems, contemporary or longstanding, not to mention the perennial sea tragedies, that have beleaguered the maritime industry, an industry that is "indubitably imbued with national interest."[17]

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[15] *Supra* note 7 at 45

[16] *Civil Liberties Union v. Executive Secretary, supra* note 8 at 339.

[17] *Trans-Asia Shipping Lines, Inc.-Unlicensed Crews Employees Union - Assisted Labor Unions (Tasli-Alu) v. Court of Appeals*, G.R. No. 145428, July 7, 2004, 433 SCRA 610, 621.

FIRST DIVISION

[G.R. No. 185226. February 11, 2010]

CORAZON M. GREGORIO, as administratrix of the estate litigated in the case below, RAMIRO T. MADARANG, and the heirs of CASIMIRO R. MADARANG, JR., namely: Estrelita L. Madarang, Consuelo P. Madarang, Casimiro Madarang IV, and Jane Margaret Madarang-Crabtree, *petitioners, vs.* **ATTY. JOSE R. MADARANG and VICENTE R. MADARANG,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL PROCEEDINGS; SETTLEMENT OF ESTATE OF DECEASED PERSON; A PROBATE COURT CANNOT ACT ON QUESTIONS OF OWNERSHIP; EXCEPTION.— While a probate court, being of special and limited jurisdiction, cannot act on questions of title and ownership, it can, for purposes of inclusion or exclusion in the inventory of properties of a decedent, make a *provisional* determination of ownership, without prejudice to a final determination through a separate action in a court of general jurisdiction. The facts obtaining in the present case, however, do not call for the probate court to make a *provisional* determination of ownership of Lot 829-B-4-B. It bears stress that the question is one of collation or advancement by the decedent to an heir over which the question of title and ownership can be passed upon by a probate court.

2. ID.; ID.; ID.; PROPERTIES ALLEGED TO HAVE BEEN DONATED BY THE DECEDENT TO AN HEIR SHOULD NOT BE EXCLUDED FROM THE INVENTORY OF THE PROPERTIES OF THE DECEDENT.— As earlier reflected, Vicente's claim of ownership over Lot 829-B-4-B rests upon a deed of donation by his father (decedent) and his mother. Article 1061 of the Civil Code expressly provides: Article 1061. Every compulsory heir, who succeeds with other compulsory heirs, must bring into the mass of the estate any property or right which he may have received from the decedent, during the lifetime of the latter, by way of donation, or any other gratuitous title, in order

that it may be computed in the determination of the legitime of each heir and in the account of partition. In relation to which, Section 2, Rule 90 of the Rules of Court provides: Sec. 2. *Questions as to advancement to be determined*. – Questions as to advancement made, or alleged to have been made, by the deceased to any heir may be heard and determined by the court having jurisdiction of the estate proceedings; and the **final order of the court thereon shall be binding on the person raising the questions and on the heir.** By express provision of law then, Lot 829-B-4-B, which was alleged to have been donated by the decedent and his wife to their son-respondent Vicente, should not be excluded from the inventory of the properties of the decedent.

APPEARANCES OF COUNSEL

Filmore C. Gomos and *Ramiro R. Madarang* for petitioners.
Maricar Suico-Le for Vicente R. Madarang.

D E C I S I O N

CARPIO MORALES, *J.*:

Casimiro V. Madarang, Sr. (Casimiro, Sr. or the decedent) died intestate on June 3, 1995, leaving real and personal properties with an estimated value of ₱200,000.00.[1] He was survived by his wife Dolores and their five children, namely Casimiro, Jr., Jose, Ramiro, Vicente and Corazon.

In the intestate proceedings filed by the couple's son Jose which was lodged before the Regional Trial Court (RTC) of Cebu City, Branch 57, Dolores was appointed as administratrix of the intestate estate of Casimiro, Sr.[2]

Dolores submitted an Inventory Report listing the properties of the decedent's estate. Jose filed his Comment on the Report, alleging that it omitted six lots including Lot 829-B-4-B located in Cebu City which is covered by Transfer Certificate of Title No. 125429.

[1] Records, Vol. 1, "Petition for Letters of Administration," p. 2.

[2] *Id.* at 44.

A hearing was thus conducted to determine whether the six lots formed part of the estate of the decedent. By Order of April 5, 2002, [3] the RTC, noting the following:

> x x x The said properties appear to have been acquired by the spouses after [their marriage on] December 27, 1931 and during their marriage or coverture. Article 160 of the New Civil Code of the Philippines (which is the governing law in this particular case) is very explicit in providing that all properties of the marriage are presumed to belong to the conjugal partnership. This presumption, to the mind of the Court, has not been sufficiently rebutted by the special administratrix. [Dolores] This presumption applies and holds even if the land is registered under the wife's name as long as it was acquired during marriage (*De Guinoo vs. Court of Appeals.* G.R. No. L-5541, June 26, 1955) or even if the wife purchased the land alone *(Flores, et al. Vs. Escudero, et al.*, G.R. No. L-5302, March 11, 1953).[4] (underscoring supplied),

instructed Dolores to revise her Inventory Report to include the six lots.

Dolores and her children, except Jose who suggested that the former be referred to as "oppositors",[5] questioned the RTC order of inclusion of the six lots via motion for reconsideration during the pendency of which motion the court appointed herein petitioner Corazon as co-administratrix of her mother Dolores.

As Dolores and her co-oppositors alleged that the six lots had been transferred during the lifetime of the decedent, they were ordered to submit their affidavits, in lieu of oral testimony, to support the allegation. Only herein respondent Vicente complied. In his Affidavit, Vicente declared that one of the six lots, Lot 829-B-4-B, was conveyed to him by a Deed of Donation executed in August 1992 by his parents Dolores and Casimiro, Sr.[6]

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[3] *Id.* at 222-226.

[4] *Id.* at 225-226.

[5] Manifestation and Motion, *id.* at 273, 276-277.

[6] *Id.* at 305-306.

It appears that petitioners later manifested that they no longer oppose the *provisional* inclusion of the six lots, except Lot 829-B-4-B.

The RTC, by Order of January 20, 2003,[7] thus modified its April 5, 2002 Order as follows:

> Of the six lots directed included in the inventory, Lot 829 B-4-B should be excluded. The administratrix is directed within sixty (60) days: (1) to submit a revised inventory in accordance with the Order dated April 5, 2002, as here modified; and (2) to render an accounting of her administration of the estate of Casimiro V. Madarang. (underscoring supplied),

Jose moved to reconsider the RTC January 20, 2003 Order, arguing that since the title to Lot 829-B-4-B remained registered in the name of his parents, it should not be excluded from the Inventory; and that the Deed of Donation in Vicente's favor was not notarized nor registered with the Register of Deeds. Jose's motion for reconsideration having been denied by Order of February 5, 2003, he filed a Notice of Appeal.

In his Brief filed before the Court of Appeals, Jose claimed that the RTC erred in excluding Lot 829-B-4-B from the Inventory as "what the lower court should have done was to . . . maintain the order including said lot in the inventory of the estate so Vicente can file an ordinary action where its ownership can be threshed out."

Jose later filed before the appellate court a "Motion to Withdraw Petition" which his co-heirs-oppositors-herein petitioners opposed on the ground that, *inter alia,* a grant thereof would "end" the administration proceedings. The appellate court, by Resolution of January 18, 2008,[8] granted the withdrawal on the ground that it would "not prejudice the rights of the oppositors."

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[7] *Id.* at 324-325.

[8] Penned by Associate Justice Francisco P. Acosta, with the concurrence of Associate Justices Pampio A. Abarintos and Amy C. Lazaro-Javier, records, Vol. 2, pp. 1242-1243.

Petitioners' motion for reconsideration of the appellate court's grant of Jose's Motion to Withdraw Petition was, **by Resolution of November 6, 2008**,[9] denied in this wise:

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In the instant case, the Probate Court found that the parties of the case interposed no objection to the non-inclusion of Lot No. 829-B-4-B in the inventory of the estate of Casimiro V. Madarang, in effect, they have consented thereto. x x x

x x x x x x x x x

Moreover, [herein petitioners] in their appeal brief, ha[ve] extensively argued that . . . **Vicente Madarang [to whom the questioned lot was donated]** and his family **have been in continuous, actual and physical possession of the donated lot** for over twenty (20) years, even before the execution of the so called donation *inter vivos* in 1992. . . . Vicente Madarang has his residential house thereon and that his ownership over the donated lot has been fully recognized by the entire Madarang Clan, including all his brothers and sisters, except the much belated objection by the appellant (Jose), allegedly resorted to as an act of harassment. [10] (emphasis and underscoring supplied),

thus affirming the RTC order of exclusion of the questioned lot.

Hence, the present petition for review filed by the oppositors-herein petitioners. Casimiro, Jr. having died during the pendency of the case, he was substituted by his wife petitioner Estrelita and co-petitioners children Consuelo, Casimiro IV, and Jane Margaret.

Petitioners contend that since the only issue for consideration by the appellate court was the merit of Jose's "Motion to Withdraw Petition," it exceeded its jurisdiction when it passed upon the merits of Jose's appeal from the RTC order excluding Lot 829-B-4-B from the Inventory.

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[9] *Id.* at 1192-1202.

[10] *Id.* at 1197-1199.

Petitioners' contention does not lie.

In their Motion for Reconsideration of the appellate court's grant of Jose's "Motion to Withdraw Petition", petitioners, oddly denying the existence of a "petition," raised the issue of the propriety of the RTC Order excluding Lot 829-B-4-B from the Inventory. Their prayer in their Motion clearly states so:

> WHEREFORE, premises considered, Oppositors-Appellees [petitioners] respectfully PRAY for this Honorable Court to RECONSIDER its questioned Resolution and rendering [*sic*], forthwith, a decision **resolving the merits** of the Partial Appeal of petitioner-appellant Jose Madarang.[11] (capitalization in the original; emphasis supplied)

The appellate court did not thus err in passing on the said issue.

More specifically, petitioners question the appellate court's finding that as the parties "interposed no objection to the non-inclusion of Lot No. 829-B-4-B in the inventory of the estate of Casimiro V. Madarang, in effect, they have consented thereto."[12]

A review of the voluminous records of the case shows that, indeed, there was no accord among the parties respecting the exclusion of Lot 829-B-4-B.

While a probate court, being of special and limited jurisdiction, cannot act on questions of title and ownership, it can, for purposes of inclusion or exclusion in the inventory of properties of a decedent, make a *provisional* determination of ownership, without prejudice to a final determination through a separate action in a court of general jurisdiction.

The facts obtaining in the present case, however, do not call for the probate court to make a *provisional* determination of ownership of Lot 829-B-4-B. It bears stress that the question is one of collation or advancement by the decedent to an heir

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[11] CA *rollo*, p. 121.

[12] *Rollo*, pp. 51-52.

over which the question of title and ownership can be passed upon by a probate court.[13]

As earlier reflected, Vicente's claim of ownership over Lot 829-B-4-B rests upon a deed of donation by his father (decedent) and his mother.

Article 1061 of the Civil Code expressly provides:

> Article 1061. Every compulsory heir, who succeeds with other compulsory heirs, must bring into the mass of the estate any property or right which he may have received from the decedent, during the lifetime of the latter, by way of donation, or any other gratuitous title, in order that it may be computed in the determination of the legitime of each heir and in the account of partition. (underscoring supplied)

in relation to which, Section 2, Rule 90 of the Rules of Court provides:

> Sec. 2. *Questions as to advancement to be determined*. – Questions as to advancement made, or alleged to have been made, by the deceased to any heir may be heard and determined by the court having jurisdiction of the estate proceedings; and the **final order of the court thereon shall be binding on the person raising the questions and on the heir.** (emphasis and underscoring supplied)

By express provision of law then, Lot 829-B-4-B, which was alleged to have been donated by the decedent and his wife to their son-respondent Vicente, should not be excluded from the inventory of the properties of the decedent.

WHEREFORE, the petition is *GRANTED*. The assailed November 6, 2008 Resolution of the Court of Appeals is *SET ASIDE*. Petitioner Corazon M. Gregorio and her co-administratrix Dolores Madarang are *DIRECTED* to include Lot 829-B-4-B in the Inventory of the properties of the intestate estate of Casimiro V. Madarang, Sr.

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[13] *Reyes v. Hon. Regional Trial Court of Makati, Branch 142*, G.R. No. 165744, August 11, 2008, 561 SCRA 593.

Let the records of the case be remanded to the court of origin, the Regional Trial Court of Cebu City, Branch 57, which is *DIRECTED* to proceed with the disposition of the case with dispatch.

SO ORDERED.

Puno, C.J. (Chairperson), Leonardo-de Castro, Bersamin, and *Villarama, Jr., JJ.,* concur.

EN BANC

[G.R. No. 186640. February 11, 2010]

GEN. ALEXANDER B. YANO, Chief of Staff, Armed Forces of the Philippines, LT. GEN. VICTOR S. IBRADO, Commanding General, Philippine Army, and MAJ. GEN. RALPH A. VILLANUEVA, Commander, 7th Infantry Division, Philippine Army, *petitioners, vs.* **CLEOFAS SANCHEZ and MARCIANA MEDINA,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; A PARTY WHO DID NOT APPEAL CANNOT ASSIGN SUCH ERRORS AS ARE DESIGNED TO HAVE THE JUDGMENT MODIFIED; RATIONALE. — The entrenched procedural rule in this jurisdiction is that a party who did not appeal cannot assign such errors as are designed to have the judgment modified. All that said appellee can do is to make a counter-assignment of errors or to argue on issues raised at the trial only for the purpose of sustaining the judgment in his favor, even on grounds not included in the decision of the court *a quo* or raised in the appellant's assignment of errors or arguments. This tenet is enshrined as one of the basic principles in our rules of procedure, specifically

to avoid ambiguity in the presentation of issues, facilitate the setting forth of arguments by the parties, and aid the court in making its determinations. A party who fails to acquire complete relief from a decision of the court has various remedies to correct an omission by the court. He may move for a correction or clarification of judgment, or even seek its modification through ordinary appeal. There is thus no basis for the Court to skip the rule and excuse herein respondents for failure to properly avail themselves of the remedies in the face of the parties' contentions that have remained disputed.

2. ID.; THE RULE ON THE WRIT OF *AMPARO*; STANDARD OF PROOF AND DILIGENCE REQUIRED. — Sections 17 and 18 of the *Amparo* Rule lay down the requisite standard of proof necessary to prove either party's claim, *viz*: SEC. 17. *Burden of Proof and Standard of Diligence Required*. — The parties shall establish their claim by substantial evidence. The respondent who is a private individual or entity 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 to evade responsibility or liability. xxx The requisite standard of proof – **substantial evidence** — speaks of the clear intent of the Rule to have the equivalent of an administrative proceeding, albeit judicially conducted, in resolving *amparo* petitions. To the appellate court, the evidence adduced in the present case failed to measure up to that standard– substantial evidence which a reasonable mind might accept as adequate to support a conclusion. Since respondents did not avail of any remedy against the adverse judgment, the appellate court's decision is, insofar as it concerns them, now beyond the ambit of review.

3. ID.; ID.; ID.; FAILURE TO ESTABLISH COMPLIANCE WITH THE STANDARD OF DILIGENCE REQUIRED DOES NOT RESULT IN THE AUTOMATIC GRANT OF THE PRIVILEGE OF THE *AMPARO* WRIT.— [T]he requirement for a government official or employee to observe extraordinary diligence in the performance of duty stresses the extraordinary

measures expected to be taken in safeguarding every citizen's constitutional rights as well as in the investigation of cases of extra-judicial killings and enforced disappearances. The failure to establish that the public official observed extraordinary diligence in the performance of duty does not result in the automatic grant of the privilege of the *amparo* writ. It does not relieve the petitioner from establishing his or her claim by substantial evidence. The omission or inaction on the part of the public official provides, however, some basis for the petitioner to move and for the court to grant certain interim reliefs.

4. ID.; ID.; ID.; ID.; PROVISIONAL RELIEFS GRANTED BY THE COURT TO PROTECT THE RIGHTS OF ALL THE PARTIES; PURPOSE THEREOF. — [S]ection 14 of the *Amparo* Rule provides for **interim or provisional reliefs** that the courts may grant in order to, *inter alia*, protect the witnesses and the rights of the parties, and preserve all relevant evidence, *viz*: SEC. 14. *Interim Reliefs*. — **Upon filing** of the petition **or at anytime before final judgment,** the court, justice or judge may grant any of the following reliefs: (a) *Temporary Protection Order*. — The court, justice or judge, upon motion or *motu proprio*, may order that the petitioner or the aggrieved party and any member of the immediate family be protected in a government agency or by an accredited person or private institution capable of keeping and securing their safety. If the petitioner is an organization, association or institution referred to in Section 3 (c) of this Rule, the protection may be extended to the officers involved. xxx (b) *Inspection Order*. — The court, justice or judge, upon verified motion and after due hearing, may order any person in possession or control of a designated land or other property, to permit entry for the purpose of inspecting, measuring, surveying, or photographing the property or any relevant object or operation thereon. xxx (c) *Production Order*. — The court, justice, or judge, upon verified motion and after due hearing, may order any person in possession, custody or control of any designated documents, papers, books, accounts, letters, photographs, objects or tangible things, or objects in digitized or electronic form, which constitute or contain evidence relevant to the petition or the return, to produce and permit their inspection, copying or photographing by or on behalf of the movant. xxx These provisional reliefs are intended to assist the court *before* it arrives at a judicious determination of the

amparo petition. For the appellate court to, in the present case, still order the inspection of the military camps and order the army units to conduct an investigation into the disappearance of Nicolas and Heherson *after* it absolved petitioners is thus not in order. The reliefs granted by the appellate court to respondents are not in sync with a finding that petitioners could not be held accountable for the disappearance of the victims.

5. ID.; APPEALS; NO MODIFICATION OF JUDGMENT COULD BE GRANTED TO A PARTY WHO DID NOT APPEAL. — Respondents posit that there appears to be some shared confusion as to whether the reliefs granted by the appellate court are final or interlocutory. They thus implore this Court to modify the appellate court's judgment by considering the reliefs as temporary or interlocutory and by adding thereto an order for the production of logbooks and reports. At this late stage, respondents can no longer avail themselves of their stale remedies in the guise of praying for affirmative reliefs in their Comment. No modification of judgment could be granted to a party who did not appeal. If respondents believed that the September 17, 2008 Decision of the appellate court was merely interlocutory, they had every opportunity to question the conclusion of said court, but they did not. They could have opposed petitioners' motion for reconsideration filed with the appellate court, it being a prohibited pleading under the *Amparo* Rule, but they did not.

APPEARANCES OF COUNSEL

The Solicitor General for petitioners.
Felix J. Mariñas, Jr. for respondents.

D E C I S I O N

CARPIO MORALES, *J.*:

On December 28, 2007, respondent Cleofas Sanchez (Cleofas) filed before this Court a petition docketed as G.R. No. 180839 for issuance of a Writ of *Amparo* with Motion for Production and Inspection directed against Gen. Hermogenes Esperon (Gen.

Esperon), the then Chief of Staff of the Armed Forces of the Philippines (AFP).

On January 2, 2008, the Court[1] resolved to issue a Writ of *Amparo* and ordered Gen. Esperon to make a verified return of the writ before Court of Appeals Justice Edgardo Sundiam, who was ordered to hear and decide the case which was eventually redocketed as CA-G.R. SP No. 00010 WR/A.

Cleofas amended her petition[2] on January 14, 2008 to include herein co-respondent Marciana Medina (Marciana) as therein additional petitioner, and to implead other military officers[3] including Lt. Ali Sumangil (Lt. Sumangil) and Sgt. Gil Villalobos[4] (Sgt. Villalobos) as therein additional respondents.

In the *Amended* Petition, Cleofas and Marciana (respondents) alleged that on September 17, 2006 at around 8:00 p.m., their respective sons Nicolas Sanchez and Heherson Medina were catching frogs outside their home in Sitio Dalin, Barangay Bueno, Capas, Tarlac; that at around 1:00 a.m. of the next day, September 18, 2006, Nicolas' "wives" Lourdez and Rosalie Sanchez, who were then at home, heard gunshots and saw armed men in soldiers' uniforms passing by; that at around 4:00 a.m. of the same day, Lourdez and Rosalie went out to check on Nicolas and Heherson but only saw their caps, slippers, *pana* and airgun for catching frogs, as well as bloodstains; and that they immediately reported the matter to the *barangay* officials.

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[1] By authority of the Chief Justice (*rollo*, pp. 64-65), which the Court confirmed *nunc pro tunc* by Resolution of January 15, 2008.

[2] *Rollo*, pp. 66-72.

[3] The Commanding General of the Philippine Army (Army), the Commanding General of the Army's 7th Infantry Division in Fort Magsaysay in Palayan City, Camp Commander of Camp Servillano Aquino of the Northern Luzon Command (Nolcom) in Tarlac City, Detachment Commander of the Camp Detachment of the Army's 71st Infantry Batallion in Tarlac, and Camp Commander of the Camp of the Bravo Company of the Army's 71st Infantry Batallion inside Hacienda Luisita in Tarlac City. (*Vide rollo*, pp. 67-68)

[4] Both were assigned to the Bravo Company of the 71st Infantry Batallion of the Army's 7th Infantry Division.

Respondents narrated that they, together with other family members, proceeded on September 19, 2006 to the Capas Station of the Philippine National Police (PNP). Accompanied by officials of the National Commission on Indigenous Peoples (NCIP),[5] they also tried to search for Nicolas and Heherson at the Camp Detachment of the 71st Infantry Batallion of the Philippine Army (Army) in Barangay Burgos, San Jose, Tarlac, and at the Camp of the Bravo Company of the Army's 71st Infantry Batallion inside Hacienda Luisita, Tarlac City, but to no avail.

Furthermore, respondents alleged that Josephine Galang Victoria, also known as Antonina Galang (Josephine), niece of a neighbor, later informed them that she had seen two men inside Camp Servillano Aquino of the Northern Luzon Command (Nolcom) in San Miguel, Tarlac City on September 21, 2006, whom Josephine later identified as Nicolas and Heherson (the victims) after respondents had shown her their photographs; and that Josephine informed them that she saw the victims again on September 24, 2006 and November 1, 2006,[6] this time at the Camp of the Bravo Company of the Army's 71st Infantry Batallion inside Hacienda Luisita, where she had occasion to talk to Lt. Sumangil and Sgt. Villalobos. Respondents filed a case on December 21, 2006 before the Commission on Human Rights (CHR), which endorsed[7] the same to the Ombudsman for appropriate action.

Contending that the victims' life, liberty and security had been and continued to be violated on account of their forced disappearance, respondents prayed for the issuance of a writ of *Amparo*, the production of the victims' bodies during the hearing on the Writ, the inspection of certain military camps,[8]

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[5] Both Nicolas and Heherson are Aetas.

[6] Josephine alleges in her affidavit that on September 24, 2006, she saw Nicolas cooking and Heherson sweeping the floor, while on November 1, 2006, she saw both of them gathering wood; *rollo*, pp. 69-70.

[7] The CHR also recommended that financial assistance by way of survivorship benefits in the amount of ₱10,000 be granted to Cleofas and Medina; *rollo*, p. 97.

[8] These are: Camp Servillano Aquino in San Miguel, Tarlac City; the

the issuance of temporary and permanent protection orders, and the rendition of judgment under Section 18 of the Rule on the Writ of *Amparo*.[9]

Meanwhile, a consolidated Return of the Writ,[10] verified by Gen. Esperon, Lt. Sumangil, Sgt. Villalobos, Maj. Gen. Juanito Gomez (Maj. Gen. Gomez) as Commander of the Army's 7th Infantry Division, and Lt. Col. Victor Bayani (Lt. Col. Bayani) as Camp Commander of Camp Servillano Aquino of the Nolcom in Tarlac City, was filed with the appellate court on January 24, 2008. Lt. Gen. Alexander Yano (Lt. Gen. Yano), Commanding General of the Army, filed a Return of the Writ upon his return from an official trip abroad.

In their Return, the military officers denied having custody of the victims. They posited that the proper remedy of respondents was to file a petition for the issuance of a Writ of *Habeas Corpus*, since the petition's ultimate objective was the production of the bodies of the victims, as they were allegedly abducted and illegally detained by military personnel;[11] that the petition failed to indicate the matters required by paragraphs (c), (d) and (e), Section 5 of the Rule on the Writ of *Amparo*, such that the allegations were incomplete to constitute a cause of action, aside from being based on mere hearsay evidence, and are, at best, speculative; that respondents failed to present the affidavits of some other competent persons which would clearly validate their claim that the military violated the victims' right to life, liberty or security by abducting or detaining them; and that the petition did not allege any specific action or inaction attributable to the military officers with respect to their duties; or allege that respondents took any action by filing a formal complaint or visiting the military camps adverted to in order to

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Camp of the Bravo Company of the Army's 71st Infantry Batallion inside Hacienda Luisita, Tarlac City; and the Camp Detachment of the Army's 71st Infantry Batallion in Barangay Burgos, San Jose, Tarlac.

[9] *Rollo*, p. 70.

[10] *Id*. at 99-135.

[11] *Id*.at 103-105.

verify Josephine's claim that she saw the victims on two different occasions inside the camps, or that they took efforts to follow up on the PNP Capas Station's further action on their complaint.[12]

Denying he violated the victims' right to life, liberty and security, Gen. Esperon specifically asserted that, in compliance with the Defense Secretary's directive in relation to cases of Writ of *Amparo* against the AFP, he issued directives to the Nolcom Commander and the Army's Commanding General to investigate and establish the circumstances surrounding reported disappearances of victims insofar as the claim on the possible involvement of the military units was concerned; and undertook to bring any military personnel involved, when warranted by the evidence, to the bar of justice.[13]

Maj. Gen. Gomez likewise denied having custody or knowledge of the whereabouts of the victims, stating that it was not army policy to abduct civilians in his area of responsibility,[14] and that he was away on official business at the time of the alleged disappearance of the victims.[15]

Lt. Col. Bayani attested that he was designated Camp Commander only on September 1, 2007 and thus had no personal knowledge about the victims' alleged disappearance or abduction on September 18, 2006; that he was informed by his immediate predecessor that no individuals were detained in the camp as it did not even have detention facilities; and that in compliance with Gen. Esperon's directive, their command was conducting further investigation to verify the allegations in the petition.[16]

Lt. Sumangil denied having spoken to Josephine inside the camp on September 24, 2006, on which date civilians were not

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[12] *Id.* at 106-111.

[13] *Id.* at 112-114.

[14] Covering the provinces of Nueva Ecija, Tarlac, Bulacan, Bataan, Aurora, Pangasinan, Zambales and several municipalities in Nueva Ecija; *rollo*, p. 115.

[15] *Id.* at 114-117.

[16] *Id.* at 116-119.

allowed to enter except on official missions or when duly authorized to conduct transactions inside the camp. He thus concluded that Josephine lied in claiming to have seen the two victims inside the Camp of the Bravo Company of the 71st Infantry Batallion inside Hacienda Luisita on September 24, 2006 or at any time thereafter. He instead recounted that on September 24, 2006, he spoke for the first and only time, but only at the gate of the camp, with a person who identified herself as "Antonina Galang", who informed him about the disappearance of the victims since September 18, 2006. Warning him that these men were members of the New People's Army (NPA), she advised him not to entertain any queries or complaints relative to their alleged disappearance.[17]

Sgt. Villalobos echoed Sumangil's disclaimer about having any of the victims in his custody or meeting anyone named Josephine Victoria, or about the latter having entered the camp's kitchen to drink water.

Lt. Gen. Yano stated that upon his return from his official functions overseas, he immediately inquired on the actions taken on the case. He averred that he had never participated directly or indirectly; or consented, permitted or sanctioned any illegal or illegitimate military operations. He declared that it had always been his policy to respect human rights and uphold the rule of law, and to bring those who violated the law before the court of justice.

In opposing the request for issuance of inspection and production orders, the military officers posited that apart from compromising national security should entry into these military camps/bases be allowed, these orders partook of the nature of a search warrant, such that the requisites for the issuance thereof must be complied with prior to their issuance. They went on to argue that such request relied solely on bare, self-serving and vague allegations contained in Josephine's affidavit, for aside from merely mentioning that she saw Nicolas and Heherson on board an army truck near the Nolcom gate and, days later, inside the kitchen of the 71st Infantry Battalion Camp inside Hacienda Luisita and while logging outside said camp, Josephine

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[17] *Id.* at 119-121.

had stated nothing more to ascertain the veracity of the places where she allegedly saw Nicolas and Heherson.[18]

On whether the impleaded military officers were either directly or indirectly connected with the disappearance of the victims, the appellate court, after hearing, absolved, by the assailed Decision of September 17, 2008,[19] Gen. Esperon, Lt. Gen. Yano, Maj. Gen. Gomez, and Lt. Col. Bayani for lack of evidence linking them to the disappearances, and further ruled as follows:

> All said, this Court is convinced that petitioners have not adequately and convincingly established any direct or indirect link between respondents individual military officers and the disappearances of Nicolas and Heherson. Neither did the concerned Philippine Army Units have exerted fully their efforts to investigate and unearth the truth and bring the culprits before the bar of justice.
>
> The concerned Philippine Army units (such as the Northern Command and the 7th Infantry Division, which had jurisdiction over the place of disappearance of Nicolas and Heherson, should exert extraordinary diligence to follow all possible leads to solve the disappearances of Nicolas and Heherson. The Philippine Army should be reminded of its constitutional mandate as the protector of the people and the State.
>
> RELIEFS
>
> While as We stated hereinbefore that We could not find any link between respondents individual military officers to the disappearance of Nicolas and Heherson, nonetheless, the fact remains that the two men are still missing. Hence, We find it equitable to grant petitioners some reliefs in the interest of human rights and justice as follows:
>
> 1. Inspections of the following camps: Camp Servillano Aquino, San Miguel, Tarlac City, any military camp of the 7th Infantry Division located in Aqua Farm, Hacienda Luisita, Tarlac City, within reasonable working hours of any day except when the military camp is on red alert status.

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[18] *Id.* at 125.

[19] Penned by Justice Edgardo F. Sundiam with the concurrence of Justices Conrado M. Vasquez, Jr. and Monina Arevalo-Zenarosa; *rollo*, pp. 30-60.

2. Thorough and Impartial Investigation – for the appropriate Investigating Unit of the Philippine Army at Camp Servillano Aquino and the Philippine Army, 7th Infantry Division in Fort Magsaysay to conduct their respective investigation of all angles pertaining to the disappearances of Nicolas and Heherson and to immediately file charges against those found guilty and submit their written report to this Court within three (3) months from notice.

SO ORDERED.[20] (underscoring supplied)

The military officers filed a Motion for Partial Reconsideration (Motion), arguing in the main that since respondents failed to prove the allegations in their petition by substantial evidence, the appellate court should not have granted those reliefs.[21]

The appellate court denied the Motion by the assailed Resolution of March 3, 2009.[22]

Taking up the cudgels for the military, Gen. Alexander Yano,[23] Lt. Gen. Victor Ibrado,[24] and Maj. Gen. Ralph Villanueva[25] (petitioners) filed the present petition for review of the appellate court's assailed issuances, faulting it for

. . . NOT CATEGORICALLY DENYING THE PRIVILEGE OF THE WRIT OF *AMPARO* PURSUANT TO SECTION 18 OF THE RULE ON THE WRIT OF AMPARO **DESPITE ITS FINDING THAT RESPONDENTS FAILED TO PROVE THEIR ALLEGATIONS IN THEIR PETITION FOR *AMPARO* BY SUBSTANTIAL EVIDENCE**. . . . [AND] . . . DIRECTING PETITIONERS TO:

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[20] *Id*. at 58-60.

[21] *Id*. at 154-165.

[22] Penned by Justice Monina Arevalo-Zenarosa with the concurrence of Justices Conrado M. Vasquez, Jr. and Noel G. Tijam; *rollo*, pp. 62-63.

[23] Previously the Commanding General of the Philippine Army, he was appointed AFP Chief of Staff effective May 12, 2008 in view of the retirement of Gen. Esperon.

[24] Commanding General of the Philippine Army, in lieu of Lt. Gen. Yano who was promoted.

[25] Commander of the 7th Infantry Division of the Philippine Army, vice Maj. Gen. Gomez.

(A) ALLOW RESPONDENTS TO INSPECT CAMP SERVILLANO AQUINO, NORTH LUZON COMMAND, PHILIPPINE ARMY, SAN MIGUEL, TARLAC CITY AND ANY MILITARY CAMP OF THE 7TH INFANTRY DIVISION LOCATED IN AQUA FARM, HACIENDA LUISITA, TARLAC CITY; AND.

(B) CONDUCT THOROUGH AND IMPARTIAL INVESTIGATION OF THE DISAPPEARANCE OF THE AGGRIEVED PARTIES, FILE CHARGES AGAINST THOSE FOUND GUILTY AND SUBMIT WRITTEN REPORT WITHIN THREE MONTHS FROM NOTICE.[26] (emphasis and underscoring supplied)

The Court finds merit in the petition.

In ruling in favor of Lt. Sumangil and Sgt. Villalobos, the appellate court resolved the case on the basis of the credibility of Josephine as a witness. It arrived at the following findings:

To prove that these two military officers took or have custody of Nicolas and Heherson, petitioners presented Josephine Galang Victoria, also known as Antonina Galang, a niece of petitioner Cleofas Sanchez' neighbor, who allegedly saw Nicolas and Heherson inside Camp Servillano Aquino on September 21, 2006 when she visited her uncle, a certain Major Henry Galang, who is allegedly living inside the camp; that a few days later, she again saw Nicolas and Heherson at Aqua Farm at Hacienda Luisita, where the camp of Bravo Company of the 71st Infantry Battalion is located and where Heherson was seen sweeping the floor and Nicolas was seen cooking, having wounds in their legs near the feet as if sustained from a gunshot wound; that on November 1, 2006, she went back upon advice of Lt. Sumangil to give her a cellfone which Tech. Sgt. Villalobos handed to her for her to know where Nicolas and Heherson will be brought; that they [*sic*] saw the two outside getting some woods under the watchful eye of a soldier when Sumangil kicked Nicolas for being slow and thereafter, she did not see the two anymore.

While Josephine Galang Victoria's story of how she saw the subject two missing persons (Nicolas and Heherson) appeared initially as plausible, however, her credibility as a witness had been successfully destroyed by the following witnesses presented by the respondents.

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[26] *Rollo*, pp. 14-15.

1) Barangay Captain Rodolfo P. Supan of Cut-Cut II, Tarlac City, attested that she knows a certain woman named Josephine Galang Victoria who introduces herself as Antonina Galang, niece through the cousin of his wife and a long-time resident of Cut-Cut II since birth until she lived with her partner – Philip Victoria and they still visit and goes to her auntie or sibling's house; that he knows the reputation of Josephine Victoria as bad regarding her telling the truth, her truthfulness and integrity, known to fool others and invents stories for money reasons, that she cannot be trusted even if she is under oath before God and the State.

2) As if that is not yet enough, Gloria Galang Mansalay testified that she is a resident of Cut-Cut II since birth in 1964 and she knows Josephine Galang Victoria because she is her niece being the daughter of her older brother; that she even took care of Antonina as a child but her general reputation in telling the truth, her fidelity and integrity is bad, known to fool others, a liar and invent [*sic*] stories for reason of money.

3) Clarita Galang Ricafrente saying that she is a resident of Cut-cut II and Antonina Galang is a niece and attested the same negative reputations against Antonina.

It appears that said negative testimonies of Josephine Galang Victoria's relatives were never successfully rebutted by her and the Court gives credence to them. No ill motive [*sic*] were established against the said witnesses to testify against Antonina Galang.

Furthermore, Antonina Galang stated that she was in Camp Servillano Aquino when she first saw Nicolas and Heherson riding in an army truck because she was visiting her uncle, Major Henry Galang, allegedly living in the camp. Parenthetically, this story of Antonina Galang was put to doubt. TSG Edgard Reyes who attested that as a meter reader in the camp, Major Galang was no longer residing there in September 2006. This testimony and revelation of TSG Reyes only bolstered the testimonies of the other witnesses on Antonina Galang's penchant to invent stories or tell a lie.

In sum, We are not inclined to give credence to the claims of Antonina Galang that the two missing person [*sic*] she saw first in Camp Servillano Aquino and later, in Aqua Farm, were Nicolas and Heherson. Notably, Antonina Galang never did see the faces of the two but were known to her through photographs. Certainly, there may be a difference between photographs and the faces in person.

To be noted also is that even the two wives of Nicolas did not make an express attestation that they saw Nicolas and Heherson in the company of those armed men who passed their place in the early morning of September 18, 2006.[27] (underscoring supplied)

NOTABLY, respondents neither moved for reconsideration nor appealed the appellate court's September 17, 2008 Decision.

The entrenched procedural rule in this jurisdiction is that a party who did not appeal cannot assign such errors as are designed to have the judgment modified. All that said appellee can do is to make a counter-assignment of errors or to argue on issues raised at the trial only for the purpose of sustaining the judgment in his favor, even on grounds not included in the decision of the court *a quo* or raised in the appellant's assignment of errors or arguments.[28]

This tenet is enshrined as one of the basic principles in our rules of procedure, specifically to avoid ambiguity in the presentation of issues, facilitate the setting forth of arguments by the parties, and aid the court in making its determinations. A party who fails to acquire complete relief from a decision of the court has various remedies to correct an omission by the court. He may move for a correction or clarification of judgment, or even seek its modification through ordinary appeal. There is thus no basis for the Court to skip the rule and excuse herein respondents for failure to properly avail themselves of the remedies in the face of the parties' contentions that have remained disputed.[29]

What is thus left for the Court to resolve is the issue of whether the grant of the RELIEFS[30] *by the appellate court after finding want of substantial evidence are valid and proper.*

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[27] *Id*. at 55-58.

[28] *Saltiga de Romero v. Court of Appeals*, G.R. No. 109307, November 25, 1999, 319 SCRA 180, 192; *Dizon, Jr. v. NLRC*, G.R. No. 69018, January 29, 1990, 181 SCRA 472, 477.

[29] *Vide Batingal v. Court of Appeals*, G.R. No. 128636, February 1, 2001, 351 SCRA 60, 67.

[30] The appellate court found it "equitable to grant petitioners some reliefs

Sections 17 and 18 of the *Amparo* Rule lay down the requisite standard of proof necessary to prove either party's claim, *viz*:

> SEC. 17. *Burden of Proof and Standard of Diligence Required.* — The parties shall establish their claim by substantial evidence.
>
> The respondent who is a private individual or entity 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 to evade responsibility or liability.
>
> SEC. 18. *Judgment*. — The Court shall render judgment within ten (10) days from the time the petition is submitted for decision. 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 and underscoring supplied)

The requisite standard of proof – **substantial evidence** — speaks of the clear intent of the Rule to have the equivalent of an administrative proceeding, albeit judicially conducted, in resolving *amparo* petitions.

To the appellate court, the evidence adduced in the present case failed to measure up to that standard– substantial evidence which a reasonable mind might accept as adequate to support a conclusion. Since respondents did not avail of any remedy against the adverse judgment, the appellate court's decision is, insofar as it concerns them, now beyond the ambit of review.

Meanwhile, the requirement for a government official or employee to observe extraordinary diligence in the performance of duty stresses the extraordinary measures expected to be taken in safeguarding every citizen's constitutional rights as well as

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in the interest of human rights and justice." (*rollo*, p. 59).

in the investigation of cases of extra-judicial killings and enforced disappearances.[31]

The failure to establish that the public official observed extraordinary diligence in the performance of duty does not result in the automatic grant of the privilege of the *amparo* writ. It does not relieve the petitioner from establishing his or her claim by substantial evidence. The omission or inaction on the part of the public official provides, however, some basis for the petitioner to move and for the court to grant certain interim reliefs.

In line with this, Section 14 of the *Amparo* Rule provides for **interim or provisional reliefs** that the courts may grant in order to, *inter alia*, protect the witnesses and the rights of the parties, and preserve all relevant evidence, *viz*:

SEC. 14. *Interim Reliefs*. — **Upon filing** of the petition **or at anytime before final judgment**, the court, justice or judge may grant any of the following reliefs:

(a) *Temporary Protection Order*. — The court, justice or judge, upon motion or *motu proprio*, may order that the petitioner or the aggrieved party and any member of the immediate family be protected in a government agency or by an accredited person or private institution capable of keeping and securing their safety. If the petitioner is an organization, association or institution referred to in Section 3 (c) of this Rule, the protection may be extended to the officers involved.

The Supreme Court shall accredit the persons and private institutions that shall extend temporary protection to the petitioner or the aggrieved party and any member of the immediate family, in accordance with guidelines which it shall issue.

The accredited persons and private institutions shall comply with the rules and conditions that may be imposed by the court, justice or judge.

(b) *Inspection Order*. — The court, justice or judge, upon verified motion and after due hearing, may order any person in possession

[31] *Razon v. Tagitis*, G.R. No. 182498, December 3, 2009.

or control of a designated land or other property, to permit entry for the purpose of inspecting, measuring, surveying, or photographing the property or any relevant object or operation thereon.

The motion shall state in detail the place or places to be inspected. It shall be supported by affidavits or testimonies of witnesses having personal knowledge of the enforced disappearance or whereabouts of the aggrieved party.

If the motion is opposed on the ground of national security or of the privileged nature of the information, the court, justice or judge may conduct a hearing in chambers to determine the merit of the opposition.

The movant must show that the inspection order is necessary to establish the right of the aggrieved party alleged to be threatened or violated.

The inspection order shall specify the person or persons authorized to make the inspection and the date, time, place and manner of making the inspection and may prescribe other conditions to protect the constitutional rights of all parties. The order shall expire five (5) days after the date of its issuance, unless extended for justifiable reasons.

(c) *Production Order*. — The court, justice, or judge, upon verified motion and after due hearing, may order any person in possession, custody or control of any designated documents, papers, books, accounts, letters, photographs, objects or tangible things, or objects in digitized or electronic form, which constitute or contain evidence relevant to the petition or the return, to produce and permit their inspection, copying or photographing by or on behalf of the movant.

The motion may be opposed on the ground of national security or of the privileged nature of the information, in which case the court, justice or judge may conduct a hearing in chambers to determine the merit of the opposition.

The court, justice or judge shall prescribe other conditions to protect the constitutional rights of all the parties. (emphasis and underscoring supplied)

These provisional reliefs are intended to assist the court *before* it arrives at a judicious determination of the *amparo* petition. For the appellate court to, in the present case, still order the inspection of the military camps and order the army units to conduct an investigation into the disappearance of Nicolas and Heherson *after* it absolved petitioners is thus not in order. The reliefs granted by the appellate court to respondents are not in sync with a finding that petitioners could not be held accountable for the disappearance of the victims.

Rspondents posit that there appears to be some shared confusion as to whether the reliefs granted by the appellate court are final or interlocutory. They thus implore this Court to modify the appellate court's judgment by considering the reliefs as temporary or interlocutory and by adding thereto an order for the production of logbooks and reports.[32]

At this late stage, respondents can no longer avail themselves of their stale remedies in the guise of praying for affirmative reliefs in their Comment. No modification of judgment could be granted to a party who did not appeal.[33]

If respondents believed that the September 17, 2008 Decision of the appellate court was merely interlocutory, they had every opportunity to question the conclusion of said court, but they did not. They could have opposed petitioners' motion for reconsideration filed with the appellate court, it being a prohibited pleading[34] under the A*mparo* Rule, but they did not.

WHEREFORE, the petition is *GRANTED*. The assailed September 17, 2008 Decision and March 3, 2009 Resolution of the Court of Appeals, insofar as it grants the assailed earlier-quoted reliefs are *SET ASIDE*.

SO ORDERED.

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[32] *Rollo*, pp. 198-201

[33] *Loy, Jr. v. San Miguel Corporation Employees Union - Philippine Transport and General Workers Union*, G.R. No. 164886, November 24, 2009.

[34] Rule on the Writ of *Amparo*, Sec. 1, par. (k).

Puno, C.J., Carpio, Corona, Velasco, Jr., Nachura, Leonardo-de Castro, Brion, Peralta, Bersamin, Del Castillo, Abad, Villarama, Jr., Perez, and *Mendoza, JJ.,* concur.

THIRD DIVISION

[G.R. No. 187683. February 11, 2010]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **VICTORIANO DELA CRUZ *y* LORENZO,** *appellant.*

SYLLABUS

1. CRIMINAL LAW; PARRICIDE; ELEMENTS. — The crime of Parricide is defined and punished under Article 246 of the Revised Penal Code (RPC). xxx It is committed when: (1) a person is killed; (2) the deceased is killed by the accused; and (3) the deceased is the father, mother, or child, whether legitimate or illegitimate, or a legitimate other ascendant or other descendant, or the legitimate spouse of the accused. The key element in Parricide — other than the fact of killing — is the relationship of the offender to the victim. In the case of Parricide of a spouse, the best proof of the relationship between the accused and the deceased would be the marriage certificate. In this case, the testimony of the accused that he was married to the victim, in itself, is ample proof of such relationship as the testimony can be taken as an admission against penal interest. Clearly, then, it was established that Victoriano and Anna were husband and wife.

2. REMEDIAL LAW; EVIDENCE; WEIGHT AND SUFFICIENCY; CIRCUMSTANTIAL EVIDENCE; WHEN SUFFICIENT FOR CONVICTION; REQUISITES PRESENT IN CASE AT BAR. — But circumstantial evidence is sufficient for conviction, as we ruled in *People v. Castillo*: Direct evidence of the commission of the offense is not the only matrix wherefrom a trial court

may draw its conclusions and finding of guilt. Conviction can be had on the basis of circumstantial evidence provided that: (1) there is more than one circumstance; (2) the facts from which the inferences are derived are proven; and (3) the combination of all the circumstances is such as to produce a conviction beyond reasonable doubt. While no general rule can be laid down as to the quantity of circumstantial evidence which will suffice in a given case, all the circumstances proved must be consistent with each other, consistent with the hypothesis that the accused is guilty, and at the same time inconsistent with the hypothesis that he is innocent, and with every other rational hypothesis except that of guilt. The circumstances proved should constitute an unbroken chain which leads to only one fair and reasonable conclusion that the accused, to the exclusion of all others, is the guilty person. Proof beyond reasonable doubt does not mean the degree of proof excluding the possibility of error and producing absolute certainty. Only moral certainty or "that degree of proof which produces conviction in an unprejudiced mind" is required. In this case, we note the presence of the requisites for circumstantial evidence to sustain a conviction.

3. ID.; ID.; CREDIBILITY OF WITNESSES; THE TRIAL COURT'S ASSESSMENT THEREOF IS ACCORDED GREAT RESPECT AND WILL NOT BE DISTURBED ON APPEAL. — Well-entrenched is the rule that the trial court's assessment of the credibility of witnesses is accorded great respect and will not be disturbed on appeal, inasmuch as the court below was in a position to observe the demeanor of the witnesses while testifying. The Court does not find any arbitrariness or error on the part of the RTC as would warrant a deviation from this well-entrenched rule.

4. CRIMINAL LAW; EXEMPTING CIRCUMSTANCES; ACCIDENT; ELEMENTS; THE ACT THAT CAUSES THE INJURY MUST BE LAWFUL. — Even if, for the sake of argument, we consider Victoriano's claim that the injury sustained by his wife was caused by an accident, without fault or intention of causing it, it is clear that Victoriano was not performing a lawful act at the time of the incident. Before an accused may be exempted from criminal liability by the invocation of Article 12 (paragraph

4) of the RPC, the following elements must concur: (1) a person is performing a lawful act (2) with due care, and (3) he causes an injury to another by mere accident and (4) without any fault or intention of causing it. For an accident to become an exempting circumstance, the act that causes the injury has to be lawful. Victoriano's act of physically maltreating his spouse is definitely not a lawful act. To say otherwise would be a travesty — a gross affront to our existing laws on violence against women.

5. ID.; MITIGATING CIRCUMSTANCES; INTOXICATION; REQUISITES TO MITIGATE LIABILITY. — [A] person pleading intoxication to mitigate penalty must present proof of having taken a quantity of alcoholic beverage prior to the commission of the crime, sufficient to produce the effect of obfuscating reason. In short, the defense must show that the intoxication is not habitual, and not subsequent to a plan to commit a felony, and that the accused's drunkenness affected his mental faculties. In this case, the absence of any independent proof that his alcohol intake affected his mental faculties militate against Victoriano's claim that he was so intoxicated at the time he committed the crime to mitigate his liability.

6. ID.; PARRICIDE; IMPOSABLE PENALTY. — [V]ictoriano failed to sufficiently show that the CA committed any reversible error in its assailed Decision. His guilt was sufficiently established by circumstantial evidence. The penalty of *reclusion perpetua* was correctly imposed, considering that there was neither any mitigating nor aggravating circumstance.

7. ID.; ID.; CIVIL LIABILITIES OF ACCUSED-APPELANT. —The heirs of the victim are entitled to a civil indemnity *ex delicto* of ₱50,000.00, which is mandatory upon proof of the fact of death of the victim and the culpability of the accused for such death. Likewise, moral damages, in the amount of ₱50,000.00, should be awarded even in the absence of allegation and proof of the emotional suffering of the victim's heirs, because certainly the family suffered emotional pain brought about by Anna's death. However, the CA erred when it deleted the award of exemplary damages. In line with current jurisprudence, it is but fitting that exemplary damages, in the sum of ₱30,000.00, be

awarded, considering that the qualifying circumstance of relationship is present, this being a case of Parricide.

APPEARANCES OF COUNSEL

The Solicitor General for Appellee.
Public Attorney's Office for the Appellant.

D E C I S I O N

NACHURA, *J.*:

Before this Court is an Appeal,[1] seeking the reversal of the Court of Appeals (CA) Decision[2] dated October 31, 2008, which affirmed with modification the Decision[3] of the Regional Trial Court (RTC) of Malolos, Bulacan, Branch 11, dated August 15, 2005, convicting appellant Victoriano dela Cruz *y* Lorenzo[4] (Victoriano) of the crime of Parricide.

The Facts

Victoriano was charged with the crime of Parricide in an Information[5] dated January 2, 2003, which reads:

That on or about the 18th day of August, 2002, in the municipality of Malolos, province of Bulacan, Philippines, and within the jurisdiction of this Honorable Court, the above named accused, with intent to kill his wife Anna Liza Caparas-dela Cruz, with whom he was united in lawful wedlock, did then and there willfully, unlawfully and feloniously attack, assault, use personal violence and stab the

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[1] CA *rollo*, pp. 118-119.

[2] Particularly docketed as CA-G.R. CR HC No. 01575, penned by Associate Justice Japar B. Dimaampao, with Associate Justices Amelita G. Tolentino and Apolinario D. Bruselas, Jr., concurring; *rollo*, pp. 2-11.

[3] Records, pp. 114-116.

[4] Also referred to as Victorino, Jon-Jon and John-John in other documents and pleadings.

[5] Records, p. 1.

said Anna Liza Caparas-dela Cruz, hitting the latter on her trunk and on the different parts of her body, thereby inflicting upon her serious physical injuries which directly caused her death.

Contrary to law.

Upon arraignment, Victoriano, with the assistance of counsel, pleaded not guilty to the offense charged.[6] Thereafter, trial on the merits ensued. In the course of the trial, two varying versions arose.

Version of the Prosecution

Joel Song (Joel) testified that between 3:30 and 4:00 p.m. on August 18, 2002, he and two others, including the aunt of Victoriano, were playing a card game known as *tong-its* just three to four arms length away from the latter's house.

While playing, Joel saw Victoriano punching and kicking his wife, herein victim Anna Liza Caparas-dela Cruz[7] (Anna), in front of their house. Joel knew the wife's name as "Joan". Victoriano then dragged Anna inside the house by pulling the latter's hair, then slammed the door. Joel overheard the couple shouting while they were already inside the house.[8]

Suddenly, Victoriano and Anna came out of the house, together with their young daughter. Victoriano was behind Anna, with his arms wrapped around her. He asked for Joel's help. Joel noticed blood spurting out of Anna's mouth. He took the couple's daughter and gave her to Victoriano's aunt. He then went with them to the Bulacan Provincial Hospital (hospital) on board a tricycle. However, Anna died.[9]

On the same day, at about 6:30 p.m., Senior Police Officers 1 Condrado Umali and Eligio Jose, responding to the call of duty, went to the hospital for investigation. There, Victoriano

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[6] *Id.* at 9.

[7] Also referred to as Joan and Me Ann in other documents and pleadings.

[8] TSN, August 6, 2003, pp. 2-3.

[9] *Id.* at 4.

was turned over to the police officers by the hospital's security guard on duty.[10]

The Certificate of Death,[11] prepared by Police Senior Inspector and Medico-Legal Officer, Dr. Ivan Richard Viray (Dr. Viray), showed that Victoriano's wife died of "*hemorrhagic shock as a result of a stab wound, trunk*." Moreover, in his Medico-Legal Report[12] dated August 21, 2002, Dr. Viray had the following findings:

HEAD and NECK:

1) Hematoma, frontal region, measuring 3 x 3 cm, 3 cm right of the anterior midline.

2) Hematoma, left orbital region, measuring 2 x 2 cm, 3 cm from the anterior midline.

CHEST and ABDOMEN:

1) Stab wound, penetrating, right shoulder region, measuring 2 x .5 cm, 2 cm right of the posterior midline, about 12 cm deep, directed lateralwards and slightly downwards, piercing the underlying tissues and muscle, lacerating the upper lobe of the right lungs.

x x x x x x x x x

> There are about 2000 cc of blood and blood clots at the thoracic cavity.

UPPER and LOWER EXTREMITIES:

1) Hematoma, distal 3rd of the left forearm, measuring 7 x 4 cm, bisected by its posterior midline, with superimposed abrasion, measuring 1.5 x 7 cm, along its anterior midline.

Version of the Defense

Victoriano testified that, at around 6:30 p.m. on August 18, 2002, he came home very drunk from a friend's house. Before

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[10] TSN, March 5, 2003, pp. 2-3.

[11] Records, p. 68.

[12] *Id.* at 69.

he could enter their house, his wife, Anna, started nagging him saying, "*Hindi ka naman pala namamasada, nakipag-inuman ka pa*." He asked her to go inside their house but she refused. Thus, Victoriano slapped Anna and dragged her inside their house.

Due to the continuous nagging of Anna, Victoriano pushed her aside so he could go out of the house. However, she fell on a jalousie window, breaking it in the process. When he helped her stand up, Victoriano noticed that her back was punctured by a piece of shattered glass of the jalousie. He brought her outside immediately and asked the help of his neighbors who were playing *tong-its* nearby. Victoriano admitted that Joel accompanied him and his wife to the hospital.

At the hospital, Victoriano was taken into custody by policemen for questioning. It was only in the following morning that Victoriano learned of his wife's passing.

Victoriano also testified that he does not usually drink; that he consumed hard liquor at the time of the incident; that Anna was not immediately treated in the hospital; that he loved his wife; and that he did not intentionally hurt her.[13]

The Lower Courts' Ruling

On August 15, 2005, the RTC rendered a Decision, the dispositive portion of which reads:

WHEREFORE, this Court finds the accused Victoriano L. dela Cruz Guilty beyond reasonable doubt of Parricide under Art. 246 of the Revised Penal Code and hereby sentences him to suffer the penalty of *Reclusion Perpetua* and to pay the heirs of the late Anna Liza Caparas-dela Cruz the following sums of money, to wit:

1. ₱60,000.00 as civil liability
2. ₱50,000.00 as moral damages, and
3. ₱30,000.00 as exemplary damages.

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[13] TSN, June 16, 2004, pp. 2-7.

SO ORDERED.[14]

Aggrieved, Victoriano appealed to the CA.[15]

On October 31, 2008, the CA affirmed with modification the findings of the RTC, thus:

> WHEREFORE, the *Decision* dated 15 August 2005 of the Regional Trial Court, Third Judicial Region, Malolos, Bulacan, Branch 11, is hereby **AFFIRMED** with **MODIFICATIONS**. The award of civil indemnity is reduced to ₱50,000.00 and the award of exemplary damages is deleted.
>
> SO ORDERED.[16]

Hence, this appeal.

In its Manifestation[17] filed before this Court, appellee, People of the Philippines, as represented by the Office of the Solicitor General, intimated that it was no longer filing any Supplemental Brief in support of its position.

Meanwhile, in his Supplemental Brief,[18] Victoriano, as represented by the Public Attorney's Office, claimed that the CA erred in appreciating Joel's testimony, since the latter merely testified on the non-mortal wounds that Anna suffered when the couple were outside the house. Insofar as the actual killing was concerned, Joel's testimony was merely circumstantial. Moreover, Victoriano averred that he did not intend to commit so grave a wrong against his wife, evident from the facts that he carried the injured body of his wife; that he sought for help after the accident; and that he brought her to the hospital for medical treatment. Furthermore, Victoriano asseverated that he was very drunk at the time. Thus, he prayed that these mitigating circumstances be appreciated in his favor.

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[14] *Supra* note 3, at 16.

[15] Records, p. 120.

[16] *Supra* note 2, at 10.

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

[18] *Id.* at 28-32.

Our Ruling

The instant appeal is bereft of merit.

The crime of Parricide is defined and punished under Article 246 of the Revised Penal Code (RPC), to wit:

> Art. 246. *Parricide*. — Any person who shall kill his father, mother, or child, whether legitimate or illegitimate, or any of his ascendants, or descendants, or his spouse, shall be guilty of parricide and shall be punished by the penalty of *reclusion perpetua* to death.

It is committed when: (1) a person is killed; (2) the deceased is killed by the accused; and (3) the deceased is the father, mother, or child, whether legitimate or illegitimate, or a legitimate other ascendant or other descendant, or the legitimate spouse of the accused. The key element in Parricide — other than the fact of killing — is the relationship of the offender to the victim. In the case of Parricide of a spouse, the best proof of the relationship between the accused and the deceased would be the marriage certificate. In this case, the testimony of the accused that he was married to the victim, in itself, is ample proof of such relationship as the testimony can be taken as an admission against penal interest.[19] Clearly, then, it was established that Victoriano and Anna were husband and wife.

Victoriano claims that Joel's testimony coincides with his own, which refers to the slapping incident that occurred outside their house. It does not at all point to him as the actual perpetrator of the crime. Thus, Victoriano submits that Joel's testimony is merely circumstantial.

But circumstantial evidence is sufficient for conviction, as we ruled in *People v. Castillo*:[20]

> Direct evidence of the commission of the offense is not the only matrix wherefrom a trial court may draw its conclusions and finding of guilt. Conviction can be had on the basis of circumstantial evidence provided that: (1) there is more than one circumstance; (2) the facts from which the inferences are derived are proven; and (3) the

[19] *People v. Velasco*, 404 Phil. 369, 379 (2001).

[20] G.R. No. 172695, June 29, 2007, 526 SCRA 215.

combination of all the circumstances is such as to produce a conviction beyond reasonable doubt. While no general rule can be laid down as to the quantity of circumstantial evidence which will suffice in a given case, all the circumstances proved must be consistent with each other, consistent with the hypothesis that the accused is guilty, and at the same time inconsistent with the hypothesis that he is innocent, and with every other rational hypothesis except that of guilt. The circumstances proved should constitute an unbroken chain which leads to only one fair and reasonable conclusion that the accused, to the exclusion of all others, is the guilty person. Proof beyond reasonable doubt does not mean the degree of proof excluding the possibility of error and producing absolute certainty. Only moral certainty or "that degree of proof which produces conviction in an unprejudiced mind" is required.[21]

In this case, we note the presence of the requisites for circumstantial evidence to sustain a conviction. First, immediately preceding the killing, Victoriano physically maltreated his wife, not merely by slapping her as he claimed, but by repeatedly punching and kicking her. Second, it was Victoriano who violently dragged the victim inside their house, by pulling her hair. Third, in Dr. Viray's Report, Anna sustained injuries in different parts of her body due to Victoriano's acts of physical abuse. Fourth, the location and extent of the wound indicated Victoriano's intent to kill the victim. The Report revealed that the victim sustained a fatal stab wound, lacerating the upper lobe of her right lung, a vital organ. The extent of the physical injury inflicted on the deceased manifests Victoriano's intention to extinguish life. Fifth, as found by both the RTC and the CA, only Victoriano and Anna were inside the house, other than their young daughter. Thus, it can be said with certitude that Victoriano was the lone assailant. Sixth, we have held that the act of carrying the body of a wounded victim and bringing her to the hospital — as Victoriano did — does not manifest innocence. It could merely be an indication of repentance or contrition on his part.[22]

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[21] *Id.* at 221-222. (Citations omitted.)

[22] *Id.* at 225, citing *People v. Nepomuceno, Jr.*, 298 SCRA 450, 462 (1998)

The foregoing circumstances are proven facts, and the Court finds no reason to discredit Joel's testimony and Dr. Viray's Report. Besides, well-entrenched is the rule that the trial court's assessment of the credibility of witnesses is accorded great respect and will not be disturbed on appeal, inasmuch as the court below was in a position to observe the demeanor of the witnesses while testifying. The Court does not find any arbitrariness or error on the part of the RTC as would warrant a deviation from this well-entrenched rule.[23]

Even if, for the sake of argument, we consider Victoriano's claim that the injury sustained by his wife was caused by an accident, without fault or intention of causing it, it is clear that Victoriano was not performing a lawful act at the time of the incident. Before an accused may be exempted from criminal liability by the invocation of Article 12 (paragraph 4) of the RPC, the following elements must concur: (1) a person is performing a lawful act (2) with due care, and (3) he causes an injury to another by mere accident and (4) without any fault or intention of causing it. For an accident to become an exempting circumstance, the act that causes the injury has to be lawful.[24] Victoriano's act of physically maltreating his spouse is definitely not a lawful act. To say otherwise would be a travesty — a gross affront to our existing laws on violence against women. Thus, we fully agree with the apt findings of the CA, to wit:

> With the foregoing avowal, We find that the death of appellant's wife was not caused by mere accident. An accident is an occurrence that "happens outside the sway of our will, and although it comes about through some act of our will, lies beyond the bounds of humanly foreseeable consequences." It connotes the absence of criminal intent. Intent is a mental state, the existence of which is shown by a person's overt acts.
>
> In the case at bench, evidence disclosed that appellant started beating his wife outside their house and was even the one who dragged her inside. This, to Our mind, contradicts his theory that

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[23] *People v. Mactal*, 449 Phil. 653, 661 (2003).

[24] *People v. Agliday*, 419 Phil. 555, 564 (2001).

he only pushed her so as to go out of the house to avoid any further quarrel. Such incongruity whittles down appellant's defense that he did not deliberately kill his wife.[25]

Finally, a person pleading intoxication to mitigate penalty must present proof of having taken a quantity of alcoholic beverage prior to the commission of the crime, sufficient to produce the effect of obfuscating reason.[26] In short, the defense must show that the intoxication is not habitual, and not subsequent to a plan to commit a felony, and that the accused's drunkenness affected his mental faculties. In this case, the absence of any independent proof that his alcohol intake affected his mental faculties militate against Victoriano's claim that he was so intoxicated at the time he committed the crime to mitigate his liability.[27]

In sum, Victoriano failed to sufficiently show that the CA committed any reversible error in its assailed Decision. His guilt was sufficiently established by circumstantial evidence.

The penalty of *reclusion perpetua* was correctly imposed, considering that there was neither any mitigating nor aggravating circumstance. The heirs of the victim are entitled to a civil indemnity *ex delicto* of ₱50,000.00, which is mandatory upon proof of the fact of death of the victim and the culpability of the accused for such death. Likewise, moral damages, in the amount of ₱50,000.00, should be awarded even in the absence of allegation and proof of the emotional suffering of the victim's heirs, because certainly the family suffered emotional pain brought about by Anna's death.

However, the CA erred when it deleted the award of exemplary damages. In line with current jurisprudence, it is but fitting that exemplary damages, in the sum of ₱30,000.00, be awarded, considering that the qualifying circumstance of relationship is present, this being a case of Parricide.[28]

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[25] *Supra* note 2, at 9.

[26] *People v. Cortes*, 413 Phil. 386, 393 (2001).

[27] *People v. Mondigo*, G.R. No. 167954, January 31, 2008, 543 SCRA 384, 392.

[28] *People v. Español*, G.R. No. 175603, February 13, 2009, 579 SCRA

WHEREFORE, the Decision of the Court of Appeals in CA-G.R. CR HC No. 01575, finding appellant, Victoriano dela Cruz *y* Lorenzo, guilty beyond reasonable doubt of the crime of Parricide, is hereby *AFFIRMED WITH MODIFICATION*. Appellant is sentenced to suffer the penalty of *reclusion perpetua* and to pay the heirs of the victim, Anna Liza Caparas-dela Cruz, the amounts of ₱50,000.00 as civil indemnity, ₱50,000.00 as moral damages, and ₱30,000.00 as exemplary damages. No costs.

SO ORDERED.

Corona (Chairperson), Velasco, Jr., Peralta, and *Mendoza, JJ.,* concur.

EN BANC

[G.R. No. 189078. February 11, 2010]

MAYOR VIRGILIO P. VARIAS, *petitioner, vs.* **COMMISSION ON ELECTIONS and JOSE "JOY" D. PEÑANO,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; GRAVE ABUSE OF DISCRETION; EXPLAINED. — Grave abuse of discretion is a concept that defies exact definition, but generally refers to "capricious or whimsical exercise of judgment as is equivalent to lack of jurisdiction"; the abuse of discretion must be patent and gross as to amount to an evasion of positive duty or a virtual refusal to perform a duty enjoined

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326, 340; *People v. Paycana, Jr.*, G.R. No. 179035, April 16, 2008, 551 SCRA 657, 668; *People v. Ayuman*, G.R. No. 133436, April 14, 2004, 427 SCRA 248, 260; and *People v. Arnante*, G.R. No. 148724, October 15, 2002, 391 SCRA 155, 161.

by law, or to act at all in contemplation of law, as where the power is exercised in an arbitrary and despotic manner by reason of passion and hostility. Mere abuse of discretion is not enough; it must be grave. **Use of *wrong or irrelevant considerations* in deciding an issue is sufficient to taint a decision maker's action with grave abuse of discretion.**

2. ID.; ID.; ID.; THE COURT CANNOT PROCEED WITH A *CERTIORARI* REVIEW IN THE ABSENCE OF ANY ALLEGATION OF JURISDICTIONAL ERROR COMMITTED BY COMELEC. — [W]e do not *ordinarily* review in a *certiorari* case the COMELEC's appreciation and evaluation of evidence. Any COMELEC misstep in this regard generally involves an error of judgment, not of jurisdiction. In exceptional cases, however, when COMELEC action on the appreciation and evaluation of evidence shows grave abuse of discretion, the Court is more than obliged, as it is then its constitutional duty, to intervene; when grave abuse of discretion is present, resulting errors arising from the grave abuse mutate from error of judgment to one of jurisdiction. The above limitations preclude us from ruling on the third and fourth grounds Varias cited in his petition. These cited grounds involve the issue of appreciation and calibration of evidence, which in proper context cannot result in any jurisdictional error, if only because Varias did not allege any grave abuse of discretion committed by the COMELEC in arriving at its conclusions. x x x Varias merely argued that these COMELEC findings and/or conclusions were wrong, and from there proceeded to argue his positions. In the absence of any allegation of jurisdictional error, no basis exists for us to proceed with a *certiorari* review.

3. POLITICAL LAW; ELECTIONS; ELECTION CONTEST; THE ELECTORAL CONTEST RULES MUST BE CONSIDERED COMPLEMENTARY TO *ROSAL* RULING. — The *Rosal* ruling, to be sure, does not involve issues merely related to the appreciation or calibration of evidence; its critical ruling is on the propriety of relying on the revision of ballot results instead of the election returns in the proclamation of a winning candidate. In deciding this issue, what it notably established was a critical guide in arriving at its conclusion – the need to determine whether the court or the COMELEC looked at the correct considerations in making its ruling. As earlier adverted to, the court's or the COMELEC's use of the *wrong or*

irrelevant considerations in choosing between revision results and the election returns can taint its action with grave abuse of discretion. After *Rosal*, we promulgated the *Rules of Procedure in Election Contests Before the Courts Involving Elective Municipal and Barangay Officials* (the *Electoral Contest Rules*). Under its Section 5, Rule 13, we defined burden of proof as the duty of a party to present evidence of the facts in issue necessary to establish one's claim or defense. x x x The Electoral Contest Rules must be considered complementary to *Rosal* to the extent that it dealt with the *Rosal* issues.

4. ID.; ID.; ID.; *ROSAL* DOES NOT ALWAYS REQUIRE DIRECT PROOF OF BALLOT TAMPERING.— *Rosal*, we preliminarily note, does not, as it should not, always require **direct proof** of tampering; even if the protestant has shown compliance with legal requirements for the preservation of ballots, the burden of evidence that shifts to the prostestee is *not confined to proof of actual tampering, but extends to its* ***likelihood***. This cannot but be a reasonable rule, since ballot tampering and ballot substitution are not acts done openly and without precaution for stealth; they are done clandestinely, and to require direct proof of actual tampering almost amounts to a requirement to do the impossible. Direct proof of actual tampering is therefore not the only acceptable evidence that negates the reliability of the ballots subjected to revision; other relevant considerations should be taken into account, most especially those resulting from the examination of physical evidence. By adopting the direct proof approach in the present case, **the COMELEC did not look at all the relevant considerations in ruling on the case.**

5. REMEDIAL LAW; EVIDENCE; HANDWRITING EXPERT; NBI REPORT ON THE POSSIBILITY OF BALLOT TAMPERING, GIVEN WEIGHT AND CREDENCE.— [W]e find the COMELEC's dismissive approach to the NBI Report unacceptable. We note that the NBI's technical examination of the ballots was made upon the parties' motion. More importantly, the technical examination was undertaken pursuant to the provisions of the Electoral Contest Rules. These findings, too, are based on physical evidence and speak for themselves in demonstrating the discovered irregularities. Under these circumstances, we can only characterize the COMELEC's misappreciation and treatment of the Report as a triviality to

be gross and inexcusable. Correctly appreciated, the NBI Report is part of a chain of facts and circumstances that, when considered together, lead to the conclusion that there was, at the very least, the likelihood of ballot tampering. That there are superimpositions of names in the ballots or that various sets of ballots were written by one person indicate that the ballots had not been preserved in the manner *Rosal* mandated. The COMELEC, as we quoted above, took these indicators very lightly and simply concluded that they **do not conclusively prove the presence of an election fraud**. The COMELEC, in short, considered as insignificant the finding that there had been superimpositions or that sets of ballots were written by one person. We add to these circumstances the NBI's expert finding that the ballots in each of the four precincts contained signatures different from those of their respective BEI Chairs. This additionally raises questions on whether these were indeed the ballots that were previously counted at the precinct level after voting. Why the COMELEC never mentioned that the NBI Report contained this finding is lost on us, and we cannot accept as correct a ruling that entirely disregarded a consideration as significant as this. x x x [W]hile we agree with the proposition that opinions of handwriting experts are not necessarily binding on the courts or on quasi-judicial agencies, the court or the quasi-judicial agency must still consider them as submitted evidence and reject them if rejection is called for, providing reasons therefor. The rejection must of course be based on the court's or the agency's own independent evaluation of the pieces of evidence subjected to handwriting examination. Without such consideration, the court or quasi-judicial agency can be considered to have arbitrarily disregarded the expert opinion or evidence.

6. POLITICAL LAW; ELECTIONS; ELECTION CONTEST; CIRCUMSTANCES SHOWING A PATTERN OF POST-ELECTION BALLOT TAMPERING. — According to Varias, the totality of the circumstances – (1) the forced opening of the padlocks of the ballot boxes of the four controversial precincts; (2) the irregular serial numbers of the metal seals; (3) the substantial variance of the votes of the parties in the election returns and the physical count; (4) the different signatures at the back of the ballots; and (5) the superimpositions – points to the obvious fact that the ballot boxes in the four precincts had been violated and the ballots

they contained, tampered. x x x We agree with Varias that, other than the NBI Report, there was a systematic pattern of post-election ballot tampering, which arguments Peñano never substantially countered. As we stated above, the dramatic changes in the tally occurred only in four out of the 14 protested precincts, yet the shaving off of Varias' lead and accompanying additions to Peñano's – a classic case of *dagdag-bawas* – in these four precincts were more than enough to alter the results. x x x Varias therefore presented – *via* a combination of related circumstances – more than enough substantial evidence to prove that the otherwise invisible and supposedly impenetrable shield protecting the integrity and sanctity of the ballots has been pierced. While these facts and circumstances, when treated separately, do not directly prove ballot tampering, a combined consideration thereof indicates otherwise and unmistakably point to the conclusion that the integrity of the ballots has been compromised.

7. ID.; ID.; ID.; RAISING THE ISSUE OF BALLOT TAMPERING ONLY AFTER THE REVISION OF THE BALLOTS IS NOT FATAL.— As a process, the technical examination of the ballots under Rule 11, Section 1 of the Electoral Contest Rules, takes place ***after*** completion of revision in the protest or counter-protest, except when the protest or counter-protest involves allegations of massive ballot substitution. Thus, we cannot fault Varias for raising allegations of ballot tampering only after the revision of the ballots, as this was the earliest time that the need and the opportunity presented themselves.

8. ID.; ID.; THE COMPROMISED BALLOTS CANNOT BE VALID SUBJECTS OF REVISION IN AN ELECTORAL CONTEST.— That the ballots are genuine does not necessarily preclude the possibility of tampering. To be sure, superimposition of names of candidates can be made even on genuine ballots. Whether the ballots are genuine or not is therefore a non-issue, given clearly established evidence that the ballots have been compromised. When tampering of ballots is proven, the compromised ballots – whether genuine or not – cannot be valid subjects of revision in an electoral contest.

9. ID.; CONSTITUTIONAL LAW; COMMISSION ON ELECTIONS (COMELEC); WHEN THE COMELEC'S RELIANCE ON THE RESULTS OF THE BALLOTS' REVISION CONSTITUTES GRAVE ABUSE OF DISCRETION.— As reasonable suspicion

exists that the integrity of the ballot boxes had been violated and that tampering of ballots had occurred, Varias asserts that the COMELEC should not have relied on the ballots but on the results reflected in the election returns. Thus, the COMELEC gravely abused its discretion when it acted contrary to the mandate of *Rosal* and relied on the results of the revision of the ballot boxes. We agree with Varias' contentions, as our own consideration of the issues raised shows that the COMELEC indeed failed to follow *Rosal*. Specifically, we hold that Varias successfully discharged the burden of proving the likelihood of ballot tampering by presenting competent and reliable evidence – facts and circumstances that are simply too obvious to ignore or gloss over. The COMELEC sadly looked at the wrong considerations, thereby acting in a manner not contemplated by law. x x x [W]e find that the COMELEC gravely abused its discretion in declaring Peñano, based on the results of the revision of ballots, the winner in the mayoralty contest for the Municipality of Alfonso, Cavite. The ballots, after proof of tampering, cannot be considered reflective of the will of the people of Alfonso.

VELASCO, JR., *J., dissenting opinion:*

1. REMEDIAL LAW; EVIDENCE; HANDWRITING EXPERT; NBI REPORT IS NOT CONCLUSIVE TO INDICATE BALLOT TAMPERING. — The said NBI report, particularly on the genuineness of handwriting and other entries on the ballots, is not conclusive to indicate ballot tampering. It is established doctrine in this jurisdiction that opinions of handwriting experts are not binding on the court or Comelec. Hence, it may accept totally or in part or even dispense with the NBI findings and conclusions and conduct its own examinations of the questioned handwriting. Expert testimony is generally regarded, as correctly pointed out by the Solicitor General, to be purely advisory in character and the courts or Comelec "may place whatever weight they choose upon said testimony and reject it, if they find that it is inconsistent with the facts in the case or otherwise, unreasonable." Verily, the opinions of handwriting experts, while helpful in the examination of forged documents owing to the technical procedure involved in the analysis, are not binding on the courts. As a logical

corollary, a finding of forgery does not depend entirely on the testimonies of handwriting experts as the judge must conduct an independent examination on the questioned signature or entry to arrive at a reasonable conclusion as to its authenticity. In view of the foregoing, a becoming respect for the *bona fides* of Comelec's position on the NBI report should have been the order of the day, absent any compelling reason why it should be otherwise.

2. POLITICAL LAW; ELECTIONS; ELECTION CONTEST; SUBSTANTIAL COMPLIANCE AS TO THE MANNER OF KEEPING THE INTEGRITY OF THE BALLOTS, UPHELD. — In the case at bar, there has been, to the **satisfaction of the RTC and Comelec,** substantial compliance with the law and Comelec rules as to the manner of keeping the integrity of the ballots as would preclude a reasonable opportunity of tampering with the ballot boxes' contents. Upon proof of compliance, the burden, following *Rosal*, shifted to Varias to establish actual tampering or the likelihood thereof. As found by the RTC and the Comelec (First Division and *en banc*), however, Varias was unable to satisfactorily discharge this burden.

3. ID.; CONSTITUTIONAL LAW; COMMISSION ON ELECTIONS (COMELEC); WHEN THE COMELEC'S DETERMINATION AND APPRECIATION OF EVIDENCE MAY NOT CONSTITUTE GRAVE ABUSE OF DISCRETION. — To my mind, the Comelec's action does not constitute what *Lino-Luna* would view as "*a strong and clear case of abuse of power*" or, in fine, come within the definition of grave abuse of discretion. For, the Comelec's determination as to the compliance with the prescribed measures to safeguard the integrity of the ballots was not without valid substantiation. That the Comelec indeed made short shrift of Varias' claim about the possibility of ballot tampering and his supporting arguments therefor is conceded. But the Comelec had its own plausible reasons for rejecting the claim. The *ponencia* itself admits that part (3 out of 5) of Comelec's reasons may "*arguably be reasonable*." Yet, the same *ponencia* would impute grave abuse of discretion on Comelec, reserving its strongest disapproval at the poll body's purported trivial misappreciation of the NBI report on the handwriting and other entries on the ballot, as if such report concludes, by the

operation of some fiction of law, the Comelec or the RTC. The NBI report, according to the *ponencia,* forms part of a chain of facts/information which, when combined together, indicated the likelihood of ballot tampering. This argument may be accorded some cogency but for the fact that the Comelec and/or the RTC for its/their own stated reasons, did not find the NBI report a compelling evidence deserving the kind of weight Varias' understandably wanted it to carry. In view of extant jurisprudence, grave abuse of discretion cannot be laid at the doorsteps of the COMELEC and/or the RTC for the evidentiary treatment they gave under the premises to the NBI report. x x x If the Comelec thus took it upon itself to look into and validate the matter of whether the ballots have been molested, a capricious exercise of judgment cannot, for that act alone, be imputed on the poll body. A lapse of judgment, perhaps, but not of grave abuse of discretion as is equivalent to want of jurisdiction. For, in the final analysis, Comelec's act was no more than an attempt to determine the true voting will of the good people of Alfonso, Cavite. It is a settled rule that laws governing election contests must be liberally construed to the end that the will of the people in the choice of public officials may not be undermined by mere technical objections.

4. ID.; ID.; ID.; FINALITY OF THE FACTUAL FINDINGS OF THE COMELEC.— The binding effect, even on this Court, of the factual determinations of the Comelec, exercising particular expertise in its field of endeavor, such as appreciation of ballots and evaluation of evidence on election irregularities, is firmly established. Hence, any attempt to overturn, on a petition for *certiorari,* factual determinations and conclusion of the Comelec would very well wreak havoc on well-settled jurisprudence. Yet, wittingly or unwittingly, this seems to be what the *ponencia* intends to accomplish in this case. This should not be allowed.

APPEARANCES OF COUNSEL

George Erwin M. Garcia for petitioner.
The Solicitor General for public respondent.
Charles Perfecto A. Mercado for private respondent.

D E C I S I O N

BRION, *J.*:

Rosal v. Commission on Elections[1] (*Rosal*) instructively tells us how to appreciate revision of ballot results as against election returns in an electoral contest, as follows:

> **(1) The ballots cannot be used to overturn the official count as reflected in the election returns unless it is first shown affirmatively that the ballots have been preserved with a care which precludes the opportunity of tampering and all suspicion of change, abstraction or substitution;**
>
> **(2) The burden of proving that the integrity of the ballots has been preserved in such a manner is on the protestant;**
>
> **(3) Where a mode of preserving the ballots is enjoined by law, proof must be made of such substantial compliance with the requirements of that mode as would provide assurance that the ballots have been kept inviolate notwithstanding slight deviations from the precise mode of achieving that end;**
>
> **(4) It is only when the protestant has shown substantial compliance with the provisions of law on the preservation of ballots that the burden of proving actual tampering or the likelihood thereof shifts to the protestee; and**
>
> **(5) Only if it appears to the satisfaction of the court or COMELEC that the integrity of the ballots has been preserved should it adopt the result as shown by the recount and not as reflected in the election returns**.[2] [Emphasis supplied.]

Among other arguments, petitioner Virgilio P. Varias (*Varias*) asserts in his petition[3] that the respondent Commission on Elections (*COMELEC*) gravely abused its discretion when it did not follow *Rosal* in resolving the appeal of the mayoralty contest between him and respondent Jose "Joy" D. Peñano (*Peñano*). He therefore asks us to annul the decision of the

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[1] G.R. No. 168253, March 16, 2007, 518 SCRA 437, 491.

[2] The Rosal Doctrine.

[3] Filed under Rule 64, in relation to Rule 65 of the Rules of Court.

COMELEC's First Division dated December 18, 2007 and the COMELEC *En Banc* Resolution dated August 17, 2009 in *Jose "Joy" Peñano v. Virgilio P. Varias and the Municipal Board of Canvassers for the Municipality of Alfonso, Cavite*, EAC NO. A–2-2008.

THE ANTECEDENTS

Varias and Peñano were candidates for the position of Mayor of Alfonso, Cavite in the May 14, 2007 elections. On May 17, 2007, Varias was proclaimed winner **after the canvass of all election returns.** He garnered 10,466 votes as against Peñano's 10,225 – a margin of 241 votes.

On May 25, 2007, Peñano filed an election protest with the Regional Trial Court (*RTC*), Branch 18, Tagaytay City, citing various election irregularities committed in **14 precincts/clustered precincts**.[4] Peñano alleged in his protest that:

8.1 Votes correctly and properly cast in favor of the protestant were deliberately misappreciated and not credited to him by the corresponding board of election inspectors;

8.2 Votes correctly and properly cast in favor of the protestant were intentionally and unlawfully counted or tallied in the election returns as votes for the protestee;

8.3 Valid votes correctly and properly cast in favor of the protestant were illegally and baselessly considered as stray;

8.4 Ballots containing valid votes of the protestant were intentionally and/or illegally misappreciated or considered as marked and declared null and void;

8.5 Votes cast in the name of the protestee in the ballots in excess of the total number voters [sic] who actually voted were illegally considered, appreciated and credited in favor of the protestee;

8.6 Votes cast in ballots prepared by persons other than those who actually voted were considered, appreciated and counted for protestee

[4] Clustered Precincts and Precincts **77A/77B; 78A/78B; 79A/79B; 81A/81B; 86A/86B; 87A; 89A/89B; 90A/90; 91A/91B; 92A/92B; 95A/95B; 100A/100B; 101A; 102A.**

The RTC issued on May 28, 2007 a precautionary order commanding the Municipal Treasurer and the Election Officer to take immediate steps to safeguard the ballot boxes of the protested precincts.

Varias filed his Answer with Counter-Protest. In light of the counter-protest, the RTC reiterated its precautionary order on June 5, 2007. **On June 12, 2007, the contested ballot boxes were placed under the RTC's custody**.

The election protest proceeded in due course and the revision of the ballots was scheduled.

Peñano presented the testimonies/affidavits of his witnesses – poll watchers who served in Precincts/Clustered Precincts 87A,[5] 90A/90B,[6] 92A/92B[7] and 102A.[8] The witnesses-poll watchers invariably declared that there had been irregularities in the counting of votes, *i.e.*, tallying was done hurriedly; votes actually for Peñano were counted in Varias' favor; ballots for Peñano were declared stray or marked; votes that were obviously written by two persons were still credited to Varias' total; the Board of Election Inspectors (*BEI*) of various precincts failed to record all the poll watchers' objections/questions on the tally.

Varias, on the other hand, presented the testimonies/affidavits of his own witnesses – his poll watchers for Clustered Precinct 90A/B and Precinct 87A[9] and the Chair of the BEI of Precinct No. 92A.[10] These witnesses invariably declared that there were no unusual incidents in their respective precincts. The poll watchers declared that they brought the ballot boxes and other election paraphernalia to the office of the Municipal Treasurer at the Alfonso Municipal Hall after the counting.[11]

[5] Elvira Salcedo

[6] Lanie May Dimapilis

[7] Ligaya Mojica

[8] Lucita Leyran

[9] Nelson Dimapilis

[10] Geneilyn M. Zamora

[11] Short summary of the testimonies of the witnesses is based entirely

After completion of the revision that saw the physical count of all the protested precincts, the Revision Committee submitted a Report[12] showing that Peñano garnered more votes than Varias. The Report also reflected the following observations:

1. In Precinct No. 0081A/0081B, the revisor for the Protestee made the general objection for ballots marked V-1 to V-74 as fabricated and substituted ballots.

2. In Precinct No. 0086A/0086B, one ballot was found in the compartment for spoiled ballots.

3. In Precinct No. 0087A/0087B, five (5) voters were included by Court Order as stated in Minutes of Voting. There is also an entry in the incident/irregularities in the MOV of tearing of unused ballots.

4. In Precinct No. 0087A, the revisor for the Protestant made the observation that all the ballots are genuine with COMELEC water marks and that the signature of BEI Chairman at the back of each ballot is authentic and the same with the documents found inside the ballot box.

The revisor for the Protestee made the general objection that all the ballots are substituted ballots and fabricated; the texture of the ballots do not appear the same, the lower and upper portion of the ballot where the stub was placed has too [sic] distinctive tearing, one by original tearing and one was cut by a scissors; and that different signatures appear at the back of the ballots, using two colors of ink – black and blue.

5. In Precinct No. 0090A, the envelope for valid ballots is partially torn and no lower detachable coupons were found inside the ballot box. Both revisors for the parties made substantially the same objections/observations as in Precinct No. 0087A.

6. In Precinct No. 0092A, the envelope for valid ballots is partially torn on its lower portion, only one detachable coupon was found inside the large compartment of the ballot box. Both revisors for the parties made substantially the same objections/observations as in the above precincts.

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on the RTC decision; *rollo*, pp. 368-408.

[12] *Id.* at 312-321.

7. In Precinct No. 0095A/0095B, nine (9) voters were excluded by Court Order.

8. In Precinct No. 0101A, one (1) padlock of the ballot box was sawed by Rommel Fernando as it cannot be opened by using any of the three keys for the said precinct.

9. In Precinct No. 0102A, both revisors for the parties made substantially the same objections/observations as in the above precincts. The revisor for the Protestee made the additional observations that the paper seal for valid ballots was pasted. The lower stub in the said precinct were [sic] found in a sealed envelope.

The protagonists then moved for a technical examination of the contested ballots on the conditions that: (1) the examination shall be conducted by experts from the Questioned Document Division of the National Bureau of Investigation (*QDD-NBI*); and (2) the examination shall be done within the court's premises and under its supervision. The RTC granted the motions.

The NBI Report

The QDD-NBI submitted the following report/findings dated September 26, 2007[13] which showed that:

1. 82 ballots out of 216 in favor of Peñano were written by one and the same person;

2. The signature of the Chair of the Board of Election Inspectors in Clustered Precinct Nos. 90A/B appearing at the dorsal side of some of the official ballots in the precinct were not written by one and the same person;

3. The signature of the Chair of the Board of Election Inspectors in Precinct No. 87A appearing at the dorsal side of some of the official ballots in the precinct were not written by one and the same person;

4. The signature of the Chair of the Board of Election Inspectors in Precinct No. 92A appearing at the dorsal side of some of the official ballots in the precinct were not written by one and the same person;

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[13] See the NBI Report; *id.* at 323-367.

5. The signature of the Chair of the Board of Election Inspectors in Precinct No. 102A appearing at the dorsal side of some of the official ballots in the precinct were not written by one and the same person;

6. 29 ballots in the four precincts (87A, 90A/B, 92A and 102A) appear to have erasures of the petitioner's name and the corresponding superimposition of the respondent's name; 19 of them were written by one and the same person.

The RTC Ruling

On December 17, 2007, the RTC rendered a Decision[14] in Peñano's favor, finding that he garnered 10,312 votes as against Varias' 10,208. The RTC arrived at this tally[15] by: **(1)** partly considering the results of the revision[16] (where Peñano was credited with 136 more votes while Varias suffered a 299 vote reduction); **(2)** disregarding the ballot count results at Clustered Precincts 81A/81B (where Peñano received a 37 vote increase while 83 votes were deducted from Varias' total);[17] and **(3)** deducting 6 votes or ballots from Peñano's for the following reasons: set(s) of ballots were written by one person (*WBO*); entries in a single ballot were written by two persons (*WBT*); or a ballot had been marked (*MB*), while at the same time 22 votes were deducted from Varias' total for having been either WBO, WBT or MB.

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[14] Penned by Judge Edwin G. Larida, Jr.

[15] In the uncontested precincts, Varias received **8,754** votes while Peñano **9,598**; Varias' total in the contested precincts, under the Election Returns, was **1715**; Peñano's was **627**.

[16] The new tally for Varias in the protested precincts, after revision, was **1420, while Peñano's total was 763**.

[17] In the election return, Varias garnered 182 votes while Peñano received 37. The action of the latter precincts was based on its ruling that:

In an Order dated July 23, 2007, the Court excluded this precinct in the revision considering that protestant substituted its revisor therein without firstly informing the Court; the Court stated that the presence of an unauthorized revisor invalidated the proceedings and/or deemed the protestant to have waived his right to revise the ballot box for the said precinct.

On the critical issue of whether the ballots of Precinct 87A could be relied upon, the RTC cited and used this Court's ruling in *Rosal v. COMELEC* as legal premise and ruled:

> Prescinding from the above doctrinal principals [sic], we now determine if the ballots can still be considered as the best evidence in determining the results of the election for this precinct.
>
> To begin with, the election protest has contained averments regarding the irregularities in its accomplishment during the May 14, 2007 elections. For clarity, and at the expense of redundancy, these allegations are as follows:
>
> 8.1. Votes correctly and properly cast in favor of the protestant were deliberately misappreciated and not credited to him by the corresponding board of election inspectors;
>
> 8.2. Votes correctly and properly cast in favor of the protestant were intentionally and unlawfully counted or tallied in the election returns as votes for the protestee;
>
> x x x x x x x x x
>
> These allegations were corroborated by the testimony of Elvira Salcedo, poll watcher of the protestant who was presented as a witness for this precinct. x x x.
>
> The ballots inside the ballot box for Precinct No. 87A echoes the allegations in the election contest and the testimony of Elvira further supports this claim. But the manner of preserving the ballots should also be inquired into so that they can be used to overturn the election return. The testimony of Elvira is wanting in this regard. However, we can see glimpses of the manner of preservation on the testimony of Nelson Dimapilis – a witness for the protestee who served at precinct 87A. He testified that after the ballots were counted, they arranged the arranged [sic] the paraphernalia used in the election in the ballot box and they brought the box in the municipal hall. As there was no evidence presented that the ballot box was not properly preserved or that it was molested after it was brought in the Municipal Hall, the court has no other option than to accept that the contents thereof remained the same while it was kept thereat. Moreover, the court sees no reason to doubt the manner of preserving of the ballot box since it was done substantially in compliance with law. At the same time, when the precautionary order was issued and during the time that the ballot box was brought before the court, the same was

retrieved in the place where it is supposed to be found. Indeed, a grand conspiracy is needed in order to molest a ballot box. But since no evidence was presented to prove this, and there being (sic) as to who might have done such a thing, the court should hold that the duty of those who were tasked in the safekeeping of the ballot box was regularly done and that the ballot box was preserved in accordance with the election laws.

Indeed, the ballots in this instance are not the only mute witnesses of the result of the election. The testimony of Elvira as well as the fact that the ballot box was found in the proper place and in the custody of the proper custodian shows that the ballots retained their superior status as evidence as compared to the election return. Thus, the physical count of the ballots as made in the revision should be followed since the election return of this precinct does not reflect the choice of the voters in this precinct.[18]

When confronted with the same discrepancies in the figures of the election returns and revision results in Clustered Precincts 90A/90B, Precinct 92A and Precinct 102A, the RTC came to a similar conclusion.

The RTC's decision thus recognized at least 4 precincts where significant variations were evident from the election returns tally, namely: Precincts/Clustered Precincts 87A, 90A/B, 92A and 102A.

The Assailed COMELEC Rulings[19]

On appeal, the First Division of the COMELEC affirmed the RTC's decision, ruling that Peñano received a total of 10,314 votes while Varias garnered 10,172 votes. It reached this tally after:

1. It included the RTC-excluded Precinct 81A under a new/different tally – Varias – 96 votes; Peñano – 72 votes;
2. It found, based on its own evaluation of **all the ballots** in the protested precincts (on the contentious issues of WBO, WBT

[18] *Rollo*, pp. 396-401.

[19] The decision of the First Division was penned by Commissioner Rene V. Sarmiento; the *En Banc* Resolution was penned by Commissioner Nicodemo T. Ferrer, with Commissioner Lucenito Tagle dissenting.

and MB), that Varias received 1,418 votes and Peñano 716.

Like the RTC, the COMELEC First Division's count largely relied on the results of the revision of the ballots.

On the critical issue of whether the ballots subject of the revision could be relied upon, the COMELEC ruled:

> The above standards [referring to *Rosal* quoted in the RTC decision] burden the protestant of proving the integrity of the ballots before they can be used to overturn the official count. **But how is integrity of the ballots established?** Number 3 of the standards answers the question. If a law provides for the mode of preserving the ballots "proof must be made of such substantial compliance with the requirements of that mode as would provide assurance that the ballots have been kept inviolate notwithstanding slight deviations from the precise mode of achieving that end." The Court then mentioned the following provisions of the Omnibus Election Code … for the safekeeping and preservation of ballots:
>
> x x x x x x x x x
>
> Clearly, the integrity of the ballots being referred to that has to be proven by the protestant in an election protest refers to the **integrity of the ballot boxes** that contain the ballots in the place of storage, **not the ballots per se.**
>
> It shall be recalled that as early as May 28, 2007, the court *a quo* issued a precautionary Order which directed the Municipal Treasurer and the Election Officer of Alfonso to take appropriate measures to protect the integrity of all election documents pertinent to the precincts protested by the protestant-appellee. Another precautionary Order was likewise issued on June 5, 2007 relative to the precincts counter-protested by protestee-appellant. On the same day of June 5, 2007, an Order was issued by the court *a quo* for the retrieval and delivery of the ballot boxes with their keys, list of voters with voting records and other documents or paraphernalia … The retrieval and delivery are to be made by Sheriffs Noramado Mateo and Teodorico V. Cosare to be assisted by the Municipal Treasurer and Election Officer of Alfonso on June 12, 2007 at 8:30 a.m. The parties were told that they may send their representatives to witness the activity x x x.

The records of the case is bereft of any report that the ballot boxes were found in the place other than the place of storage

so as to call the occasion for the protestant-appellee to prove that the same ballot boxes were under the custody of the Municipal Treasurer of Alfonso, Cavite.

The revision reports for the different precincts which are signed by the revisors of both parties also indicate the condition of the ballot boxes at the time they are opened for revision purposes.

In the Revision Report for Precinct 79A (Brgy. Mangas I), the ballot box is with Serial No. CE01-056756. It is reported to have three Comelec padlocks, with three keys, Inner Metal Seal Nos. CE07-406141/CE07406140. **As to the space for the "Outer Metal Seal Serial No.", it is filled with "NONE."**

In the Revision Report for Precinct No 81A/81B (Brgy. Mangas I), the ballot box is with Serial No. CE-01-056443. It is reported to have three Comelec padlocks, with three keys. The outer metal seal has serial number CE-07-406144 and Inner Metal Seal No. CE-07 406145. As to the condition of the outer and inner metal seal, the Report indicated that they are properly attached and locked.

In the Revision Report for Precinct No 77A/77B (Brgy. Mangas I), the ballot box is with Serial No. CE-01-058-033. It is reported to have three Comelec padlocks, with three keys. **There is no outer metal seal and but with two (2) inner metal seals with numbers CE07406136 and CE07-406137.**

In the Revision Report for Precinct No 86A/86B (Brgy. Marahan I), the ballot box is with Serial No. CE-01-061579. It is reported that the ballot box is with three (3) Comelec padlocks and with three (3) keys. The outer metal seal is with serial number CE 07-406155 while the inner metal seal is with serial number CE07-406156. Said seals are found to be properly attached and have sealed the ballot box.

In the Revision Report for Precinct No 87A (Brgy. Marahan I), the ballot box is with Serial No. CE 01-063371. It is reported that the ballot box is with three (3) Comelec padlocks and with three (3) keys. The outer metal seal is with serial number CE 07 406158 and the inner seal is with serial number CE:07406157. Both outer and inner metal seals are properly locked.

In the Revision Report for Precinct No 89A/89B (Brgy. Marahan I), the ballot box is with Serial No. CE98-843512 with three Comelec padlocks with three (3) keys. The outer metal seal is with serial

number CE07-406161 and the inner metal seal is with serial number CE07-406162. Both outer and inner metal seals are properly attached.

In the Revision Report for Precinct No 90A/90B (Brgy. Matagbak I), the ballot box is with Serial No. CE 01-064817 with three Comelec padlocks and three keys. The outer metal seal is with serial number CE01-64817 and the inner metal seal is with serial number CE:07406163. Both seals are properly attached.

In the Revision Report for Precinct No 95A/95B (Brgy. Marahan II), the ballot box is with serial number CE 98-044211 and with three Comelec padlocks and three keys. **There is no outer metal seal but with two (2) inner metal seals with numbers CE0740674 and CE 07040673.** The ballot box is properly locked.

In the Revision Report for Precinct No 91A/91B (Brgy. Marahan II), the ballot box is with serial number CE 01-065438. It has three (3) padlocks and three (3) keys. The outer metal seal is with serial number CE 07-406166 and the inner metal seal is with serial number CE 07-406165. The ballot box is in good condition and is properly locked.

In the Revision Report for Precinct No 92A (Brgy. Marahan II), the ballot box is with serial number CE 01-064891 with three (3) Comelec padlocks and three (3) keys. **The ballot box has no outer metal seal but with two (2) inner metal seals with numbers CE007406167 and CE 007406168.** The ballot box is properly locked.

In the Revision Report for Precinct No. 102A (Brgy. Matagbak II), the ballot box is with Serial No. CE 98-044852 with three Comelec keys (*sic*) and three keys. The outer metal seal has Serial No. CE 07-406187 while the inner metal seal is with Serial No. CE 07-406188. The ballot box is properly locked, the outer metal seal is properly attached but the **inner metal seal is already "opened."**

In the Revision Report for Precinct No. 101A (Brgy. Matagbak II), the ballot box is with Serial No. CE 98-047462 with three Comelec padlocks and keys. The outer metal seal is with serial number CE 07-406186 and an inner metal seal is with serial number CE 07-406165. The ballot box is properly locked and the metal seals properly attached.

In the afore-mentioned revision reports, the metal seals for the precincts 79A, 77A/77B, 78A/78B, 95A/95B and 92A, are not

properly attached. The two (2) seals are both attached on the holes provided for inner metal seals. Likewise, in Precinct No. 102A, the inner metal seal is "opened." Considering that the Comelec padlocks locked these ballot boxes and the two seals has sealed the inner part of the ballot boxes, the mistake on the placing of the seals, by reasonable inference, can be said to have been made at the time the ballot boxes were closed at the precinct level on election day and not done after the election. As to Precinct No. 102A, although the inner metal seal is "opened," the outer metal seal and the padlocks were properly attached.

From the foregoing, it can be reasonably said that there was substantial compliance with statutory safety measures to prevent reasonable opportunity for tampering with their contents. Thus, the burden of proving that actual tampering with the contents of the ballot boxes shifted to the protestee-appellant.

> If such substantial compliance with these safety measures is shown as would preclude a reasonable opportunity of tampering with the ballot boxes' contents, the burden shifts to the protestee to prove that actual tampering took place.

To prove that ballots particularly in Precincts 87A, 90A/B, 92A and 102A are tampered, the protestee-appellant points out the following:

> 1. The envelopes containing the ballots in the Precinct 87A, 90A/B, 92A and 102A are partially torn and that the inner metal seal of the ballot box in Precinct 102A is already broken;
>
> 2. The ballots in precinct Nos. 87-A, 90-A/B, 92A and 102A are fabricated and substituted as they have different textures and had signatures at their dorsal portion which are significantly different from the signatures of the chairmen as found in other election documents;
>
> 3. The findings of the NBI Questioned Documents Division corroborated the observations of the revisors. It found eighty two (82) ballots filled-up by one person and that twenty-nine (29) ballots contain superimpositions of the votes for the protestant and nineteen (19) among them were made by one person;
>
> 4. At the time the election protest was filed, protestee-appellant [*sic*] was still the sitting mayor who had control of

the affairs in the municipal hall of Alfonso where the ballot boxes were stored; and

5. The ballots in Precincts 87-A, 90-A/B, 92A and 102A lack the security marking, the signatures of the BEI chairmen are likewise forged and that the name "Peñano" is superimposed on the name "Varias." Protestee-appellant asserts that these are pieces of evidence that proves election fraud and the lower court, therefore, erred when it preferred the ballots over the election returns.

The fact that the envelopes x x x are partially torn does not by itself prove that there was indeed tampering of the ballots, especially when the report does not indicate with specification the size and the manner the tearing was done and when the statutory safety measures are substantially complied with.

However, an examination of the envelopes pertaining to the aforesaid four precincts submitted to this Commission discloses that the torn portions are on the longer sides of the long brown envelopes. Likewise, the irregular manner by which the envelopes were torn suggests that they occurred while they are inserted into the ballot boxes.

Although the inner metal seal of Precinct No. 102A have (sic) been broken, the Report indicates that the outer metal seal and the Comelec padlocks were attached and intact at the time the ballot box for said precinct was opened.

The result of the thorough examination conducted by this Commission on all the ballots in Precincts 87A, 90A/B, 92A and 102A pertaining to the confidential security features belies the claim of the protestee-appellant that said ballots lack the security markings. This Commission, aided by the use (sic) microscope and ultra-violet light, found that **ALL the ballots in the said precincts contain ALL the hidden security features**. Thus, the ballots are not spurious and cannot be rejected on lack of the security features.

On the findings of the NBI Questioned Documents Division, the same should be the proper subject of appreciation. The fact that the name Peñano is superimposed on the name "Varias" does not conclusively prove the presence of an election fraud. The same can be said of the ballots allegedly filled up by one and the same person.

The protestee-appellant also fails to show proof that the protestant-appellee, while sitting as the mayor of Alfonso, tampered or caused the tampering of the ballots.

In all, the lower court did not err in relying on the ballots over the election returns.[20] [Emphasis supplied.]

The COMELEC *En Banc* denied Varias' subsequent motion for reconsideration on the following grounds:

1. The motion for reconsideration was *pro forma* – a mere rehash of arguments and points already passed upon by both the RTC and the First Division;

2. Even on the merits, there is no reason to reverse the ruling of the First Division. There is a legal presumption that official duty has been duly performed x x x There is absolutely nothing in the Motion for Reconsideration, no evidence, not even a scintilla thereof, other than the simple assertion contained therein of the allegation of supposed discrepancy, which would not be sufficient to overturn the presumption of the regularity of the performance of the function by the First Division of this Commission.[21]

THE PETITION

Varias faults the COMELEC for grave abuse of discretion on the following grounds:

1. **It did not require the protestant to prove that the integrity of the ballot boxes was preserved;**

2. **It relied on the physical count of the ballots in precincts 87A, 90A/B, 92A and 102A instead of the election returns despite overwhelming evidence that the ballot boxes were no longer intact and that there were irregularities in the examined ballots;**

3. **It did not i nvalidate the revised ballots for Peñano in the other contested precincts despite the showing that these**

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[20] *Rollo*, pp. 63-277.

[21] *Id.* at 278-311.

ballots were either marked, written by one person per set and/or written by two or more persons;

4. It voided the revised ballots of Varias in the other contested precincts for being marked.

THE COURT'S RULING

We find the petition impressed with merit.

The Parameters of Our Review

The present petition is for *certiorari* under Rule 64, in relation with Rule 65 of the Rules of Court. Under these Rules, our review is limited to the jurisdictional issue of whether the COMELEC acted without or in excess of its jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction.[22] Varias anchored his petition on alleged instances of COMELEC's grave abuse of discretion.

Grave abuse of discretion is a concept that defies exact definition, but generally refers to "capricious or whimsical exercise of judgment as is equivalent to lack of jurisdiction"; the abuse of discretion must be patent and gross as to amount to an evasion of positive duty or a virtual refusal to perform a duty enjoined by law, or to act at all in contemplation of law, as where the power is exercised in an arbitrary and despotic manner by reason of passion and hostility.[23] Mere abuse of discretion is not enough; it must be grave.[24] **Use of *wrong or irrelevant considerations* in deciding an issue is sufficient to taint a decision maker's action with grave abuse of discretion.**[25]

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[22] RULES OF COURT, Rule 65, Section 1.

[23] *Quintos v. Commission on Elections*, 440 Phil. 1045 (2002).

[24] *Suliguin v. Commission on Elections*, G.R. No. 166046, March 23, 2006, 485 SCRA 219.

[25] *Pecson v. Commission on Elections*, G.R. No. 182865, December 24, 2008, citing *Almeida v. Court of Appeals*, 489 Phil. 649 (2005), where we ruled that *in granting or denying injunctive relief, a court abuses its discretion when it lacks jurisdiction,* ***fails to consider and make a record of the factors relevant to its determination****, relies on clearly erroneous*

Closely related with this limitation is the condition under Section 5, Rule 64 that *findings of fact of the Commission supported by substantial evidence shall be final and non-reviewable*. Substantial evidence is that degree of evidence that a reasonable mind might accept to support a conclusion.[26]

Under these rules, we do not *ordinarily* review in a *certiorari* case the COMELEC's appreciation and evaluation of evidence. Any COMELEC misstep in this regard generally involves an error of judgment, not of jurisdiction.[27] In exceptional cases, however, when COMELEC action on the appreciation and evaluation of evidence shows grave abuse of discretion, the Court is more than obliged, as it is then its constitutional duty, to intervene; when grave abuse of discretion is present, resulting errors arising from the grave abuse mutate from error of judgment to one of jurisdiction.[28]

The above limitations preclude us from ruling on the third and fourth grounds Varias cited in his petition. These cited grounds involve the issue of appreciation and calibration of evidence, which in proper context cannot result in any jurisdictional error, if only because Varias did not allege any grave abuse of discretion committed by the COMELEC in arriving at its conclusions. The COMELEC concluded that: (1) entries in some sets of two or more different ballots were written by one person; (2) entries in a particular ballot were written by two persons; and (3) a ballot had been marked. Varias merely argued that these COMELEC findings and/or conclusions were wrong, and from there proceeded to argue his positions. In the absence of any allegation of jurisdictional error, no basis exists for us to proceed with a *certiorari* review.

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factual findings, ***considers clearly irrelevant or improper factors, clearly gives too much weight to one factor, relies on erroneous conclusions of law or equity, or misapplies its factual or legal conclusions***.

[26] RULES OF COURT, Rule 134, Section 5.

[27] See *Pagaduan v. Commission on Elections*, G.R. No. 172278, March 29, 2007, 519 SCRA 512.

[28] See *De Guzman v. Commission on Elections*, G.R. No. 159713, March 31, 2004, 426 SCRA 698.

In contrast to the approach taken on the cited 3rd and 4th grounds, the petition's approach of citing the first two grounds is different, as Varias specifically cites and shows how jurisdictional errors were committed under these grounds. Hence, these grounds are open for our consideration and action, albeit under the limited review that *certiorari* allows.

The Rosal Doctrine, the Rules of Procedure in Election Contests before the Courts Involving Elective Municipal and Barangay Officials,[29] and the Present Case

The *Rosal* ruling, to be sure, does not involve issues merely related to the appreciation or calibration of evidence; its critical ruling is on the propriety of relying on the revision of ballot results instead of the election returns in the proclamation of a winning candidate. In deciding this issue, what it notably established was a critical guide in arriving at its conclusion – the need to determine whether the court or the COMELEC looked at the correct considerations in making its ruling. As earlier adverted to, the court's or the COMELEC's use of the *wrong or irrelevant considerations* in choosing between revision results and the election returns can taint its action with grave abuse of discretion.[30]

After *Rosal*, we promulgated the *Rules of Procedure in Election Contests Before the Courts Involving Elective Municipal and Barangay Officials* (the *Electoral Contest Rules*). Under its Section 5, Rule 13, we defined burden of proof as the duty of a party to present evidence of the facts in issue necessary to establish one's claim or defense. Section 6, Rule 13 of the Electoral Contest Rules provides:

SEC. 6. *Disputable presumptions*. – The following presumptions are considered as facts, unless contradicted and overcome by other evidence:

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[29] A.M. No. 07-4-15-SC.

[30] *Supra* note 25.

(a) On the election procedure:

(1) The election of candidates was held on the date and time set and in the polling place determined by the Commission on Elections;

(2) The Boards of Election Inspectors were duly constituted and organized;

(3) Political parties and candidates were duly represented by pollwatchers;

(4) Pollwatchers were able to perform their functions; and

(5) The Minutes of Voting and Counting contains all the incidents that transpired before the Board of Election Inspectors.

(b) On election paraphernalia:

(1) Ballots and election returns that bear the security markings and features prescribed by the Commission on Elections are genuine;

(2) The data and information supplied by the members of the Boards of Election Inspectors in the accountable forms are true and correct; and

(3) The allocation, packing and distribution of election documents or paraphernalia were properly and timely done.

(c) On appreciation of ballots:

(1) A ballot with appropriate security markings is valid;

(2) The ballot reflects the intent of the voter;

(3) The ballot is properly accomplished;

(4) A voter personally prepared one ballot, except in the case of assistors; and

(5) The exercise of one's right to vote was voluntary and free.

The Electoral Contest Rules must be considered complementary to *Rosal* to the extent that it dealt with the *Rosal* issues.[31]

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[31] *Rosal* dealt with matters not otherwise covered now by the cited provisions of the Electoral Contest Rules; *i.e.*, the imperative need to determine whether the security measures provided by law for preserving the ballots and ballot

In the present case, Varias claims that the COMELEC showed manifest and gross partiality and bias in favor of Peñano in appreciating the evidence in the mayoralty contest. Peñano, according to Varias, had the burden of proving that the ballots had been preserved, yet the COMELEC simply dismissed his (Varias) allegations of post-election fraud on the justificatory statement that *records of the case are bereft of any report that the ballot boxes were found in a place other than the place of storage so as to call the occasion for the protestant-appellee to prove that the same ballot boxes were under the custody of the Municipal Treasurer of Alfonso, Cavite*. To Varias, this finding does not necessarily show that post-election tampering did not happen. The COMELEC should have instead required Peñano to prove that the padlocks and self-locking metal seals attached to the ballot boxes were the same ones the BEI used in locking and sealing them as required by Section 50 of Resolution No. 7815.[32] The revision report, Varias claims, show that the padlocks attached to the ballot boxes of Precincts 87A, 90A/B, 92A and 102A were forced open and the self-locking, fixed-length seals attached to the ballot boxes were irregular. The COMELEC merely mentioned that the ballot boxes had padlocks accompanied by keys, but was completely silent on whether the keys could open their intended padlocks. It is necessary to show that the padlocks were the same ones the BEI used in locking the ballots; records of the revision show that in Precincts 87A, 90A/B, 92A and 102A, the padlocks had to be forced open, as the designated keys could not open

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boxes have been followed. The application of the evidentiary presumptions under the cited provision of the Rules must take this interplay into account.

[32] Section 50, Resolution No. 7815 provides:

SEC. 50. *Disposition of ballot boxes, keys, election returns and other documents*. – Upon the termination of the counting of votes and the announcement of the results of the election in the precinct, the BEI shall:

x x x x x x x x x

b. Close the inner compartments of the ballot box, lock them with one (1) self-locking fixed-length seal and then lock the outer cover with the three (3) padlocks and one (1) self-locking fixed-length seal. The three keys to the padlocks shall be placed in separate envelopes which shall be sealed and signed by all members of the BEI.

them.[33] Additionally, as the Resolution of the First Division itself shows, there were irregularities in the use of the self-locking metal seals; the serial numbers of the self-locking seals were not uniform – the serial number of the metal seal for the ballot box of Precinct 90A/B began, unlike the others, with 01, which means that it was intended for use in the 2001 elections; the serial numbers of the two seals in Precinct 95A/95B, on the other hand, only had seven (7) digits, while those for Precinct 92A had nine (9).

Varias additionally claims that the conditions of the ballots found inside the ballot boxes cast a reasonable suspicion that the ballot boxes had been violated. *First*, the physical count of the ballots in Precincts 87A, 90A/B, 92A, and 102A was very different from the votes garnered by the parties as reflected in the election returns, the statement of votes, and the tally board; the results in all the other precincts, on the other hand, were substantially the same. This variation is not merely a case of misappreciation of votes of one candidate in favor of the other, as this is a case of ballots previously credited to a candidate literally vanishing. Varias further asserts that misappreciation of ballots of this magnitude would not have gone unnoticed, as the parties had their respective poll watchers in these precincts; no record whatsoever exists of pollwatchers' reports of irregularity of this nature during the counting of votes. The COMELEC, Varias claims, was silent on these discrepancies – it never tried to explain the sizeable deduction from the votes in his (Varias) favor and the substantial addition to Peñano's total. *Second*, there is evidence coming from a neutral source – the NBI – showing that the signatures of the BEI chairmen at the back of the ballots are not the same as the sample signatures of the

c. Deliver the ballot box to the city or municipal treasurer, accompanied by watchers. x x x

In case the ballot box delivered by the BEI was not locked and/or sealed, the treasurer shall lock and/or seal the ballot box. The treasurer shall include such fact, including the serial number of the self-locking fixed –length seal used, in his report to the Commission.

[33] This of course is not strictly accurate, as the cited Report of the Revision Committee shows that it was the lock of Precinct 101A that was forced open.

same persons in other election paraphernalia. *Third,* the NBI also found out that, in the ballots, there were superimpositions of Peñano's name over Varias'.

According to Varias, the totality of the circumstances – (1) the forced opening of the padlocks of the ballot boxes of the four controversial precincts; (2) the irregular serial numbers of the metal seals; (3) the substantial variance of the votes of the parties in the election returns and the physical count; (4) the different signatures at the back of the ballots; and (5) the superimpositions – points to the obvious fact that the ballot boxes in the four precincts had been violated and the ballots they contained, tampered. This, he asserts, is the inescapable conclusion that an ordinary and unbiased mind would have reached; for unexplained reasons, the COMELEC arbitrarily and whimsically refused to see and appreciate these irregularities. Instead, the COMELEC went to great lengths, *greater than those reached by Peñano,* to justify its conclusion that, in the four precincts, the ballot boxes and all their contents were well preserved.

As reasonable suspicion exists that the integrity of the ballot boxes had been violated and that tampering of ballots had occurred, Varias asserts that the COMELEC should not have relied on the ballots but on the results reflected in the election returns. Thus, the COMELEC gravely abused its discretion when it acted contrary to the mandate of *Rosal* and relied on the results of the revision of the ballot boxes.

We agree with Varias' contentions, as our own consideration of the issues raised shows that the COMELEC indeed failed to follow *Rosal*. Specifically, we hold that Varias successfully discharged the burden of proving the likelihood of ballot tampering by presenting competent and reliable evidence – facts and circumstances that are simply too obvious to ignore or gloss over. The COMELEC sadly looked at the wrong considerations, thereby acting in a manner not contemplated by law. Its actions clearly fit the "grave abuse of discretion" definition cited above.

Rosal, we preliminarily note, does not, as it should not, always require **direct proof** of tampering; even if the protestant has shown compliance with legal requirements for the preservation

of ballots, the burden of evidence that shifts to the prostestee is *not confined to proof of actual tampering, but extends to its* ***likelihood***. This cannot but be a reasonable rule, since ballot tampering and ballot substitution are not acts done openly and without precaution for stealth; they are done clandestinely, and to require direct proof of actual tampering almost amounts to a requirement to do the impossible. Direct proof of actual tampering is therefore not the only acceptable evidence that negates the reliability of the ballots subjected to revision; other relevant considerations should be taken into account, most especially those resulting from the examination of physical evidence. By adopting the direct proof approach in the present case, **the COMELEC did not look at all the relevant considerations in ruling on the case.**

For emphasis and ease of reference, we summarize COMELEC's reasons for relying on the results of the revision of ballots:

a. The RTC issued precautionary orders and allowed the parties, if they so desired, to witness the delivery and transfer of the custody of the ballots from the Municipal Treasurer's Office to the RTC.

b. The ballot boxes were found in no other place than their designated place of storage.

c. There was *substantial* compliance with the statutory safety measures to prevent reasonable opportunity for tampering; this conclusion is based on the Revision Reports showing the condition of the ballot boxes in the individual precincts when the ballot boxes were opened for revision.

In comparison, COMELEC rejected Varias' claimed tampering on the following reasoning:

a. The irregular manner in which the envelopes containing the ballots were torn suggests that this incident occurred when the envelopes were inserted in the ballot boxes.

b. As regards the broken inner metal seal of Precinct 102A, the Report of the Revision Committee shows that the outer metal seal and the COMELEC padlocks were attached and intact at the time the ballot box was opened.

c. All the ballots in Precincts 87A, 90A/B, 92A and 102A contain all the hidden security features. They are not therefore spurious.

d. "On the findings of the NBI Questioned Documents Division, the same should be the proper subject of appreciation. The fact that the name "Peñano" is superimposed on the name "Varias" does not conclusively prove the presence of an election fraud. The same can be said of the ballots allegedly filled up by one and the same person."

e. Varias failed to show proof that Peñano, while sitting as Mayor of Alfonso, tampered or caused the tampering of the ballots.

For these reasons, the COMELEC concluded that the RTC did not err in relying on the ballots.

While parts (a), (b) and (c) of the COMELEC ruling above may arguably be reasonable, **we find the COMELEC's dismissive approach to the NBI Report unacceptable**. We note that the NBI's technical examination of the ballots was made upon the parties' motion. More importantly, the technical examination was undertaken pursuant to the provisions of the Electoral Contest Rules. These findings, too, are based on physical evidence and speak for themselves in demonstrating the discovered irregularities. Under these circumstances, we can only characterize the COMELEC's misappreciation and treatment of the Report as a triviality to be gross and inexcusable.

Correctly appreciated, the NBI Report is part of a chain of facts and circumstances that, when considered together, lead to the conclusion that there was, at the very least, the likelihood of ballot tampering. That there are superimpositions of names in the ballots or that various sets of ballots were written by one person indicate that the ballots had not been preserved in the manner *Rosal* mandated. The COMELEC, as we quoted above, took these indicators very lightly and simply concluded that they **do not conclusively prove the presence of an election fraud**. The COMELEC, in short, considered as insignificant the finding that there had been superimpositions or that sets of ballots were written by one person.

We add to these circumstances the NBI's expert finding that the ballots in each of the four precincts contained signatures different from those of their respective BEI Chairs. This additionally raises questions on whether these were indeed the ballots that were previously counted at the precinct level after voting. Why the COMELEC never mentioned that the NBI Report contained this finding is lost on us, and we cannot accept as correct a ruling that entirely disregarded a consideration as significant as this.

We agree with Varias that, other than the NBI Report, there was a systematic pattern of post-election ballot tampering, which arguments Peñano never substantially countered. As we stated above, the dramatic changes in the tally occurred only in four out of the 14 protested precincts, yet the shaving off of Varias' lead and accompanying additions to Peñano's – a classic case of *dagdag-bawas* – in these four precincts were more than enough to alter the results. If votes for Peñano were indeed erroneously and deliberately credited to Varias at the precinct level, we agree with Varias that an irregularity of this magnitude could not have escaped the attention of Peñano's poll watchers. We significantly note in this regard that the Minutes of Voting and Counting do not contain any report of any incident of this nature. The Electoral Contest Rules presumes that *the Minutes of Voting and Counting contain all the incidents that transpired before the Board of Election Inspectors*. To our mind, this presumption cannot be rebutted by a mere claim that the BEI refused to enter the objections of Peñano's poll watchers; the disproportion between this claim and the magnitude of the supposed error at the precinct level is simply too great for this claim to be believed. Under the circumstances, we can reasonably conclude that there were changes in the entries in the ballots after they were counted at the precinct level.

Varias therefore presented – *via* a combination of related circumstances – more than enough substantial evidence to prove that the otherwise invisible and supposedly impenetrable shield protecting the integrity and sanctity of the ballots has been pierced. While these facts and circumstances, when treated separately, do not directly prove ballot tampering, a combined

consideration thereof indicates otherwise and unmistakably point to the conclusion that the integrity of the ballots has been compromised. Faced with conflicting results between a revision of questionable ballots and the official tally reflected in the election results, a reasonable mind would immediately conclude that the revision results cannot prevail over the election returns. *Rosal* instructs us to so rule.

This conclusion will not change even in the face of the following assertions/arguments Peñano and the COMELEC invariably invoke: (a) that Varias belatedly raised the alleged issue of post-election fraud – he did not question the integrity of the ballot boxes and the ballots in his answer, in his motion to dismiss, in his preliminary conference brief, or during the preliminary conference itself, raising the issue only after the result of the revision of ballots had come in;[34] (b) that Varias purportedly admitted, as stated in the RTC's preliminary conference order dated June 27, 2007, a discrepancy in the canvass of election returns – the canvass reported that the total number of those who actually voted was only 20,943 while the statement of votes showed a combined total of 21,160 votes for the position of Mayor; this fact alone, Peñano asserts, justifies the resort to a revision of ballots and the use of the revision results;[35] (c) that the ballots in the 4 precincts were genuine, as they bore all the hidden security features – a presumption established by the Electoral Contests Rules;[36] and (d) that opinions of handwriting experts are not binding upon the COMELEC; they are generally regarded as purely advisory in character, and the courts may place upon them whatever weight they choose or reject them if they are found to be inconsistent with the facts of the case or otherwise unreasonable.[37]

As a process, the technical examination of the ballots under Rule 11, Section 1 of the Electoral Contest Rules, takes place

[34] *See* Peñano's Comment; *rollo*, pp. 603-614 and the COMELEC's Comment; *id.*, at 615-626.

[35] *Id*.

[36] *Id*.

[37] COMELEC's Comment; *id.*, at 615-626.

after completion of revision in the protest or counter-protest, except when the protest or counter-protest involves allegations of massive ballot substitution. Thus, we cannot fault Varias for raising allegations of ballot tampering only after the revision of the ballots, as this was the earliest time that the need and the opportunity presented themselves.

We note, with respect to Varias' purported admission of the discrepancy in the ballot count, that Peñano did not present the RTC's preliminary conference order dated June 27, 2007; it is not part of the record before us. The alleged admission therefore effectively remains a mere unsubstantiated allegation with no evidentiary support. More importantly, this is an issue that neither the RTC nor the COMELEC ever discussed in their decisions, as Peñano raised this issue for the very first time at this very late stage of the proceedings. Lastly, an attack on the reliability of the official tally reflected on the election returns appears to us to be badly misplaced in the present petition for *certiorari,* where Varias is asking us for the affirmative relief of nullifying the COMELEC rulings on limited jurisdictional grounds. As a Rule 65 *certiorari* review is limited in scope and character, we must confine ourselves within the ambit of this limited jurisdiction, lest we ourselves commit grave abuse of discretion.

That the ballots are genuine does not necessarily preclude the possibility of tampering. To be sure, superimposition of names of candidates can be made even on genuine ballots. Whether the ballots are genuine or not is therefore a non-issue, given clearly established evidence that the ballots have been compromised. When tampering of ballots is proven, the compromised ballots – whether genuine or not – cannot be valid subjects of revision in an electoral contest.

Finally, while we agree with the proposition that opinions of handwriting experts are not necessarily binding on the courts or on quasi-judicial agencies, the court or the quasi-judicial agency must still consider them as submitted evidence and reject them if rejection is called for, providing reasons therefor. The rejection must of course be based on the court's or the agency's

own independent evaluation of the pieces of evidence subjected to handwriting examination. Without such consideration, the court or quasi-judicial agency can be considered to have arbitrarily disregarded the expert opinion or evidence.

In sum, we find that the COMELEC gravely abused its discretion in declaring Peñano, based on the results of the revision of ballots, the winner in the mayoralty contest for the Municipality of Alfonso, Cavite. The ballots, after proof of tampering, cannot be considered reflective of the will of the people of Alfonso.

WHEREFORE, premises considered, we *GRANT* the petition and accordingly *ANNUL* the interrelated December 18, 2007 Decision of the COMELEC's First Division and the August 17, 2009 Resolution of the COMELEC *En Banc* in *Jose "Joy" Peñano v. Virgilio P. Varias and the Municipal Board of Canvassers for the Municipality of Alfonso, Cavite*, EAC NO. A–2-2008. As shown by the election returns, we hereby *CONFIRM* the validity of the proclamation of Virgilio P. Varias as elected Mayor of Alfonso, Cavite. Costs against the private respondent.

SO ORDERED.

Carpio, Corona, Carpio Morales, Leonardo-de Castro, Peralta, Barsamin, Del Castillo, Villarama, Jr., Perez, and *Mendoza, JJ.,* concur.

Puno, C.J., Nachura, and *Abad, JJ.,* join the dissenting opinion of *J.* Velasco, Jr.

Velasco, Jr., J., please see dissenting opinion.

DISSENTING OPINION

VELASCO, JR., *J.:*

When the sovereignty of the people expressed by the electorate via the ballot is at stake, everything should be done to have that sovereignty obeyed by all.[1] The primary duty to ascertain by all feasible means the will of the electorate in an election

[1] *Pangandaman v. COMELEC,* 319 SCRA 287 (1999).

belongs; it has broad powers to ascertain the true results of an election by all means available to it.[2] And in the discharge of this duty, the Comelec's factual determination, in the course of appreciating contested ballots and election documents, cannot be overturned by the Court, unless it is clearly tainted with grave abuse of discretion.[3]

With the above doctrinal pronouncements in mind, I am constrained to register my dissent to the *ponencia* which I earnestly believe trifles with settled jurisprudence.

The records yield the following relevant background facts:

After the canvas of all election returns in the May 14, 2007 elections for the position of municipal mayor of Alfonso, Cavite, petitioner Virgilio Varias was proclaimed mayor-elect of that town, having garnered 10,466 votes as against private respondent Jose Peñano's 10,225 votes. Shortly thereafter, Peñano filed an election protest with the Regional Trial Court (RTC) in Tagaytay City alleging the commission of several irregularities [4] in 14 precincts. To this protest, Varias filed his answer with

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[2] *Octava v. COMELEC*, 518 SCRA 759, 765 (2007).

[3] *De Guzman v. COMELEC*, 426 SCRA 698 (2004); *Aradais v. COMELEC*, 428 SCRA 277 (2004).

[4] The alleged irregularities are as follows:

"Votes correctly and properly cast in favor of protestant were deliberately misappreciated and not credited to him by the corresponding board of election inspectors;

"Votes correctly and properly cast in favor or protestant were intentionally and unlawfully counted or tallied in the election returns as votes for the protestee;

"Valid votes correctly and properly cast in favor of protestant were intentionally were illegally and baselessly considered as stray;

"Ballots containing valid votes of the protestant were intentionally and/or illegally misappreciated or considered as marked and declared null and void;

"Votes cast in the name of protestee in the ballots in excess of the total number voters who actually voted were illegally considered, appreciated and credited in favor of the protestee;

"Votes cast in ballots prepared by persons other than those who actually voted were considered and appreciated and counted for protestee." (See *Rollo*, p. 400)

counter-protest. As is usual in protest cases of this nature, the RTC lost no time in issuing precautionary orders to safeguard the ballot boxes in the protested and counter-protested precincts.

The election protest proceeded in due course and the revision of ballots and reception of evidence were set and conducted.[5] Forthwith, the revision committee submitted revision reports after which the two rivals moved for and agreed to a technical examination of the contested ballots to be undertaken by the Questioned Document Division (QDD) of the National Bureau of Investigation (NBI). The NBI would later also submit its report.

Following the appreciation of the contested ballots, the RTC rendered, on December 17, 2007, judgment finding Peñano the winning mayoralty candidate, having garnered 10,312 votes as aganst 10,208 of Varias. In that decision which eventually paved the way for Peñano's proclamation, the court found four (4) protested precincts, *i.e.*, Precinct Nos. 87A, 90A/B, 92A/B and 102A, as swing voting centers in view of the significant difference between the ballot count results and the election returns tally in the corresponding precinct in question. The RTC invoked *Rosal v. COMELEC* [6] to support its ruling.

Varias then repaired to the Comelec where its First Division, by Resolution of December 17, 2008, dismissed his appeal. Per the First Division's appreciation of the case and the contested ballots, Peñano won by a margin of 142 votes, slightly higher than the 140 votes determined by the RTC. The *en banc* Commission would subsequently deny, by another resolution, Varias' motion for reconsideration, premised on the same reasons tendered by the First Division, noting in addition that the *pro forma* rule militates against his plea for reconsideration.

Thus, the instant petition for *certiorari* and prohibition.

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[5] As narrated in the RTC Decision, Peñano presented the testimonies of four of his poll watchers; Varias presented the testimonies of his poll watchers in two precincts and the Board of Election Inspector chairperson for Precinct No. 92-A.

[6] G.R. No. 168253, March 16, 2007, 518 SCRA 473.

Varias sought to nullify the Comelec's twin resolutions, faulting the poll body with grave abuse of discretion on four grounds. The last two stated grounds, the *ponencia* properly noted, are not open to *certiorari* review, involving as they do the matter of appreciating and evaluating evidence that, in the proper context, cannot result in any jurisdictional error inasmuch as Varias failed to allege any grave abuse of discretion committed by the Comelec in arriving at its conclusion. But to the majority, the first two grounds advanced by Varias are so open for such review since he has shown how grave abuse of discretion was committed under these grounds, namely: (1) That the Comelec decision did not require the protestant to prove that the integrity of the ballots was preserved; and (2) It relied on the physical count of the ballots in the 4 key precincts instead of the election returns despite overwhelming evidence that the ballot boxes were no longer intact and that there were irregularities in the examined ballots.

A reasonable suspicion exists, so Varias claims, that the integrity of the ballot boxes had been subverted and that tampering of ballots had occurred. Accordingly, the Comelec should have not relied on the ballots but on the results reflected in the election returns. Thus, Varias concludes, Comelec gravely abused its discretion when it acted contrary to the mandate of *Rosal* and relied on the results of the revision of the ballot boxes.

Sharing Varias' lament, the majority held:

> We agree with Varias' contentions as our own considerations of the issues raised shows that the **COMELEC indeed failed to follow *Rosal***. Specifically, we hold that Varias successfully discharged the burden of proving the likelihood of ballot tampering by presenting competent and reliable evidence – facts and circumstances that are simply too obvious to ignore or gloss over. The COMELEC sadly looked at the wrong considerations, thereby acting in a manner not contemplated by law. Its actions clearly fit the grave abuse of discretion cited above.

This dissent revolves around the question, following *Rosal* viewed in conjunction with A.M. No. 07-4-15-SC, on whether or not the election returns corresponding to certain precincts

protested by Peñano truly reflect the will of the voters therein, as expressed in the ballots they cast during the 2007 mayoralty election in Alfonso, Cavite. A.M. No. 07-4-15-SC, adopting the *Rules of Procedure in Election Contests Before the Courts Involving Elective Municipal and Barangay Officials*, (Election Contest Rules or Rules*),* which took effect shortly after the promulgation[7] of *Rosal* and expressly made to apply to election protest cases pending after their effectivity, [8] established under Section 6 of its Rule 13 certain disputable presumptions, thus:

> Sec. 6. *Disputable presumptions.*—The following presumptions are considered as facts, unless contradicted and overcome by other evidence:
>
> x x x x x x x x x
>
> (b) On election paraphernalia:
>
> (1) Ballots and election returns that bear the security markings and features prescribed by the Commission on Elections are genuine; x x x
>
> (c) On appreciation of ballots:
>
> (1) A ballot with appropriate security markings is valid; x x x

Complementing Sec. 6(c)(1) above is the succeeding Rule 10 of the Rules reading:

> Sec. 8. *Inquiry as to security markings and vital information relative to ballots and election documents.*—When a revision of ballots is ordered, and for the guidance of the revisors, the court shall inquire about the security markings on the ballots and election documents from the Chairman, Commission on Elections, who shall be obliged to indicate such markings and other vital information that may aid the court in determining the authenticity of ballots and election documents. The parties shall be notified of the results of such inquiry.

Rosal, citing *Cailles v. Gomez*,[9] which, in turn, cited American jurisprudence, summarized the standards to be observed in an

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[7] March 16, 2007.

[8] Sec. 1, Rule 16.

[9] 42 Phil. 496 (1921).

election contest predicated on the theory that the election returns – which are *prima facie* evidence of how the electorate voted on election day[10] – do not accurately reflect the true will of the voters due to alleged irregularities in the appreciation and counting of ballots. These guiding standards are:

(1) The ballots cannot be used to overturn the official count as reflected in the election returns unless it is first shown affirmatively that the ballots have been preserved with a care which precludes the opportunity of tampering and all suspicion of change, abstraction or substitution;

(2) The burden of proving that the integrity of the ballots has been preserved in such a manner is on the protestant;

(3) Where a mode of preserving the ballots is enjoined by law, proof must be made of such substantial compliance with the requirements of that mode as would provide assurance that the ballots have been kept inviolate notwithstanding slight deviations from the precise mode of achieving that end;

(4) It is only when the protestant has shown substantial compliance with the provisions of law on the preservation of ballots [that were actually cast and counted] that the burden of proving actual tampering or the likelihood thereof shifts to the protestee; and

(5) Only if it appears to the satisfaction of the court or COMELEC that the integrity of the ballots has been preserved should it adopt the result as shown by the recount and not as reflected in the election returns.

In its decision, the RTC, in effect, held that the protested ballots have not been fraudulently altered or tampered with after the voting and physical count, irresistibly implying they remained in the same condition as they were when delivered to the municipal treasurer as custodian of the ballot boxes and their contents. The following pronouncements of the RTC say or at least suggest as much:

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[10] *Lerias v. HRET*, 202 SCRA 808 (1991).

The ballots inside the ballot box for Precinct No. 87 echoes (sic) the allegations [by Peñano of irregularities] in the election contest and the testimony of Elvira (Salcedo) [11] further supports this claim.

x x x x x x x x x

Indeed the ballots in this instance are not the only mute instances of the result of the election. The testimony of Elvira as well as the fact that the ballot box was found in the proper place and in the custody of the proper custodian shows that the ballots retained their superior status as evidence compared to the election return. Thus the physical count of the ballots as made in the revision should be followed since the election return for this precinct does not reflect the true choice of the voters in this precinct.[12]

x x x x x x x x x

The same circumstances as in Precinct 87A are present in Precinct No. 90A/90B.[13]

x x x x x x x x x

As the circumstances in [Precinct No. 92A] are similar with those obtaining in Precinct 87A are present in Precinct No. 90A/90B …, the ballots should be regarded as reflective of the result of the election.[14]

x x x x x x x x x

Needless to state the court found the same circumstances in this precinct [102A] and hence, the ballots should be followed in determining the result of the election.[15]

The Comelec's First Division, in its 212-page resolution[16] dismissing petitioner Varias' appeal from the RTC's decision, arrived at the same critical factual conclusion on the absence

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[11] Peñano's poll watcher for Precinct No. 87A.

[12] Pages 34-35 of the RTC Decision; *Rollo*, pp. 400-401.

[13] *Id.* at 401.

[14] *Id.* at 404.

[15] *Id.* at 406.

[16] Penned by Commissioner Rene Sarmiento.

of post-election tampering and, accordingly, ruled that the trial court did not err in relying on the ballots over the election returns. The First Division noted that item #3 of the *Rosal* standard provides the answer to the question of "how is the integrity of the ballots established." Said item #3 provides that if a law sets out the mode of preserving the ballots, proof must be made of such substantial compliance with the requirements of that mode as would provide assurance of the ballots having been kept inviolate, albeit there might have been slight deviations from the exercise of achieving that end. The First Division listed and reproduced four (4) provisions of the Omnibus Election Code[17] and two (2) of Comelec Resolution No. 6667,[18] all of which *Rosal* also referred to, prescribing for the safekeeping and preservation of ballots. But as the First Division was quick to explain, however, "[C]learly, the integrity of the ballots being referred to that has to be proven by the protestant refers to the **integrity of the ballot boxes** that contain the ballots in the place of storage, **not the ballots per se."**[19] *Rosal* has a similar qualifying explanation, formulated in the following wise:

> Obviously, the proof [of the integrity of the ballots] cannot be supplied by an examination of the ballots themselves, their identity being the very fact of dispute.
>
> x x x x x x x x x
>
> As made abundantly clear by the foregoing provisions [of the Omnibus Code and Comelec Resolution No. 6667] the mode of preserving the ballots in this jurisdiction is for these to be stored safely in sealed and padlocked ballot boxes xxx The integrity of the ballots and, therefore, their probative value, as evidence of the voters'

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[17] Secs. 160, 217, 219 & 220.

[18] General Instructions for the Board of Election Inspectors on the Casting and Counting of Votes in Connection with the May 10, 2004 Synchronized National and Local Elections; a counterpart provision is found in Comelec Resolution No. 7815 - General Instructions for the Board of Election Inspectors on the Casting and Counting of Votes in Connection with the May 14, 2007 Synchronized National and Local Elections.

[19] Page 23 of the 1st Division resolution; *Rollo*, p. 85.

will are contingent on the integrity of the ballot boxes in which they were stored. x x x[20]

The First Division, taking into account the following events and/or documents:

(1) the Precautionary Order of the RTC dated May 28, 2007, directing the municipal treasurer and election officer of Alfonso, Cavite to take proper measures toward protecting the integrity of pertinent election documents/paraphernalia *vis-à-vis* the protested precincts;

(2) the RTC Order of June 12, 2007 – or after Varias had assumed office - for the retrieval by the court sheriffs and delivery to the Court of the protested and counter-protested ballot boxes with their keys;

(3) the revision reports insofar as they described the condition of the different ballot boxes at the time they were opened for revision purposes; and

(4) the evidence adduced by the parties,

determined that "there was substantial compliance with statutory safety measures to prevent reasonable opportunity for tampering with their contents,"[21] and thus the burden of proving that actual tampering with the contents of the ballot boxes shifted to Varias.[22]

And as further determined by the First Division, Varias failed to discharge the burden thus shifted to him, what with the fact, among other things, that all the ballots in the 4 crucial precincts were found by the Commission, using microscopic and ultra violet light, to contain all the hidden security features.[23] Under Sec. 6(c) of the Rules, a ballot with security markings is presumed valid. Earlier, Varias raised the issue of the ballots in question being spurious owing to their supposed lack of security markings.

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[20] Note No. 5, p. 498.

[21] *Ibid*, p. 27, *rollo*, p. 89.

[22] *Ibid*.

[23] *Ibid*, p. 91.

Upon the foregoing perspective, I am disturbed and at a loss to understand how the *ponencia* could plausibly ascribe grave abuse of discretion on the part of the First Division and the *en banc* Comelec. As the *ponencia* itself declares, the term "grave abuse of discretion" denotes capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction; the abuse must be patent and gross as to amount to an evasion of positive duty or a virtual refusal to perform a duty enjoined by law, or to act at all in contemplation of law.

The *ponencia* takes the position that the Comelec—and necessarily the RTC before it—looked at and used the *wrong or irrelevant considerations* in resolving the case, an approach that thus tainted with grave abuse of discretion its decision. And what were the supposedly correct and relevant considerations that the Comelec did not bother to take into account? The *ponencia* summarized Varias' enumeration of "correct" considerations that, according to him and which the *ponencia* appears to wholeheartedly agree with, the Comelec whimsically "*refused to see and appreciate.*"[24] These are: (1) the forced opening of the padlocks of the ballot boxes of the four controversial precincts; (2) the irregular serial numbers of the metal seals; (3) the substantial variance of the votes of the parties in the election returns and the physical count; and (4) the different signatures at the back of the ballot and incidents of superimpositions, as indicated in the NBI report.[25]

I beg to disagree.

To be sure, Comelec looked at and took into account what the *ponencia* viewed as the correct and relevant considerations, but the stubborn fact is that the poll body found them insufficient to carry the day for Varias. Refusal to look at and consider a certain relevant matter when so required and inability to favorably consider such matter, as was the Comelec's bent in this case, are entirely two dissimilar concepts. The difference need no belaboring. That the Comelec considered Varias'

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[24] *Ponencia*, p. 20.

[25] *Ponencia*, p. 19.

manifest concerns about the condition of the ballot boxes for the 4 precincts and the possibility that their security features have been compromised before the revisions proceedings may be gleaned from the ensuing excerpts of the First Division's resolution:

In the Revision Report for Precinct 79A (Brgy. Mangas I), the ballot box is with Serial No. CEO1-056756. It is reported to have three Comelec padlocks, with three keys, Inner Metal Seal Nos. CE07-406141/CE07406140. **As to the space for the 'Outer Metal Seal Serial No.', it is filled with 'NONE'**.

In the Revision Report for Precinct No. 81A/81B (Brgy. Mangas I), the ballot box is with Serial No. CE-01-056443. It is reported to have three Comelec padlocks, with three keys. The outer metal seal has serial number CE-07-406144 and Inner Metal Seal No. CE-07-406145. As to the condition of the outer and inner metal seal, the report indicated that they are properly attached and locked.

In the Revision Report for Precinct 77A/77B (Brgy. Mangas I), the ballot box is with Serial No. CE01-058-033. It is reported to have three Comelec padlocks, with three keys. **There is no outer metal seal and but with two (2) inner metal seals with numbers CE07406136 and CE07-406137.**

In the Revision Report for Precinct 78A/78B (Brgy. Mangas I), the ballot box is with Serial No. CE-98-0469 16. It is reported to have three Comelec padlocks, with three keys. **There is no outer metal seal but with two (2) inner metal seals with numbers 406139 and 406138** and they are found to have been properly attached and locked.

In the Revision Report for Precinct 86A/86B (Brgy. Marahan I), the ballot box is with Serial No. CE01-061579. It is reported that the ballot box is with three Comelec padlocks and with three (3) keys. The outer metal seal is with serial number CE 07-406155 while the inner metal seal is with serial number CE07-406156. Said seals are found to be properly attached and have sealed the ballot box.

In the Revision Report for Precinct No. 87A (Brgy. Marahan I), the ballot box is with Serial No. CE 01-063371. It is reported that the ballot box is with three (3) Comelec padlocks and with three (3) keys. The outer metal seal is with serial number CE 07 406158 and the inner

seal is with serial number CE:07406157. Both outer and inner metal seals are properly locked.

In the Revision Report for Precinct No. 89A/89B (Brgy. Marahan I), the ballot box is with Serial No. CE98-843512 with three Comelec padlocks with three keys. The outer metal seal is with serial number CE07-406161 and the inner metal seal is with serial number CE07-406162. Both outer and inner metal seals are properly attached.

In the Revision Report for Precinct No. 90A/90B (Brgy. Marahan I), the ballot box is with Serial No. CE 01-064817 with three Comelec padlocks and three keys. The outer metal seal is with serial number CE01-064817 and the inner metal seal is with serial number CE: 07406163. Both seals are properly attached.

In the Revision Report for Precinct No. 100A/100B (Brgy. Matagbak I), the ballot box is with serial number CE 95-39928 with two Comelec padlocks outside and one Comelec padlock inside. There are three keys accompanying the ballot box. The ballot box is found to be in good condition and that both outer and inner metal seals are properly attached and sealed.

In the Revision Report for Precinct No. 95A/95B (Brgy. Marahan II), the ballot box is with serial number CE 98-044211 and with three (3) Comelec padlocks and three keys. **There is no outer metal seals but with two (2) inner metal seals with serial numbers CE 0740674 and CE 0740673**. The ballot box is properly locked.

In the Revision Report for Precinct No. 91A/91B (Brgy. Marahan II), the ballot box is with serial number CE01-065438. It has three (3) padlocks and three (3) keys. The outer metal seal is with serial number CE 07-406166 and the inner seal is with CE 07-406165. The ballot box is in good condition and is properly locked.

In the Revision Report for Precinct No. 92A (Brgy. Marahan I), the ballot box is with Serial No. CE 01-064891 with three (3) Comelec padlocks and three (3) keys. **The ballot box has no outer metal seal but with two (2) inner metal seals with serial numbers CE 007406167 and CE 007406168**. The ballot box is properly locked.

In the Revision Report for Precinct No. 102A (Brgy. Matagbak II), the ballot box is with Serial No. CE 98-044852 with three Comelec keys and three keys. The outer metal seal has Serial No. CE 07-406187 while the inner metal seal is with Serial No. CE 07-406188. The ballot

box is properly locked, the outer metal seal is properly **attached but the inner metal seal is already "opened**."

And on the basis of the revision reports duly signed by the parties' respective revisors, the First Division concluded:

> In the aforementioned revision reports, the metal seals for the precincts 79A, 77A/77B, 78A/78B, 95A/95B and 92A, are not properly attached. The two (2) seals were both attached on the holes provided for inner metal seals. Likewise, in Precinct No. 102A, the inner metal seal is 'opened'. Considering that the Comelec padlocks locked these ballot boxes and the two seals has sealed the inner part of the ballot boxes**, the mistake on the placing of the seals, by reasonable inference, can be said to have been made at the time the ballot boxes were closed at the precinct level on election day and not done after the election. As to Precinct No. 102A, although the inner metal seal is 'opened', the outer metal seal and the padlocks were properly attached.**

It may so that the padlock for Precinct No. 102A had, per the revision report for that precinct, been forced open. There was a satisfactory explanation, however, for this forcible opening: the padlock was cut by one Rommel Fernando when it could not be opened by any of the three keys.

Varias—and impliedly the *ponencia*—has made much of the fact that the First Division merely mentioned that the ballot boxes had padlocks with corresponding keys but was completely silent on whether those keys could open their intended padlocks. Varias is obviously unaware of jurisprudence that the mere inability of the keys to fit into the padlocks attached to the ballot boxes would not, without more, vitiate the integrity of the ballots contained therein. Writing for the Court in *Carlos v. Angeles,* [26] Associate Justice Bernardo Pardo, himself a former COMELEC Chairman, ratiocinates as follows:

> Procedurally, the keys to the ballot boxes [are] turned over by the Board of Election Inspectors from the precinct level to the Municipal Board of Canvassers and finally to the municipal treasurer for safekeeping. The three-level turn-over of the keys will not prevent

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[26] *Carlos v. Angeles, supra*.

the possibility of these keys being mixed up. This is an ordinary occurrence during elections. The mere inability of the keys to fit into the padlocks attached to the ballot boxes does not affect the integrity of the ballots. xxx. (Emphasis supplied.)

Lest it be overlooked, Varias, in his appeal to the Comelec and his subsequent motion for reconsideration of the Comelec First Division's resolution, never touched any issue regarding padlocks, their keys and/or the serial numbers of the metal seals used. Had he done so, Comelec could, with its technical expertise and records of equipment used in the election, have had the opportunity to address and rule on said issue. There is even no mention that Varias questioned these matters during the revision proceedings. As Varias only raised the matter for the first time in the petition before the Court, the same and his supporting arguments cannot be taken cognizance of and may be disregarded as a non-issue.

The Comelec also passed upon the NBI's finding on superimposition, stating that the "fact that the name 'Peñano' is superimposed on the name 'Varias' does not conclusively prove the presence of fraud."[27] As to the NBI's findings respecting the signatures of the BEI chairmen at the back of the ballots not being the same as the sample signatures of the same persons in other election paraphernalia, the Comelec, citing the RTC decision, had also addressed the same.

To my mind, the fault of the *ponencia* lies in its near obsessive reliance on the NBI report. In this regard, it may be well to recall what the Court said in *Punzalan v. COMELEC*:[28]

The authenticity of a questioned signature cannot be determined solely upon its general characteristics, similarities or dissimilarities with the genuine signature. Dissimilarities as regards spontaneity, rhythm, presence of the pen, loops in the strokes, signs of stops, shades, *etc.*, that may be found between the questioned signature and the genuine one are not decisive on the question of the former's authenticity. The result of examination of questioned handwriting,

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[27] *Rollo*, p. 92.

[28] G. R. No. 126669, April 27, 1998, 289 SCRA 702.

even with the benefit of aid of experts and scientific instruments, is, at best, inconclusive. There are other factors that must be taken into consideration. **The position of the writer, the condition of the surface on which the paper where the questioned signature is written is placed, his state of mind, feelings and nerves, and the kind of pen and/or paper used, played an important role on the general appearance of the signature**. Unless, therefore, there is, in a given case, absolute absence, or manifest dearth, or direct or circumstantial competent evidence of the character of a questioned handwriting, much weight should not be given to characteristic similarities, or dissimilarities, between the questioned handwriting and an authentic one.

Indeed, the haste and pressure, the rush and excitement permeating the surroundings of polling places could certainly affect the handwriting of both the voters and the election officers manning the said precincts. The volume of work to be done and the numerous documents to be filled up and signed must likewise be considered. Verily, minor and insignificant variations in handwriting must be perceived as indicia of genuineness rather than of falsity.

In *Go Fay v. Bank of the Philippine Islands* (46 Phil. 968 [1924]), this Court held that carelessness, spontaneity, unpremeditation, and speed in signing are evidence of genuineness. In *U.S. v. Kosel*(24 Phil. 594 [1913]), it was ruled that dissimilarity in certain letters in a handwriting may be attributed to the mental and physical condition of the signer and his position when he signed. Grief, anger, vexation, stimulant, pressure and weather have some influence in one's writing. Because of these, it is an accepted fact that it is very rare that two (2) specimens of a person's signature are exactly alike." (Emphasis supplied.)

In sum, the said NBI report, particularly on the genuineness of handwriting and other entries on the ballots, is not conclusive to indicate ballot tampering. It is established doctrine in this jurisdiction that opinions of handwriting experts are not binding on the court or Comelec. Hence, it may accept totally or in part or even dispense with the NBI findings and conclusions and conduct its own examinations of the questioned handwriting.[29]

[29] *Punzalan v. COMELEC*, 289 SCRA 702; Section 22, Rule 132 of the Rules of Court explicitly authorizes the court (public respondent in this case) to make itself the comparison of the disputed handwriting "with writings admitted as genuine by the party whom the evidence is offered."

Expert testimony is generally regarded, as correctly pointed out by the Solicitor General, to be purely advisory in character and the courts or Comelec "may place whatever weight they choose upon said testimony and reject it, if they find that it is inconsistent with the facts in the case or otherwise, unreasonable."[30] Verily, the opinions of handwriting experts, while helpful in the examination of forged documents owing to the technical procedure involved in the analysis, are not binding on the courts.[31] As a logical corollary, a finding of forgery does not depend entirely on the testimonies of handwriting experts as the judge must conduct an independent examination on the questioned signature or entry to arrive at a reasonable conclusion as to its authenticity.[32]

In view of the foregoing, a becoming respect for the *bona fides* of Comelec's position on the NBI report should have been the order of the day, absent any compelling reason why it should be otherwise.

To me, it is incorrect to say that the Comelec and the RTC deviated from *Rosal*, more particularly on (a) the matter of preserving the integrity of the ballots, (b) the question of who has the burden of proving the same and (c) the ensuing shifting of the burden once the integrity of the ballot shall have been proven. On the contrary, the Comelec's action hewed with *Rosal*. In *Rosal*, the Court quoted with approval the following doctrine that *Cailles* lifted from *Tebbe v. Smith*:[33]

> So, too, when a substantial compliance with the provisions of the statute has been shown, the burden of proof shifts to the contestant of establishing that, notwithstanding this compliance, the ballots have in fact been tampered with, or that they have been exposed under such circumstances that a violation of them might

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[30] Comment of COMELEC, p. 11, citing Francisco on Evidence, Vol. VII, Part 1, p. 662.

[31] *Gimenez v. Commission on Ecumenical Mission and Relations of the United Presbyterian Church in the USA*, 432 Phil. 895 (2002).

[32] *G.M. Philippines, Inc. v. Cuambot*, G.R. No. 162308, November 22, 2006, 507 SCRA 552.

[33] 108 Cal. 101.

have taken place. But this proof is not made by a naked showing that it was possible for one to have molested them. The law cannot guard against a mere possibility and no judgment of any of its courts is rendered upon one.

In the case at bar, there has been, to the **satisfaction of the RTC and Comelec,** substantial compliance with the law and Comelec rules as to the manner of keeping the integrity of the ballots as would preclude a reasonable opportunity of tampering with the ballot boxes' contents. Upon proof of compliance, the burden, following *Rosal*, shifted to Varias to establish actual tampering or the likelihood thereof. As found by the RTC and the Comelec (First Division and *en banc*), however, Varias was unable to satisfactorily discharge this burden. He, instead, alleged that tampering likely occurred because Peñano was still the sitting mayor when he filed his protest, the padlocks in the four key precincts were forced open, and superimposition and signature irregularity were contained in the NBI's report.

The foregoing considered, it simply makes little sense to argue that the Comelec and the RTC gravely abused their discretion when they relied on the physical count of the ballots against the entries appearing in the election returns for the 4 precincts in question. The determination of whether or not a ballot is valid should be left exclusively to the trial court or electoral tribunal taking cognizance of the election case on the basis of what appears on the face on the ballots.[34] The courts' or Comelec's discretion on the matter is circumscribed, however, by this precept: extreme caution should be observed before any ballot is invalidated and doubts in the appreciation of ballots are resolved in favor of their validity.[35]

Lest it be overlooked, a meticulous observance and examination of each and every contested ballot seem to have been conducted by the RTC and Comelec before coming up with their own parallel findings and conclusions. The First Division devoted

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[34] *Malaluan v. Comelec*, 254 SCRA 397.

[35] *De Guzman v. COMELEC, supra*, citing cases.

over 180 pages of its resolution to this examination process alone, which may argue against the idea of that body acting on a whim or with grave abuse of discretion.

As in any *certiorari* proceedings, the ultimate issue boils down to the question of whether grave abuse of discretion attended the assailed action of a government officer or office. Or put a bit differently, the question to be asked is whether the action in question passes the test of reasonableness. In 1916, the landmark case of *Lino-Luna v. Arcenas*[36] expounded on the juridical concept of "discretion" as follows:

> In its very nature, the discretionary control conferred upon the trial judge over the proceedings had before him implies the absence of any hard-and-fast rule by which it is to be exercised, and in accordance with which it may be reviewed. But the discretion conferred … is not a willful, arbitrary, capricious and uncontrolled discretion. It is sound, judicial discretion which should always be exercised …. As was said in the case of …: "The establishment of a clearly defined rule of action would be the end of discretion, and yet discretion should not be a word for arbitrary or inconsiderate action." So in the case of Goodwin vs. Prime (92 Me., 355), it was said that "discretion implied that in the absence of positive law or fixed rule the judge is to decide by his view of expediency or by the demands of equity and justice."
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> There being no "positive law or fixed rule" to guide the judge in the court below in such cases, there is no "positive law or fixed rule" to guide a court of appeal in reviewing his action …and such courts will not therefore attempt to control the exercise of discretion by the court below unless it plainly appears that there was "inconsiderate action" or the exercise of mere "arbitrary will", or in other words that his action in the premises amount to an "abuse of discretion". But the right of an appellate court to review judicial acts which lie in the discretion of inferior courts may properly be invoked upon a showing of a strong and clear case of abuse of power … or that the ruling objected to rested on an erroneous principle of law not vested in discretion.

To my mind, the Comelec's action does not constitute what *Lino-Luna* would view as "*a strong and clear case of abuse*

[36] 34 Phil. 80 (1916).

of power" or, in fine, come within the definition of grave abuse of discretion. For, the Comelec's determination as to the compliance with the prescribed measures to safeguard the integrity of the ballots was not without valid substantiation. That the Comelec indeed made short shrift of Varias' claim about the possibility of ballot tampering and his supporting arguments therefor is conceded. But the Comelec had its own plausible reasons for rejecting the claim. The *ponencia* itself admits that part (3 out of 5) of Comelec's reasons may "*arguably be reasonable*." Yet, the same *ponencia* would impute grave abuse of discretion on Comelec, reserving its strongest disapproval at the poll body's purported trivial misappreciation of the NBI report on the handwriting and other entries on the ballot, as if such report concludes, by the operation of some fiction of law, the Comelec or the RTC.

The NBI report, according to the *ponencia,* forms part of a chain of facts/information which, when combined together, indicated the likelihood of ballot tampering. This argument may be accorded some cogency but for the fact that the Comelec and/or the RTC for its/their own stated reasons, did not find the NBI report a compelling evidence deserving the kind of weight Varias' understandably wanted it to carry. In view of extant jurisprudence, grave abuse of discretion cannot be laid at the doorsteps of the COMELEC and/or the RTC for the evidentiary treatment they gave under the premises to the NBI report.

I can concede that the significant discrepancy between the results of the ballot count during revision and those reflected in the election returns for the 4 precincts cannot plausibly be explained by just looking at the number of required voters and the number of those who actually voted. The explanation lies somewhere else. It was captured in a sense by the RTC when it stated, in gist, that the revised ballots in the ballot boxes for the four precincts and the testimonies of Peñano's witnesses echo the allegations of irregularities.[37] Properly appreciated,

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[37] See Note No. 4, *supra*.

the revised ballots accounted for the significant addition to Peñano's votes and the corresponding subtraction to Varias.

It has been suggested that the Comelec erred when its decision no longer required Peñano, as *Rosal* allegedly would, to prove that the integrity of the ballot boxes and their contents has been preserved in a mode as to preclude a reasonable opportunity of tampering with the ballots inside. But if Peñano, as protestant, had not been asked to discharge this burden, it ought to be pointed out, nevertheless, that the Comelec's own investigation and the evidence adduced during the trial showed that the requirements for the care and preservation needed to safeguard the integrity of the ballot boxes—and necessarily of their contents — have substantially been complied with. To be sure, *Rosal* did not intend to impose on the protestant the obligation to prove a fact the trial court deemed already proven. The absurdity of a contrary view could have not been contemplated by *Rosal*. And as *Rosal* would also tell us, if it appears to the satisfaction of the trial court or Comelec that the ballots are intact and genuine, then it could adopt the result as shown by the ballot recount and not as reflected in the election returns.

If the Comelec thus took it upon itself to look into and validate the matter of whether the ballots have been molested, a capricious exercise of judgment cannot, for that act alone, be imputed on the poll body. A lapse of judgment, perhaps, but not of grave abuse of discretion as is equivalent to want of jurisdiction. For, in the final analysis, Comelec's act was no more than an attempt to determine the true voting will of the good people of Alfonso, Cavite. It is a settled rule that laws governing election contests must be liberally construed to the end that the will of the people in the choice of public officials may not be undermined by mere technical objections.[38]

The binding effect, even on this Court, of the factual determinations of the Comelec, exercising particular expertise in its field of endeavor, such as appreciation of ballots and

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[38] *Carlos v. Angeles*, G.R. No. 142907, November 29, 2000; *Gardiner v. Romulo*, 26 Phil. 521 and other cases.

evaluation of evidence on election irregularities, is firmly established. Hence, any attempt to overturn, on a petition for *certiorari,* factual determinations and conclusion of the Comelec would very well wreak havoc on well-settled jurisprudence. Yet, wittingly or unwittingly, this seems to be what the *ponencia* intends to accomplish in this case. This should not be allowed.

I, therefore, vote to deny the instant petition.

EN BANC

[G.R. No. 189466. February 11, 2010]

DARYL GRACE J. ABAYON, *petitioner, vs.* **THE HONORABLE HOUSE OF REPRESENTATIVES ELECTORAL TRIBUNAL, PERFECTO C. LUCABAN, JR., RONYL S. DELA CRUZ and AGUSTIN C. DOROGA,** *respondents.*

[G.R. No. 189506. February 11, 2010]

CONGRESSMAN JOVITO S. PALPARAN, JR., *petitioner, vs.* **HOUSE OF REPRESENTATIVES ELECTORAL TRIBUNAL (HRET), DR. REYNALDO LESACA, JR., CRISTINA PALABAY, RENATO M. REYES, JR., ERLINDA CADAPAN, ANTONIO FLORES and JOSELITO USTAREZ,** *respondents.*

SYLLABUS

1. POLITICAL LAW; ELECTION LAWS; PARTY-LIST SYSTEM ACT; THE PARTY-LIST REPRESENTATIVES ARE ELECTED INTO OFFICE AND BECOME MEMBERS OF

THE HOUSE OF REPRESENTATIVES, NOT THE PARTY-LIST ORGANIZATION.— But, although it is the party-list organization that is voted for in the elections, it is not the organization that sits as and becomes a member of the House of Representatives. Section 5, Article VI of the Constitution, identifies who the "members" of that House are. [T]he members of the House of Representatives are of two kinds: "members x x x who shall be elected from legislative districts" and "**those who x x x shall be elected through a party-list system of registered national, regional, and sectoral parties or organizations.**" This means that, from the Constitution's point of view, it is the party-list representatives who are "elected" into office, not their parties or organizations. These representatives are elected, however, through that peculiar party-list system that the Constitution authorized and that Congress by law established where the voters cast their votes for the organizations or parties to which such party-list representatives belong.

2. ID.; ID.; ID.; VOTE CAST IN A PARTY-LIST ELECTION IS A VOTE FOR THE PARTY'S NOMINEES WHO WILL SIT IN THE HOUSE OF REPRESENTATIVES.— Once elected, both the district representatives and the party-list representatives are treated in like manner. They have the same deliberative rights, salaries, and emoluments. They can participate in the making of laws that will directly benefit their legislative districts or sectors. They are also subject to the same term limitation of three years for a maximum of three consecutive terms. It may not be amiss to point out that the Party-List System Act itself recognizes party-list nominees as "members of the House of Representatives," xxx. As this Court also held in *Bantay Republic Act or BA-RA 7941 v. Commission on Elections*, a party-list representative is in every sense "an elected member of the House of Representatives." Although the vote cast in a party-list election is a vote for a party, such vote, in the end, would be a vote for its nominees, who, in appropriate cases, would eventually sit in the House of Representatives.

3. ID.; ID.; ID.; A NOMINEE MUST BE A BONA FIDE MEMBER OF THE PARTY OR ORGANIZATION WHICH HE SEEKS TO REPRESENT; INTERPRETATION OF THE MEANING THEREOF LIES WITH THE HOUSE OF REPRESENTATIVES ELECTORAL TRIBUNAL (HRET).— Both the Constitution and the Party-List System Act set the

qualifications and grounds for disqualification of party-list nominees. xxx In the cases before the Court, those who challenged the qualifications of petitioners Abayon and Palparan claim that the two do not belong to the marginalized and underrepresented sectors that they ought to represent. The Party-List System Act provides that a nominee must be a "*bona fide* member of the party or organization which he seeks to represent." It is for the HRET to interpret the meaning of this particular qualification of a nominee—the need for him or her to be a *bona fide* member or a representative of his party-list organization—in the context of the facts that characterize petitioners Abayon and Palparan's relation to *Aangat Tayo* and *Bantay*, respectively, and the marginalized and underrepresented interests that they presumably embody.

4. ID.; ID.; ID.; THE HOUSE OF REPRESENTATIVES ELECTORAL TRIBUNAL (HRET) HAS JURISDICTION TO HEAR AND PASS UPON THE QUALIFICATIONS OF THE PARTY-LIST NOMINEES; COMELEC'S JURISDICTION OVER ELECTION CONTEST RELATING TO THE QUALIFICATIONS OF THE NOMINEE ENDS ONCE THE SAME TOOK HIS OATH AND ASSUMED OFFICE AS MEMBER OF THE HOUSE OF REPRESENTATIVES.— What is inevitable is that Section 17, Article VI of the Constitution provides that the HRET shall be the sole judge of all contests relating to, among other things, the qualifications of the members of the House of Representatives. Since, as pointed out above, party-list nominees are "**elected members**" of the House of Representatives no less than the district representatives are, the HRET has jurisdiction to hear and pass upon their qualifications. By analogy with the cases of district representatives, once the party or organization of the party-list nominee has been proclaimed and the nominee has taken his oath and assumed office as member of the House of Representatives, the COMELEC's jurisdiction over election contests relating to his qualifications ends and the HRET's own jurisdiction begins. The Court holds that respondent HRET did not gravely abuse its discretion when it dismissed the petitions for *quo warranto* against *Aangat Tayo* party-list and *Bantay* party-list but upheld its jurisdiction over the question of the qualifications of petitioners Abayon and Palparan.

APPEARANCES OF COUNSEL

Abayon Silva Salanatin & Associates for Daryl Grace J. Abayon.

George Erwin M. Garcia for Cong. Jovito S. Palparan, Jr.

Jonell M. Torregosa for private respondents in G.R. No. 189506.

D E C I S I O N

ABAD, *J.*:

These two cases are about the authority of the House of Representatives Electoral Tribunal (HRET) to pass upon the eligibilities of the nominees of the party-list groups that won seats in the lower house of Congress.

The Facts and the Case

In **G.R. 189466**, petitioner Daryl Grace J. Abayon is the first nominee of the *Aangat Tayo* party-list organization that won a seat in the House of Representatives during the 2007 elections.

Respondents Perfecto C. Lucaban, Jr., Ronyl S. Dela Cruz, and Agustin C. Doroga, all registered voters, filed a petition for *quo warranto* with respondent HRET against *Aangat Tayo* and its nominee, petitioner Abayon, in HRET Case 07-041. They claimed that *Aangat Tayo* was not eligible for a party-list seat in the House of Representatives, since it did not represent the marginalized and underrepresented sectors.

Respondent Lucaban and the others with him further pointed out that petitioner Abayon herself was not qualified to sit in the House as a party-list nominee since she did not belong to the marginalized and underrepresented sectors, she being the wife of an incumbent congressional district representative. She moreover lost her bid as party-list representative of the party-list organization called *An Waray* in the immediately preceding elections of May 10, 2004.

Petitioner Abayon countered that the Commission on Elections (COMELEC) had already confirmed the status of *Aangat Tayo* as a national multi-sectoral party-list organization representing the workers, women, youth, urban poor, and elderly and that she belonged to the women sector. Abayon also claimed that although she was the second nominee of *An Waray* party-list organization during the 2004 elections, she could not be regarded as having lost a bid for an elective office.

Finally, petitioner Abayon pointed out that respondent HRET had no jurisdiction over the petition for *quo warranto* since respondent Lucaban and the others with him collaterally attacked the registration of *Aangat Tayo* as a party-list organization, a matter that fell within the jurisdiction of the COMELEC. It was *Aangat Tayo* that was taking a seat in the House of Representatives, and not Abayon who was just its nominee. All questions involving her eligibility as first nominee, said Abayon, were internal concerns of *Aangat Tayo*.

On July 16, 2009 respondent HRET issued an order, dismissing the petition as against *Aangat Tayo* but upholding its jurisdiction over the qualifications of petitioner Abayon.[1] The latter moved for reconsideration but the HRET denied the same on September 17, 2009,[2] prompting Abayon to file the present petition for special civil action of *certiorari*.

In **G.R. 189506**, petitioner Jovito S. Palparan, Jr. is the first nominee of the *Bantay* party-list group that won a seat in the 2007 elections for the members of the House of Representatives. Respondents Reynaldo Lesaca, Jr., Cristina Palabay, Renato M. Reyes, Jr., Erlinda Cadapan, Antonio Flores, and Joselito Ustarez are members of some other party-list groups.

Shortly after the elections, respondent Lesaca and the others with him filed with respondent HRET a petition for *quo warranto* against *Bantay* and its nominee, petitioner Palparan, in HRET Case 07-040. Lesaca and the others alleged that Palparan was ineligible to sit in the House of Representatives as party-list

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[1] *Rollo* (G.R. No. 189466), pp. 147-148.

[2] *Id.* at 25-26, Resolution 09-183.

nominee because he did not belong to the marginalized and underrepresented sectors that *Bantay* represented, namely, the victims of communist rebels, Civilian Armed Forces Geographical Units (CAFGUs), former rebels, and security guards. Lesaca and the others said that Palparan committed gross human rights violations against marginalized and underrepresented sectors and organizations.

Petitioner Palparan countered that the HRET had no jurisdiction over his person since it was actually the party-list *Bantay*, not he, that was elected to and assumed membership in the House of Representatives. Palparan claimed that he was just *Bantay*'s nominee. Consequently, any question involving his eligibility as first nominee was an internal concern of *Bantay*. Such question must be brought, he said, before that party-list group, not before the HRET.

On July 23, 2009 respondent HRET issued an order dismissing the petition against *Bantay* for the reason that the issue of the ineligibility or qualification of the party-list group fell within the jurisdiction of the COMELEC pursuant to the Party-List System Act. HRET, however, defended its jurisdiction over the question of petitioner Palparan's qualifications.[3] Palparan moved for reconsideration but the HRET denied it by a resolution dated September 10, 2009,[4] hence, the recourse to this Court through this petition for special civil action of *certiorari* and prohibition.

Since the two cases raise a common issue, the Court has caused their consolidation.

The Issue Presented

The common issue presented in these two cases is:

Whether or not respondent HRET has jurisdiction over the question of qualifications of petitioners Abayon and Palparan as nominees of *Aangat Tayo* and *Bantay* party-list organizations,

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[3] *Rollo* (G.R. No. 189506), pp. 53-54.

[4] *Id.* at 83-84.

respectively, who took the seats at the House of Representatives that such organizations won in the 2007 elections.

The Court's Ruling

Petitioners Abayon and Palparan have a common theory: Republic Act (R.A.) 7941, the Party-List System Act, vests in the COMELEC the authority to determine which parties or organizations have the qualifications to seek party-list seats in the House of Representatives during the elections. Indeed, the HRET dismissed the petitions for *quo warranto* filed with it insofar as they sought the disqualifications of *Aangat Tayo* and *Bantay*. Since petitioners Abayon and Palparan were not elected into office but were chosen by their respective organizations under their internal rules, the HRET has no jurisdiction to inquire into and adjudicate their qualifications as nominees.

If at all, says petitioner Abayon, such authority belongs to the COMELEC which already upheld her qualification as nominee of *Aangat Tayo* for the women sector. For Palparan, *Bantay*'s personality is so inseparable and intertwined with his own person as its nominee so that the HRET cannot dismiss the *quo warranto* action against *Bantay* without dismissing the action against him.

But, although it is the party-list organization that is voted for in the elections, it is not the organization that sits as and becomes a member of the House of Representatives. Section 5, Article VI of the Constitution,[5] identifies who the "members" of that House are:

Sec. 5. (1). The House of Representatives shall be composed of not more than two hundred and fifty members, unless otherwise fixed by law, who shall be elected from legislative districts apportioned among the provinces, cities, and the Metropolitan Manila area in accordance with the number of their respective inhabitants, and on the basis of a uniform and progressive ratio, and those who, as provided by law, shall be elected through a partylist system of

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[5] Section 17. The Senate and the House of Representatives shall each have an Electoral Tribunal which shall be the sole judge of all contests relating to the election, returns, and qualifications of their respective Members.

registered national, regional, and sectoral parties or organizations. (Underscoring supplied)

Clearly, the members of the House of Representatives are of two kinds: "members x x x who shall be elected from legislative districts" and "**those who x x x shall be elected through a party-list system of registered national, regional, and sectoral parties or organizations.**" This means that, from the Constitution's point of view, it is the party-list representatives who are "elected" into office, not their parties or organizations. These representatives are elected, however, through that peculiar party-list system that the Constitution authorized and that Congress by law established where the voters cast their votes for the organizations or parties to which such party-list representatives belong.

Once elected, both the district representatives and the party-list representatives are treated in like manner. They have the same deliberative rights, salaries, and emoluments. They can participate in the making of laws that will directly benefit their legislative districts or sectors. They are also subject to the same term limitation of three years for a maximum of three consecutive terms.

It may not be amiss to point out that the Party-List System Act itself recognizes party-list nominees as "members of the House of Representatives," thus:

Sec. 2. Declaration of Policy. — The State shall promote proportional representation in the election of representatives to the House of Representatives through a party-list system of registered national, regional and sectoral parties or organizations or coalitions thereof, which will enable Filipino citizens belonging to the marginalized and underrepresented sectors, organizations and parties, and who lack well-defined political constituencies but who could

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Each Electoral Tribunal shall be composed of nine Members, three of whom shall be Justices of the Supreme Court to be designated by the Chief Justice, and the remaining six shall be Members of the Senate or the House of Representatives, as the case may be, who shall be chosen on the basis of proportional representation from the political parties and the parties or organizations registered under the party-list system represented therein. The senior Justice in the Electoral Tribunal shall be its Chairman.

contribute to the formulation and enactment of appropriate legislation that will benefit the nation as a whole, to become members of the House of Representatives. Towards this end, the State shall develop and guarantee a full, free and open party system in order to attain the broadest possible representation of party, sectoral or group interests in the House of Representatives by enhancing their chances to compete for and win seats in the legislature, and shall provide the simplest scheme possible. (Underscoring supplied)

As this Court also held in *Bantay Republic Act or BA-RA 7941 v. Commission on Elections*,[6] a party-list representative is in every sense "an elected member of the House of Representatives." Although the vote cast in a party-list election is a vote for a party, such vote, in the end, would be a vote for its nominees, who, in appropriate cases, would eventually sit in the House of Representatives.

Both the Constitution and the Party-List System Act set the qualifications and grounds for disqualification of party-list nominees. Section 9 of R.A. 7941, echoing the Constitution, states:

Sec. 9. *Qualification of Party-List Nominees.* – No person shall be nominated as party-list representative unless he is a natural-born citizen of the Philippines, a registered voter, a resident of the Philippines for a period of not less than one (1) year immediately preceding the day of the election, able to read and write, bona fide member of the party or organization which he seeks to represent for at least ninety (90) days preceding the day of the election, and is at least twenty-five (25) years of age on the day of the election.

In case of a nominee of the youth sector, he must at least be twenty-five (25) but not more than thirty (30) years of age on the day of the election. Any youth sectoral representative who attains the age of thirty (30) during his term shall be allowed to continue until the expiration of his term.

In the cases before the Court, those who challenged the qualifications of petitioners Abayon and Palparan claim that the two do not belong to the marginalized and underrepresented sectors that they ought to represent. The Party-List System

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[6] G.R. No. 177271, May 4, 2007, 523 SCRA 1, 16-17.

Act provides that a nominee must be a "*bona fide* member of the party or organization which he seeks to represent."[7]

It is for the HRET to interpret the meaning of this particular qualification of a nominee—the need for him or her to be a *bona fide* member or a representative of his party-list organization—in the context of the facts that characterize petitioners Abayon and Palparan's relation to *Aangat Tayo* and *Bantay*, respectively, and the marginalized and underrepresented interests that they presumably embody.

Petitioners Abayon and Palparan of course point out that the authority to determine the qualifications of a party-list nominee belongs to the party or organization that nominated him. This is true, initially. The right to examine the fitness of aspiring nominees and, eventually, to choose five from among them after all belongs to the party or organization that nominates them.[8] But where an allegation is made that the party or organization had chosen and allowed a disqualified nominee to become its party-list representative in the lower House and enjoy the secured tenure that goes with the position, the resolution of the dispute is taken out of its hand.

Parenthetically, although the Party-List System Act does not so state, the COMELEC seems to believe, when it resolved the challenge to petitioner Abayon, that it has the power to do so as an incident of its authority to approve the registration of party-list organizations. But the Court need not resolve this question since it is not raised here and has not been argued by the parties.

What is inevitable is that Section 17, Article VI of the Constitution[9] provides that the HRET shall be the sole judge of all contests relating to, among other things, the qualifications

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[7] Republic Act 7941, Section 9.

[8] Republic Act 7941, Section 13.

[9] Section 17. The Senate and the House of Representatives shall each have an Electoral Tribunal which shall be the sole judge of all contests relating to the election, returns, and qualifications of their respective Members. Each Electoral Tribunal shall be composed of nine Members, three of whom shall

of the members of the House of Representatives. Since, as pointed out above, party-list nominees are "**elected members**" of the House of Representatives no less than the district representatives are, the HRET has jurisdiction to hear and pass upon their qualifications. By analogy with the cases of district representatives, once the party or organization of the party-list nominee has been proclaimed and the nominee has taken his oath and assumed office as member of the House of Representatives, the COMELEC's jurisdiction over election contests relating to his qualifications ends and the HRET's own jurisdiction begins.[10]

The Court holds that respondent HRET did not gravely abuse its discretion when it dismissed the petitions for *quo warranto* against *Aangat Tayo* party-list and *Bantay* party-list but upheld its jurisdiction over the question of the qualifications of petitioners Abayon and Palparan.

WHEREFORE, the Court *DISMISSES* the consolidated petitions and *AFFIRMS* the Order dated July 16, 2009 and Resolution 09-183 dated September 17, 2009 in HRET Case 07-041 of the House of Representatives Electoral Tribunal as well as its Order dated July 23, 2009 and Resolution 09-178 dated September 10, 2009 in HRET Case 07-040.

SO ORDERED.

Puno, C.J., Carpio, Carpio Morales, Velasco, Jr., Leonardo-de Castro, Brion, Peralta, Bersamin, Del Castillo, Villarama, Jr., Perez, and *Mendoza, JJ.*, concur.

Corona and *Nachura, JJ.*, no part.

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be Justices of the Supreme Court to be designated by the Chief Justice, and the remaining six shall be Members of the Senate or the House of Representatives, as the case may be, who shall be chosen on the basis of proportional representation from the political parties and the parties or organizations registered under the party-list system represented therein. The senior Justice in the Electoral Tribunal shall be its Chairman.

[10] *Señeres v. Commission on Elections*, G.R. No. 178678, April 16, 2009.

SECOND DIVISION

[G.R. No. 158385. February 12, 2010]

MODESTO PALALI, *petitioner, vs.* **JULIET AWISAN, represented by her Attorney-in-Fact GREGORIO AWISAN,** *respondent.*

SYLLABUS

1. CIVIL LAW; POSSESSION; ACTUAL PHYSICAL POSSESSION, ESTABLISHED.— As found by the trial court, petitioner was able to prove his and his predecessors' actual, open, continuous and physical possession of the subject property dating at least to the pre-war era (aside from petitioner's tax declaration over the subject property). Petitioner's witnesses were long time residents of Sitio Camambaey. They lived on the land, knew their neighbors and were familiar with the terrain. They were witnesses to the introduction of improvements made by petitioner and his predecessors-in-interest. From their consistent, unwavering, and candid testimonies, we find that petitioner's grandfather Mocnangan occupied the land during the pre-war era. He planted camote on the property because this was the staple food at that time. He then gave the subject property to his daughter Tammam, while he gave a separate one to his son Pacolan Mocnangan. In the 1960s, Tammam and her husband Palalag cultivated the land, built a cogon home, and started a family there. Palalag introduced terraces and, together with his sons, built earth fences around the property. Palalag's family initially planted bananas, coffee, and oranges; they later added avocadoes, persimmons, and pineapples. When Tammam and Palalag died, their son, petitioner herein, buried them in the subject property and continued cultivating the land. He also constructed a new home.

2. ID.; OWNERSHIP; TAX DECLARATION WITHOUT PROOF OF ACTUAL POSSESSION DOES NOT PROVE OWNERSHIP.— [R]espondent relied merely on her tax declaration, but failed to prove actual possession insofar as

the subject property is concerned. To be sure, respondent *attempted* to prove possession of the subject property. Her predecessor-in-interest, Cadwising, had allegedly introduced improvements like a piggery, poultry, terracing, plantings, and a barbed wire fence. However, not one of these alleged improvements was found during the ocular inspection conducted by the trial court. The absence of all his alleged improvements on the property is suspicious in light of his assertion that he has a caretaker living near the subject property for 20 years. Cadwising did not even bother to explain the absence of the improvements. The trial court's rejection of Cadwising's assertions regarding the introduction of improvements is therefore not baseless. Thus, respondent having failed to prove possession, her claim rests solely on her tax declaration. But tax declarations, by themselves, are not conclusive evidence of ownership of real property. In the absence of actual, public, and adverse possession, the declaration of the land for tax purposes does not prove ownership. Respondent's tax declaration, therefore, cannot serve as basis to oust petitioner who has been in possession (by himself and his predecessors) of the subject property since before the war.

3. ID.; ID.; ONE WHO HAS NO RIGHT TO THE PROPERTY BEING TRANSFERRED, TRANSFERS NO BETTER RIGHT TO HIS TRANFEREE.— Neither can respondent rely on the public instruments dealing with the 6.6698-hectare property covered by her tax declaration. Such public documents merely show the successive transfers of the property covered by said documents. They do not conclusively prove that the transferor actually owns the property purportedly being transferred, especially as far as third parties are concerned. For it may very well be that the transferor does not actually own the property he has transferred, in which case he transfers no better right to his transferee. No one can give what he does not have – *nemo dat quod non habet*. Thus, since respondent's predecessor-in-interest Cadwising appeared not to have any right to *the subject property*, he transferred no better right to his transferees, including respondent.

4. ID.; ID.; ONE WHO WAS ABLE TO PROVE ACTUAL PHYSICAL POSSESSION COUPLED WITH A TAX DECLARATION HAS A BETTER CLAIM OR TITLE TO THE PROPERTY.— [W]e hold that as between the petitioner and the respondent, it is the petitioner who has the better claim or title to the subject property. While the respondent merely relied on her tax declaration, petitioner was able to prove actual possession of the subject property coupled with his tax declaration. We have ruled in several cases that possession, when coupled with a tax declaration, is a weighty evidence of ownership. It certainly is more weighty and preponderant than a tax declaration alone.

5. ID.; ID.; ACTUAL POSSESSOR UNDER CLAIM OF OWNERSHIP ENJOYS THE PRESUMPTION OF OWNERSHIP.— The preponderance of evidence is therefore clearly in favor of petitioner, particularly considering that, as the actual possessor under claim of ownership, he enjoys the presumption of ownership.

6. REMEDIAL LAW; EVIDENCE; BURDEN OF PROOF; RESTS ON THE PARTY WHO ASSERTS THE AFFIRMATIVE OF AN ISSUE.— [S]ettled is the principle that a party seeking to recover real property must rely on the strength of her case rather than on the weakness of the defense. The burden of proof rests on the party who asserts the affirmative of an issue. For he who relies upon the existence of a fact should be called upon to prove that fact. Having failed to discharge her burden to prove her affirmative allegations, we find that the trial court rightfully dismissed respondent's complaint.

APPEARANCES OF COUNSEL

Sergio SJ Milan for petitioner.
Rudolfo A. Lockey for respondent.

D E C I S I O N

DEL CASTILLO, *J.*:

A person occupying a parcel of land, by himself and through his predecessors-in-interest, enjoys the presumption of ownership. Anyone who desires to remove him from the property must overcome such presumption by relying solely on the strength of his claims rather than on the weakness of the defense.

This Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court assails the September 27, 2002 Decision[2] and the April 25, 2003 Resolution[3] of the Court of Appeals (CA) in CA-G.R. CV No. 52942. The challenged Decision disposed as follows:

> WHEREFORE, premises considered, the assailed decision of the trial court dated May 24, 1996 is hereby **REVERSED AND SET ASIDE** and a new one is entered:
>
> 1. Awarding the subject land in favor of the [respondent] with the exclusion of the area where the residential house of the [petitioner] is erected.
>
> 2. Ordering the [petitioner] to vacate the rootcrop land and surrender its possession in favor of the [respondent], and enjoining the [petitioner] to refrain from doing any act disturbing the [respondent's] peaceful possession and enjoyment of the same.
>
> 3. Cancelling Tax Declaration No. 31297 of the [petitioner] insofar as the rootcrop land of .0648 hectares is concerned, with the exclusion of his residential land. All other reliefs and remedies prayed for are **DENIED**, there being no sufficient evidence to warrant granting them.
>
> SO ORDERED.[4]

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[1] *Rollo*, pp. 3-17.

[2] *Id.* at 77-93; penned by Associate Justice Amelita G. Tolentino and concurred in by Associate Justices Martin S. Villarama, Jr. and Remedios Salazar-Fernando.

[3] *Id.* at 102-103.

[4] *Id.* at 91-92.

Factual Antecedents

Respondent Juliet Awisan claimed to be the owner[5] of a parcel of land in Sitio Camambaey, Tapapan, Bauko, Mountain Province, allegedly consisting of 6.6698 hectares[6] and covered by Tax Declaration No. 147 in her name.[7] On March 7, 1994, she filed an action for quieting of title against petitioner Modesto Palali, alleging that the latter occupied and encroached on the *northern portion* of her property and surreptitiously declared it in his name for tax purposes.[8] We shall refer to this land occupied by petitioner, which allegedly encroached on the northern portion of respondent's 6.6698-hectare land, as the "*subject property*." Respondent prayed to be declared the rightful owner of the northern portion, for the cancellation of petitioner's tax declaration, and for the removal of petitioner and his improvements from the property.[9]

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[5] As donee in a Deed of Donation dated November 6, 1993, records, pp. 6-7.

[6] Before the conduct of the pre-trial conference, respondent sold a portion of her property to a third party (Deed of Sale of a Portion of Real Estate dated May 24, 1994, *id.* at 59). Thus, her alleged landholding was reduced to 5.4326 hectares. For some reason unbeknown to the Court, respondent continued to refer to her property as consisting of 6.6698 hectares (*Id.* at 29). Thus, both the trial and appellate courts also referred to her property as consisting of its original 6.6698 hectares. For convenience, particularly in reviewing the decisions of the trial and appellate courts, we shall continue to refer to the property allegedly owned by respondent as consisting of "6.6698 hectares," but it should be kept in mind that the actual size of the land allegedly owned by respondent was reduced to 5.4326 hectares.

[7] The plaintiff describes the land donated to her as follows:

> ROOTCROP LAND – situated at sitio Camambaey, Tapapan, Bauko, Mt. Province, bounded on the north by a Creek and the Provincial Road; on the south by a creek and public land; on the east by the provincial road, and west by public land and the municipal road, containing an area of 6.6698 hectares, more or less, and declared for taxation purposes in the name of plaintiff under TD No. 147 of the Municipal Tax Rolls of Bauko, Mt. Province, *id.* at 1.

[8] *Id.* at 2-3.

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

Respondent's (Plaintiff's) Allegations

According to respondent, the 6.6698 hectare land was originally owned by her father, Cresencio Cadwising. The latter testified that he and his wife were able to consolidate ownership over the land by declaring them from public land as well as by purchasing from adjoining landowners. He admitted including in his tax declaration a communal sacred lot (*patpatayan*) even if he did not acquire free patent title over the same. As for the properties he bought, these were generally purchased without any documentation, save for two.[10]

Cadwising also claimed having introduced improvements on the subject property as early as the 1960s.[11] The 6.6698 hectare land was mortgaged to the Development Bank of the Philippines (DBP), which acquired it in the foreclosure sale. DBP then sold the land to one Tico Tibong, who eventually donated the same to respondent.

Petitioner's (Defendant's) Allegations

In his defense, petitioner denied the encroachment and asserted ownership over the subject property. He maintained that he and his ancestors or predecessors-in-interest have openly and continuously possessed the subject land since time immemorial. He and his siblings were born on that land and, at that time, the area around the house was already planted with bananas, *alnos*, and coffee.[12] When his mother died, he buried her in the lot beside the house in 1975; while his father was buried near the same plot in 1993.[13] His own home had been standing on the property for the past 20 years. Petitioner insisted that during this entire time, no one disturbed his ownership and possession thereof.[14]

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[10] Affidavit of Transfer of Real Property, *id.* at 75; Deed of Absolute Sale, *id.* at 73.

[11] TSN, September 30, 1994, pp. 13-14.

[12] TSN, May 30, 1995, p. 3.

[13] *Id.* at 2-3.

[14] Records, p. 32.

Sometime in 1974, petitioner declared the said land in his name for taxation purposes.[15] The said Tax Declaration indicates that the property consists of 200 square meters of residential lot and 648 square meters of rootcrop land (or a total of 848 square meters).

Proceedings before the Regional Trial Court

It is worth mentioning that both the complaint[16] and the pre-trial brief[17] of respondent alleged encroachment only on the *northern* portion of her 6.6698-hectare land. During trial, however, respondent's attorney-in-fact, Gregorio Awisan,[18] and

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[15] Tax Declaration No. 31297 was issued in 1974, *id.* at 111.

[16] *Id*. at 3. The sixth paragraph of the complaint reads:

That said acts of defendant in encroaching, entering the land of herein plaintiff, particularly the said NORTHERN portion thereof, and thereafter declaring the same surreptitiously for taxation purposes as abovementioned, and thereby claiming ownership and possession of said NORTHERN portion, is patently illegal, fraudulent and unjustified, and which acts of defendant constitute a cloud and a thorn to the title of ownership of and possession of herein plaintiff, which she now prays for the removal and consequently cleared and dissipated in accordance with law x x x .

[17] *Id*. at 29-31. The salient portion reads:

x x x That since its acquisition, plaintiff and family, have been in open, adverse, continuous and uninterrupted possession of the same, tilling and cultivating it until the present without anyone questioning their said possession and ownership, including defendant herein. It was only sometime the early months of 1992, and before the aforementioned donation was formalized, plaintiff, who is residing at Baguio City, sought assistance from her father-in-law (herein atty-in-fact, Gregorio Awisan) to look into the present status of the said land, as a result of which, the latter informed that one by the name of Modesto Palali x x x have encroached and actually entered the property, particularly *the northern side thereof*, and even declared a portion thereof with an area of 848 square meters, more or less, as reflected in the latter's Tax Declaration bearing No. 31793 of the Municipal Tax Rolls of Bauko, Mt. Province.

[18] TSN, September 28, 1994, pp. 7-8.

Q: Do you know the portions of this land entered into by the defendants [sic]?

A: Yes.

x x x x x x x x x

respondent's predecessor-in-interest, Cresencio Cadwising,[19] both *alleged* that there was an encroachment in the *southern* portion also. This was done without amending the allegations of the complaint.

Confronted with this new allegation of encroachment on the *southern* portion, petitioner tried to introduce his tax declaration over the same (in the name of his deceased father), but was objected to by respondent on the ground of immateriality.[20]

Q: Will you describe the portion of that property?

A: North is near his [petitioner's] house maybe about 2,000 to 3,000 square meters. In the south is about 1,500 square meters.

[19] TSN, September 30, 1994, pp. 13 and 17-18.

Q: Beside this land of Duclan is a land marked as Palali, Exh. "C-5", what does that land refer to?

A: This is the land which Palali entered.

Q: Is that the land that is now being litigated in this case?

A: Yes, sir.

x x x x x x x x x

Q: I show you Exh. "C-6" as claimed by Modesto Palali, what does this exhibit refer to?

A: This is another portion which Palali entered.

Q: Is this the portion which is the subject of this case?

A: A part of the case.

[20] TSN, May 30, 1995, pp. 9 and 11-12.

Q: Do you have tax declaration on the land in question?

A: There is.

x x x x x x x x x

Q: I am showing to you Exhs. 1, 2, 3 which are tax declaration nos. 31297, 32674, and 31793; are these the tax declarations on the land in question?

A: Yes, sir.

x x x x x x x x x

Q: During ocular inspection also, the plaintiff's representative [sic] named Cresencio Cadwising included *another* portion to the *south* of the property in question; who owns that property that was included by Cresencio Cadwising on the south?

A: The southern part is also owned by my parents, and distributed among us which we in turn gave to our children.

After such objection, however, respondent surprisingly and inconsistently insisted that the ownership of the southern portion was included in the complaint and was an issue in the case. The ensuing confusion over the subject of the case is revealed in the following exchange between the parties' lawyers:[21]

Atty. Awisan: Where is the land in question located?
Palali: In Tapapan, Bauko, sir.

Atty. Awisan: Where is that situated in relation to your house?
Palali: It is near my house which is enclosed with fence.

Atty. Awisan: How about the land in question situated *in the southern portion*, do you know that?
Palali: That is the land our parents gave to us as inheritance. There are terraces there.

Atty. Awisan: So, the land in question [is] located below your house and on the southern portion?

Atty. Bayogan: As far as the southern portion is concerned, it is *not included* in the complaint.

Atty. Awisan: It is included.

Atty. Bayogan: The southern portion refer[s] to Lot 3 and it is not included in the complaint. *In fact when I started asking question regarding this land, the counsel objected.*

Atty. Awisan: This land indicated as Lot 3 is the southern portion.

Q: In other words, that property which was included by Cresencio Cadwising at the southern side during ocular inspection also belongs to the Palali clan?

A: Yes, sir.

x x x x x x x x x

Q: Does your father have tax declaration over that southern property?

A: Yes, sir.

Q: Will you be able to bring that to court if necessary?

A: Yes, sir.

Atty: Awisan (for plaintiff): Immaterial.

Court: Proceed with matters related to the issue.

[21] TSN, May 30, 1995, pp. 13-14.

The trial court, apparently relying on the allegations of the complaint, ruled on the *northern portion* as the subject property of the case.

Ruling of the Regional Trial Court

After due trial, the Regional Trial Court of Bontoc, Mountain Province, Branch 35, dismissed[22] the complaint. It based its decision on respondent's failure to prove her allegation of physical possession of the land. Going by the results of its ocular inspection[23] of the land in question, the trial court noted that Cadwising (respondent's predecessor-in-interest) could not pinpoint and the court did not see *any* of the improvements that Cadwising had allegedly introduced to the land.[24] Thus, the trial court held that respondent's claim of ownership was supported solely by her tax declarations and tax payment receipts which, by themselves, are not conclusive proof of ownership.[25]

In contrast, the trial court duly verified during the ocular inspection the existence of the improvements introduced by petitioner and his predecessors on the subject property.[26] Moreover, the trial court observed that the witnesses for the petitioner all lived continuously since their births within or near Sitio Camambaey in Tapapan and that they knew the land very well. They knew petitioner and his predecessors, as well as the improvements introduced by them to the land. Thus, the trial court found that the petitioner presented overwhelming proof of actual, open, continuous and physical possession of the property since time immemorial. Petitioner's possession,

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[22] Decision dated May 24, 1996; penned by Judge Manuel B. Bragado, records, pp. 153-161.

[23] The ocular inspection was conducted on January 20, 1995. See Transcript of the Proceedings had during the Ocular Inspection of the Land in Question, *id.* at 59-64.

[24] *Id.* at 158.

[25] *Id.* at 160.

[26] *Id.* at 158-159.

coupled with his tax declarations, is strong evidence of ownership which convinced the court of his better right to the property.[27]

For purposes of clarity, we cite the dispositive portion of the trial court's Decision thus:

> Wherefore, premises considered, judgment is hereby rendered in favor of the defendant Modesto Palali and against the plaintiff Juliet C. Awisan, represented by her Attorney-in-Fact, Gregorio B. Awisan, as follows:
>
> a) Ordering the dismissal of the complaint and costs against the plaintiff;
>
> b) Adjudging the defendant Modesto Palali as the owner and lawful possessor *of the subject property*; and
>
> c) The court cannot however grant the counterclaim of defendant for lack of evidence to prove the same.
>
> SO ORDERED.[28]

Ruling of the Court of Appeals

Respondent appealed the trial court's decision to the CA, which reversed the same. The CA found that petitioner failed to prove actual possession of the *entire* 6.6698 hectare land, which the CA believed to be the subject of the case. According to the appellate court, petitioner was only able to prove actual occupation of the portion where his house was located and the area below where he had planted fruit-bearing plants.[29]

The CA also ruled that based on the ocular inspection report of the trial court, petitioner's possession did not extend to the entire 6.6698 hectares. In its own words:

> Likewise, the report on the ocular inspection of the land in question divulges that the alleged possession of the land by [petitioner] Modesto Palali does not extend to the entire 6.6698 hectares of the subject land. Not even in the sketch plan of the land does it illustrate

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[27] *Id.* at 160.

[28] *Id.* at 160-161.

[29] *Rollo*, pp. 87-88.

that the possession of the [petitioner] refers to the entire subject land. Instead, the possession of [petitioner] merely points to certain portions of the subject land as drawn and prepared by the tax mappers.

From the foregoing testimony, no sufficient indicia could be inferred that the possession of the [petitioner] refers to the entire portion of the land.[30]

The appellate court also refused to give credence to petitioner's tax declaration. The CA held that petitioner's Tax Declaration No. 31793, which covers only an 848-square meter property, is incongruous with his purported claim of ownership over the entire 6.6698-hectare land.

Proceeding from this premise, the CA gave greater weight to the documentary and testimonial evidence of respondent. The presumption of regularity was given to the public documents from which respondent traced her title to the subject property.

Thus, the CA awarded the entire 6.6698-hectare property to respondent and ordered the cancellation of petitioner's tax declaration (except for the 200-square meter residential lot thereof which was not being claimed by respondent).[31]

Petitioner moved for a reconsideration of the unfavorable Decision, but his motion was denied for lack of merit.

Hence, this petition.

Preliminary Matter

The CA Decision is based on a mistaken understanding of the subject property

[30] *Id.* at 88-89.

[31] The CA described the subject property as follows:

At the outset, the subject land being claimed by plaintiff-appellant as described in the complaint is the 6.6698 hectares land bounded by a canal on the northeast and pine land on the northwest, on the west by a *barangay* road, by the pine land on the southwest and riceland on the southeast, and on the east by a provincial road. The said description is *with the exclusion of the portion of land where the residential house of the defendant-appellee is erected. Id.* at 87.

It is apparent that the CA Decision proceeded from an erroneous understanding of what the subject property actually is and what the trial court actually ruled upon. The CA was under the mistaken impression that the subject property was the *entire* 6.6698 hectares of land allegedly owned by respondent under her Tax Declaration No. 147. Because of this, the CA ruled against petitioner on the ground that he failed to prove possession of the *entire* 6.6698 hectares. The CA also disregarded petitioner's Tax Declaration No. 31793 (despite being coupled with actual possession) because the said tax declaration covered only an 848-square meter property and did not cover the *entire* 6.6698 hectare property. This is clear from the following text lifted from the CA Decision:

> The trial court's finding that the defendant-appellee had acquired the subject land by virtue of acquisitive prescription cannot be countenanced. At the outset, *the subject land being claimed by the plaintiff-appellant as described in the complaint is the 6.6698 hectares land* [*boundaries omitted*]. The said description is with the exclusion of the portion of land where the residential house of the defendant-appellee is erected. *However, the adverse and exclusive possession offered by the defendant-appellee, which includes his tax receipt, does not refer to the* ***entire*** *land consisting of 6.6698 hectares being claimed by the plaintiff-appellant.* x x x The witnesses for the defendant-appellee testified that indeed Modesto Palali's predecessors-in-interest have once built a house in Camambaey, Tapapan, Bauko, Mt. Province, but *whether or not the defendant-appellee or his predecessor-in-interest have actually, exclusively, notoriously, and adversely possessed the* ***entire*** *6.6698 hectares of land could not be deduced from their testimonies.* It could be gleaned from the testimony of Consigno Saligen, that what the defendant-appellee actually possessed and claim as their own is merely that portion where the house is erected and that portion of land below the house where Modesto Palali planted fruit-bearing plants. x x x
>
> Likewise, the report on ocular inspection of the land in question divulges that *the alleged possession of the land by defendant-appellee Modesto Palali does not extend to the* ***entire*** *6.6698 hectares of the subject land.* Not even in the sketch plan of the land does it illustrate that the possession of the defendant-appellee refers to the entire subject land. Instead, the possession of the

defendant-appellee merely points to certain portions of the subject land as drawn and prepared by the "tax mappers".

From the foregoing testimony, no sufficient indicia could be inferred that the possession of the defendant-appellee refers to the entire portion of the land.[32]

This was perhaps not entirely the appellate court's fault, because a reading of the issues presented by respondent to the CA gives the wrong impression that the subject property is the *entire* 6.6698 hectares:

x x x [T]he plaintiff-appellant elevated the matter on appeal assigning the following errors committed by the trial court:

I

The trial court erred in failing to consider the overwhelming superior documentary and oral evidence of the plaintiff Juliet C. Awisan showing her ownership on (sic) the *land in question consisting of 6.6698 hectares* described in her complaint

II

The *trial court erred in adjudicating the land in question to the defendant Modesto Palali* who is a squatter on the land whose tax declaration merely overlapped or duplicated that of the plaintiff and which *covered only a small portion* of 200 square meters of residential portion [sic] and 648 square meter of rootcrop land.

x x x[33]

The foregoing formulation of the issues presented by respondent before the CA erroneously described "the land in question" as "consisting of 6.6698 hectares" and erroneously stated that the trial court "adjudicated the land in question to [petitioner]." Said formulation is very misleading because the case before the trial court did not involve the ownership of the entire 6.6698 hectares, but merely the *northern* portion thereof – the property actually occupied by petitioner and much smaller than 6.6698 hectares. Even if we go back to the respondent's

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[32] *Id.* at 87-89.

[33] *Id.* at 85. Emphasis supplied.

complaint, we would find there that respondent is claiming encroachment merely of the "northern portion" of her 6.6698-hectare property, and not of the entire 6.6698 property.[34]

Neither did the trial court adjudicate to petitioner the entire 6.6698-hectare land; it simply upheld petitioner's right to the property he is actually occupying. It only declared petitioner as the lawful owner and possessor of the "subject property," which is the property to the north of the 6.6698-hectare land and occupied by petitioner. This is evident from the trial court's summary of the facts established by the respondent and her witnesses, to wit:

> During the hearing of the case, plaintiff and her witnesses established and disclosed: x x x that *only a portion of the entire 6.6 hectares in its northern portion located below and above the residential house of the defendant Modesto Palali* is now the land in question as properly shown in the sketch of the land covered by Tax Declaration No. 147 in the name of Juliet Awisan x x x.[35]

Proceeding from a wrong premise as to what is the subject property, the CA utterly failed to appreciate the evidence as they relate to the parties' claims. Thus, while the general rule is that this Court is not a trier of facts, and that in a petition for review under Rule 45, only questions of law may be raised, the Court is behooved to admit the instant case as an exception.[36]

Issue

The issue in this case is who between the parties has the better right to the subject property.

Our Ruling

Having gone over the parties' evidence before the trial court, we find adequate support for the trial court's ruling in favor of petitioner. The CA erred in reversing the trial court's findings,

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[34] Records, p. 154.

[35] *Id.* at 157.

[36] *Tio v. Abayata*, G.R. No. 160898, June 27, 2008, 556 SCRA 175, 184; *Sampayan v. Court of Appeals*, 489 Phil. 200, 207-208 (2005).

particularly because, as discussed above, such reversal was premised on the CA's erroneous understanding of the subject property.

As found by the trial court, petitioner was able to prove his and his predecessors' actual, open, continuous and physical possession of the subject property dating at least to the pre-war era (aside from petitioner's tax declaration over the subject property). Petitioner's witnesses were long time residents of Sitio Camambaey. They lived on the land, knew their neighbors and were familiar with the terrain. They were witnesses to the introduction of improvements made by petitioner and his predecessors-in-interest.

From their consistent, unwavering, and candid testimonies, we find that petitioner's grandfather Mocnangan occupied the land during the pre-war era. He planted camote on the property because this was the staple food at that time. He then gave the subject property to his daughter Tammam, while he gave a separate one to his son Pacolan Mocnangan. In the 1960s, Tammam and her husband Palalag cultivated the land, built a cogon home, and started a family there. Palalag introduced terraces and, together with his sons, built earth fences around the property. Palalag's family initially planted bananas, coffee, and oranges; they later added avocadoes, persimmons, and pineapples. When Tammam and Palalag died, their son, petitioner herein, buried them in the subject property and continued cultivating the land. He also constructed a new home.

On the other hand, respondent relied merely on her tax declaration, but failed to prove actual possession insofar as the subject property is concerned. To be sure, respondent *attempted* to prove possession of the subject property. Her predecessor-in-interest, Cadwising, had allegedly introduced improvements like a piggery, poultry, terracing, plantings, and a barbed wire fence. However, not one of these alleged improvements was found during the ocular inspection conducted by the trial court. The absence of all his alleged improvements on the property is suspicious in light of his assertion that he has a caretaker living near the subject property for 20 years. Cadwising did

not even bother to explain the absence of the improvements. The trial court's rejection of Cadwising's assertions regarding the introduction of improvements is therefore not baseless.

Thus, respondent having failed to prove possession, her claim rests solely on her tax declaration. But tax declarations, by themselves, are not conclusive evidence of ownership of real property. In the absence of actual, public, and adverse possession, the declaration of the land for tax purposes does not prove ownership.[37] Respondent's tax declaration, therefore, cannot serve as basis to oust petitioner who has been in possession (by himself and his predecessors) of the subject property since before the war.

Neither can respondent rely on the public instruments dealing with the 6.6698-hectare property covered by her tax declaration. Such public documents merely show the successive transfers of the property covered by said documents. They do not conclusively prove that the transferor actually owns the property purportedly being transferred, especially as far as third parties are concerned. For it may very well be that the transferor does not actually own the property he has transferred, in which case he transfers no better right to his transferee. No one can give what he does not have – *nemo dat quod non habet*.[38] Thus, since respondent's predecessor-in-interest Cadwising appeared not to have any right to *the subject property*, he transferred no better right to his transferees, including respondent.

All told, we hold that as between the petitioner and the respondent, it is the petitioner who has the better claim or title to the subject property. While the respondent merely relied on her tax declaration, petitioner was able to prove actual possession of the subject property coupled with his tax declaration. We have ruled in several cases that possession, when coupled with a tax

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[37] *Daclag v. Macahilig,* G.R. No. 159578, July 28, 2008, 560 SCRA 137, 151-152; *Cequeña v. Bolante,* 386 Phil. 419, 430-431 (2000).

[38] *Daclag v. Macahilig, supra* at 150-151.

declaration, is a weighty evidence of ownership.[39] It certainly is more weighty and preponderant than a tax declaration alone.

The preponderance of evidence is therefore clearly in favor of petitioner, particularly considering that, as the actual possessor under claim of ownership, he enjoys the presumption of ownership.[40] Moreover, settled is the principle that a party seeking to recover real property must rely on the strength of her case rather than on the weakness of the defense.[41] The burden of proof rests on the party who asserts the affirmative of an issue. For he who relies upon the existence of a fact should be called upon to prove that fact. Having failed to discharge her burden to prove her affirmative allegations, we find that the trial court rightfully dismissed respondent's complaint.

A final note. Like the trial court, we make no ruling regarding the *southern portion* of the property (or Lot 3, as referred to by the parties), because this property was not included in respondent's complaint. Although the Rules of Court provide that "when issues not raised by the pleadings are tried with the express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings,"[42] such rule does not apply here. Respondent objected[43] when petitioner tried to prove his ownership of Lot 3 on the ground of immateriality, arguing that ownership of Lot 3 was not an issue. Respondent cannot now insist otherwise.

WHEREFORE, the petition is *GRANTED*. The September 27, 2002 Decision as well as the April 25, 2003 Resolution of the Court of Appeals in CA-G.R. CV No. 52942 are *REVERSED*

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[39] *Cequeña v. Bolante, supra*; *Llanes v. Republic*, G.R. No. 177947, November 27, 2008, 572 SCRA 258, 271; *Heirs of Arzadon-Crisologo v. Rañon*, G.R. No. 171068, September 5, 2007, 532 SCRA 391, 410.

[40] *Philippine National Bank v. Court of Appeals*, 424 Phil. 757, 771 (2002).

[41] NEW CIVIL CODE, Article 434.

[42] RULES OF COURT, Rule 10, Section 5.

[43] *Supra* note 20.

and SET ASIDE. The May 24, 1996 Decision of the Regional Trial Court of Bontoc, Mountain Province, Branch 35 is *REINSTATED and AFFIRMED.* Costs against respondent.

SO ORDERED.

Carpio (Chairperson), Brion, Abad, and P*erez, JJ.*, concur.

SECOND DIVISION

[G.R. No. 168967. February 12, 2010]

CITY OF ILOILO represented by HON. JERRY P. TREÑAS, City Mayor, *petitioner, vs.* **HON. LOLITA CONTRERAS-BESANA, Presiding Judge, Regional Trial Court, Branch 32, and ELPIDIO JAVELLANA,** *respondents.*

SYLLABUS

1. POLITICAL LAW; CONSTITUTIONAL LAW; EMINENT DOMAIN; TWO STAGES OF EXPROPRIATION PROCEEDINGS. — Expropriation proceedings have two stages. The first phase ends with an order of dismissal, or a determination that the property is to be acquired for a public purpose. Either order will be a final order that may be appealed by the aggrieved party. The second phase consists of the determination of just compensation. It ends with an order fixing the amount to be paid to the landowner. Both orders, being final, are appealable.

2. ID.; ID.; ID.; THE RECKONING DATE FOR THE DETERMINATION OF JUST COMPENSATION SHOULD BE THE DATE OF THE FILING OF THE COMPLAINT. — When the taking of the property sought to be expropriated coincides with the commencement of the expropriation proceedings, or takes place subsequent to the filing of the complaint for eminent domain, the just compensation should be determined **as of the**

date of the filing of the complaint. Even under Sec. 4, Rule 67 of the 1964 Rules of Procedure, under which the complaint for expropriation was filed, just compensation is to be determined "as of the date of the filing of the complaint." Here, there is no reason to depart from the general rule that the point of reference for assessing the value of the Subject Property is the time of the filing of the complaint for expropriation.

3. ID.; ID.; ID.; WHEN THE OWNER OF THE EXPROPRIATED PROPERTY SLEPT ON HIS RIGHT, HE CANNOT RECOVER POSSESSION BUT HE IS ENTITLED TO JUST COMPENSATION. — Concededly, Javellana also slept on his rights for over 18 years and did not bother to check with the PNB if a deposit was actually made by the petitioner. Evidently, from his inaction in failing to withdraw or even verify the amounts purportedly deposited, private respondent not only accepted the valuation made by the petitioner, but also was not interested enough to pursue the expropriation case until the end. As such, private respondent may not recover possession of the Subject Property, but is entitled to just compensation. It is high time that private respondent be paid what was due him after almost 30 years.

4. ID.; ID.; ID.; TAKING OF PROPERTY WITHOUT JUST COMPENSATION ENTITLES THE OWNER TO DAMAGES. — We stress, however, that the City of Iloilo should be held liable for damages for taking private respondent's property without payment of just compensation. In *Manila International Airport Authority v. Rodriguez*, the Court held that a government agency's prolonged occupation of private property without the benefit of expropriation proceedings undoubtedly entitled the landowner to damages.

APPEARANCES OF COUNSEL

City Legal Office (Iloilo) for petitioner.
Franklin J. Andrada for private respondent.

D E C I S I O N

DEL CASTILLO, *J.*:

It is arbitrary and capricious for the government to initiate expropriation proceedings, seize a person's property, allow the order of expropriation to become final, but then fail to justly compensate the owner for over 25 years. This is government at its most high-handed and irresponsible, and should be condemned in the strongest possible terms. For its failure to properly compensate the landowner, the City of Iloilo is liable for damages.

This Petition for *Certiorari* under Rule 65 of the Rules of Court with a prayer for the issuance of a temporary restraining order seeks to overturn the three Orders issued by Regional Trial Court (RTC) of Iloilo City, Branch 32 on the following dates: December 12, 2003 (the First Assailed Order),[1] June 15, 2004 (the Second Assailed Order),[2] and March 9, 2005 (the Third Assailed Order) (the three aforementioned Orders are collectively referred to as the Assailed Orders).[3]

Factual Antecedents

The essential facts are not in dispute.

On September 18, 1981, petitioner filed a *Complaint*[4] for eminent domain against private respondent Elpidio T. Javellana (Javellana) and Southern Negros Development Bank, the latter as mortgagee. The complaint sought to expropriate two parcels of land known as Lot Nos. 3497-CC and 3497-DD registered in Javellana's name under Transfer Certificate of Title (TCT) No. T-44894 (the Subject Property) to be used as a school site for Lapaz High School.[5] Petitioner alleged that the Subject

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[1] *Rollo*, pp. 44-45.

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

[3] *Id.* at 48-49.

[4] *Id.* at 50-52.

[5] The expropriation was authorized by Resolution No. 96 dated April 25,

Property was declared for tax purposes in Tax Declaration No. 40080 to have a value of ₱60.00 per square meter, or a total value of ₱43,560.00. The case was docketed as Civil Case No. 14052 and raffled to then Court of First Instance of Iloilo, Branch 7.

On December 9, 1981, Javellana filed his *Answer*[6] where he admitted ownership of the Subject Property but denied the petitioner's avowed public purpose of the sought-for expropriation, since the City of Iloilo already had an existing school site for Lapaz High School. Javellana also claimed that the true fair market value of his property was no less than ₱220.00 per square meter.[7]

On May 11, 1982, petitioner filed a *Motion for Issuance of Writ of Possession,* alleging that it had deposited the amount of ₱40,000.00 with the Philippine National Bank-Iloilo Branch. Petitioner claimed that it was entitled to the immediate possession of the Subject Property, citing Section 1 of Presidential Decree No. 1533,[8] after it had deposited an amount equivalent to 10% of the amount of compensation. Petitioner attached to its motion a Certification issued by Estefanio C. Libutan, then Officer-in-

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1978 issued by the Sangguiniang Panglungsod of Iloilo entitled "Authorizing the City Legal Officer to initiate the expropriation of Lot No. 180 of Arevalo and Lot Nos. 3497-CC and 3497-DD at La Paz for School Site Purposes." *Id.* at 50-51.

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

[7] *Id.*

[8] Presidential Decree No. 1533, Establishing A Uniform Basis For Determining Just Compensation And The Amount Of Deposit For Immediate Possession Of The Property Involved In Eminent Domain Proceedings (1978).

Section 1. In determining just compensation for private property acquired through eminent domain proceedings, the compensation to be paid shall not exceed the value declared by the owner or administrator or anyone having legal interest in the property or determined by the assessor, pursuant to the Real Property Tax Code, whichever value is lower, prior to the recommendation or decision of the appropriate Government office to acquire the property.

Section 2. Upon the filing of the petition for expropriation and the deposit in the Philippine National Bank at its main office or any of its branches of an amount equivalent to ten per cent (10%) of the amount of compensation

Charge of the Iloilo City Treasurer's Office, stating that said deposit was made.[9]

Javellana filed an *Opposition to the Motion for the Issuance of Writ of Possession*[10] citing the same grounds he raised in his Answer — that the city already had a vast tract of land where its existing school site was located, and the deposit of a mere 10% of the Subject Property's tax valuation was grossly inadequate.

On May 17, 1983, the trial court issued an Order[11] which granted petitioner's *Motion for Issuance of Writ of Possession* and authorized the petitioner to take immediate possession of the Subject Property. The court ruled:

> PREMISES CONSIDERED, the Motion for the Issuance of a Writ of Possession dated May 10, 1982, filed by plaintiff is hereby granted. Plaintiff is hereby allowed to take immediate possession, control and disposition of the properties known as Lot Nos. 3497-CC and 3497-DD x x x.[12]

Thereafter, a Writ of Possession[13] was issued in petitioner's favor, and petitioner was able to take physical possession of the properties sometime in the middle of 1985. At no time has Javellana ever denied that the Subject Property was actually used as the site of Lapaz National High School. Aside from the

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provided in Section 1 hereof, the government or its authorized instrumentality, agency or entity shall be entitled to immediate possession, control and disposition of the real property and the improvements thereon, including the power of demolition if necessary, notwithstanding the pendency of the issues before the courts.

[9] *Rollo*, p. 59

[10] *Id.* at 60-61.

[11] *Id.* at 62-64.

[12] *Id.* at 63-64.

[13] *Id.* at 65-66. Private respondent filed a Motion for Reconsideration against the trial court's Order, *id.* at 67-68; petitioner opposed, *id.* at 69-70. The trial court denied private respondent's Motion in an Order dated January 10, 1984, *id.* at 71.

filing by the private respondent of his *Amended Answer* on April 21, 1984,[14] the expropriation proceedings remained dormant.

Sixteen years later, on April 17, 2000, Javellana filed an *Ex Parte Motion/Manifestation*, where he alleged that when he finally sought to withdraw the ₱40,000.00 allegedly deposited by the petitioner, he discovered that no such deposit was ever made. In support of this contention, private respondent presented a Certification from the Philippine National Bank stating that no deposit was ever made for the expropriation of the Subject Property.[15] Private respondent thus demanded his just compensation as well as interest. Attempts at an amicable resolution and a negotiated sale were unsuccessful. It bears emphasis that petitioner could not present any evidence — whether documentary or testimonial — to prove that any payment was actually made to private respondent.

Thereafter, on April 2, 2003, private respondent filed a *Complaint*[16] against petitioner for Recovery of Possession, Fixing and Recovery of Rental and Damages. The case was docketed as Civil Case No. 03-27571, and raffled to Branch 28 of the Iloilo City Regional Trial Court. Private respondent alleged that since he had not been compensated for the Subject Property, petitioner's possession was illegal, and he was entitled to recovery of possession of his lots. He prayed that petitioner be ordered to vacate the Subject Property and pay rentals amounting to ₱15,000.00 per month together with moral, exemplary, and actual damages, as well as attorney's fees.

On May 15, 2003, petitioner filed its Answer,[17] arguing that Javellana could no longer bring an action for recovery since the Subject Property was already taken for public use. Rather, private respondent could only demand for the payment of just compensation. Petitioner also maintained that the legality or illegality of petitioner's possession of the property should be

[14] *Id.* at 74-77.

[15] *Id.* at 88.

[16] *Id.* at 78-87.

[17] *Id.* at 89-93.

determined in the eminent domain case and not in a separate action for recovery of possession.

Both parties jointly moved to consolidate the expropriation case (Civil Case No. 14052) and the case for recovery of possession (Civil Case No. 03-27571),[18] which motion was granted by the trial court in an Order dated August 26, 2003.[19] On November 14, 2003, a commission was created to determine the just compensation due to Javellana.[20]

On November 20, 2003, private respondent filed a *Motion/ Manifestation* dated November 19, 2003 claiming that before a commission is created, the trial court should first order the condemnation of the property, in accordance with the Rules of Court. Javellana likewise insisted that the fair market value of the Subject Property should be reckoned from the date when the court orders the condemnation of the property, and not the date of actual taking, since petitioner's possession of the property was questionable.[21] Before petitioner could file its Comment, the RTC issued an Order dated November 21, 2003 denying the Motion.[22]

Undeterred, Javellana filed on November 25, 2003, an *Omnibus Motion to Declare Null and Void the Order of May 17, 1983 and to Require Plaintiff to Deposit 10% or ₱254,000.00*. Javellana claimed that the amount is equivalent to the 10% of the fair market value of the Subject Property, as determined by the Iloilo City Appraisal Committee in 2001, at the time when the parties were trying to negotiate a settlement.[23]

First Assailed Order

On December 12, 2003, the RTC issued the First Assailed Order, which nullified the Order dated May 17, 1983 (concerning

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[18] Records, p. 88.

[19] *Id.* at 89.

[20] *Rollo*, p. 94

[21] *Id.* at 95-96.

[22] *Id.* at 97.

[23] Petitioner first claimed that it never received a copy of this Motion,

the issuance of a writ of possession over the Subject Property). The trial court ruled:

> x x x the Order dated May 17, 1983 is hereby declared null and void and the plaintiff [is] hereby ordered to immediately deposit with the PNB the 10% of the just compensation **after the Commission shall have rendered its report and have determined the value of the property not at the time it was condemned but at the time the complaint was filed in court.**[24] (Emphasis ours)

Second Assailed Order

Neither party sought reconsideration of this Order.[25] Nonetheless, about six months later, the RTC issued the Second Assailed Order, which it denominated as an "Amended Order." The Second Assailed Order was identical to the first, except that the reckoning point for just compensation was now the "time this order was issued," which is June 15, 2004.

> x x x the Order dated May 17, 1983 is hereby declared null and void and the plaintiff [is] hereby ordered to immediately deposit with the PNB the 10% of the just compensation after the Commission shall have rendered its report and have determined the value of the property not at the time it was condemned but at the time **this order was issued.** (Underscoring in original text)

This time, petitioner filed a *Motion for Reconsideration* claiming that there was no legal basis for the issuance of the Second Assailed Order.[26] Javellana opposed, arguing that since the May 17, 1983 Order and the Second Assailed Order were interlocutory in character, they were always subject to modification and revision by the court anytime.[27]

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however, private respondent presented its file copy of the Motion, duly received by the City Legal Office of Iloilo City.

[24] *Rollo*, p. 45.

[25] Petitioner claims that it never received a copy of the Order.

[26] *Rollo*, pp. 105-114.

Petitioner also claimed that it had not been furnished with a copy of the First Assailed Order, although this was disproved by the lower court. Records, p. 48.

[27] *Rollo*, pp. 115-122.

Third Assailed Order

After the parties were able to fully ventilate their respective positions,[28] the public respondent issued the Third Assailed Order, denying the Motion for Reconsideration, and ruling as follows:

> The Order dated June 15, 2004 among other things stated that parties and counsels must be bound by the Commissioner's Report regarding the value of the property **not at the time it was condemned but at the time this order was issued.**
>
> This is true inasmuch as there was no deposit at the PNB and their taking was illegal.
>
> The plaintiff thru [sic] Atty. Laurea alleged that this Court had a change of heart and issued an Amended Order with the same wordings as the order of December 12, 2003 but this time stated not at the time it was condemned but at the time the order was issued. **Naturally, this Court in the interest of justice, can amend its order because there was no deposit by plaintiff.**
>
> The jurisprudence cited by plaintiff that the just compensation must be determined as of the date of the filing of the complaint is true if there was a deposit. Because there was none the filing was not in accordance with law, hence, must be at the time the order was issued.
>
> The allegation of defendant thru [sic] counsel that the orders attacked by plaintiff thru [sic] counsel saying it has become final and executory are interlocutory orders subject to the control of the Judge until final judgment is correct. Furthermore, it is in the interes[t] of justice to correct errors.[29]

In the meantime, on April 15, 2004, the Commission submitted its Report, providing the following estimates of value, but without making a proper recommendation:[30]

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[28] Petitioner filed a Rejoinder on August 12, 2004; *id.* at 123-126. Private respondent filed a Reply dated August 17, 2004; *id.* at 127-129.

[29] *Id.* at 48-49.

[30] Records, pp. 124-155.

Reckoning Pointng	Value per square meter	Fair Market Value	Basis
1981 – at the time the complaint was filed	₱110.00/sqm	₱79,860.00	based on three or more recorded sales of similar types of land in the vicinity in the same year
1981 – at the time the complaint was filed	₱686.81/sqm	₱498,625.22	Appraisal by Southern Negros Development Bank based on market value, zonal value, appraised value of other banks, recent selling price of neighboring lots
2002	₱3,500.00/sqm	₱2,541,000.00	Appraisal by the City Appraisal Committee, Office of the City Assessor
2004	₱4,200.00/sqm	PhP3,049,200.00	Private Appraisal Report (Atty. Roberto Cal Catolico dated April 6, 2004)

Hence, the present petition.

Petitioner's Arguments

Petitioner is before us claiming that (1) the trial court gravely abused its discretion amounting to lack or excess of jurisdiction in overturning the Order dated May 17, 1983, which was already a final order; and (2) just compensation for the expropriation should be based on the Subject Property's fair market value either at the time of taking or filing of the complaint.

Private Respondent's Arguments

Private respondent filed his Comment on October 3, 2005,[31] arguing that (1) there was no error of jurisdiction correctible by *certiorari*; and (2) that the Assailed Orders were interlocutory orders that were subject to amendment and nullification at the discretion of the court.

[31] *Id.* at 132-145.

Issues

There are only two questions we need to answer, and they are not at all novel. *First*, does an order of expropriation become final? *Second*, what is the correct reckoning point for the determination of just compensation?

Our Ruling

Expropriation proceedings have two stages. The first phase ends with an order of dismissal, or a determination that the property is to be acquired for a public purpose.[32] Either order will be a final order that may be appealed by the aggrieved party.[33] The second phase consists of the determination of just compensation.[34] It ends with an order fixing the amount to be paid to the landowner. Both orders, being final, are appealable.[35]

An order of condemnation or dismissal is final, resolving the question of whether or not the plaintiff has properly and legally exercised its power of eminent domain.[36] Once the first order becomes final and no appeal thereto is taken, the authority to expropriate and its public use can no longer be questioned.[37]

Javellana did not bother to file an appeal from the May 17, 1983 Order which granted petitioner's *Motion for Issuance of Writ of Possession* and which authorized petitioner to take immediate possession of the Subject Property. Thus, it has become final, and the petitioner's right to expropriate the property for a public use is no longer subject to review. On the first question, therefore, we rule that the trial court gravely erred in nullifying the May 17, 1983 Order.

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[32] *Estate of Salud Jimenez v. Philippine Export Processing Zone*, 402 Phil. 271, 284 (2001).

[33] *Municipality of Biñan v. Garcia*, G.R. No. 69260, December 22, 1989, 180 SCRA 576, 584-585.

[34] *City of Manila v. Serrano*, 411 Phil. 754, 765 (2001).

[35] *National Housing Authority v. Heirs of Guivelondo*, 452 Phil. 483, 492 (2003).

[36] *Heirs of Alberto Suguitan v. City of Mandaluyong*, 384 Phil. 676, 692 (2000).

[37] *Estate of Salud Jimenez v. Philippine Export Processing Zone*, *supra* note 32 at 288.

We now turn to the reckoning date for the determination of just compensation. Petitioner claims that the computation should be made as of September 18, 1981, the date when the expropriation complaint was filed. We agree.

In a long line of cases, we have constantly affirmed that:

> x x x just compensation is to be ascertained as of the time of the taking, which usually coincides with the commencement of the expropriation proceedings. Where the institution of the action precedes entry into the property, the just compensation is to be ascertained as of the time of the filing of the complaint.[38]

When the taking of the property sought to be expropriated coincides with the commencement of the expropriation proceedings, or takes place subsequent to the filing of the complaint for eminent domain, the just compensation should be determined **as of the date of the filing of the complaint.**[39] Even under Sec. 4, Rule 67 of the 1964 Rules of Procedure, under which the complaint for expropriation was filed, just compensation is to be determined "as of the date of the filing of the complaint." Here, there is no reason to depart from the general rule that the point of reference for assessing the value of the Subject Property is the time of the filing of the complaint for expropriation.[40]

Private respondent claims that the reckoning date should be in 2004 because of the "clear injustice to the private respondent

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[38] *B.H. Berkenkotter & Co. v. Court of Appeals*, G.R. No. 89980, December 14, 1992, 216 SCRA 584, 587. See also RULES OF COURT, Rule 67, Sec. 4:

> If the objections to and the defenses against the right of the plaintiff to expropriate the property are overruled, or when no party appears to defend as required by this Rule, the court may issue an order of expropriation declaring that the plaintiff has a lawful right to take the property sought to be expropriated, for the public use or purpose described in the complaint, upon payment of just compensation to be determined as of the date of the taking of the property or the filing of the complaint whichever came first.

[39] *Republic of the Philippines v. Vda. De Castellvi*, 157 Phil. 329, 349 (1974).

[40] *National Power Corporation v. Co*, G.R. No. 166973, February 10, 2009, 578 SCRA 235, 246.

who all these years has been deprived of the beneficial use of his properties."

We commiserate with the private respondent. The school was constructed and has been in operation since 1985. Petitioner and the residents of Iloilo City have long reaped the benefits of the property. However, non-payment of just compensation does not entitle the private landowners to recover possession of their expropriated lot.[41]

Concededly, Javellana also slept on his rights for over 18 years and did not bother to check with the PNB if a deposit was actually made by the petitioner. Evidently, from his inaction in failing to withdraw or even verify the amounts purportedly deposited, private respondent not only accepted the valuation made by the petitioner, but also was not interested enough to pursue the expropriation case until the end. As such, private respondent may not recover possession of the Subject Property, but is entitled to just compensation.[42] It is high time that private respondent be paid what was due him after almost 30 years.

We stress, however, that the City of Iloilo should be held liable for damages for taking private respondent's property without payment of just compensation. In *Manila International Airport Authority v. Rodriguez*,[43] the Court held that a government agency's prolonged occupation of private property without the benefit of expropriation proceedings undoubtedly entitled the landowner to damages:

Such pecuniary loss entitles him to adequate compensation in the form of actual or compensatory damages, which in this case should be the legal interest (6%) on the value of the land at the time of taking, from said point up to full payment by the MIAA. This is based on the principle that interest "runs as a matter of law and follows from the right of the landowner to be placed in

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[41] *Forfom Development Corporation v. Philippine National Railways*, G.R. No. 124795, December 10, 2008, 573 SCRA 350, 369.

[42] *Eusebio v. Luis*, G.R. No. 162474, October 13, 2009.

[43] G.R. No. 161836, February 28, 2006, 483 SCRA 619, 630-632.

as good position as money can accomplish, as of the date of the taking x x x.

x x x x x x x x x

For more than twenty (20) years, the MIAA occupied the subject lot without the benefit of expropriation proceedings and without the MIAA exerting efforts to ascertain ownership of the lot and negotiating with any of the owners of the property. To our mind, **these are wanton and irresponsible acts which should be suppressed and corrected. Hence, the award of exemplary damages and attorneys fees is in order.** x x x.[44] (Emphasis supplied)

WHEREFORE, the petition is *GRANTED*. The Orders of the Regional Trial Court of Iloilo City, Branch 32 in Civil Case No. 14052 and Civil Case No. 03-27571 dated December 12, 2003, June 15, 2004, and March 9, 2005 are hereby *ANNULLED and SET ASIDE*.

The Regional Trial Court of Iloilo City, Branch 32 is *DIRECTED* to immediately determine the just compensation due to private respondent Elpidio T. Javellana based on the fair market value of the Subject Property at the time Civil Case No. 14052 was filed, or on September 18, 1981 with interest at the legal rate of six percent (6%) per annum from the time of filing until full payment is made.

The City of Iloilo is *ORDERED* to pay private respondent the amount of ₱200,000.00 as exemplary damages.

SO ORDERED.

Carpio (Chairperson), Brion, Abad, and *Perez, JJ.*, concur.

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[44] See also *Forfom Development Corporation v. Philippine National Railways, supra*.

SECOND DIVISION

[G.R. No. 171774. February 12, 2010]

REPUBLIC OF THE PHILIPPINES, *petitioner, vs.* **APOLINARIO CATARROJA, REYNALDO CATARROJA, and ROSITA CATARROJA-DISTRITO,** *respondents.*

SYLLABUS

1. CIVIL LAW; RECONSTITUTION OF TITLE; REPUBLIC ACT NO. 26 (RA 26); FAILURE TO SHOW RELIABLE DOCUMENTS FOR RECONSTITUTION.— [T]he Catarrojas have been unable to present any of the documents mentioned in paragraphs (a) to (e) [Section 2, R.A. 26]. Their parents allegedly lost the owner's duplicate certificate of title. They did not have a certified copy of such certificate of title or a co-owner's, a mortgagee's, or a lessee's duplicate of the same. The LRA itself no longer has a copy of the original decree or an authenticated copy of it. Likewise, the Register of Deeds did not have any document of encumbrance on file that shows the description of the property. x x x This Court is not convinced that the x x x documents of the Catarrojas fall in the same class as those enumerated in paragraphs (a) to (e). None of them proves that a certificate of title had in fact been issued in the name of their parents. In *Republic v. Tuastumban*, the Court ruled that the documents must come from official sources which recognize the ownership of the owner and his predecessors-in-interest. None of the documents presented in this case fit such description.

2. ID.; ID.; ID.; EFFORTS TO LOOK FOR AND AVAIL OF THE SOURCES IN PARAGRAPHS A TO E, SECTION 2 OF R.A. 26 MUST BE EXERTED BEFORE PRESENTATION OF THE SOURCE IN PARAGRAPH F MAY BE ALLOWED.— [T]he Catarrojas failed to show that they exerted efforts to look for and avail of the sources in paragraphs (a) to (e) before availing themselves of the sources in paragraph (f). The Court said in *Republic v. Holazo* that the documents referred to in Sec. 2(f) may be resorted to only in the absence of the preceding documents in the list. Only if the petitioner for reconstitution fails to show that he had, in fact, sought to secure such

documents and failed to find them, can the presentation of the "other document" as evidence in substitution be allowed.

3. ID.; ID.; ID.; WHAT NEEDS TO BE SHOWN BEFORE AN ORDER FOR RECONSTITUTION MAY BE ISSUED.— [I]n *Republic v. Tuastumban* the Court enumerated what needs to be shown before the issuance of an order for reconstitution: (a) that the certificate of title had been lost or destroyed; (b) that the documents presented by petitioner are sufficient and proper to warrant reconstitution of the lost or destroyed certificate of title; (c) that the petitioner is the registered owner of the property or had an interest therein; (d) that the certificate of title was in force at the time it was lost or destroyed; and (e) that the description, area and boundaries of the property are substantially the same as those contained in the lost or destroyed certificate of title.

4. ID.; ID.; ID.; RECONSTITUTION OF TITLE CANNOT BE ORDERED WITHOUT PROOF THAT SUCH TITLE HAD ONCE EXISTED.— Absent a clear and convincing proof that an original certificate of title had in fact been issued to their parents in due course, the Catarrojas cannot claim that their predecessors succeeded in acquiring title to the subject lots. The nature of reconstitution of a lost or destroyed certificate of title denotes a restoration of the instrument in its original form and condition. That cannot be done without proof that such certificate of title had once existed. The procedures laid down in R.A. 26 for reconstituting a title have to be strictly followed considering that reconstitution, if made easy, could be the source of anomalous titles. It could also be unscrupulously availed of by some as a convenient substitute for the rigid proceedings involved in original registration of title.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.
Pacheco Law Office for respondents.

D E C I S I O N

ABAD, *J.*:

This is about a petition for reconstitution of a lost original certificate of title in which the respondents have been unable to present evidence that such title had in fact been issued by an appropriate land registration court.

The Facts and the Case

Respondents Apolinario Catarroja, Reynaldo Catarroja, and Rosita Catarroja-Distrito (the Catarrojas) filed a petition for reconstitution of lost original certificate of title covering two lots in Zapang, Ternate, Cavite, one with an area of 269,695 square meters and the other with an area of 546,239 square meters.[1] The Catarrojas alleged that they inherited these lands from their parents, Fermin and Sancha Catarroja, who reportedly applied for their registration with the Court of First Instance of Cavite sometime before the last world war.[2]

The Land Registration Authority (LRA) issued a certification on August 3, 1998[3] and a report on February 4, 2002,[4] confirming that the land registration court issued Decree 749932 on May 21, 1941 covering the subject lots. A copy of this decree was, however, no longer available in the records of the LRA. The LRA report verified as correct the plans and technical descriptions of the subject lots which had been approved under LRA PR-19042 and LRA PR-19043.

The Catarrojas alleged that, pursuant to the decree, the Register of Deeds of Cavite issued an original certificate of title to their parents. But, as it happened, based on a certification issued by

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[1] Exhibit "A", records, pp. 1-6.

[2] Exhibit "Q" (inadvertently marked as Exhibit "F"), *id*. at 7-8.

[3] Exhibit "R" (inadvertently marked as Exhibit "G"), *id*. at 9.

[4] Exhibit "E", *id*. at 24-25.

the Register of Deeds, the original on file with it was lost in the fire that gutted the old Cavite capitol building on June 7, 1959.[5] The Catarrojas also claimed that the owner's duplicate copy of the title had been lost while with their parents.[6]

Since the public prosecutor representing the government did not object to the admission of the evidence of the Catarrojas and since he said that he had no evidence to refute their claims, the case was submitted for decision.[7] On June 27, 2003 the Regional Trial Court (RTC) of Cavite issued an Order, granting the petition for reconstitution of title.[8]

On appeal, however, the Court of Appeals (CA) reversed the RTC decision.[9] It held that the evidence of the Catarrojas failed to establish any of the sources for reconstitution enumerated in Section 2 of Republic Act (R.A.) 26 (An act providing a special procedure for reconstitution of Torrens certificate of title lost or destroyed). The Catarrojas did not have proof that an original certificate of title had in fact been issued covering the subject lots. On motion for reconsideration, however, the CA rendered an amended decision dated February 23, 2006, setting aside its decision dated July 12, 2005 and finding sufficient evidence to allow reconstitution of the Catarrojas' title.[10] Petitioner Republic of the Philippines challenges that decision through this action.

The Issue Presented

The sole issue presented in this case is whether or not the CA erred in finding sufficient evidence to grant the petition for reconstitution of title.

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[5] Exhibit "H", *id*. at 10.

[6] Exhibit "S" (inadvertently marked as Exhibit "H"), *id*. at 11.

[7] Manifestation and Comment dated May 20, 2003, *id*. at 115; RTC Order dated May 30, 2003, *id*. at 116.

[8] *Id.* at 117-120.

[9] CA *rollo*, pp. 94-104.

[10] *Id*. at 131-134.

The Court's Ruling

R.A. 26 governs the reconstitution of lost or destroyed Torrens certificates of title. Its Section 2 enumerates the following sources for the reconstitution of such titles:

(a) The owner's duplicate of the certificate of title;

(b) The co-owner's, mortgagee's, or lessee's duplicate of the certificate of title;

(c) A certified copy of the certificate of title, previously issued by the register of deeds or by a legal custodian thereof;

(d) An authenticated copy of the decree of registration or patent, as the case may be, pursuant to which the original certificate of title was issued;

(e) A document, on file in the Registry of Deeds, by which the property, the description of which is given in said document, is mortgaged, leased or encumbered, or an authenticated copy of said document showing that its original had been registered; and

(f) Any other document which, in the judgment of the court, is sufficient and proper basis for reconstituting the lost or destroyed certificate of title.

Admittedly, the Catarrojas have been unable to present any of the documents mentioned in paragraphs (a) to (e) above. Their parents allegedly lost the owner's duplicate certificate of title. They did not have a certified copy of such certificate of title or a co-owner's, a mortgagee's, or a lessee's duplicate of the same. The LRA itself no longer has a copy of the original decree or an authenticated copy of it. Likewise, the Register of Deeds did not have any document of encumbrance on file that shows the description of the property.

The only documentary evidence the Catarrojas could produce as possible sources for the reconstitution of the lost title are those other documents described in paragraph (f). Relying on this, they submitted the following documents:

1. The Microfilm printouts of the Official Gazette dated February 25, 1941, Vol. 39, No. 24, Pages 542-543, showing a notice of hearing in LRC 482, GLRO Record 54798, respecting their

parents' application for registration and confirmation of their title to the subject lots.[11]

2. A certification issued by the LRA dated August 3, 1998, stating that, based on official records, GLRO Record 54798, Cavite, had been issued Decree 749932 on May 21, 1941.[12]

3. A certification from the Register of Deeds of Cavite dated July 3, 1999, stating that it cannot ascertain whether the land covered by Decree 749932 and GLRO Record 54798 had been issued a certificate of title because its titles were arranged numerically and not by lot numbers, location, or names of registered owners. The Register of Deeds also certified that all their records were lost in the June 7, 1959 fire.[13]

4. The Report of the LRA dated February 4, 2002, stating that based on their record book of decrees, Decree 749932 had been issued on May 21, 1941 covering the subject lots under GLRO Record 54798. The report also verified as correct the plans (Psu-111787 and Psu-111788) and technical descriptions of the subject lots and approved under LRA PR-19042 and LRA PR-19043.[14]

5. An Affidavit of Loss dated December 14, 2001, stating that the duplicate certificate of title covering the subject lots had been lost.[15]

This Court has, in *Republic v. Intermediate Appellate Court*,[16] applied the principle of *ejusdem generis* in interpreting Section 2(f) of R.A. 26. "Any other document" refers to reliable documents of the kind described in the preceding enumerations. This Court is not convinced that the above documents of the Catarrojas fall in the same class as those enumerated in paragraphs (a) to (e). None of them proves that a certificate of title had

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11 Exhibit "Q" (inadvertently marked as Exhibit "F"), records, pp. 7-8.

12 Exhibit "R" (inadvertently marked as Exhibit "G"), *id*. at 110.

13 Exhibit "H", *id*. at 10.

14 Exhibit "E", *id*. at 24-25.

15 Exhibit "S" (inadvertently marked as Exhibit "H"), *id*. at 11.

16 241 Phil. 75, 81 (1988).

in fact been issued in the name of their parents. In *Republic v. Tuastumban*,[17] the Court ruled that the documents must come from official sources which recognize the ownership of the owner and his predecessors-in-interest. None of the documents presented in this case fit such description.

Moreover the Catarrojas failed to show that they exerted efforts to look for and avail of the sources in paragraphs (a) to (e) before availing themselves of the sources in paragraph (f). The Court said in *Republic v. Holazo*[18] that the documents referred to in Sec. 2(f) may be resorted to only in the absence of the preceding documents in the list. Only if the petitioner for reconstitution fails to show that he had, in fact, sought to secure such documents and failed to find them, can the presentation of the "other document" as evidence in substitution be allowed.

Further, in *Republic v. Tuastumban*[19] the Court enumerated what needs to be shown before the issuance of an order for reconstitution: (a) that the certificate of title had been lost or destroyed; (b) that the documents presented by petitioner are sufficient and proper to warrant reconstitution of the lost or destroyed certificate of title; (c) that the petitioner is the registered owner of the property or had an interest therein; (d) that the certificate of title was in force at the time it was lost or destroyed; and (e) that the description, area and boundaries of the property are substantially the same as those contained in the lost or destroyed certificate of title.

The microfilm printouts of the Official Gazette are not proof that a certificate of title was in fact issued in the name of the Catarrojas' parents. The publication in the Official Gazette only proved that the couple took the initial step of publishing their claim to the property. There was no showing, however, that the application had been granted and that a certificate of title was issued to them.

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[17] G.R. No. 173210, April 24, 2009.

[18] 480 Phil. 828, 840 (2004).

[19] *Supra* note 17.

Although the LRA's certification and its report confirmed the issuance of a decree, these documents do not sufficiently prove that a title had in fact been issued to the parents of the Catarrojas pursuant to such decree. Indeed, it remains uncertain what kind of decree the land registration court issued in the case. Significantly, Act 496 (the 1903 Land Registration Act) which was then in force recognized two kinds of decrees in land registration proceedings: first, a decree issued under Section 37 that dismisses the application and, second, a decree issued under Section 38 confirming title of ownership and its registration.[20]

SECTION 37. If in any case without adverse claim the court finds that the applicant has no proper title for registration, a decree shall be entered dismissing the application, and such decree may be ordered to be without prejudice x x x.

SECTION 38. If the court after hearing finds that the applicant or adverse claimant has title as stated in his application or adverse claim and proper registration, a decree of confirmation and registration shall be entered x x x.

Absent a clear and convincing proof that an original certificate of title had in fact been issued to their parents in due course, the Catarrojas cannot claim that their predecessors succeeded in acquiring title to the subject lots. The nature of reconstitution of a lost or destroyed certificate of title denotes a restoration of the instrument in its original form and condition. That cannot be done without proof that such certificate of title had once existed. The procedures laid down in R.A. 26 for reconstituting a title have to be strictly followed considering that reconstitution, if made easy, could be the source of anomalous titles. It could also be unscrupulously availed of by some as a convenient substitute for the rigid proceedings involved in original registration of title.[21]

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[20] *Registration of Land Titles and Deeds*, Peña, 1988 Revised Edition, p. 86.

[21] *Ortigas & Co. Ltd. Partnership v. Judge Velasco*, 343 Phil. 115, 136 (1997).

The Court observes that the subject property, supposedly located in Ternate, Cavite, where the naval reservation is found, covers more than 81 hectares of land. It is hardly believable that it has remained untouched by any documented transaction since its supposed titling in May 1941. It is also curious that no photocopy of that title has ever been kept and preserved in some private or public repository.

Parenthetically, the Catarrojas did not present any tax declaration covering such vast piece of property. Although a tax declaration is not a proof of ownership, payment of realty tax is an exercise of ownership over the property and is the payer's unbroken chain of claim of ownership over it. Furthermore, the Catarrojas' procrastination of over five decades before finally seeking reconstitution of title has allowed laches to set in.

Once again, courts must be cautious against hasty and reckless grant of petitions for reconstitution, especially when they involve vast properties as in this case.[22]

WHEREFORE, the Court *GRANTS* the petition, *REVERSES* the amended decision of the Court of Appeals dated February 23, 2006, and *REINSTATES* its decision dated July 12, 2005 in CA-G.R. CV 80401 that denied the petition for reconstitution of title of respondents Apolinario Catarroja, Reynaldo Catarroja, and Rosita Catarroja-Distrito.

SO ORDERED.

Carpio, Brion, Del Castillo, and *Perez, JJ.*, concur.

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[22] *Angat v. Republic*, G.R. No. 175788, June 30, 2009.

SECOND DIVISION

[G.R. Nos. 174599-609. February 12, 2010]

PACIFICO R. CRUZ, *petitioner, vs.* **THE SANDIGANBAYAN (Fourth Division), OFFICE OF THE OMBUDSMAN, OFFICE OF THE SPECIAL PROSECUTOR AND SPECIAL PRESIDENTIAL TASK FORCE 156,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; PRELIMINARY INVESTIGATION; DISREGARDING A PREVIOUS FINDING OF LACK OF PROBABLE CAUSE WITHOUT A HEARING IS A VIOLATION OF THE RIGHT TO DUE PROCESS OF LAW.— Here, after respondent OSP considered the evidence anew at reinvestigation, it ruled that such evidence did not establish probable cause against petitioner Cruz. x x x Respondent OSP, therefore, recommended the dropping of petitioner Cruz's name from the charges already filed in court. And the OMB approved this recommendation. The necessary implication of this is that the OMB had, after reinvestigation, found no probable cause against Cruz. Based on its finding, therefore, the State did not have the right to prosecute him. With this result, it was a matter of duty for respondent OSP to apply with the Sandiganbayan for the withdrawal of the charges against Cruz. And this they did. Respondent Task Force of course filed a motion for reconsideration of the new OMB resolution in the case. But the OMB implicitly denied the same when it nonetheless caused the filing of the motion to drop petitioner Cruz from the charges. The Task Force did not further pursue its remedies to oppose such dropping of charges. Respondent OSP, therefore, acted in violation of petitioner Cruz' right to due process of law when it impulsively and arbitrarily disregarded its previous finding of lack of probable cause without hearing.

2. ID.; JUDGMENTS; *RES JUDICATA*; DOCTRINE OF CONCLUSIVENESS OF JUDGMENT, APPLIED.— In the present case, the OMB charged petitioner Cruz, acting in conspiracy with others, of violating Section 3(e) of Republic

Act 3019 in connection with the transfer of fraudulently issued TCCs to Pilipinas Shell. The main issue in this case is whether or not Cruz, Pilipinas Shell's Treasury head, connived with the officials of the One-Stop Center and others in unlawfully giving, through manifest partiality and bad faith, unwarranted benefits to DKC by processing and approving such transfers to Pilipinas Shell, knowing that DKC, the transferee, had been a dormant company. This Court resolved substantially the same issue in *Pilipinas Shell Petroleum Corporation v. Commissioner of Internal Revenue*. There, the Court categorically found that Pilipinas Shell, represented in its acquisition of the TCCs in question by petitioner Cruz, was a transferee in good faith and for value of those TCCs. This means that neither Pilipinas Shell nor Cruz was a party to the fraudulent issuance and transfer of the TCCs. Indeed, there existed, said the Court, no evidence that Pilipinas Shell was involved in the processing of the One-Stop Center's approval of the transfer of those TCCs to Pilipinas Shell. The parties in the tax case and in the criminal cases are substantially the same. Although it was respondent Task Force that investigated the irregularities in the issuance and transfers of the TCCs, the ultimate complainant in the criminal case—the party that suffered the injury—was the government, represented by the Commissioner of Internal Revenue. The latter also represented the government in the tax case against Pilipinas Shell. Petitioner Cruz, on the other hand, represented Pilipinas Shell in all the transactions in question. In short, the parties in the tax case and in the criminal cases represent substantially identical interests. The principle of *res judicata* through conclusiveness of judgment applies to bar the criminal actions against Cruz.

APPEARANCES OF COUNSEL

Angara Abello Concepcion Regala & Cruz for petitioner.

D E C I S I O N

ABAD, *J.*:

This case is about a public prosecutor's unilateral withdrawal of a motion to drop an accused from the information after a reinvestigation by his office found no probable cause against

such accused and the effect of being relieved of liability in a tax case upon the accused's criminal liability in a related case.

The Facts and the Case

In 2001, acting on reports of irregularities, respondent Special Presidential Task Force 156 (Task Force) investigated the One-Stop Shop Inter-Agency Tax Credit and Duty Drawback Center (the One-Stop Center) of the Department of Finance (DOF). The Task Force found that certain officials of the One-Stop Center had been issuing tax credit certificates (TCCs) to entities that did not earn them through tax overpayments.

According to respondent Task Force, the Diamond Knitting Corporation (DKC), a Board of Investments-registered textile manufacturer, completely shut down its operations in 1993 yet the DOF's One-Stop Center issued to it TCCs totaling ₱131,205,391.00 from 1994 to 1997. DKC in turn sold a number of these TCCs to Pilipinas Shell Petroleum Corporation (Pilipinas Shell) with the approval of the One-Stop Center. Pilipinas Shell then used these TCCs to pay off its excise tax obligations to the Bureau of Internal Revenue (BIR).

Believing that petitioner Pacifico R. Cruz, the General Manager of Pilipinas Shell's Treasury and Taxation Department, was a party to the fraud, respondent Task Force included him in its complaint for plunder[1] against certain officials of DKC and of the One-Stop Center[2] before respondent Office of the Ombudsman (OMB).[3]

On July 25, 2002 respondent OMB dismissed the plunder charge but caused the filing on August 7, 2002 of separate informations[4] for multiple violations of Section 3(e) of the Anti-

[1] *Rollo*, pp. 129-146; docketed as OMB-0-01-0973.

[2] The others are: Antonio P. Belicena, Uldarico P. Andutan, Jr., Faustino T. Chingkoe, Gloria C. Chingkoe, Winston T. Chingkoe, Catalina A. Bautista, Amante F. Ares, Reynato C. Andaya, Celso L. Legarda and Rowena P. Malonzo.

[3] Violation of Republic Act 7080 or the Anti-Plunder Law.

[4] *Rollo*, pp. 149-168.

Graft and Corrupt Practices Act against petitioner Cruz and the others with him.[5] Before being arraigned, however, Cruz sought the reinvestigation of the cases,[6] claiming that he had been unable to seek reconsideration because of the hasty filing of the informations. The Sandiganbayan granted his motion and ordered the OMB to submit a report of its reinvestigation within 60 days.[7]

After reinvestigation, on October 7, 2002 respondent Office of the Special Prosecutor (OSP) submitted a memorandum to the OMB, recommending the dropping of the charges against Cruz[8] for lack of evidence that he supplied the false documents used for processing the transfers to Pilipinas Shell of the subject fraudulently issued TCCs. The OSP found that Cruz could not have known that DKC had long stopped its business operations. Indeed, the OSP had in two similar cases[9] recommended the dropping of charges against Cruz for the same reason. Upon review, the OMB approved respondent OSP's recommendation.

Respondent Task Force sought the reconsideration[10] of respondent OSP's new stand on the case, which Cruz opposed.[11] But the OSP did not resolve the motion. Instead, on November 28, 2002 it filed a motion[12] with the Sandiganbayan, for the dropping of Cruz from the informations. Apparently, however, the Sandiganbayan sat long on this motion and did not act on it.

More than five months later or on May 9, 2003 respondent OSP, acting through Prosecutor Warlito F. Galisanao, filed a

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[5] Docketed as Criminal Case Nos. 27657, 27658, 27677, 27678, 27694, 27695, 27704, 27705, 27715, 27725 and 27736.

[6] *Rollo*, pp. 172-187.

[7] *Id*. at 189.

[8] *Id.* at 196-204.

[9] Criminal Case Nos. 25940-25962, entitled "*People v. Belicena, et al*."

[10] Sandiganbayan records, Vol. II, pp. 133-135.

[11] *Id*. at 136-145.

[12] *Rollo*, pp. 192-194.

motion[13] with the Sandiganbayan to hold in abeyance action on the OSP's motion to drop petitioner Cruz from the charges. At the hearing of the motion on May 15, 2003, when neither Cruz nor his counsel was present, Prosecutor Humphrey T. Monteroso orally moved to withdraw the OSP's motion to drop Cruz from the informations. The Sandiganbayan promptly granted Monteroso's oral motion. Yet, on May 26, 2003 the OSP still filed a motion to withdraw its motion to drop Cruz from the informations. The OSP set its withdrawal motion for hearing on June 4, 2003.[14]

Meanwhile, unaware of the Sandiganbayan's May 15, 2003 order, petitioner Cruz opposed[15] Galisanao's now abandoned motion to defer action on the withdrawal of the criminal charges. On May 30, 2003 Cruz eventually received the Sandiganbayan's May 15, 2003 order[16] that already allowed the withdrawal of respondent OSP's dropping of Cruz from the informations.

On June 16, 2003 petitioner Cruz filed a motion for reconsideration[17] of the Sandiganbayan's May 15, 2003 order on the ground that he had no notice of the hearing set on that date. He also complained of lack of notice respecting the formal withdrawal motion set on June 4, 2003. Cruz also challenged Galisanao and Monteroso's authority to countermand the OMB's approval of the dropping of the charges against him.

The Sandiganbayan gave the prosecution 15 days from June 20, 2003 or until July 5, 2003 within which to comment on petitioner Cruz's motion for reconsideration. It gave the latter the same period of time to file a reply and the prosecution 10 days from receipt of the reply to file its rejoinder.[18] Surprisingly, before the various periods could play out or on July 3, 2003

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13 *Id.* at 223-224.

14 *Id.* at 238-241.

15 *Id.* at 227-237.

16 *Id.* at 91.

17 *Id.* at 243-261.

18 Sandiganbayan records, Vol. II, p. 150.

Cruz received a June 4, 2003 order from the Sandiganbayan, denying Cruz's motion for reconsideration. This prompted him to file a motion seeking clarification but the Sandiganbayan never got to resolve this last motion.

At any rate, on February 10, 2004 the Sandiganbayan required Ombudsman Simeon V. Marcelo to tell the court whether or not he is upholding the action taken by his subordinates.[19] It was Special Prosecutor Dennis M. Villa-Ignacio who affirmed the actions of Galisanao and Monteroso. He said that the prosecutors acted on verbal orders of Ombudsman Marcelo. Apparently, Ombudsman Marcelo later inhibited himself from the TCC cases and designated Villa-Ignacio to act on his behalf.[20]

On July 17, 2006 the Sandiganbayan resolved to deny petitioner Cruz's motion for reconsideration.[21] The court held that Cruz was not entitled to notice since it was the OSP's prerogative to withdraw its earlier motion to drop him from the charges. The Sandiganbayan also pointed out that Cruz ultimately had the opportunity to ventilate his objections since he filed a motion for reconsideration of the court's order granting the withdrawal. Consequently, any defect in earlier proceedings had been cured. As to Galisanao and Monteroso's lack of authority to act the way they did, the court ruled that the Special Prosecutor eventually affirmed their acts. Unsatisfied, Cruz filed the present petition for *certiorari* under Rule 65.

Meanwhile, on December 21, 2007, this Court rendered judgment in *Pilipinas Shell Petroleum Corporation v. Commissioner of Internal Revenue*.[22] The BIR assessed deficiency income taxes against Pilipinas Shell, given that it used for payment the fraudulently issued TCCs subject of this case. This Court nullified the assessment, finding that Pilipinas Shell was a transferee in good faith and for value and may thus

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[19] *Id.* at 222-223.

[20] *Rollo*, pp. 306-308 and 310-311.

[21] *Id.* at 95-99.

[22] G.R. No. 172598, December 21, 2007, 541 SCRA 316.

not be unjustly prejudiced by the transferor's fraud committed in procuring the transfer of those TCCs.

Petitioner Cruz filed a manifestation invoking the Court's ruling in the above tax case as *res judicata* with respect to his alleged criminal liabilities relating to the subject TCCs.

The Issues Presented

Petitioner Cruz presents the following issues:

1. Whether or not the Sandiganbayan gravely abused its discretion in allowing respondent OSP to withdraw its earlier motion to drop petitioner Cruz from the criminal informations even after the OMB had approved such withdrawal on ground of lack of probable cause; and

2. Whether or not the findings of the Court in *Pilipinas Shell Petroleum Corporation v. Commissioner of Internal Revenue* that Pilipinas Shell was a transferee in good faith and for value of the TCCs in question bar the prosecution of Cruz in the criminal cases subject of this petition.

The Rulings of the Court

FIRST. The Sandiganbayan pointed out that it was respondent OSP's prerogative, as public prosecutor, to withdraw the earlier motion it filed for the dropping of the charges against petitioner Cruz. Giving him notice of such motion, said the Sandiganbayan, was therefore not indispensable.

But respondent OSP did not ask the Sandiganbayan to drop petitioner Cruz from the charges filed in court out of pure whim or simply because the OSP changed its mind regarding his case. On motion of Cruz and upon orders of the Sandiganbayan, the OSP conducted a reinvestigation of the case. By its nature, a reinvestigation is nothing more than a continuation of the OMB's duty to conduct a preliminary investigation for the purpose of determining probable cause against a person charged with an offense falling under its jurisdiction.

Here, after respondent OSP considered the evidence anew at reinvestigation, it ruled that such evidence did not establish

probable cause against petitioner Cruz. Said the OSP in its October 7, 2002 memorandum to the OMB:

Upon re-evaluation, a close scrutiny of the records revealed that the evidences at hand will not be sufficient to justify the inclusion of movant [Cruz] as one of the accused/co-conspirators in the above captioned cases. There is no evidence on record that movant has knowledge, consent nor participation in the preparation and submission of the falsified documents purportedly showing deliveries by PSPC to DKC of large volume of oil products and which documents were used as supporting documents in the processing for the transfer of subject TCCs from DKC to PSPC.

More so the allegations of movant appeared to have remained unrebutted during the entire proceedings in the Preliminary Investigation stage and as a matter of fact evidences (encashed checks and vouchers) later on gathered and attached by the Task Force 156 in their motion dated September 4, 2002 bolstered the position of herein movant. Said documents clearly showed that PSPC acquired subject TCCs thru purchase with ten (10%) discount and not with alleged supply of oil/fuel products.[23]

Respondent OSP, therefore, recommended the dropping of petitioner Cruz' name from the charges already filed in court. And the OMB approved this recommendation. The necessary implication of this is that the OMB had, after reinvestigation, found no probable cause against Cruz. Based on its finding, therefore, the State did not have the right to prosecute him. With this result, it was a matter of duty for respondent OSP to apply with the Sandiganbayan for the withdrawal of the charges against Cruz. And this they did.

Respondent Task Force of course filed a motion for reconsideration of the new OMB resolution in the case. But the OMB implicitly denied the same when it nonetheless caused the filing of the motion to drop petitioner Cruz from the charges. The Task Force did not further pursue its remedies to oppose such dropping of charges. Respondent OSP, therefore, acted in violation of petitioner Cruz' right to due process of law when

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[23] *Rollo*, p. 199.

it impulsively and arbitrarily disregarded its previous finding of lack of probable cause without hearing.

And respondent OSP did not even pretend that it found new evidence that established Cruz' guilt. It offered no excuse for its turnabout. For its part, the Sandiganbayan did not bother to require the OSP to present a new finding with the OMB's approval that overruled, after appropriate hearing, the previous determination of lack of probable cause that they made.

Apparently, the Sandiganbayan forgot that, in ordering the reinvestigation of the charges against petitioner Cruz, it effectively acknowledged that he had not been accorded his full right to a preliminary investigation. And so it ordered a reinvestigation. Of course, the Sandiganbayan had, after the informations were filed with it, the discretion to assess the evidence on its own and determine what to do with the case before it.[24] But the fact is that it opted to let the OMB conduct a reinvestigation, a power that the latter had.

As it happened, the OMB found after reinvestigation that no probable cause existed against petitioner Cruz. Under the circumstances, this entitled Cruz to the dismissal of the charges against him. Unfortunately, acting with grave abuse of discretion, the Sandiganbayan ignored Cruz' right to such a dismissal. It simply allowed respondent OSP to withdraw its motion to drop Cruz from those charges even if the OSP made no claim that the state of evidence had changed after it submitted its memorandum.

SECOND. Having reached the above conclusion, the Court would ordinarily be satisfied with annulling the Sandiganbayan's ruling that granted respondent OSP's motion to withdraw its application for the dropping of petitioner Cruz from the charges. And, as a result, the Court would then just direct the Sandiganbayan to pass upon the merits of the OSP's move to drop Cruz.

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[24] *Santos v. Orda, Jr.*, 481 Phil. 93, 107 (2004).

But this Court's recent ruling in *Pilipinas Shell Petroleum Corporation v. Commissioner of Internal Revenue*[25] – that Pilipinas Shell, of which petitioner Cruz was the responsible officer, was a transferee in good faith and for value of the same TCCs subject of the criminal cases—raises the issue of whether or not such ruling bars the prosecution of Cruz in the criminal cases subject of this petition.

The *res judicata* rule bars the re-litigation of facts or issues that have once been settled by a court of law upon a final judgment on the merits. Section 47 (b) and (c) of Rule 39 of the Rules of Court establishes two rules:

> (a) a judgment on the merits by a court of competent jurisdiction bars the parties and their privies from bringing a new action or suit involving the same cause of action before either the same or any other tribunal; and
>
> (b) any right, fact or matter directly adjudged or necessarily involved in the determination of an action before a competent court that renders judgment on the merits is conclusively settled and cannot be litigated again between the parties and their privies, regardless of whether the claims, purposes or subject matters of the two suits are the same.

The first is commonly referred to as "bar by former judgment"; the second as "conclusiveness of judgment." It is the second that is relevant to this case.

Conclusiveness of judgment or *auter action pendent* ordains that issues actually and directly resolved in a former suit cannot be raised anew in any future case involving the same parties although for a different cause of action. Where the rule applies, there must be identity of issues but not necessarily identity in causes of action.[26]

In the present case, the OMB charged petitioner Cruz, acting in conspiracy with others, of violating Section 3(e) of Republic

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[25] *Supra* note 22.

[26] *Presidential Commission on Good Government v. Sandiganbayan*, G.R. No. 157592, October 17, 2008, 569 SCRA 360, 372-373.

Act 3019 in connection with the transfer of fraudulently issued TCCs to Pilipinas Shell.[27] The main issue in this case is whether or not Cruz, Pilipinas Shell's Treasury head, connived with the officials of the One-Stop Center and others in unlawfully giving, through manifest partiality and bad faith, unwarranted benefits to DKC by processing and approving such transfers to Pilipinas Shell, knowing that DKC, the transferee, had been a dormant company.

This Court resolved substantially the same issue in *Pilipinas Shell Petroleum Corporation v. Commissioner of Internal Revenue*.[28] There, the Court categorically found that Pilipinas

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[27] Except for the dates of commission of the offense, tax credit certificate numbers and corresponding face values, as well as amount of oil deliveries, the eleven (11) informations uniformly allege:

"That on or about x x x, in the City of Manila, Philippines, and within the jurisdiction of this Honorable Court, accused ANTONIO P. BELICENA, former Assistant Secretary, Revenue Operation Group, Department of Finance, and as such was authorized to sign and approve Tax Credit Certificates issued by the One-Stop Shop Tax Credit and Duty Drawback Center (CENTER), ULDARICO P. ANDUTAN, Jr., former Deputy Executive Director of the CENTER, and ROWENA P. MALONZO, Tax Specialist of the Center, taking advantage of their position and while in the performance of their function as such, conspiring and confederating with one another and with accused WINSTON T. CHINGKOE, GLORIA C. CHINGKOE, FAUSTINO T. CHINGKOE, CATALINA A. BAUTISTA, AMANTE F. ARES and REYNATO C. ANDAYA, and the Pilipinas Shell Petroleum Corporation, represented by PACIFICO R. CRUZ, through manifest partiality and evident bad faith, by processing, evaluating, and/or recommending the approval of the transfer/conveyance or disposition of Tax Credit Certificate No. x x x with face value in the amount of x x x from Diamond Knitting Industries, Inc. to Pilipinas Shell Petroleum Corporation as a consideration for the delivery of the latter of x x x liters of industrial oil used in the manufacture and production of textile, as in fact the transfer of the credit certificate was approved, when in truth and in fact, the accused knew fully well that there were no oil deliveries considering that Diamond Knitting could not have possibly received said oil deliveries from Shell and had no use of petroleum products on account of its (Diamond Knitting) closure by the Pollution Adjudication Board of the Department of Environment and Natural Resources for its failure to comply with the environmental requirements imposed by law as early as February 1993."

[28] *Supra* note 22.

Shell, represented in its acquisition of the TCCs in question by petitioner Cruz, was a transferee in good faith and for value of those TCCs. This means that neither Pilipinas Shell nor Cruz was a party to the fraudulent issuance and transfer of the TCCs. Indeed, there existed, said the Court, no evidence that Pilipinas Shell was involved in the processing of the One-Stop Center's approval of the transfer of those TCCs to Pilipinas Shell.

The parties in the tax case and in the criminal cases are substantially the same. Although it was respondent Task Force that investigated the irregularities in the issuance and transfers of the TCCs, the ultimate complainant in the criminal case—the party that suffered the injury—was the government, represented by the Commissioner of Internal Revenue. The latter also represented the government in the tax case against Pilipinas Shell. Petitioner Cruz, on the other hand, represented Pilipinas Shell in all the transactions in question. In short, the parties in the tax case and in the criminal cases represent substantially identical interests. The principle of *res judicata* through conclusiveness of judgment applies to bar the criminal actions against Cruz.

WHEREFORE, the Court *GRANTS* the petition and *DIRECTS* the Sandiganbayan Fourth Division to *DISMISS* Criminal Cases 27657, 27658, 27677, 27678, 27694, 27695, 27704, 27705, 27715, 27725 and 27736 against petitioner Pacifico R. Cruz.

SO ORDERED.

Carpio, Brion, Del Castillo, and *Perez, JJ.*, concur.

SECOND DIVISION

[G.R. No. 180945. February 12, 2010]

PHILIPPINE NATIONAL BANK, AS THE ATTORNEY-IN-FACT OF OPAL PORTFOLIO INVESTMENTS (SPV-AMC), INC., *petitioner, vs.* **MERCEDES CORPUZ, REPRESENTED BY HER ATTORNEY-IN-FACT VALENTINA CORPUZ,** *respondent.*

SYLLABUS

1. CIVIL LAW; MORTGAGE; A MORTGAGEE-BANK IS EXPECTED TO BE MORE CAUTIOUS IN DEALING WITH LANDS AS SECURITY FOR THE MORTGAGE BEFORE APPROVING LOANS.— As a rule, the Court would not expect a mortgagee to conduct an exhaustive investigation of the history of the mortgagor's title before he extends a loan. But petitioner PNB is not an ordinary mortgagee; it is a bank. Banks are expected to be more cautious than ordinary individuals in dealing with lands, even registered ones, since the business of banks is imbued with public interest. It is of judicial notice that the standard practice for banks before approving a loan is to send a staff to the property offered as collateral and verify the genuineness of the title to determine the real owner or owners.

2. ID.; ID.; ID.; CIRCUMSTANCES NEGATING THE BANK'S CLAIM AS AN INNOCENT MORTGAGEE; CASE AT BAR.— One of the CA's findings in this case is that in the course of its verification, petitioner PNB was informed of the previous TCTs covering the subject property. And the PNB has not categorically contested this finding. It is evident from the faces of those titles that the ownership of the land changed from Corpuz to Bondoc, from Bondoc to the Palaganases, and from the Palaganases to the Songcuans in less than three months and mortgaged to PNB within four months of the last transfer. The above information in turn should have driven the PNB to look at the deeds of sale involved. It would have then discovered that the property was sold for ridiculously low prices: Corpuz supposedly sold it to Bondoc for just ₱50,000.00; Bondoc to the Palaganases for just ₱15,000.00; and the Palaganases to the Songcuans also for just ₱50,000.00. Yet the PNB gave

the property an appraised value of ₱781,760.00. Anyone who deliberately ignores a significant fact that would create suspicion in an otherwise reasonable person cannot be considered as an innocent mortgagee for value.

APPEARANCES OF COUNSEL

Chief Legal Counsel (PNB) for petitioner.
Albino V. Gonzales for respondent.

D E C I S I O N

ABAD, *J.*:

This case is about the need for a mortgagee-bank, faced with suspicious layers of transfers involving a property presented for mortgage, to exercise proper diligence in ascertaining the *bona fide* status of those transfers.

The Facts and the Case

On October 4, 1974 respondent Mercedes Corpuz delivered her owner's duplicate copy of Transfer Certificate of Title (TCT) 32815 to Dagupan City Rural Bank as security against any liability she might incur as its cashier. She later left her job and went to the United States.

On October 24, 1994 the rural bank where she worked cancelled its lien on Corpuz's title, she having incurred no liability to her employer. Without Corpuz's knowledge and consent, however, Natividad Alano, the rural bank's manager, turned over Corpuz's title to Julita Camacho and Amparo Callejo.

Conniving with someone from the assessor's office, Alano, Camacho, and Callejo prepared a falsified deed of sale, making it appear that on February 23, 1995 Corpuz sold her land to one "Mary Bondoc" for ₱50,000.00. They caused the registration of the deed of sale, resulting in the cancellation of TCT 32815 and the issuance of TCT 63262 in Bondoc's name. About a month later or on March 27, 1995 the trio executed another fictitious deed of sale with "Mary Bondoc" selling the property to the spouses

Rufo and Teresa Palaganas for only ₱15,000.00. This sale resulted in the issuance of TCT 63466 in favor of the Palaganases.

Nine days later or on April 5, 1995 the Palaganases executed a deed of sale in favor of spouses Virgilio and Elena Songcuan for ₱50,000.00, resulting in the issuance of TCT 63528. Finally, four months later or on August 10, 1995 the Songcuans took out a loan of ₱1.1 million from petitioner Philippine National Bank (PNB) and, to secure payment, they executed a real estate mortgage on their title. Before granting the loan, the PNB had the title verified and the property inspected.

On November 20, 1995 respondent Corpuz filed, through an attorney-in-fact, a complaint before the Dagupan Regional Trial Court (RTC) against Mary Bondoc, the Palaganases, the Songcuans, and petitioner PNB, asking for the annulment of the layers of deeds of sale covering the land, the cancellation of TCTs 63262, 63466, and 63528, and the reinstatement of TCT 32815 in her name.

On June 29, 1998 the RTC rendered a decision granting respondent Corpuz' prayers. This prompted petitioner PNB to appeal to the Court of Appeals (CA). On July 31, 2007 the CA affirmed the decision of the RTC and denied the motion for its reconsideration, prompting PNB to take recourse to this Court.

The Issue Presented

The sole issue presented in this case is whether or not petitioner PNB is a mortgagee in good faith, entitling it to its lien on the title to the property in dispute.

The Ruling of the Court

Petitioner PNB points out that, since it did a credit investigation, inspected the property, and verified the clean status of the title before giving out the loan to the Songcuans, it should be regarded as a mortgagee in good faith. PNB claims that the precautions it took constitute sufficient compliance with the due diligence required of banks when dealing with registered lands.

As a rule, the Court would not expect a mortgagee to conduct an exhaustive investigation of the history of the mortgagor's title

before he extends a loan.[1] But petitioner PNB is not an ordinary mortgagee; it is a bank.[2] Banks are expected to be more cautious than ordinary individuals in dealing with lands, even registered ones, since the business of banks is imbued with public interest.[3] It is of judicial notice that the standard practice for banks before approving a loan is to send a staff to the property offered as collateral and verify the genuineness of the title to determine the real owner or owners.[4]

One of the CA's findings in this case is that in the course of its verification, petitioner PNB was informed of the previous TCTs covering the subject property.[5] And the PNB has not categorically contested this finding. It is evident from the faces of those titles that the ownership of the land changed from Corpuz to Bondoc, from Bondoc to the Palaganases, and from the Palaganases to the Songcuans in less than three months and mortgaged to PNB within four months of the last transfer.

The above information in turn should have driven the PNB to look at the deeds of sale involved.It would have then discovered that the property was sold for ridiculously low prices: Corpuz supposedly sold it to Bondoc for just ₱50,000.00; Bondoc to the Palaganases for just ₱15,000.00; and the Palaganases to the Songcuans also for just ₱50,000.00. Yet the PNB gave the property an appraised value of ₱781,760.00. Anyone who deliberately ignores a significant fact that would create suspicion in an otherwise reasonable person cannot be considered as an innocent mortgagee for value.[6]

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[1] *Development Bank of the Philippines v. Court of Appeals*, 387 Phil. 283, 302 (2000).

[2] *Cruz v. Bancom Finance Corporation (now Union Bank of the Philippines)*, 429 Phil. 225, 239 (2002).

[3] *Heirs of Manlapat v. Court of Appeals*, 498 Phil. 453, 473 (2005).

[4] *Cavite Development Bank v. Spouses Lim*, 381 Phil. 355, 368-369 (2000), citing *Spouses Tomas v. Philippine National Bank*, 187 Phil. 183, 187 (1980).

[5] *Rollo*, p. 23.

[6] *Development Bank of the Philippines v. Court of Appeals, supra* note 1, at 303.

The Court finds no reason to reverse the CA decision.

WHEREFORE, the Court *DENIES* the petition and *AFFIRMS* the decision of the Court of Appeals dated July 31, 2007 and its resolution dated December 17, 2007 in CA-G.R. CV 60616.

SO ORDERED.

Carpio (Chairperson), Brion, Del Castillo, and *Perez, JJ.*, concur.

EN BANC

[G.R. No. 190156. February 12, 2010]

LEONOR DANGAN-CORRAL, *petitioner, vs.* **COMMISSION ON ELECTIONS and ERNESTO ENERO FERNANDEZ,** *respondents.*

SYLLABUS

1. POLITICAL LAW; ELECTIONS; RULES OF PROCEDURE IN ELECTION CONTESTS; THE REQUIREMENT AS TO THE CONTENTS OF THE DECISION IN AN ELECTION CONTEST IS MANDATORY.— Notably, the word "must" is used in [Section 2 (d), Rule 14], thus, clearly indicating the mandatory — not merely directory — nature of the requirement of what the decision should contain. The specific rules on the contents of decisions in election contests were formulated so that the decision could, by itself, be taken as a valuable aid in expeditiously deciding on appeal incidents peripheral to the main case.

2. ID.; ID.; ID.; ID.; A CLEAR SHOWING OF THE PROTESTANT'S VICTORY AND PROTESTEE'S DEFEAT IS AN ESSENTIAL REQUISITE IN AN ELECTION CONTEST DECISION; CASE AT BAR.— For the limited purpose of determining whether the essential requisite of a clear showing in the decision of

the protestant's victory and the protestee's defeat is present, we have examined the RTC Decision subject of the present case. It is glaring and unmistakable that the said Decision does not conform to the requirements set forth in Section 2 of the Rules. It does not give the specifics of its findings. The general statement invalidating 67% of the total votes cast on the ground that the ballots were written by one person or written by two persons is grossly infirm. The Decision does not specify why the court considered particular groups of ballots to have been written by one person, and other invalidated ballots to have been written by two persons. Worse, the Decision does not state which and how many ballots were written by one person; and which and how many ballots were written by two persons. The entire Decision, even the lengthy part enumerating the exhibits offered by each party, fails to yield the exact number of and which ballots were written by one person, and the exact number of and which ballots were written by two persons. There is also no mention in the decision of whether or not the RTC took into consideration the entries of the Minutes of Voting and Counting relative to illiterate or disabled voters, if any, who cast their votes through assistors. x x x In the present case, the victory of the protestant and the defeat of the protestee were not clearly established in the Decision because of the RTC's failure to conform to the prescribed form of the Decision. Because of said infirmity, there is no certainty, it not being mentioned in the Decision, on whether the ballots of those who voted through assistors were also invalidated or not, in conjunction with the lack of a specific number of ballots invalidated for being written by one person. The ballots of those who voted through assistors, if any, could validly be written by one person. It being unclear from the Decision whether these ballots, if any, were invalidated, it follows that the victory of the protestant and defeat of the protestee are unclear and not manifest therein.

APPEARANCES OF COUNSEL

Brillantes Navarro Jumamil Arcilla Escolin Martinez & Vivero Law Offices for petitioner.

The Solicitor General for public respondent.

George Erwin Garcia for private respondent.

D E C I S I O N

DEL CASTILLO, *J.*:

Does the allowance of execution pending appeal of a Decision of a Regional Trial Court (RTC) in an election protest case constitute grave abuse of discretion amounting to lack or excess of jurisdiction when the said RTC Decision does not contain the specific matters required by the Rules of Procedure in Election Contests? This is the question directly involved in the present case.

In the present Petition for *Certiorari*, petitioner assails the December 17, 2008 and November 10, 2009 Resolutions of the Commission on Elections (Comelec) in Comelec Special Relief Case, SPR No. 51-2008 dismissing petitioner's petition for *certiorari* and denying her motion for reconsideration, respectively.The Comelec found that the RTC substantially complied with the rules on execution pending appeal and did not gravely abuse its discretion amounting to lack or excess of jurisdiction.

Antecedents

Petitioner Leonor Dangan-Corral (Corral) and private respondent Ernesto Enero Fernandez (Fernandez) were candidates for the position of mayor of the Municipality of El Nido, Palawan during the May 14, 2007 elections. Corral was eventually proclaimed the winner with 5,113 votes as against Fernandez's 3,807. The latter, thereafter, filed an election protest docketed as Special Proceedings Case No. 1870 which was raffled to Branch 95 of the RTC of Puerto Princesa City, Palawan.

Ruling of the Regional Trial Court

On February 22, 2008, the RTC promulgated its Decision,[1] the dispositive portion of which reads:

> WHEREFORE, premises considered, the Court rules that, in view of the invalidation of the ballots judicially declared as written by one (1) or two (2) persons, the Protestant is hereby declared the duly elected Mayor of El Nido, Palawan by a vote of 1,701, x x x

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[1] *Rollo*, pp. 88-124; penned by Judge Bievenido C. Blancaflor.

winning over protestee whose final tally of votes after above deduction is 1,236 votes, the Protestant winning by a margin of 465 votes.[2]

On the same day that the decision was promulgated, Corral filed her formal Notice of Appeal simultaneously paying the required amount of docket/appeal fees. Fernandez, on the other hand, filed a Motion for Execution Pending Appeal and set the same for hearing on February 27, 2008.

On the said date of hearing, Corral filed her written opposition to the motion; nevertheless, the hearing was held. After the hearing, the RTC judge issued the Order[3] granting the motion for execution of his Decision pending its appeal. The dispositive part of the Order states:

> WHEREFORE, premises considered, in view of the circumstances cited above surrounding the execution of the above questioned ballots, there exists a cloud of doubt on the earlier pronouncement of the Board of Election Canvassers declaring Protestee as winner of the election contest and should not continue in office as Protestee has no mandate of the people of El Nido at this point in time and in lieu thereof, the Court hereby GRANTS the execution pending appeal of its Decision dated February 22, 2008.
>
> IT IS SO ORDERED.[4]

On March 5, 2008, Corral filed a Motion for Reconsideration of the said Order, but the motion was denied. Thus, Corral filed on March 12, 2008 a petition for *certiorari* before the Comelec imputing grave abuse of discretion to the RTC for granting Fernandez' motion for execution pending appeal despite the absence of good and special reasons or superior circumstances as expressly required by existing rules.

Ruling of the Comelec First Division

The Comelec First Division issued a 60-day Temporary Restraining Order (TRO) on March 26, 2008 enjoining the enforcement and implementation of the February 27, 2008 Order

[2] *Id.* at 124.

[3] *Id.* at 144-146.

[4] *Id.* at 146.

of the RTC. Thereafter, as the TRO was about to expire, it issued an order dated May 22, 2008 granting the preliminary injunction prayed for by the petitioner. Then on December 17, 2008, it resolved the petition and issued the assailed Resolution, the dispositive portion of which states:

> WHEREFORE, premises considered, the instant petition for *certiorari* is hereby DISMISSED. The orders of the respondent court dated February 27, 2008 and March 7, 2008 are consequently affirmed.
>
> SO ORDERED.[5]

Ruling of the Comelec En Banc

Petitioner moved for a reconsideration before the Comelec *En Banc* which resolved the matter on November 10, 2009 as follows:

> WHEREFORE, premises considered, the Commission *en banc* RESOVLED (sic), as it hereby RESOLVES, to:
>
> 1. DISMISS petitioner LEONOR DANGAN-CORRAL'S Motion for Reconsideration for lack of merit;
>
> 2. AFFIRM the dismissal of the herein Petition by the First Division of this Commission, hereby giving way to the implementation of the execution pending appeal issued by the court *a quo* in favor of private respondent Ernesto Enero Fernandez, and hereby ordering petitioner Leonor Dangan-Corral to vacate the position of Municipal Mayor of El Nido, Province of Palawan; and the Electoral Contests Adjudication Department is hereby directed to furnish the Department of Interior and Local Government a copy of this Resolution for proper implementation;
>
> 3. DENY public respondent RTC Judge Bienvenido Blancaflor's motion to dismiss (addressed to his own court) the charge of contempt filed against him, and instead, he is hereby found GUILTY of CONTEMPT OF THIS COMMISSION and sentenced to pay a fine in the amount of ONE THOUSAND (₱1,000.00) PESOS;
>
> 4. DIRECT private respondent Ernesto Enero Fernandez to explain within ten (10) days from receipt of this Resolution why he should not be cited for contempt of this Commission for assuming the herein controverted position of Municipal Mayor of El Nido, Province of

[5] *Id.* at 64.

Palawan, while the Writ of Preliminary Injunction earlier issued was still in full force and effect.

SO ORDERED.[6]

Issues

Hence, this petition, which alleges palpable grave abuse of discretion, to wit:

The respondent Comelec committed not only a reversible error but gravely abused its discretion when it ignored the mandatory requirements of the SUPREME COURT duly promulgated Rule on the matter of FORM of Decision of trial court in protest cases.

The respondent Comelec likewise committed grave abuse of discretion when it disregarded the mandatory requirements of the SUPREME COURT duly promulgated Rule, specifically Rule 14, Section 11 of the Rules of Procedure in Election Contests Before the Courts Involving Elective Municipal and Barangay Officials by simplistically relying on the dispositive portion of the decision of the trial court and refusing to examine the substantial portion of the said grossly defective trial court decision so as to determine whether the victory of the protestant and the defeat of protestee was clearly established.

The respondent Comelec committed grave abuse of discretion when it sustained the validity of the Special Order granting private respondent's Motion for Execution Pending Appeal notwithstanding the clear absence of the requisite two [2] good reasons to support such grant.

The respondent Comelec committed grave abuse of discretion when it stubbornly insisted on merely applying in this case the general principles of *Certiorari* Petitions and refused to apply and correlate therewith the provisions of the New Rules on Protest Cases Applicable to the Trial Courts most especially on the subject of Execution Pending Appeal.

In sum, the issue is whether the Comelec gravely abused its discretion amounting to lack or excess of jurisdiction in affirming the execution pending appeal of the decision of the RTC.

Petitioner's Arguments

Petitioner contends that the RTC Decision sought to be executed pending appeal violates the mandatory required form

[6] *Id.* at 86-87.

of decisions in election cases and thus should not be executed. She further contends that the determination of whether the victory of the protestant was clearly established should be made from the entire decision and not, as what the Comelec did, merely from the dispositive portion. She insists that the RTC Decision readily shows the inconclusive, defective and infirmed nature of protestant's alleged victory. Petitioner also posits that there was no valid or good reason given for granting the execution pending appeal. She also contends that the Comelec refused to apply the new rules on protest cases and is thus guilty of grave abuse of discretion.

Private Respondent's Arguments

On the other hand, Fernandez contends that the Decision of the RTC is well grounded based on the evidence presented and it clearly establishes his victory over Corral by a margin of 465 votes. Fernandez also contends that there are good reasons to allow execution pending appeal, like giving substance to the voice of the people of El Nido. Hence, he maintains that the decision may properly be the subject of a writ of execution pending appeal.

Our Ruling

There are clear cut requirements on when RTC decisions may be executed pending appeal. Rule 14 of the Rules of Procedure in Election Contests states:

> Sec. 11. *Execution pending appeal*. — On motion of the prevailing party with notice to the adverse party, the court, while still in possession of the original records, may, at its discretion, order the execution of the decision in an election contest before the expiration of the period to appeal, subject to the following rules:
>
> (a) There must be a motion by the prevailing party with three-day notice to the adverse party. Execution pending appeal shall not issue without prior notice and hearing. There must be good reasons for the execution pending appeal. The court, in a special order, must state the good or special reasons justifying the execution pending appeal. Such reasons **must**:
>
> (1) constitute superior circumstances demanding urgency that will outweigh the injury or damage should the losing party secure a reversal of the judgment on appeal; and

(2) **be manifest, in the decision sought to be executed, that the defeat of the protestee or the victory of the protestant has been clearly established**.

(b) If the court grants an execution pending appeal, an aggrieved party shall have twenty working days from notice of the special order within which to secure a restraining order or status quo order from the Supreme Court or the Commission on Elections. The corresponding writ of execution shall issue after twenty days, if no restraining order or status quo order is issued. During such period, the writ of execution pending appeal shall be stayed. (Emphasis supplied)

A valid exercise of discretion to allow execution pending appeal requires that it must be manifest in the decision sought to be executed that the defeat of the protestee and the victory of the protestant have been clearly established.[7] The Rules of Procedure in Election Contests now embody this doctrine, which the Comelec has in the past[8] given value to and used in resolving cases before it, and which has formed part of our jurisprudence.

We have taken to heart the need to decide election contests with dispatch; hence, we promulgated A.M. No. 07-4-15-SC[9] to address the matter. Noteworthy is the fact that particular attention has been given to the decision itself in election contests. For comparison, in the Rules of Court, Section 1 of Rule 36 merely states: "A judgment or final order determining the merits of the case shall be in writing personally and directly prepared by the judge, stating clearly and distinctly the facts and the law on which it is based, signed by him, and filed with the clerk of court." In the Rules of Procedure in Election Contests, however, Section 2 of Rule 14 states:

Section 2. *Form of decision in election protests*.—After termination of the revision of ballots and before rendering its decision

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[7] *Pecson v. Commission on Elections*, G.R. No. 182856, December 24, 2008, 575 SCRA 634, 649.

[8] *Fermo v. Commission on Elections*, 384 Phil. 584, 592 (2000); *Istarul v. Commission on Elections*, G.R. No. 170702, June 16, 2006, 491 SCRA 300, 309.

[9] Rules of Procedure in Election Contests Before the Courts Involving Elective Municipal and Barangay Officials (Rules of Procedure in Election Contests).

in an election protest that involved such revision, the court shall examine and appreciate the original ballots. The court, in its appreciation of the ballots and in rendering rulings on objections and claims to ballots of the parties, shall observe the following rules:

(a) On Marked Ballots— The court must specify the entries in the ballots that clearly indicate that the intention of the voter is to identify the ballot. The specific markings in the ballots must be illustrated or indicated;

(b) On Fake or Spurious Ballots— The court must specify the COMELEC security markings that are not found in the ballots that are considered fake or spurious;

(c) On Stray Ballots— The court must specify and state in detail why the ballots are considered stray;

(d) On Pair or Group of Ballots Written by One or Individual Ballots Written by Two— When ballots are invalidated on the ground of written by one person, the court must clearly and distinctly specify **why** the pair or group of ballots has been written by only one person. The specific strokes, figures or letters indicating that the ballots have been written by one person **must** be specified. **A simple ruling that a pair or group of ballots has been written by one person would not suffice**. **The same is true when ballots are excluded on the ground of having been written by two persons**. The court must likewise take into consideration the entries of the Minutes of Voting and Counting relative to illiterate or disabled voters, if any, who cast their votes through assistors, in determining the validity of the ballots found to be written by one person, whether the ballots are in pairs or in groups; and

(e) On Claimed Ballots— The court must specify the exact basis for admitting or crediting claimed votes to either party. (Emphasis supplied)

Notably, the word "must" is used in the above-quoted rule, thus, clearly indicating the mandatory — not merely directory — nature of the requirement of what the decision should contain. The specific rules on the contents of decisions in election contests were formulated so that the decision could, by itself, be taken as a valuable aid in expeditiously deciding on appeal incidents peripheral to the main case. In the present case, the contents of the decision become particularly relevant and useful in light of the need to decide the case before us with utmost dispatch,

based only on the documents submitted before us, considering that the records and election materials are with another tribunal, as a matter of course.

For the limited purpose of determining whether the essential requisite of a clear showing in the decision of the protestant's victory and the protestee's defeat is present, we have examined the RTC Decision subject of the present case. It is glaring and unmistakable that the said Decision does not conform to the requirements set forth in Section 2 of the Rules. It does not give the specifics of its findings. The general statement invalidating 67% of the total votes cast on the ground that the ballots were written by one person or written by two persons is grossly infirm. The Decision does not specify why the court considered particular groups of ballots to have been written by one person, and other invalidated ballots to have been written by two persons. Worse, the Decision does not state which and how many ballots were written by one person; and which and how many ballots were written by two persons. The entire Decision, even the lengthy part enumerating the exhibits offered by each party, fails to yield the exact number of and which ballots were written by one person, and the exact number of and which ballots were written by two persons. There is also no mention in the decision of whether or not the RTC took into consideration the entries of the Minutes of Voting and Counting relative to illiterate or disabled voters, if any, who cast their votes through assistors. The Decision merely states that "[a] careful and cursory examination of these ballots indubitably shows that these ballots are written either by one (1) or two (2) persons, given the palpable similarity in the handwritings indicated in these ballots earlier declared by Protestant's revisors as written by one (1) and two (2) persons."[10] It utterly violates the mandatory requirement that "the court must clearly and distinctly specify why the pair or group of ballots has been written by only one person. The specific figures or letters indicating that the ballots have been written by one person must be specified."

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[10] RTC Decision, p. 37; *rollo*, p. 124.

In the present case, the victory of the protestant and the defeat of the protestee were not clearly established in the Decision because of the RTC's failure to conform to the prescribed form of the Decision. Because of said infirmity, there is no certainty, it not being mentioned in the Decision, on whether the ballots of those who voted through assistors were also invalidated or not, in conjunction with the lack of a specific number of ballots invalidated for being written by one person. The ballots of those who voted through assistors, if any, could validly be written by one person. It being unclear from the Decision whether these ballots, if any, were invalidated, it follows that the victory of the protestant and defeat of the protestee are unclear and not manifest therein.

Consequently, to allow the execution of such a grossly infirm RTC Decision in disregard of established jurisprudence and clear and straightforward rules is arbitrary and whimsical and constitutes grave abuse of discretion amounting to lack or excess of jurisdiction.[11]

Considering that the execution pending appeal cannot be validly allowed without the above discussed requisite, and having already found the presence of grave abuse of discretion, we find no necessity of addressing the other matters raised by the petitioner and of still determining the presence or absence of the other requisites for execution pending appeal.

WHEREFORE, the petition is *GRANTED.* The December 17, 2008 Resolution of the First Division of the Commission on Elections and November 10, 2009 Resolution of the Commission on Elections *En Banc* in Special Relief Case, SPR No. 51-2008 are declared *NULL* and *VOID.*

SO ORDERED.

Puno, C.J., Carpio, Corona, Carpio Morales, Velasco, Jr., Nachura, Leonardo-de Castro. Brion, Peralta, Bersamin, Abad, Villarama, Jr., Perez, and *Mendoza, JJ.,* concur.

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[11] *Information Technology Foundation of the Philippines v. Commission on Elections,* 464 Phil. 173, 323 (2004).

THIRD DIVISION

[A.M. No. P-09-2721. February 16, 2010]
(Formerly A.M. No. 09-9-162-MCTC)

REPORT ON THE FINANCIAL AUDIT CONDUCTED ON THE BOOKS OF ACCOUNTS OF THE MUNICIPAL CIRCUIT TRIAL COURT, MONDRAGON-SAN ROQUE, NORTHERN SAMAR.

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; COURT PERSONNEL; DELAY IN THE DEPOSIT OF JUDICIARY COLLECTIONS AND NON-SUBMISSION OF MONTHLY REPORTS, COMMITTED.— Gimena explained that it had become his practice to deposit or remit the cash collections whenever he would make his monthly report. His express admission that he had been negligent in submitting the monthly report which, consequently, resulted in the delay in remitting the JDF and SAJF does not warrant his exculpation from administrative liability. Likewise, his defenses that he had not used the subject funds for his personal benefit and that he had already deposited the said amounts do not work in his favor. His subsequent restitution of the amount did not alter the fact that he was remiss in the discharge of his duties. Suffice it to state that circulars of the Court must be strictly complied with to protect the safekeeping of funds and collections and to establish full accountability of government funds. Shortages in the amounts to be remitted and the years of delay in the actual remittance constitute gross neglect of duty for which the Clerk of Court shall be administratively liable, gross dishonesty, gross misconduct, and even malversation of public funds. As pointed out by the OCA, the ₱75,000.00 collected from election protest cases was part of the ₱150,000.00 he collected in November 2007, which he kept in his personal possession for almost one year (*should be* more than one year) and, thus, posed the danger of being lost or malversed and of depriving the court of interest income. The failure to remit on time judiciary collections deprives the court of interest that

"mistaken belief that the ₱75,000.00 FF need not be deposited or remitted since it was the source for all expenses in case of revision as provided by the Rules of Procedure in Election Contest" would not constitute valid excuse. Unfamiliarity with procedures will not exempt him from liability. As Clerk of Court II, Gimeno is expected to keep abreast of all applicable laws, jurisprudence and administrative circulars pertinent to his office. As custodian of court funds and revenues, Clerks of Court have always been reminded of their duty to immediately deposit the various funds received by them to the authorized government depositories, for they are not supposed to keep funds in their custody. The Court finds Gimena guilty of two (2) offenses, *i.e.*, delay in the deposit of collections and non-submission of monthly reports of collections, deposits and withdrawals in violation of Administrative Circular No. 3-2000 x x x and OCA Circular No. 113-2004.

2. ID.; ID.; ID.; ID.; PENALTY AFTER CONSIDERING MITIGATING CIRCUMSTANCES.— Jurisprudence abounds that delayed remittance of cash collections by the clerk of court or cash clerk constitutes gross neglect of duty on which is imposed the supreme penalty of dismissal. Hence, the imposable penalty upon Gimena should be dismissal from the service. However, since he pleaded that he had not malversed any of the amounts collected for his personal benefit and had subsequently remitted the subject amounts, as shown by the attached disbursement vouchers and acknowledgment receipts, that no outstanding accountabilities, these can be taken as mitigating circumstances that warrant the imposition of the lower penalty of suspension of one (1) month without pay. This is in line with Section 53 of Rule IV (Penalties) of the Uniform Rules on Administrative Cases in the Civil Service and some decided cases wherein therein respondents subsequently fully remitted all collections.

D E C I S I O N

PERALTA, *J.*:

This administrative matter arose from the financial audit conducted by the Financial Audit Team on the books of accounts of Pompeyo G. Gimena, Clerk of Court II of Municipal Circuit Trial Court (MCTC), Mondragon-San Roque, Northern Samar,

covering the period from July 1, 1985 to March 31, 2009, to verify whether the amounts collected were correctly and completely recorded in the books and, thereafter, deposited in the Land Bank of the Philippines (LBP) within the prescribed period.

In the Memorandum[1] for the Court Administrator, the audit team made the following observation and evaluation. Thus,

Based on the available documents presented to the audit team, the following are our significant findings and observations:

l. Cash Count on April 15, 2009 disclosed a shortage of ₱40.00 as shown below:

Denominations	**Quantity**	**Amount**
₱1,000.00	55	₱55,000.00
500.00	48	24,000.00
200.00	42	8,400.00
100.00	72	7,200.00
50.00	2	100.00
Total		**₱94,700.00**
SUMMARY OF CASH COUNT ON APRIL 15, 2009		
Total Undeposited Collections		₱94,740.00
Total Cash Items		₱94,700.00
Balance of Accountability		**₱ 40.00**

The cash presented were for the undeposited collections of the following accounts:

Name of Fund	**Date**	**OR No.**	**Amount**
JDF[Judiciary Development Fund]	Aug. 20, 2008 to April14, 2009	6936764 to 6800; 6851 to 6950; 6937051 to 7100; 7151 to 7167	₱ 6,133.00
SAJF[Special Allowance for the Judiciary Fund]	Aug.20, 2008 to April 14, 2009	6936830 to 6850; 6501 to 6550; 6937001 to 7150; 7201 to 7216	₱12,607.00

[1] Dated September 16, 2009, pp. 2-11, which was addressed to then Court Administrator Jose P. Perez, now a Member of this Court.

MF [Mediation Fund]	Mar. 26 to April 11, 2009	6936953 to 6954	1,000.00
FF[Fiduciary Fund]		2716963	25,000.00
		2716959	25,000.00
		2716964	25,000.00
Total			₱94,740.00

Aside from the shortage of ₱40.00 during cash count, Mr. Pompeyo G. Gimena did not deposit on time the collections on Fiduciary Fund, Special Allowance for the Judiciary Fund, Judiciary Development Fund and Mediation Fund with the authorized depository bank, the Land Bank of the Philippines, pursuant to the guidelines set forth in Circular No. 50-95 dated October 11, 1995 and Administrative Circular No. 35-2004 dated August 20, 2004, respectively.

The cash on hand representing undeposited collections from August 20, 2008 to April 14, 2009 are enumerated in detail for each fund and its corresponding number of months/days of delayed in the remittance to the respective accounts.

For the Judiciary Development Fund:

Date of Collections	O.R. Number	Amount	Period of Delay
Aug. 20 to 31, 2008	6936764 to 6785	₱308.00	7 months & 15 days
September 2008	6786 to 6800 & 6851	249.00	6 months & 15 days
October 2008	6852 to 6871	1,314.00	5 months & 15 days
November 2008		318.00	5 months & 15 days
December 2008		900.00	4 months & 15 days
January 2009		450.00	3 months & 15 days
February 2009		896.00	2 months & 15 days
March 2009		1,208.00	1 month & 15 days
April 2009		490.00	
Total		₱6,133.00	

For the Special Allowance for the Judiciary Fund:

Date of Collections	OR Number	Amount	Period of Delay
Aug 20 to 27, 2008	6936830 to 6835		
September 2008	6836 to 6850 & 6936501 to 6502	₱592.00	7 months & 15 days
October 2008	6503 to 6521	1,086.00	5 months & 15 days
November 2008	6522 to 6532	682.00	5 months & 15 days
December 2008	6533 to 6550 & 6937001 to 7004	2,115.00	4 months & 15 days
January 2009	7005 to 7034	1,050.00	3 months & 15 days
February 2009	7035 to 7050 & 7101 to 7122	2,104.00	2 months & 15 days
March 2009	7123 to 7150	2,992.00	1 months (sic) & 15 days
April 1 to 14, 2009	6937201 to 7216	1,510.00	
		₱12,607.00	

For the Fiduciary Fund:

Date of Collections	O.R. Number	Amount	Period of Delay
11/8/2007	2716963	₱25,000.00	1 year, 4 months & 15 days
11/8/2007	2716959	25,000.00	1 year, 4 months & 15 days
11/16/2007	2716964	25,000.00	1 year, 4 months & 15 days

On April 27, 2009, Mr. Pompeyo G. Gimena submitted his explanation to the delayed remittance of undeposited collections of cash on hand totaling to ₱94,700.00. According to him, it is his practice to deposit/remit the cash collections whenever he makes his monthly reports. He admitted that he was negligent in making the report on time, resulting in the delay of remittance of Judiciary Development Fund and Special Allowance for the Judiciary Fund collections. He also opted not to deposit the cash bond collections of election protest collection to the Municipal Treasurer's Office (MTO) for reason that it is the source of all expenses in case of

revision as provided by the Rules of Procedures in Election Contest (Annex "B").

We find the explanation of Mr. Gimena on his failure to deposit to the MTO the cash collections amounting to ₱75,000.00 in election protest cases and the JDF and SAJF collections unmeritorious. He kept the cash collections in election protest cases in his personal possession for almost one year. The ₱75,000.00 collections in election protest cases were part of the ₱150,000.00 he collected in November 2007. The other half ₱75,000.00 was deposited in November 2007 to the MTO under MTO OR Nos. 1230960 to 962 as shown in the attached photocopy of the Certificate of Deposits issued by the MTO (Annex "C").

The undeposited collections of cash on hand could have earned interest to the JDF/SAJF had he not kept the amount in his personal possession. He is allowed to purchase Postal Money Orders (PMOs) from the Local Post Office payable to the Chief Accountant, Accounting Division, FMO-OCA for the JDF and SAJF collections or the nearest Land Bank situated in Catarman, Northern Samar which is approximately fifteen kilometers away from the court.

On April 15, 2009 the Team advised Mr. Gimena to deposit the amount of ₱12,607.00 to the Special Allowance for the Judiciary Fund as provided for under Sec. 21 (g) of the Amended Administrative Circular No. 35-2004 which he complied on that day. Furthermore, he was advised to deposit ₱6,133.00 and ₱75,000.00 to the JDF account & Fiduciary Fund, respectively, which he complied also on the same day (Annexes "D" & "E").

II. INVENTORY OF USED AND UNUSED OFFICIAL RECEIPTS:

All two hundred thirty (230) booklets of Accountable Forms No. 51 (Official Receipts) requisitioned by the court from the Property Division, OCA were fully accounted for.

There were fifteen (15) booklets and one hundred forty five (145) pieces of official receipts which remained unused as of April 15, 2009, to wit:

Name of Accountable Form	Inclusive Serial Numbers	Quantity
Unallocated	6937251 to 8000	15 booklets
JDF	6937168 to 7200	33 pieces
SAJF	6937217 to 7250	34 pieces

FF	2716969 to 7000	32 pieces
MF	6936955 to 7000	46 pieces
Total		**15 booklets and 145 pieces**

Hereunder are the audit computations for each judiciary fund based on the available documents presented to the team:

III. For the JUDICIARY DEVELOPMENT FUND (JDF):

There was a total cash shortage of **Nine Thousand One Hundred Sixty One (₱9,161.00),** which was restituted on April 21, 2009 (Annex "F").

Total Collections (July 1, 1985 to March 31, 2009)	₱337,044.60
Less: Total Remittance (same period)	328,025.15
Balance of Accountability – Shortage	₱ 9,019.45
Less: Restitution on April 21, 2009	9,161.00
Over-remittance	**(₱141.55)**

The shortage was due to under-remittance of collections of the following period:

Period	Collection	Deposit	Short/(Over)
1985 to 1996	₱33,431.00	₱32,015.00	₱1,416.00
1997 to 2001	85,932.00	82,665.00	3,267.00
2002 to 2004	124,269.60	122,010.40	2,259.20
2005 to 2006	54,990.00	52,442.25	2,547.75
2007 to March 2009	38,422.00	38,892.50	(470.50)
Total	**₱337,044.60**	**₱328,025.15**	**₱9,019.45**

IV. For the SPECIAL ALLOWANCE FOR THE JUDICIARY FUND (SAJF):

There was a total cash shortage of **Two Thousand One Hundred Twenty One & 50/100 (₱2,121.50),** which was restituted on April 21, 2009 (Annex "G").

SCOPE OF AUDIT – November 11, 2003 to March 31, 2009

Total Collections (Nov. 11, 2003 to March 31, 2009)	₱157,791.30
Less: Total Remittance (same Period)	155,669.80
Balance of Accountability – shortage	₱ 2,121.50
Less: Restitution on April 21, 2009	2,121.50
Balance of Accountability	**₱ 0.00**

The shortage was due to under-remittance of collections of the following period:

Period	Collection	Deposit	Short/(Over)
2004	₱11,319.90	₱ 1,150.60	₱10,169.30
2005	59,038.90	50,618.50	8,420.40
2006	33,000.50	26,570.40	6,430.10
2007	28,464.50	30,348.00	1,883.50
2008	19,821.50	35,710.30	(15,888.80)
2009	6,146.00	11,272.00	(5,126.00)
Total	**₱157,791.30**	**₱155,669.80**	**₱2,121.50**

V. For the MEDIATION FUND (MF)

There was a total cash shortage of **Five Hundred Pesos (₱500.00),** which was restituted on April 15, 2009.

Total Collections	₱1,500.00
Less: Total Remittance	1,000.00
Balance of Accountability – shortage	500.00
Less: Payments on April 15, 2009	500.00
Balance of Accountability	**₱ 0.00**

The shortage was due to under-remittance of March 2009 collections.

VI. For the CLERK OF COURT GENERAL FUND (COCGF)

The Clerk of Court did not assess or collect General Fund from start of collection up to December 31, 2003. All legal fees were receipted and deposited to the Judiciary Development Fund, a violation of Administrative Circular 3-2000, Re: Guidelines in the allocation of the legal fees collected under Rule 141 of the Rules of Court, as amended, between the General Fund and the Judiciary Development Fund.

VII. For the FIDUCIARY FUND (FF)

There was a total shortage of Four Thousand Pesos (₱4,000.00) which was due to undocumented withdrawals in Criminal Case No. 8526 under Official Receipt Number 19043196. Thus, Mr. Pompeyo paid ₱4,000.00 on July 13, 2009, because he could not locate the bondsman to acknowledge receipt of the withdrawn cash bond nor the records for the said withdrawal, computed below:

Collections	₱393,310.00
Less: Withdrawals	197,000.0
Bal. of Unwithdrawn Fiduciary Fund as of March 31, 2009	196,310.00
Less: Certification of deposits issued by the MTO-Mondragon	192,310.00
Balance of Accountability	4,000.00
Less: Deposit on 7/13/09 under LBP SA No. 1191-1324-47	4,000.00
Balance of Accountability	**0.00**

Mr. Pompeyo G. Gimena failed to deposit the cash collections in election protest cases amounting to ₱75,000.00 to the Land Bank of the Philippines, Catarman Branch or to the Municipal Treasurer's Office. This is a direct violation of Section A(2) of OCA Circular No. 50-95, which provides that cash collections accruing to the FF shall be deposited in the name of the court with its Clerk of Court and the Executive Judge/Presiding Judge as authorized signatories. The court opened a savings account only on July 7, 2009, with an initial deposit of Fifteen Thousand Pesos (₱15,000.00) under SA No. 1191-1324-47.

He also failed to remit his collections of the JDF and SAJF on time, as shown below:

SCHEDULE 1:

Date of Collections	Date Deposited	Amount	Period of Delay
October 2007	August 20, 2008	₱210.00	10 months
November 2007	August 20, 2008	11,975.00	9 months
December 2007	August 20, 2008	531.00	8 months
January 2008	August 20, 2008	3,087.00	7 months
February 2008	August 20, 2008	510.00	6 months
March 2008	August 20, 2008	708.00	5 months
April 2008	August 20, 2008	804.00	4 months
May 2008	August 20, 2008	717.00	3 months
June 2008	August 20, 2008	210.00	2 months
July 2008	August 20, 2008	749.50	1 months(sic)
Total		₱19,501.50	

SCHEDULE 2:

Date of Collections	Date Deposited	Amount	Period of Delay
July 2004	June 23, 2006	₱317.30	1 year & 11 months
August 2004	June 23, 2006	154.00	1 year & 10 months

September 2004	June 23, 2006	1,596.90	1 year & 9 months
October 2004	June 23, 2006	725.50	1 year & 8 months
November 2004	June 23, 2006	3,968.10	1 year & 7 months
December 2004	June 23, 2006	3,541.50	1 year & 6 months
February 2005	November 10, 2005	4,709.00	9 months
March 2005	November 10, 2005	3,866.50	8 months
April 2005	November 10, 2005	7,758.30	7 months
May 2005	November 10, 2005	5,912.50	6 months
June 2005	November 10, 2005	8,921.50	5 months
July 2005	November 10, 2005	8,733.00	4 months
August 2005	November 10, 2005	6,825.00	3 months
September 2005	November 10, 2005	3,893.00	2 months
January 2006	June 23, 2006	2,918.50	5months
February 2006	June 23, 2006	5,640.00	4 months
March 2006	June 23, 2006	1,534.00	3 months
April 2006	June 23, 2006	3,932.00	2 months
July 2006	March 23, 2007	2,324.50	8 months
August 2006	March 23, 2007	1,782.00	7 months
September 2006	March 23, 2007	4,332.00	6 months
October 2006	March 23, 2007	3,373.50	5 months
November 2006	March 23, 2007	2,269.00	4 months
December 2006	March 23, 2007	1,612.50	3 months
March 2007	September 13, 2007	3,878.00	6 months
April 2007	September 13, 2007	1,861.50	5 months
May 2007	September 13, 2007	1,993.00	4 months
June 2007	September 13, 2007	805.00	3 months
July 2007	September 13, 2007	2,700.00	2 months
Total		**[₱101,877.60]**	

Aside from the fact that the collections from the Judiciary Development Fund, Special Allowance for the Judiciary Fund and cash collections in election protest cases were not remitted on time (Schedules 1 & 2), the Team found that Mr. Pompeyo violated Administrative Circular No. 3-2000, dated June 15, 2000, which states that the aggregate total of the deposit slips for any particular month should always be equal to and tally with the total collections for that month as reflected in the Monthly Report of Collections and Deposits and Cash Book. He violated Section A(2) of Circular No. 50-95, whereby all Clerks of Court of the lower courts are directed to deposit all collections from bailbonds, rental deposits and other fiduciary collections within twenty-four (24) hours by the Clerk of Court concerned, upon receipt thereof, following the same guidelines laid down in Circular No. 13-19 dated March 1,

1992, with the Land Bank of the Philippines, the authorized government depository bank for the Judiciary. Clerks of Court are not authorized to keep their collections in their custody. He also violated OCA Circular No. 113-2004, the guidelines and procedures in the submission of monthly reports of collections, and deposits to the Accounting Division, Financial Management office, Office of the Court Administrator because of his failure to submit the monthly reports of collections, deposits and withdrawals.

In keeping the cash on hand for almost a year in the personal possession of Mr. Gimena, it exposes the risk of being lost or malversed and deprived the court of interest income, if collections were deposited on time in the bank.

x x x x x x x x x

Indeed, Mr. Gimena had been remiss in the performance of his duties as Clerk of Court. However, since Mr. Gimena had already been relieved as accountable officer and he had restituted the shortages in his collection and deposited the cash on hand immediately upon advice by the Team, we find that a penalty of suspension without pay and a fine should (sic) imposed for the infractions committed.

Furthermore, the withholding of Mr. Gimena's salaries was due to his failure to submit monthly reports of collections, deposits and withdrawals to the Financial Management Office, OCA, despite warnings and follow-up communications. Considering that the audit on the books of accounts of Mr. Gimena has been finalized, his withheld salaries can now be released.

In view of the foregoing, we respectfully recommended that:

A. This report be docketed as an administrative complaint against Mr. Pompeyo G. Gimena, incumbent Clerk of Court of MCTC, Mondragon-San Roque, Northern Samar for the delay in the deposit of collections and non submission of monthly reports of collections, deposits and withdrawals in violation of Administrative Circular No. 3-2000 and OCA Circular 113-2004 dated June 15, 2000 and September 16, 2004, respectively;

B. Ms. Pompeyo G. Gimena be **SUSPENDED** for **one (1) month without pay** and **FINED** in the amount of **FIVE THOUSAND PESOS** (₱5,000.00) for delay in the deposit of collections exposing to the risk of being malversed and depriving the Court of interest income

with a **STERN WARNING** that similar act will be dealt with more severely in the future;

C. The withheld salaries and allowances of Mr. Pompeyo G. Gimena, Clerk of Court II of MCTC, Mondragon-San Roque, be released for humanitarian consideration;

D. Ms. Nila A. Tuballas, incumbent Officer-in-Charge/ Stenographer, MCTC, Mondragon-San Roque, Northern Samar be **DIRECTED** to:

1. Effectively exercise control and supervision over the court personnel especially those in charge with the collection/ deposits/withdrawals and recording of all court funds, and submission of monthly reports; and

2. Keep herself abreast/updated with the court issuance & strictly comply with the provisions there of, particularly on the proper handling of judiciary funds; and

E. Presiding Judge Emerenciana O. Manook be **DIRECTED** to **MONITOR** the Officer-in Charge, Ms. Nila A. Tuballas to ensure strict compliance with the circulars on the proper handling of judiciary funds and adhere strictly to the issuance of the Court to avoid repetition the same offenses committed as enumerated above.

In its Memorandum for the Chief Justice dated September 16, 2009, the Office of the Court Administrator (OCA) adopted *in toto* the recommendation of the audit team.

On January 10, 2007, the Fiscal Management Office (FMO) - OCA again requested authority from the Chief Justice to withhold the salaries of Gimena for non-submission of monthly reports of collections, deposits and withdrawals despite due notices of the following accounts, to wit:

Accounts	**Period**
Special Allowance for Judiciary Fund	April 2004 to February 28, 2007
Judiciary Development Fund	February 2004, July 2004 to February 2007
Fiduciary Fund	None

Gimena complied in September 2007; however, his salaries were not released despite submission of the compliance as

regards the above accounts because again, he failed to submit the succeeding monthly reports of collections and deposits from March 1, 2007 to March 31, 2009.

In a letter dated April 27, 2009 addressed to the Team Leader of the Fiscal Monitoring Division, Court Management Office (CMO)-OCA, Gimena justified the delay of his remittance with the following explanation:

> It has become my practice to deposit/remit my cash collections whenever I make my monthly report. I have been lately negligent in making this report on time resulting in the delay of my remittance of the JDF and the SA[J]F. Rest assured, however, that I have not used any of said amount for my personal benefit and as of today, I have already remitted/deposited all amount according to your audit and reconciliation of my book of accounts. The corresponding disbursement vouchers and acknowledgment receipts are all hereto attached.
>
> As to the amount of ₱75,000.00 (FF), the same has already been deposited with the Office of the Municipal Treasurer, LGU-Mondragon, Northern Samar. I was mistaken in my belief that it need not be deposited/remitted since it was the source for all expenses in case of revision as provided by the Rules of Procedure in Election Contest.
>
> Wherefore, I beg the indulgence of your Honorable Office and I commit myself to make my monthly report on time and that all these mistakes will not happen again.

On May 25, 2009, the newly designated Presiding Judge Emerenciana O. Manook relieved Gimena as accountable officer and designated Stenographer Nila A. Tuballas as Officer-in-Charge. Thus,

> Effective as of this date, collection of money accruing to this Court shall be transferred from Mr. Pompeyo G. Gimena, Clerk of Court, to Mrs. Nila a. Tuballas, Stenographer, who shall accept, sign for and keep in her custody the money which must be deposited immediately to the depository Bank on a daily basis, weekly basis, or monthly basis. Mrs. Tuballas is further instructed to submit a written daily report of cash payment made to the Court.[2]

[2] Annex "A" of the Memorandum for the Court Administrator dated September 16, 2009.

The Court agrees with the findings of the OCA that Gimena is administratively liable, but modifies its recommended penalty.

Administrative Circular No. 3-2000, dated June 15, 2000, emphasized the responsibility of the Clerks of Court, Officer-in-Charge, or Accountable Officers to adhere to the proper procedure in handling court funds as follows:

ADMINISTRATIVE CIRCULAR NO. 3-2000

TO: THE COURT OF APPEALS, SANDIGANBAYAN, COURT OF TAX APPEALS, REGIONAL TRIAL COURTS, METROPOLITAN TRIAL COURTS, MUNICIPAL TRIAL COURTS IN CITIES, MUNICIPAL TRIAL COURTS, MUNICIPAL CIRCUIT TRIAL COURTS, SHARI'A DISTRICT COURTS AND SHARI'A CIRCUIT COURTS

SUBJECT: RE: GUIDELINES IN THE ALLOCATION OF THE LEGAL FEES COLLECTED UNDER RULE 141 OF THE RULES OF COURT, AS AMENDED, BETWEEN THE GENERAL FUND AND THE JUDICIARY DEVELOPMENT FUND.

x x x x x x x x x

II. PROCEDURAL GUIDELINES

A. Judiciary Development Fund.

1. Duty of the Clerks of Court, Officer-in-Charge or Accountable Officers. The Clerks of Court, Officers-in-Charge of the Office of the Clerk of Court, or their accountable duly authorized representatives designated by them in writing, who must be accountable officers, shall receive the Judiciary Development Fund collections, issue the proper receipt therefor, maintain a separate cash book properly marked CASH BOOK FOR JUDICIARY DEVELOPMENT FUND, deposit such collections in the manner herein prescribed, and render the proper Monthly Report of Collections and Deposits for said Fund.

2. Depository Bank for the Fund. – The amounts accruing to the Fund shall be deposited for the account of the Judiciary Development Fund, Supreme Court, Manila by the Clerks of Court, Officer-in-Charge, of the Office of the Clerk of Court in an authorized government depository bank. The income or interest earned shall likewise form part of the Fund. For this purpose, the depository

bank for the Fund shall be the LAND BANK OF THE PHILIPPINES (LBP) or its branches. In the absence of a LBP Branch, Postal Money Order (PMOs) payable to the Chief Account, SC (OCA) can be purchased from the Local Post Office and sent to the latter for deposit to the JDF Savings Account.

In cases of remittances through PMOs, Clerks of Courts/ Accountable Officers are directed to check the entries on the PMO as to (a) date (staled PMOs should not be remitted); (b) amount in words and figures; and (c) signature of the Postmaster, to avoid inconveniences.

3. Systems and Procedures. –

x x x x x x x x x

c. In the RTC, MeTC, MTCC, MTC, MCTC, SDC and SCC. – The daily collections for the Fund in these courts shall be deposited everyday with the nearest LBP branch for the account of the Judiciary Development Fund, Supreme Court, Manila – SAVINGS ACCOUNT No. 0591-0116-34 or if depositing daily is not possible, deposits for the Fund shall be at the end of every month, provided, however, that whenever collections for the Fund reach ₱500.00, the same shall be deposited immediately even before the period above-indicated.

x x x x x x x x x

d. Rendition of Monthly Report. – Separate "Monthly Report of Collections and Deposits" shall be regularly prepared for the Judiciary Development Fund which shall be submitted to the Chief Accountant, FMO, OCA, copy furnished the FMBO, Supreme Court, the Fiscal Monitoring Division within ten (10) days after the end of every month. Duplicate copies of the official receipts issued during such month covered and validated copy of the Deposit Slips, should likewise be submitted. Deposit Slips that are not machine validated shall not be considered as deposits.

The aggregate total of the Deposit Slips for any particular month should always be equal to and tally with the total collections for that month as reflected in the Monthly Report of Collections and Deposits, and Cash Book.

x x x x x x x x x

B. General Fund (GF)

(1) Duty of the Clerks of Court, Officer-in-Charge or Accountable Officers. – The Clerks of Court, Officers-in-Charge of the office of the Clerk of Court, or their accountable duly authorized representatives designated by them in writing, who must be accountable officers, shall receive the General Fund collections, issue the proper receipt therefor, maintain a separate cash book properly marked CASH BOOK FOR CLERK OF COURT'S GENERAL FUND AND SHERIFF'S GENERAL FUND, deposit such collection in the manner herein prescribed, and render the proper Monthly Report of Collections and Deposits for said Fund.

(2) Depository Bank of the GF.— The amounts accruing to the Fund shall be deposited for the account of the General Fund, Bureau of Treasury, by the Clerks of Court, Officers-in-Charge of the Office of the Clerk of Court in the authorized government depository bank. For this purpose, the depository bank for the GF shall be the LAND BANK OF THE PHILIPPINES (LBP) or its branches. In the absence of a LBP Branch, Postal Money Orders (PMO's) payable to the Chief Accountant, SC (OCA) can be purchased from the Local Post Office and sent to the Chief Accountant, SC (OCA) for deposit to the Bureau of Treasury.

The aggregate total of the Deposit Slips for any particular month should always be equal to and tally tally (sic) with the total collections for that month as reflected in the Monthly Report of Collections and Deposits, and the Cash Bank.

x x x x x x x x x

Strict observance of this rules and regulations in hereby enjoined. The Clerks of Court, Officer-in-Charge shall exercise close supervision over their respective duly authorized representatives to ensure strict compliance herewith and shall be held administratively accountable for failure to do so. Failure to comply with any of these rules and regulations shall mean the withholding of the salaries and allowances of those concerned until compliance thereof is duly affected, pursuant to Section 122 of P.D. No. 1445 dated June 11, 1978, without prejudice to such further disciplinary action the Court may take against them.

June 15, 2000.

(Signed)

HILARIO G. DAVIDE, JR.
Chief Justice

In OCA Circular No. 113-2004 dated September 16, 2004 (effective October 1, 2004), the guidelines for the uniform submission of Monthly Reports of Collections and Deposits by Clerks of Courts have been outlined as follows:

OCA CIRCULAR NO. 113-2004

TO: ALL CLERKS OF COURT OF THE REGIONAL TRIAL COURTS (RTC), SHARI'A DISTRICT COURTS (SDC), METROPOLITAN TRIAL COURTS (MeTC), MUNICIPAL TRIAL COURT IN CITIES (MTCC), MUNICIPAL CIRCUIT TRIAL COURTS (MCTC), MUNICIPAL TRIAL COURTS (MTC), AND SHARI'A CIRCUIT COURTS (SCC)

SUBJECT: SUBMISSION OF MONTHLY REPORTS OF COLLECTIONS AND DEPOSITS

The following guidelines and procedures are hereby established for purposes of uniformity in the submission of Monthly Reports of Collections and Deposits, to wit:

1. The Monthly Reports of Collections and Deposits for the Judiciary Development Fund (JDF), Special Allowance for the Judiciary (SAJ) and Fiduciary Fund (FF) shall be:

1.1. Certified correct by the Clerk of Court
1.2. Duly subscribed and sworn to before the Executive/ Presiding Judge
1.3. Sent not later than the 10th day of each succeeding month to –

The Chief Accountant
Accounting Division
Financial Management Office
Office of the Court Administrator
Supreme Court of the Philippines
Taft Avenue, Ermita
Manila

2. The following documents shall be attached to the reports:
A. For Judiciary Development Fund (JDF)
a. Duplicate copies of the official receipts issued
b. Machine validated deposit slips, if collections are remitted/deposited with the Land Bank of the Philippines (LBP), or Postal Money Order (PMO), if collections are remitted through PMO.

B. For Special Allowance for the Judiciary (SAJ)

a. Duplicate copies of the official receipts issued

b. Machine validated deposit slips, if collections are remitted/deposited with the LBP, or PMO, if collections are remitted through PMO

C. For Fiduciary Fund (FF)

a. Duplicate copies of the official receipts issued

b. Machine validated deposit slips, if collections are deposited with the LBP, or certified true copies of the official receipts issued by the Provincial/City/Municipal Treasurer, if collections are deposited with the Treasurer's Office.

c. In case of withdrawal:

c.1. Copy of the Court Order

c.2. Original Official Receipt (OR) or certified true copy of OR

c.3. Duplicate or certified true copy of withdrawal slip and disbursement voucher if collections are deposited in a savings account with the LBP, or a copy of the check and disbursement voucher if collections are deposited in a current account with the LBP, or disbursement voucher, if collections are deposited with the PTO/CTO/MTO

c.3.3 Copy of the acknowledgment receipt

3. In case no transaction is made within the month, written notice thereof shall be submitted to the aforesaid Office not later than the 10th day of the succeeding month.

Henceforth, all Clerks of Court shall only submit monthly reports for the three (3) funds, namely: JDF, SAF, and FF.

The former Special Allowance for Justices and Judges (SAJJ) shall be now described as Special Allowance for the Judiciary (SAJ).

Circular No. 44-2000 is hereby revoked.

This Circular shall be effective beginning 01 October 2004.

16 September 2004.

(Signed)
PRESBITERO J. VELASCO, JR.[3]
Court Administrator

[3] Now a Member of this Court.

During the examination of the books of accounts of MCTC, Mondragon-San Roque, the Financial Audit Team called the attention of Gimeno with regard to the shortage of ₱40.00 during the cash count on April 15, 2009 and his failure to timely deposit the court collections in the total amount of ₱94,740.00, specifically on the following: JDF in the amount of ₱6,133.00 (from August 20, 2008 to April 14, 2009); SAJF in the amount of ₱12,607.00 (from August 20, 2008 to April 14, 2009); MF in the amount of ₱1,000.00 (from March 26 to April 11, 2009); and FF in the amounts of ₱25,000.00 + ₱25,000.00 + ₱25,000.00 or a total of ₱75,000.00 (November 8 and 16, 2007).

In his letter dated April 27, 2009, Gimena explained that it had become his practice to deposit or remit the cash collections whenever he would make his monthly report. His express admission that he had been negligent in submitting the monthly report which, consequently, resulted in the delay in remitting the JDF and SAJF does not warrant his exculpation from administrative liability. Likewise, his defenses that he had not used the subject funds for his personal benefit and that he had already deposited the said amounts do not work in his favor. His subsequent restitution of the amount did not alter the fact that he was remiss in the discharge of his duties. Suffice it to state that circulars of the Court must be strictly complied with to protect the safekeeping of funds and collections and to establish full accountability of government funds.[4] Shortages in the amounts to be remitted and the years of delay in the actual remittance constitute gross neglect of duty for which the Clerk of Court shall be administratively liable,[5] gross dishonesty, gross

[4] *Re: Report of Acting Presiding Judge Wilfredo F. Herico on Missing Cash Bonds in Criminal Case Nos. 750 and 812, A.M. No. 00-3-108-RTC*, January 28, 2005, 449 SCRA 407.

[5] *Soria v. Oliveros*, A.M. No. P-00-1372, May 16, 2005, 458 SCRA 410; *Office of the Court Administrator v. Besa*, A.M. No. P-02-1551, September 11, 2002, 388 SCRA 558; *Re: Audit Conducted on the Books of Accounts of Former Clerk of Court Mr. Wenceslao P. Tinoy, MCTC, Talakag, Bukidnon*, A.M. No. 02-5-111-MCTC, August 7, 2002, 386 SCRA 459; *Re: Financial Audit Conducted on the Books of Accounts of Clerk of Court Pacita T. Sendin, MTC, Solano, Nueva Vizcaya,* A.M. No. 01-4-119-MTC, January 16, 2002, 373 SCRA 351.

misconduct,[6] and even malversation of public funds.[7] As pointed out by the OCA, the ₱75,000.00 collected from election protest cases was part of the ₱150,000.00 he collected in November 2007, which he kept in his personal possession for almost one year (*should be* more than one year) and, thus, posed the danger of being lost or malversed and of depriving the court of interest income. The failure to remit judiciary collections on time deprives the court of interest that may be earned if the amounts are deposited in a bank.[8] His "mistaken belief that the ₱75,000.00 FF need not be deposited or remitted since it was the source for all expenses in case of revision as provided by the Rules of Procedure in Election Contest" would not constitute valid excuse. Unfamiliarity with procedures will not exempt him from liability. As Clerk of Court II, Gimeno is expected to keep abreast with all applicable laws, jurisprudence and administrative circulars pertinent to his office. As custodian of court funds and revenues, Clerks of Court have always been reminded of their duty to immediately deposit the various funds received by them to the authorized government depositories, for they are not supposed to keep funds in their custody.[9]

The Court finds Gimena guilty of two (2) offenses, *i.e.*, delay in the deposit of collections and non-submission of monthly reports of collections, deposits and withdrawals in violation of Administrative Circular No. 3-2000 (dated June 15, 2000) and OCA Circular No. 113-2004 (September 16, 2004). The OCA recommended two penalties for the said offenses, albeit in the

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[6] *Report on the Financial Audit Conducted on the Books of Accounts of Mr. Agerco P. Balles, MTCC-OCC, Tacloban City*, A.M. No. P-05-2065, April 2, 2009, 583 SCRA 50.

[7] *Muin v. Avestruz, Jr.*, A.M. No. P-04-1831, February 2, 2009, 578 SCRA 1; *Office of the Court Administrator v. Fortaleza*, A.M. No. P-01-1524, July 29, 2002, 385 SCRA 293.

[8] *Sollesta v. Mission*, A.M. No. P-03-1755, April 29, 2005, 457 SCRA 519; *Office of the Court Administrator v. Besa*, *supra* note 5.

[9] *Report on the Financial Audit Conducted on the Books of Accounts of Mr. Agerco P. Balles, MTCC-OCC, Tacloban City*, *supra* note 6; *Office of the Court Administrator v. Bernardino*, A.M. No. P-97-1258, January 31, 2005, 450 SCRA 88.

alternative — suspension for one (1) month without pay or fine in the amount of five thousand pesos (₱5,000.00) with a stern warning that similar act will be dealt with more severely in the future. This should be modified. In *Re: Report on Audit and Physical Inventory of the Records of Cases in MTC of Peñaranda, Nueva Ecija*,[10] therein clerk of court was found guilty of gross neglect of duty for failure to timely turn over the court collections and submit monthly reports and, thus, dismissed from the service. Similarly, in *Sollesta v. Mission*,[11] aside from failure to submit monthly reports, therein clerk of court restituted the misappropriated court funds, but was still found guilty of gross neglect of duty and, therefore, dismissed from the service.

As to the proper sanction to be imposed upon Gimena, the Court applies the rules under Sections 54 and 55, Rule IV (Penalties) of the Uniform Rules on Administrative Cases in the Civil Service as follows:

Section 54. Manner of Imposition. When applicable, the imposition of the penalty maybe made in accordance with the manner provided herein below:

a. The *minimum* of the penalty shall be imposed where only mitigating and no aggravating circumstances are present.

b. The *medium* of the penalty shall be imposed where no mitigating and aggravating circumstances are present.

c. The *maximum* of the penalty shall be imposed where only aggravating and no mitigating circumstances are present.

d. Where aggravating and mitigating circumstances are present, paragraph [a] shall be applied where there are more mitigating circumstances present; paragraph [b] shall be applied when the circumstances equally offset such other; and paragraph [c] shall be applied when there are more aggravating circumstances.

Section 55. Penalty for the Most Serious Offense. If the respondent is found guilty of two or more charges or counts, the penalty to be imposed should be that corresponding to the most

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[10] A.M. No. 95-6-55-MTC, July 28, 1997, 276 SCRA 257.

[11] A.M. No. P-03-1755, April 29, 2005, 457 SCRA 519.

serious charge or count and the rest shall be considered as aggravating circumstances.

Jurisprudence abounds that delayed remittance of cash collections by the clerk of court or cash clerk constitutes gross neglect of duty on which is imposed the supreme penalty of dismissal.[12] Hence, the imposable penalty upon Gimena should be dismissal from the service. However, since he pleaded that he had not malversed any of the amounts collected for his personal benefit and had subsequently remitted the subject amounts, as shown by the attached disbursement vouchers and acknowledgment receipts, that no outstanding accountabilities, these can be taken as mitigating circumstances that warrant the imposition of the lower penalty of suspension of one (1) month without pay. This is in line with Section 53 of Rule IV (Penalties) of the Uniform Rules on Administrative Cases in the Civil Service[13] and some decided cases wherein therein respondents subsequently fully remitted all collections.[14]

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[12] *Report on the Financial Audit Conducted on the Books of Accounts of Mr. Agerco P. Balles, MTCC-OCC, Tacloban City*, *supra* note 6; *Report on the Financial Audit Conducted in the MCTC-Maddela, Quirino,* A.M. No. P-09-2598, February 12, 2009, 578 SCRA 520; *Office of the Court Administrator v. Dureza-Aldevera,* A.M. No. P-01-1499, September 26, 2006, 503 SCRA 18; *Office of the Court Administrator v. Bernardino, id.*; *Office of the Court Administrator v. Besa, id.*; *Rangel-Roque v. Rivota,* A.M. No. P-97-1253, February 2, 1999, 302 SCRA 509.

[13] Sec. 53. Extenuating, Mitigating, Aggravating, or Alternative Circumstances. — In the determination of the penalties to be imposed, *mitigating, aggravating and alternative circumstances* attendant to the commission of the offense shall be considered.

x x x x x x x x x

l. Other analogous circumstances

Nevertheless, in the appreciation thereof, the same must be invoked or pleaded by the proper party, otherwise, said circumstances shall not be considered in the imposition of the proper penalty. The Commission, however, in the interest of substantial justice may take and consider these circumstances.

[14] *Re: Misappropriation of the Judiciary Fund Collections by Ms. Juliet C. Banag, Clerk of Court, MTC, Plaridel, Bulacan,* A.M. No. P-

WHEREFORE, for delay in the deposit of cash collections, in violation of the Court's Administrative Circular No. 3-2000 dated June 15, 2000, and non-submission of monthly reports of collections, deposits and withdrawals, in violation of Office of the Court Administrator Circular No. 113-2004 dated September 16, 2004, Pompeyo G. Gimena, Clerk of Court II of the Municipal Circuit Trial Court, Mondragon-San Roque, Northern Samar, is found *GUILTY* of gross neglect of duty and *SUSPENDED* for a period of one (1) month without pay with a *STERN WARNING* that a repetition of the same or similar act in the future shall be dealt with more severely.

SO ORDERED.

Corona (Chairperson), Velasco, Jr., Nachura, and *Mendoza, JJ.,* concur.

THIRD DIVISION

[A.M. No. P-10-2772. February 16, 2010]
(Formerly A.M. OCA I.P.I. No. 07-2615-P)

DOMINGO PEÑA, JR., *complainant, vs.* **ACHILLES ANDREW V. REGALADO II, Sheriff IV, Regional Trial Court, Office of the Clerk of Court, Naga City,** *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; COURT PERSONNEL; COMPLAINANT'S LACK OF INTEREST IN PURSUING THE CASE WILL NOT EXONERATE RESPONDENT FROM ANY ADMINISTRATIVE CASE.—

02-1641, January 20, 2004, 420 SCRA 150; *In Re: Delayed Remittance of Collections of Teresita Lydia R. Odtuhan, OIC, RTC, Br. 117, Pasay City*, A.M. No. 02-10-598-RTC, February 11, 2003, 397 SCRA 222.

Despite complainant's manifest apathy towards the outcome of this administrative case, the Court is duty-bound to proceed with its investigation and resolution to determine whether respondent has, in fact, erred in his conduct. Complainant's lack of interest in pursuing the case will not exonerate respondent from any administrative action. It will not divest this Court of jurisdiction to determine the truth behind the complaint, as the need to maintain the faith and confidence of the people in the government and its agencies and instrumentalities should not be made to depend on the whims and caprices of the complainants who are, in a real sense, only witnesses therein.

2. ID.; ID.; ID.; SHERIFF'S DUTY AS OFFICER OF THE COURT, EXPLAINED.— Sheriffs are officers of the court who serve and execute writs addressed to them by the court, and who prepare and submit returns on their proceedings. As officers of the court, they must discharge their duties with great care and diligence. They have to perform faithfully and accurately what is incumbent upon them and show at all times a high degree of professionalism in the performance of their duties. Despite being exposed to hazards that come with the implementation of the judgment, sheriffs must perform their duties by the book.

3. ID.; ID.; ID.; SHERIFFS ARE NOT ALLOWED TO RETAIN THE MONEY IN HIS POSSESSION BEYOND THE DAY WHEN THE PAYMENT WAS MADE.— When the judgment obligee is not present at the time the judgment obligor makes the payment, the sheriff is authorized to receive it. However, the money received must be remitted to the clerk of court within the same day or, if not practicable, deposited in a fiduciary account with the nearest government depository bank. Evidently, sheriffs are not permitted to retain the money in their possession beyond the day when the payment was made or to deliver the money collected directly to the judgment obligee.

4. ID.; ID.; ID.; ID.; GOOD FAITH IS NOT A DEFENSE.— Good faith on the part of respondent, or lack of it, in proceeding to properly execute his mandate would be of no moment, for he is chargeable with the knowledge that being an officer of the court tasked thereto, it behooves him to make due compliance.

As implementing officers of the court, sheriffs should set the example by faithfully observing and not brazenly disregarding the Rules of Court.

5. ID.; ID.; ID.; FAILURE TO COMPLY WITH THE PROPER PROCEDURE IN ENFORCING WRITS OF EXECUTION CONSTITUTES CONDUCT PREJUDICIAL TO THE BEST INTEREST OF THE SERVICE.— [W]e find respondent guilty of conduct prejudicial to the best interest of the service for not following the proper procedure in enforcing writs of execution. Sheriffs have the duty to perform faithfully and accurately what is incumbent upon them, and any method of execution falling short of the requirement of the law deserves reproach and should not be countenanced. The Court will not hesitate to impose the ultimate penalty on those who fall short of their accountabilities. The Court condemns and does not tolerate any conduct that violates the norms of public accountability and diminishes public confidence in the judicial system.

D E C I S I O N

NACHURA, *J.*:

In a Letter[1] dated April 2, 2007, complainant Domingo Peña, Jr. reported to the Office of the Court Administrator (OCA) the alleged unethical conduct of respondent Sheriff IV Achilles Regalado II in implementing the writ of execution issued in relation to *People v. Domingo Peña, Jr. and Domingo Francisco* (Criminal Case No. 1852 for Falsification of Public Documents). The judgment on execution ordered complainant and Domingo Francisco to each pay a fine of ₱5,000.00 and damages in the amount of ₱30,000.00 to private complainant, Flora Francisco. Complainant averred that respondent collected from him ₱13,000.00, ₱4,500.00 and ₱2,000.00 on September 6, 2006, November 29, 2006, and December 29, 2006, respectively, without issuing official receipts. He was merely issued handwritten acknowledgment receipts, which he attached to the complaint as Exhibits "A", "B", and "C".

[1] *Rollo,* pp. 3-4.

In his Comment,[2] respondent admitted that he received the said amounts from complainant, but claimed that he already delivered them to Mrs. Francisco, as evidenced by the acknowledgment receipts signed by the latter. According to respondent, complainant went to his office on September 6, 2006 and gave him ₱13,000.00. On the same day, he went to Francisco's house to give her the amount, but the latter was not around. Respondent allegedly went back to Francisco's house the following day and gave her the money. Later on, he collected the two succeeding payments at complainant's house and immediately gave the amounts collected to Francisco. Respondent claimed that the complaint was filed to harass and prevent him from further executing the judgment against complainant.

The Court referred the complaint to Judge Jaime E. Contreras, Executive Judge of the Regional Trial Court of Naga City, for investigation, report and recommendation.[3]

During the hearing, complainant testified that he was not issued official receipts for the money he gave to respondent, only handwritten provisional receipts. He said he knew, however, that respondent already gave the money to Francisco. He then informed Judge Contreras that he was no longer interested in pursuing the case because of his health condition.[4]

When interrogated, respondent confessed that he did not remit the money he collected from complainant to the Office of the Clerk of Court. He allegedly did so to spare Francisco, who is already very old, the inconvenience of filing a motion to release the money. He pointed out that such procedure was practical, considering that Francisco's house is only adjacent to that of the complainant. He explained that he was not able to give the ₱13,000.00 to Francisco on the same day he collected it from complainant, because she was not around at that time; and so, he gave it to her the following day.[5] He said that he

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[2] *Id.* at 9-12.

[3] *Id.* at 28.

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

[5] *Id.* at 55-56.

has been a sheriff for 12 years already, and he had followed the same procedure in some of the cases assigned to him for execution.[6]

Francisco confirmed that she received ₱13,000.00 from respondent on September 6, 2006, the date indicated in the provisional receipt. She, however, claimed that she did not receive ₱4,500.00 and ₱2,000.00, respectively, on November 29, 2006 and December 29, 2006, the dates indicated in the provisional receipts.[7] Francisco said that she signed the two latter receipts on the assurance of respondent that he would come back with the said amounts.[8]

The records reveal that, when respondent failed to return and give Francisco the amounts of ₱4,500.00 and ₱2,000.00, she wrote Judge Contreras a Letter dated June 20, 2007,[9] complaining about respondent's failure to collect the balance of the judgment award after the lapse of two years. As a result, Judge Contreras required Francisco and respondent to appear before him, during which the judge advised respondent to just pay the balance of the amount collected. It was only after that conference that Francisco received the amounts of ₱4,500.00 and ₱2,000.00.[10]

When confronted, respondent denied that it was only after the conference that he gave the money to Francisco, stating that the latter may have already forgotten what actually transpired, since it happened three years ago.[11]

Judge Contreras disagreed. On the contrary, he found that Francisco was still mentally alert despite her age and, consequently, gave her testimony more credence. Judge Contreras also noted that this was the second offense for which respondent

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6 *Id.* at 82-83.

7 *Id.* at 79.

8 *Id.* at 68.

9 *Id.* at 94.

10 *Id.* at 80.

11 *Id.* at 82.

had been investigated, and the evidence was clear that in both cases[12] respondent did not follow basic rules in implementing the writs of execution. He took into consideration respondent's admission that he has been doing such irregular acts or practices for the past 12 years in several cases assigned to him. He then recommended that respondent be suspended for 15 days from service without pay, with a stern warning that the repetition of the same or similar acts in the future shall be dealt with more severely.

In a Resolution dated September 2, 2009, the Court referred Judge Contreras' report to the OCA for evaluation, report and recommendation.

In a Memorandum dated January 7, 2010, the OCA found respondent guilty of grave misconduct and dishonesty and recommended that a more severe penalty be imposed upon him, thus:

1. That the instant administrative complaint, dated 2 April 2007, of Domingo Peña, be RE-DOCKETED as a regular administrative matter;

2. That respondent Sheriff IV Achilles Andrew Regalado II, Regional Trial Court, OCC, Naga City, be found GUILTY of GRAVE MISCONDUCT and DISHONESTY; and

3. That he be meted the penalty of DISMISSAL from the service, with forfeiture of all retirement benefits, except accrued leave credits, and with perpetual disqualification from re-employment in any government agency, including government owned and controlled corporation.

The Court likewise finds respondent administratively liable, but modifies the OCA's designation of the offense and the penalty imposed.

Despite complainant's manifest apathy towards the outcome of this administrative case, the Court is duty-bound to proceed with its investigation and resolution to determine whether

[12] Two other administrative complaints are pending against respondent sheriff: A.M. IPI-09-3133-P and A.M. IPI-07-2614-P.

respondent has, in fact, erred in his conduct. Complainant's lack of interest in pursuing the case will not exonerate respondent from any administrative action. It will not divest this Court of jurisdiction to determine the truth behind the complaint, as the need to maintain the faith and confidence of the people in the government and its agencies and instrumentalities should not be made to depend on the whims and caprices of the complainants who are, in a real sense, only witnesses therein.[13]

Sheriffs are officers of the court who serve and execute writs addressed to them by the court, and who prepare and submit returns on their proceedings. As officers of the court, they must discharge their duties with great care and diligence. They have to perform faithfully and accurately what is incumbent upon them and show at all times a high degree of professionalism in the performance of their duties.[14] Despite being exposed to hazards that come with the implementation of the judgment, sheriffs must perform their duties by the book.[15]

Section 9, Rule 39 of the Rules of Court lays down the procedure to be followed by the sheriff in implementing money judgments:

SEC. 9. *Execution of judgments for money, how enforced.* —

(*a) Immediate payment on demand.* — The officer shall enforce an execution of a judgment for money by demanding from the judgment obligor the immediate payment of the full amount stated in the writ of execution and all lawful fees. The judgment obligor shall pay in cash, certified bank check payable to the judgment obligee, or any other form of payment acceptable to the latter, the amount of the judgment debt under proper receipt directly to the judgment obligee or his authorized representative if present at the time of payment. The lawful fees shall be handed under proper receipt to the executing sheriff who shall turn over the said amount within the same day to the clerk of court of the court that issued the writ.

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[13] *Bunagan v. Ferraren,* A.M. No. P-06-2173, January 28, 2008, 542 SCRA 355, 362.

[14] *Escobar Vda. de Lopez v. Luna,* A.M. No. P-04-1786, February 13, 2006, 482 SCRA 265, 275.

[15] *Caja v. Nanquil*, 481 Phil. 488, 518-519 (2004).

If the judgment obligee or his authorized representative is not present to receive payment, the judgment obligor shall deliver the aforesaid payment to the executing sheriff. The latter shall turn over all the amounts coming into his possession within the same day to the clerk of court of the court that issued the writ, or if the same is not practicable, deposit said amounts to a fiduciary account in the nearest government depository bank of the Regional Trial Court of the locality.

The clerk of said court shall thereafter arrange for the remittance of the deposit to the account of the court that issued the writ whose clerk of court shall then deliver said payment to the judgment obligee in satisfaction of the judgment. The excess, if any, shall be delivered to the judgment obligor while the lawful fees shall be retained by the clerk of court for disposition as provided by law. In no case shall the executing sheriff demand that any payment by check be made payable to him.

When the judgment obligee is not present at the time the judgment obligor makes the payment, the sheriff is authorized to receive it. However, the money received must be remitted to the clerk of court within the same day or, if not practicable, deposited in a fiduciary account with the nearest government depository bank. Evidently, sheriffs are not permitted to retain the money in their possession beyond the day when the payment was made or to deliver the money collected directly to the judgment obligee.

Respondent's excuse for not turning over the money to the clerk of court does not persuade us enough to arrive at a contrary finding. He explains that it was practical to directly give the money he collected from complainant to Francisco, whose house is just adjacent to that of the complainant. Firstly, complainant could have directly made the payment to Francisco or her representative. Secondly, considering that the first payment was handed to him by complainant in his office, respondent could have easily turned it over to the clerk of court. Instead, respondent went to Francisco's house to give her the money, presumably as an act of good will.

Respondent may have been motivated by a noble intention when he directly gave the ₱13,000.00 to Francisco, but the same cannot be said of the two succeeding payments. Francisco had to file a complaint against respondent before the latter delivered the same to her. Though respondent insists that he gave the amounts to Francisco on the same day he received them, this is belied by Francisco's positive testimony that she received the money several months after the dates indicated in the receipts. This is corroborated by Francisco's letter-complaint to Judge Contreras and her account of what transpired in the conference that the latter arranged.

Good faith on the part of respondent, or lack of it, in proceeding to properly execute his mandate would be of no moment, for he is chargeable with the knowledge that being an officer of the court tasked thereto, it behooves him to make due compliance.[16] As implementing officers of the court, sheriffs should set the example by faithfully observing and not brazenly disregarding the Rules of Court.[17] Incredibly, respondent even blatantly admitted that he followed the same procedure in some of the other writs of execution that he enforced.

Moreover, the records show that, upon receipt from complainant (judgment obligor) of three payments, respondent merely issued handwritten acknowledgment receipts to him. This act constitutes a violation of Section 113, Article III, Chapter V of the National Accounting and Auditing Manual which provides "that no payment of any nature shall be received by a collecting officer without immediately issuing an official receipt in acknowledgment thereof."[18]

Accordingly, we find respondent guilty of conduct prejudicial to the best interest of the service for not following the proper procedure in enforcing writs of execution. Sheriffs have the duty to perform faithfully and accurately what is incumbent

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[16] *Zarate v. Judge Untalan,* 494 Phil. 208, 217 (2005).

[17] *Flores v. Falcotelo,* A.M. No. P-05-2038, January 25, 2006, 480 SCRA 16, 30.

[18] *Lopez v. Ramos,* A.M. No. P-05-2017, June 29, 2005, 462 SCRA 26, 34.

upon them, and any method of execution falling short of the requirement of the law deserves reproach and should not be countenanced.[19] The Court will not hesitate to impose the ultimate penalty on those who fall short of their accountabilities. The Court condemns and does not tolerate any conduct that violates the norms of public accountability and diminishes public confidence in the judicial system.[20]

Section 52(A)(20) of the Revised Uniform Rules on Administrative Cases classifies conduct prejudicial to the best interest of the service as a grave offense punishable by suspension of six months and one day to one year for the first offense.

WHEREFORE, judgment is rendered, finding respondent Achilles Andrew V. Regalado II *GUILTY* of conduct prejudicial to the best interest of the service and is hereby *SUSPENDED* from the service for one (1) year without pay, with a stern warning that a repetition of the same offense shall be dealt with more severely.

SO ORDERED.

Corona (Chairperson), Velasco, Jr., Peralta, and *Mendoza, JJ.,* concur.

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[19] *Mangubat v. Camino,* A.M. No. P-06-2115, February 23, 2006, 483 SCRA 163,169-170.

[20] *Velasco v. Tablizo,* A.M. No. P-05-1999, February 22, 2008, 546 SCRA 403, 412.

SECOND DIVISION

[G.R. No. 156287. February 16, 2010]

FELICITAS M. MACHADO and MARCELINO P. MACHADO, *petitioners, vs.* **RICARDO L. GATDULA, COMMISSION ON THE SETTLEMENT OF LAND PROBLEMS, and IRINEO S. PAZ, Sheriff IV, Office of the Provincial Sheriff, San Pedro, Laguna,** *respondents.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; EXECUTIVE ORDER NO. 561 (EO 561); JURISDICTION OF THE COMMISSION ON SETTLEMENT OF LAND PROBLEMS (COSLAP), EXPLAINED.— [T]he COSLAP has two different rules in acting on a land dispute or problem lodged before it, *e.g.*, COSLAP can assume jurisdiction only if the matter is one of those enumerated in [Section 3] paragraph 2(a) to (e) of [EO 561]. Otherwise, it should refer the case to the agency having appropriate jurisdiction for settlement or resolution. In resolving whether to assume jurisdiction over a case or to refer it to the particular agency concerned, the COSLAP considers: (a) the nature or classification of the land involved; (b) the parties to the case; (c) the nature of the questions raised; and (d) the need for immediate and urgent action thereon to prevent injury to persons and damage or destruction to property. The terms of the law clearly do not vest on the COSLAP the general power to assume jurisdiction over *any* land dispute or problem. Thus, under EO 561, the instances when the COSLAP may resolve land disputes are limited only to those involving public lands or those covered by a specific license from the government, such as pasture lease agreements, timber concessions, or reservation grants.

2. ID.; ID.; ID.; ID.; COSLAP HAS NO JURISDICTION OVER A DISPUTE BETWEEN TWO PARTIES CONCERNING THE RIGHT OF WAY OVER PRIVATE LANDS; CASE AT BAR.— Undisputably, the properties involved in the present dispute are *private* lands owned by *private* parties, none of whom is a squatter, a patent lease agreement holder, a government

reservation grantee, a public land claimant or a member of any cultural minority. Moreover, the dispute between the parties can hardly be classified as critical or explosive in nature that would generate social tension or unrest, or a critical situation that would require immediate and urgent action. The issues raised in the present case primarily involve the application of the Civil Code provisions on Property and the Easement of Right of Way. x x x The Machados cannot invoke Section 3, paragraph 2(e) of EO 561, which provides that the COSLAP may assume jurisdiction over complaints involving "other similar land problems of grave urgency," to justify the COSLAP's intervention in this case. The statutory construction principle of *ejusdem generic* prescribes that where general words follow an enumeration of persons or things, by words of a particular and specific meaning, such general words are not to be construed in their widest extent but are to be held as applying only to persons or things of the same kind as those specifically mentioned. A dispute between two parties concerning the right of way over private lands cannot be characterized as similar to those enumerated under Section 3, paragraph 2(a) to (d) of EO 561.

3. REMEDIAL LAW; JURISDICTION; ESTOPPEL GENERALLY DOES NOT CONFER JURISDICTION.— By reason of the Machados' active participation in the **mediation conferences** and the COSLAP verification surveys, the CA declared the Machados estopped from questioning the body's jurisdiction and bound by its decisions, orders and resolutions. **We disagree with this ruling.** Jurisdiction over a subject matter is conferred by law and not by the parties' action or conduct. Estoppel generally does **not** confer jurisdiction over a cause of action to a tribunal where none, by law, exists. x x x

4. ID.; JUDGMENTS; A JUDGMENT ISSUED BY A BODY WITHOUT JURISDICTION IS VOID; EFFECT.— In this case, the COSLAP did not have jurisdiction over the subject matter of the complaint filed by Gatdula, yet it proceeded to assume jurisdiction over the case and even issued writs of execution and demolition against the Machados. The lack of jurisdiction cannot be cured by the parties' participation in the proceedings before the COSLAP. Under the circumstances, the Machados can rightfully question its jurisdiction at anytime, even during appeal or after final judgment. A judgment issued by a quasi-judicial body

without jurisdiction is void. It cannot be the source of any right or create any obligation. All acts pursuant to it and all claims emanating from it have no legal effect. The void judgment can never become final and any writ of execution based on it is likewise void.

APPEARANCES OF COUNSEL

Rolleto T. Arce for petitioners.

D E C I S I O N

BRION, *J.*:

Before this Court is the Petition for Review on *Certiorari*[1] filed by petitioners Felicitas M. Machado and Marcelino P. Machado (*the Machados*), assailing the decision[2] of the Court of Appeals (*CA*) dated January 31, 2002 and the resolution[3] dated December 5, 2002 in CA-G.R. SP No. 65871. The CA decision dismissed the Machados' petition for *certiorari* and their motion for reconsideration, and upheld the jurisdiction of the Commission on Settlement of Land Problems (*COSLAP*) to render judgment over a private land and to issue the corresponding writs of execution and demolition.

THE FACTUAL ANTECEDENTS

The dispute involves two adjoining parcels of land located in *Barangay* San Vicente, San Pedro, Laguna, one belonging to the Machados, and the other belonging to respondent Ricardo L. Gatdula (*Gatdula*).

On February 2, 1999, Gatdula wrote a letter[4] to the COSLAP requesting assistance because the Machados allegedly blocked

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[1] Under Rule 45 of the Rules of Court; *rollo*, pp. 15-29.

[2] Penned by Associate Justice Portia Aliño-Hormachuelos, and concurred in by Associate Justice Eriberto U. Rosario, Jr. and Associate Justice Mariano C. Del Castillo (now a member of this Court); *id.* at 42-53.

[3] *Id.* at 55-58.

[4] *Id.* at 59.

the right of way to his private property by constructing a two-door apartment on their property.

Acting on Gatdula's letter, the COSLAP conducted a **mediation conference** on February 25, 1999; the parties then agreed to have a verification survey conducted on their properties and to share the attendant expenses. Thereafter, the COSLAP issued an Order dated March 16, 1999 directing the Chief of the Survey Division of the Community Environment and Natural Resources Office – Department of Environment and Natural Resources (*CENRO-DENR*), to conduct a verification survey on May 9, 1999. The order likewise stated that in the event that no surveyor is available, the parties may use the services of a private surveyor, whom the CENRO-DENR Survey Division would deputize.

As scheduled, a private surveyor, Junior Geodetic Engineer Abet F. Arellano (*Engr. Arellano*), conducted a verification survey of the properties in the presence of both parties. Engr. Arellano submitted a report to the COSLAP finding that the structure built by the Machados encroached upon an alley found within the Gatdula property. Engr. Arellano's findings corroborated the separate report of Engineer Noel V. Soqueco of the CENRO, Los Baños, Laguna that had also been submitted to the COSLAP.

The Machados contested these reports in their position paper dated August 26, 1999. They alleged that Gatdula had no right of action since they did not violate Gatdula's rights.[5] *They further assailed the jurisdiction of the COSLAP, stating that the proper forum for the present case was the Regional Trial Court of San Pedro, Laguna.*

The COSLAP Ruling

On October 25, 1999, the COSLAP issued a resolution[6] (*October 25, 1999 COSLAP Resolution*) directing the Machados to reopen the right of way in favor of Gatdula. In so ruling, the COSLAP relied on the verification survey made by Engr.

[5] *Id.* at 60-67.

[6] *Id.* at 68-73.

Arellano, which established that the Machados had encroached on the existing alley in Gatdula's property.

The COSLAP declared the Machados estopped from questioning its jurisdiction to decide the case, since they actively participated in the mediation conferences and the verification surveys without raising any jurisdictional objection. It ruled that its jurisdiction does not depend on the convenience of the Machados.

The Machados filed a motion for reconsideration which the COSLAP denied in a resolution dated January 24, 2000.

On February 18, 2000, the Machados filed a notice of appeal[7] with the Office of the President (*OP*).

While this appeal was pending, the COSLAP, upon Gatdula's motion, issued a writ of execution[8] enforcing the terms of the October 25, 1999 COSLAP Resolution. The Machados opposed the writ by filing a motion to quash on March 30, 2001.[9] They argued that the October 25, 1999 COSLAP Resolution was not yet ripe for execution in view of the pending appeal before the OP.

Since the Machados persistently refused to reopen the right of way they closed, the provincial sheriff recommended to COSLAP the issuance of a writ of demolition. The COSLAP issued the writ of demolition[10] on July 12, 2001.

The CA Ruling

On July 31, 2001, the Machados went to the CA for relief through a Petition for *Certiorari* and Prohibition,[11] claiming that the COSLAP issued the writs of execution and demolition with grave abuse of discretion.

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[7] *Id.* at 74-82.

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

[9] *Id.* at 87-89.

[10] *Id.* at 90-91.

[11] Under Rule 65 of the Rules of Court; *id.* at 92-103.

The CA found the Machados' claim unfounded and, accordingly, dismissed their petition in its decision of January 31, 2002.[12] It declared that the COSLAP correctly issued the assailed writs because the October 25, 1999 COSLAP Resolution had already become final and executory for failure of the Machados to avail of the proper remedy against the COSLAP orders and resolutions. Under Section 3 (2)[13] of Executive Order No. 561 (*EO 561*), the resolutions, orders, and decisions of the COSLAP become final and executory 30 days after promulgation, and are appealable by *certiorari* only to the Supreme Court. In *Sy v. Commission on the Settlement of Land Problems*,[14] it was held that under the doctrine of judicial

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[12] *Supra* note 2.

[13] Section 3. *Powers and Functions*. The Commission shall have the following powers and functions:

2. Refer and follow-up for immediate action by the agency having appropriate jurisdiction any land problem or dispute referred to the Commission: Provided, That the Commission may, in the following cases, assume jurisdiction and resolve land problems or disputes which are critical and explosive in nature considering, for instance, the large number of the parties involved, the presence or emergence of social tension or unrest, or other similar critical situations requiring immediate action:

(a) Between occupants/squatters and pasture lease agreement holders or timber concessioners;

(b) Between occupants/squatters and government reservation grantees;

(c) Between occupants/squatters and public land claimants or applicants;

(d) Petitions for classification, release and/or subdivision of lands of the public domain; and

(e) Other similar land problems of grave urgency and magnitude.

The Commission shall promulgate such rules and procedures as will ensure expeditious resolution and action on the above cases. **The resolution, order or decision of the Commission on any of the foregoing cases shall have the force and effect of a regular administrative resolution, order or decision** and shall be binding upon the parties therein and upon the agency having jurisdiction over the same. **Said resolution, order or decision shall become final and executory within thirty (30) days from its promulgation and shall be appealable by *certiorari* only to the Supreme Court.** [emphasis supplied]

[14] 417 Phil. 378 (2000).

hierarchy, the orders, resolutions and decisions of the COSLAP, as a quasi-judicial agency, are directly appealable to the CA under Rule 43 of the 1997 Rules of Civil Procedure, and not to the Supreme Court. Thus, the CA ruled that the Machados' appeal to the OP was not the proper remedy and did not suspend the running of the period for finality of the October 25, 1999 COSLAP Resolution.

On the issue of jurisdiction, the CA found that the COSLAP was created to provide a more effective mechanism for the expeditious settlement of land problems, ***in general***; the present case, therefore, falls within its jurisdiction.[15] Moreover, the Machados' active participation in the mediation conference and their consent to bring about the verification survey bound them to the COSLAP's decisions, orders and resolutions.

From this CA decision, the Machados filed a motion for reconsideration,[16] which the CA subsequently denied in its Resolution of December 5, 2002.[17]

The Machados thus filed the present Rule 45 petition with this Court, raising two vital issues:

1. Whether the COSLAP has jurisdiction over Gatdula's complaint for right of way against the Machados; and
2. Whether the COSLAP can validly issue the writs of execution and demolition against the Machados.

THE COURT'S RULING

We find the petition meritorious.

The COSLAP does not have jurisdiction over the present case

In resolving the issue of whether the COSLAP has jurisdiction over the present case, a review of the history of the COSLAP

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[15] Citing *Bañaga v. Commission on the Settlement of Land Problems*, G.R. No. 66386, January 30, 1990, 181 SCRA 599.

[16] *Rollo*, pp. 120-126.

[17] *Supra* note 3.

and an account of the laws creating the COSLAP and its predecessor, the Presidential Action Committee on Land Problems (*PACLAP*), is in order.

The COSLAP's forerunner, the PACLAP, was created on July 31, 1970 pursuant to Executive Order No. 251. As originally conceived, the committee was tasked to expedite and coordinate the investigation and resolution of land disputes, streamline and shorten administrative procedures, adopt bold and decisive measures to solve land problems, and/or recommend other solutions.

On March 19, 1971, Executive Order No. 305 was issued reconstituting the PACLAP. The committee was given exclusive jurisdiction over all cases involving public lands and other lands of the public domain,[18] and was likewise vested with adjudicatory powers phrased in broad terms:

> 1. To investigate, coordinate, and **resolve expeditiously land disputes**, streamline administrative proceedings, and, in general, **to adopt bold and decisive measures to solve problems involving public lands and lands of the public domain.**[19] [emphasis supplied]

Thereafter, Presidential Decree No. 832 (*PD 832*)[20] was issued on November 27, 1975 reorganizing the PACLAP and enlarging its functions and duties. The decree also granted PACLAP quasi-judicial functions. Section 2 of PD 832 states:

> Section 2. *Functions and duties of the PACLAP*. – The PACLAP shall have the following functions and duties:
>
> 1. Direct and coordinate the activities, particularly the investigation work, of the various government agencies and agencies involved in land problems or disputes, and streamline administrative procedures **to relieve small settlers and landholders and members of**

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[18] *The United Residents of Dominican Hill, Inc. v. Commission on the Settlement of Land Problems*, 406 Phil. 354, 366 (2001).

[19] *Davao New Town Development Corporation v. Commission on the Settlement of Land Problems*, 498 Phil. 530, 545 (2005).

[20] Reorganizing the Presidential Action Committee on Land Problems.

cultural minorities of the expense and time-consuming delay attendant to the solution of such problems or disputes;

2. Refer for immediate action any land problem or dispute brought to the attention of the PACLAP, to any member agency having jurisdiction thereof: Provided, **That when the Executive Committee decides to act on a case, its resolution, order or decision thereon shall have the force and effect of a regular administrative resolution, order or decision, and shall be binding upon the parties therein involved and upon the member agency having jurisdiction thereof;**

x x x x x x x x x

4. Evolve and implement a system of procedure for the speedy investigation and resolution of land disputes or problems at provincial level, if possible. [emphasis supplied]

The PACLAP was abolished by EO 561 effective on September 21, 1979, and was replaced by the COSLAP. Unlike the former laws, EO 561 specifically enumerated the instances when the COSLAP can exercise its adjudicatory functions:

Section 3. *Powers and Functions*. – The Commission shall have the following powers and functions:

x x x x x x x x x

2. Refer and follow up for immediate action by the agency having appropriate jurisdiction any land problem or dispute referred to the Commission: Provided, That **the Commission may, in the following cases, assume jurisdiction and resolve land problems or disputes which are *critical and explosive in nature* considering, for instance, the large number of the parties involved, the presence or emergence of social tension or unrest, or other similar critical situations requiring immediate action:**

(a) Between occupants/squatters and pasture lease agreement holders or timber concessionaires;

(b) Between occupants/squatters and government reservation grantees;

(c) Between occupants/squatters and public land claimants or applicants;

(d) Petitions for classification, release and/or subdivision of lands of the public domain; and

(e) Other similar land problems of grave urgency and magnitude.

The Commission shall promulgate such rules and procedures as will ensure expeditious resolution and action on the above cases. The resolution, order or decision of the Commission on any of the foregoing cases shall have the force and effect of a regular administrative resolution, order or decision and shall be binding upon the parties therein and upon the agency having jurisdiction over the same. Said resolution, order or decision shall become final and executory within thirty (30) days from its promulgation and shall be appealable by *certiorari* only to the Supreme Court. [emphasis supplied]

Under these terms, the COSLAP has two different rules in acting on a land dispute or problem lodged before it, *e.g.*, COSLAP can assume jurisdiction only if the matter is one of those enumerated in paragraph 2(a) to (e) of the law. Otherwise, it should refer the case to the agency having appropriate jurisdiction for settlement or resolution.[21] In resolving whether to assume jurisdiction over a case or to refer it to the particular agency concerned, the COSLAP considers: (a) the nature or classification of the land involved; (b) the parties to the case; (c) the nature of the questions raised; and (d) the need for immediate and urgent action thereon to prevent injury to persons and damage or destruction to property. The terms of the law clearly do not vest on the COSLAP the general power to assume jurisdiction over *any* land dispute or problem.[22] Thus, under EO 561, the instances when the COSLAP may resolve land disputes are limited only to those involving public lands or those covered by a specific license from the government, such as pasture lease agreements, timber concessions, or reservation grants.[23]

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[21] *Ga v. Spouses Tubungan*, G.R. No. 182185, September 18, 2009.

[22] *Longino v. Atty. General*, 491 Phil. 600, 621 (2005).

[23] *Barranco v. Commission on the Settlement of Land Problems*, G.R. No. 168990, June 16, 2006, 491 SCRA 222, 235-236.

Undisputably, the properties involved in the present dispute are *private* lands owned by *private* parties, none of whom is a squatter, a patent lease agreement holder, a government reservation grantee, a public land claimant or a member of any cultural minority.[24]

Moreover, the dispute between the parties can hardly be classified as critical or explosive in nature that would generate social tension or unrest, or a critical situation that would require immediate and urgent action. The issues raised in the present case primarily involve the application of the Civil Code provisions on Property and the Easement of Right of Way. As held in *Longino v. General*,[25] "disputes requiring no special skill or technical expertise of an administrative body that could be resolved by applying pertinent provisions of the Civil Code are within the exclusive jurisdiction of the regular courts."

The Machados cannot invoke Section 3, paragraph 2(e) of EO 561, which provides that the COSLAP may assume jurisdiction over complaints involving "other similar land problems of grave urgency," to justify the COSLAP's intervention in this case. The statutory construction principle of *ejusdem generic* prescribes that where general words follow an enumeration of persons or things, by words of a particular and specific meaning, such general words are not to be construed in their widest extent but are to be held as applying only to persons or things of the same kind as those specifically mentioned.[26] A dispute between two parties concerning the right of way over private lands cannot be characterized as similar to those enumerated under Section 3, paragraph 2(a) to (d) of EO 561.

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[24] ADMINISTRATIVE CODE, Book IV, Title III, Chapter 11, Section 32 states:

Section 32. The Commission on the Settlement of Land Problems shall also be responsible for the settlement of land problems involving small landowners and members of cultural minorities.

[25] *Supra* note 22 at 619, citing *Ty v. Court of Appeals*, 408 Phil. 792 (2002).

[26] *Id.* at 622, citing *The United Residents of Dominican Hill, Inc. v. Commission on the Settlement of Land Problems*, 406 Phil. 354, 366 (2001).

In *Davao New Town Development Corporation v. Commission on the Settlement of Land Problems*[27] – where we ruled that the COSLAP does not have blanket authority to assume every matter referred to it – we made it clear that its jurisdiction is confined only to disputes over lands in which the government has a proprietary or regulatory interest.

The CA apparently misread and misapplied the Court's ruling in *Bañaga v. Court of Appeals.*[28] *Bañaga* involved two contending parties who filed free patent applications for a parcel of *public* land with the Bureau of Lands. Because of the Bureau of Lands' failure to act within a reasonable time on the applications and to conduct an investigation, the COSLAP decided to assume jurisdiction over the case. Since the dispute involved a *public* land on a free patent issue, the COSLAP undeniably had jurisdiction over the *Bañaga* case.

Jurisdiction is conferred by law and a judgment issued by a quasi-judicial body without jurisdiction is void

By reason of the Machados' active participation in the **mediation conferences** and the COSLAP verification surveys, the CA declared the Machados estopped from questioning the body's jurisdiction and bound by its decisions, orders and resolutions. **We disagree with this ruling.**

Jurisdiction over a subject matter is conferred by law and not by the parties' action or conduct.[29] Estoppel generally does **not** confer jurisdiction over a cause of action to a tribunal where none, by law, exists. In *Lozon v. NLRC*,[30] we declared that:

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[27] *Supra* note 19 at 548.

[28] G.R. No. 66386, January 30, 1990, 181 SCRA 599.

[29] *Spouses Vargas v. Spouses Caminas*, G.R. Nos. 137839-40, June 12, 2008, 554 SCRA 305, 317; *Metromedia Times Corporation v. Pastorin*, G.R. No. 154295, July 29, 2005, 465 SCRA 320, 335; *Dy v. National Labor Relations Commission*, 229 Phil. 234, 242 (1986).

[30] 310 Phil. 1, 12-13 (1995), citing *La Naval Drug Corporation v. Court of Appeals*, 236 SCRA 78 (1994).

Lack of jurisdiction over the subject matter of the suit is yet another matter. Whenever it appears that the court has no jurisdiction over the subject matter, the action shall be dismissed. This defense may be interposed at any time, during appeal or even after final judgment. Such is understandable, as this kind of jurisdiction is conferred by law and not within the courts, let alone the parties, to themselves determine or conveniently set aside. In *People v. Casiano*, this Court, on the issue of estoppel, held:

> The operation of the principle of estoppel on the question of jurisdiction seemingly depends upon whether the lower court actually had jurisdiction or not. **If it had no jurisdiction, but the case was tried and decided upon the theory that it had jurisdiction, the parties are not barred, on appeal, from assailing such jurisdiction, for the same 'must exist as a matter of law, and may not be conferred by consent of the parties or by estoppel'** However if the lower court had jurisdiction, and the case was heard and decided upon a given theory, such, for instance, as that the court had no jurisdiction, the party who induced it to adopt such theory will not be permitted, on appeal, to assume an inconsistent position – that the lower court had jurisdiction. Here, the principle of estoppel applies. The rule that jurisdiction in conferred by law, and does not depend upon the will of the parties, has no bearing thereon. [emphasis supplied]

In this case, the COSLAP did not have jurisdiction over the subject matter of the complaint filed by Gatdula, yet it proceeded to assume jurisdiction over the case and even issued writs of execution and demolition against the Machados. The lack of jurisdiction cannot be cured by the parties' participation in the proceedings before the COSLAP.[31] Under the circumstances, the Machados can rightfully question its jurisdiction at anytime, even during appeal or after final judgment. A judgment issued by a quasi-judicial body without jurisdiction is void.[32] It cannot be the source of any right or create any obligation. All acts

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[31] As earlier mentioned, the Machados, in fact, questioned the COSLAP's jurisdiction as early as the position paper they filed questioning the COSLAP Report; *rollo*, p. 63.

[32] *National Housing Authority v. Commission on the Settlement of Land Problems*, G.R. No. 142601, October 23, 2006, 505 SCRA 38, 43.

pursuant to it and all claims emanating from it have no legal effect. The void judgment can never become final and any writ of execution based on it is likewise void.[33]

WHEREFORE, premises considered, we *GRANT* the petition for review on *certiorari*. The assailed Court of Appeals decision dated January 31, 2002 and resolution dated December 5, 2002 in CA-G.R. SP No. 65871 are *REVERSED and SET ASIDE*. The Decision of the Commission on the Settlement of Land Problems dated October 25, 1999 in COSLAP Case No. 99-59, as well as the writ of execution dated March 21, 2001 and the writ of demolition dated July 12, 2001, are declared *NULL and VOID* for having been issued without jurisdiction.

SO ORDERED.

Carpio (Chairperson), Carpio Morales,[*] *Abad,* and *Perez, JJ.,* concur.

THIRD DIVISION

[G.R. No. 165377. February 16, 2010]

LOLITA REYES doing business under the name and style, SOLID BROTHERS WEST MARKETING, *petitioner, vs.* **CENTURY CANNING CORPORATION,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; ONLY QUESTIONS OF LAW MAY BE RAISED UNDER RULE 45 PETITIONS; EXCEPTION THERETO, APPLIED.— The Court is not a trier of facts, its

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[33] *Supra* note 21.

[*] Designated additional Member of the Second Division vice Associate Justice Mariano C. del Castillo per raffle dated February 3, 2010.

jurisdiction being limited to reviewing only errors of law that may have been committed by the lower courts. As a general rule, petitions for review under Rule 45 of the Rules of Civil Procedure filed before this Court may only raise questions of law. However, jurisprudence has recognized several exceptions to this rule. In this case, the factual findings of the Court of Appeals are contrary to those of the RTC; thus, we find it proper to review the evidence.

2. REMEDIAL LAW; EVIDENCE; REQUIRED DEGREE OF EVIDENCE IN CIVIL CASES.— It is a basic rule in evidence that each party to a case must prove his own affirmative allegations by the degree of evidence required by law. In civil cases, the party having the burden of proof must establish his case by preponderance of evidence, or that evidence that is of greater weight or is more convincing than that which is in opposition to it. It does not mean absolute truth; rather, it means that the testimony of one side is more believable than that of the other side, and that the probability of truth is on one side than on the other.

3. ID.; ID.; CREDIBILITY OF WITNESSES; TESTIMONIES OF WITNESSES WERE ACCORDED FULL FAITH AND CREDIT.— [P]etitioner did not even rebut, either in her direct testimony or in rebuttal, the testimonies of Navarez and Uy that they met with her several times, and talked with her regarding the collection of her indebtedness and the pull-out of the canned goods. In fact, in Uy's testimony, he also mentioned Eliseo's death, and that Uy even allowed few days to pass before going to petitioner's place to collect so as to give petitioner time to comfort herself. Eliseo's death sometime in October 1997 was confirmed by petitioner. We agree with the CA when it said that if indeed petitioner did not transact with respondent, she should not have entertained respondent's collecting officers and should not have offered settlement or returned some of the canned goods. The testimonies of respondent's witnesses were further bolstered by the absence of any motive on their part to falsely testify against petitioner; thus, their testimonies are hereby accorded full faith and credit.

4. ID.; ID.; DEFENSE OF DENIAL, NOT GIVEN WEIGHT.— Petitioner's defense consists of denial. We have held that denial, if unsubstantiated by clear and convincing evidence, is a negative and self-serving evidence that has no weight in law and cannot

be given greater evidentiary value over the testimony of credible witnesses who testified on affirmative matters.

APPEARANCES OF COUNSEL

Y.F. Busmente & Associates Law Offices for petitioner.
Aguirre Abaño Pamfilo Paras Pineda & Agustin Law Offices for respondent.

D E C I S I O N

PERALTA, *J.*:

Before us is a Petition for Review on *Certiorari* seeking the reversal of the Decision[1] dated September 16, 2004 of the Court of Appeals (CA) in CA-G.R. CV No. 67975, which reversed and set aside the Decision[2] of the Regional Trial Court (RTC), Branch 267, Pasig City, in Civil Case No. 66863.

The antecedent facts as found by the Court of Appeals are as follows:

Plaintiff corporation, Century Canning Corporation, is engaged in the business of manufacturing, processing, and distribution of canned goods, particularly, Century Tuna. Defendant Lolita Reyes is a businesswoman doing business under the name and style Solid Brothers West Marketing.

The facts as gathered by the Court *a quo* are as follows:

In the subject case, Plaintiff Century Canning Corporation tried to establish the fact that defendant Lolita Reyes had applied for and was granted "credit line" from the former thereby allowing the latter to allegedly obtain and secure Century tuna canned goods. And when the defendant's obligation to pay became due and demandable, the same failed to pay as she refused to pay her unsettled accounts in the total amount of ₱787,191.27. However, due to the constant and

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[1] Penned by Justice Eliezer R. delos Santos with Justices Delilah Vidallon-Magtolis and Arturo D. Brion (now an Associate Justice of the Supreme Court), concurring, *rollo*, pp. 47-53.

[2] Records, pp. 216-224; per Judge Florito S. Macalino.

diligent efforts exerted by the representatives of the plaintiff to collect the alleged unpaid obligations of the defendant, the later returned some unsold Century tuna canned goods, the value of which at ₱323,697.64 was deducted from the principal obligation thereby leaving the amount of ₱463,493.63 as the unsettled account of defendant Reyes. That because of the refusal of the defendant to satisfactorily and completely settle her unpaid account, the plaintiff was constrained to refer the matter to its legal counsel, who consequently sent a demand letter, and accordingly filed the instant case in Court after the defendant failed to comply and satisfy the demand letter to pay.

In her Answer with Compulsory Counterclaim, defendant averred that she has no transaction with the plaintiff for the purchase of the alleged canned goods in question, inasmuch as she is not engaged in the canned goods business but in auto airconditioning, parts and car accessories in Banaue, Quezon City.[3]

Trial thereafter ensued.

On April 28, 2000, the RTC rendered its decision, the dispositive portion of which reads:

WHEREFORE, premises considered, the instant complaint is hereby ordered DISMISSED. The prayer for counterclaim of defendant in the form of moral damages, exemplary damages, and attorney's fees is hereby granted.

Accordingly, let judgment be rendered in favor of defendant's counterclaim, and plaintiff Century Canning Corporation is directed to pay defendant Lolita Reyes moral damages in the amount of ₱50,000.00, exemplary damages in the amount of ₱25, 000.00 and attorney's fees in the amount of ₱20,000.00 as well as to pay the costs of the suit.[4]

SO ORDERED.

In so ruling, the RTC found that respondent failed to substantiate its allegations that petitioner is liable to pay a certain sum of money. It based its conclusion on the fact that petitioner's signature in the Credit Application Form submitted by respondent

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[3] *Rollo*, pp. 48-49.

[4] Records, p. 224.

was significantly different from the signature appearing in petitioner's COMELEC voter's identification card (ID) and her Community Tax Certificate (CTC) which she proffered to be her usual, true, and genuine signature. It also found that petitioner's signature did not appear in the five sales invoices presented by respondent where the former acknowledged receipt of the delivered canned good; that there was no explicit authority such as a written document showing the appointment of a certain Oscar Delumen as petitioner's authorized representative to transact business and/or receive canned goods for and on petitioner's behalf; that there was also no showing that respondent requested or asked for Delumen's authority to transact or receive the goods on petitioner's behalf inasmuch as the amount involved was of considerable value. The RTC did not give credence to the testimonial as well as the documentary evidence presented by respondent for being self-serving. It awarded damages to petitioner taking into consideration the mental anguish she suffered by reason of the case and for being forced to litigate to protect her right.

Respondent filed its appeal with the CA. Petitioner filed her appellee's brief, and respondent filed a Reply thereto.

On September 16, 2004, the CA granted the appeal, the dispositve portion of which reads:

> WHEREFORE, premises considered, the appeal is hereby GRANTED. The assailed decision of the Regional Trial Court is REVERSED and SET ASIDE and the defendant-appellee held liable for the amount claimed by the plaintiff-appellant.[5]

In reversing the RTC, the CA found that the RTC's conclusion that petitioner's signature in the Credit application form was different from her signature in the CTC and voter's ID was contrary to the RTC's observation during the September 9, 1999 hearing, where it made a remark that "as far as the strokes, there seemed to be a similarity, because signatures sometimes differed in size; but as far as the strokes were concerned, they seemed to be the same." The CA found that

[5] *Rollo*, p. 53.

in the credit application form, where petitioner's certificate of registration of business name was attached, a certain Oscar Delumen represented himself as petitioner's former sales operations manager; that the existence and authenticity of both documents were never refuted by petitioner; that the fact that Delumen was acting for and on petitioner's behalf was not controverted, except by mere denial. The CA noted that in Delumen's Comments on Motion to Cite him in Contempt of Court, he stated that "when he saw on his desk the RTC Order of December 27, 1999, directing him to pay a fine of ₱1,000.00 as form of wastage fee, he immediately brought the said Order to petitioner and was assured by the latter that she would have her lawyer attend to and take care for him"; that this statement proved that petitioner and Delumen knew each other; and that the RTC should have required Delumen's testimony, as he was a vital witness to the case, but the RTC opted to forego with the same.

The CA gave credence to the respondent's witnesses, who testified that they had previously met with petitioner when they attempted to collect her unpaid accounts; that petitioner even tried to settle her indebtedness through monthly installments until such time that the debt was fully paid; that petitioner even returned some of the goods previously delivered to her to reduce her accountabilities; that the testimonies of these witnesses belied petitioner's defense that she never transacted business with respondent, because, if she did not transact with the latter, she would not have entertained respondent's officers and would not have offered settlement and returned the goods. The CA concluded that the positive declarations of respondent's witnesses could not be overturned by petitioner's general denial that she never transacted business with respondent.

Hence, this petition where petitioner raises the issue that:

THE COURT OF APPEALS GRAVELY ABUSED ITS DISCRETION IN GRANTING RESPONDENT'S APPEAL AND HOLDING PETITIONER LIABLE TO PAY RESPONDENT'S CLAIM.

Petitioner contends that the CA misquoted or misapplied the remarks made by the RTC during the trial of the case, since

the observation "as far as the strokes, there seems to be a similarity" refers to that between petitioner's signature appearing in her community tax certificate and the verification in her answer, and not between petitioner's alleged signatures in the credit application form and her community tax certificate and voter's ID. She argues that contrary to the CA finding that she never refuted the existence and authenticity of the credit application form, she categorically denied having executed the same by claiming that the signature appearing therein was not hers; that she not only denied her signature in the credit application form, but she also presented documents showing her genuine signature. She also claimed that the CA's finding that Delumen was acting on her behalf was not established by competent evidence during the trial of the case, as the only evidence submitted by respondent to prove the authority of Delumen was the credit application form; that said credit application form has no probative value for being self-serving, and its genuineness and authenticity were not established.

Petitioner contended that the Comment on Motion to Cite in Contempt of Court submitted by Delumen, which the CA claimed to have proven the fact that petitioner and Delumen knew each other, was not formally offered as part of respondent's evidence, and Delumen was not even presented during the trial; that the CA erred in concluding that petitioner returned some of the canned goods to respondent, relying on the statement of account which was self-serving, and no copy of the same was sent to the petitioner; and that the statement of account where the amount of ₱323,697.64 was deducted was merely based on the credit memo, which respondent's witness did not prepare himself. There was no evidence that the goods were received by petitioner, as even the sales invoices did not bear her signatures; and the fact that the goods were received by Delumen because he was petitioner's general manager was not established.

The issue presented before Us is whether the CA correctly found that petitioner was liable to pay respondent's claim. This is a factual issue.

The Court is not a trier of facts, its jurisdiction being limited to reviewing only errors of law that may have been committed by the lower courts.[6] As a general rule, petitions for review under Rule 45 of the Rules of Civil Procedure filed before this Court may only raise questions of law.[7] However, jurisprudence has recognized several exceptions to this rule.[8]

In this case, the factual findings of the Court of Appeals are contrary to those of the RTC; thus, we find it proper to review the evidence.

It is a basic rule in evidence that each party to a case must prove his own affirmative allegations by the degree of evidence required by law.[9] In civil cases, the party having the burden of proof must establish his case by preponderance of evidence,[10] or that evidence that is of greater weight or is more convincing than that which is in opposition to it. It does not mean absolute

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[6] *Bank of the Philippine Islands v. Reyes*, G.R. No. 157177, February 11, 2008, 544 SCRA 206, 215.

[7] *Triumph International (Philippines), Inc v. Apostol*, June 16, 2009.

[8] *Id.* citing *Almendrala v. Ngo,* G.R. No. 142408, 30 September 2005, 471 SCRA 311.

Several instances when this Court may review findings of fact of the Court of Appeals on appeal by *certiorari*, to wit: (1) when the findings are grounded entirely on speculation, surmises or conjectures; (2) when the inference made is manifestly mistaken, absurd or impossible; (3) when there is grave abuse of discretion; (4) when the judgment is based on misapprehension of facts; (5) when the findings of fact are conflicting; (6) when in making its findings the Court of Appeals went beyond the issues of the case, or its findings are contrary to the admissions of both the appellant and the appellee; (7) when the findings are contrary to that of the trial court; (8) when the findings are conclusions without citation of specific evidence on which they are based; (9) when the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondent; (10) when the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record; or (11) when the Court of Appeals manifestly overlooked certain relevant facts not disputed by the parties, which, if properly considered, would justify a different conclusion.

[9] *Bank of the Philippine Islands*, *supra*, at 216 citing Revised Rules of Court, Rule 131, Sec. 1.

[10] *Id.* citing Revised Rules on Evidence, Rule 133, Sec. 1.

truth; rather, it means that the testimony of one side is more believable than that of the other side, and that the probability of truth is on one side than on the other.

We find no merit in the petition.

The RTC dismissed respondent's complaint, as it found that the signature appearing in the credit application form, alleged to be that of petitioner, was significantly different from the signature in the CTC and voter's ID that petitioner claimed to show her usual and genuine signature. However, the CA found that such conclusion was contrary to the RTC's observation made during the trial, when the latter said that "there seems to be a similarity in strokes because a signature sometimes differs on the size." While the CA's finding on this matter was erroneous, since a reading of the transcript of stenographic notes of the September 9, 1999 hearing, when the alleged observation regarding the similarity in strokes was made by the RTC, shows that the RTC was comparing petitioner's signatures in her voter's ID and her CTC with her signature in the Verification in her Answer. We still affirm the CA's reversal of the RTC decision.

While petitioner denies having any transaction with respondent regarding the sale and delivery to her of respondent's canned goods, a review of the evidence shows otherwise. Records show that respondent submitted a certificate of registration of business name under petitioner's name and with her photo, which was marked as respondent's Exhibit "L".[11] Notably, respondent's formal offer of evidence[12] stated that the purpose of Exhibit "L" was to show that petitioner had submitted such certificate as one of her supporting documents in applying as a distributor of respondent's products, and also for the purpose of contradicting petitioner's allegation that she had no transaction with respondent.[13] In petitioner's Objections/Comment to respondent's offer of evidence,[14] she offered no objection to

[11] Records, p. 156.

[12] *Id.* at 143.

[13] *Id.* at 144.

[14] *Id.* at 157-159.

this exhibit.[15] In fact, in the same Comment, petitioner prayed that the other exhibits be denied admission for the purpose for which they were offered, except Exhibit "L".[16] In effect, petitioner admitted the purpose for which Exhibit "L" was offered, *i.e.*, one of the documents she submitted to respondent to be a distributor of the latter's products. Thus, such admission belies her allegation in her Answer with compulsory counterclaim that she had no transaction with respondent for the purchase of the canned goods,[17] as well as her testimony on direct examination that she did not know respondent.[18]

Although petitioner denies her signature in the credit application form, the entries[19] therein show informations whose veracity even admitted by petitioner. Such entries include the residential address at 132 Zamora Street, Caloocan, which was petitioner's previous residence prior to her transfer to Banaue, Quezon City;[20] and shows Eliseo Dy as authorized signatory of two bank accounts, whom petitioner admitted on cross-examination to be her live-in partner for 23 years.[21] Notable also is the fact that the tax account number appearing in the credit application form was the same tax account number stated in petitioner's CTC, which she presented to reflect her true and usual signature.[22] It was also in the credit application form where the name of Oscar Delumen, with his signature affixed thereto, appears as petitioner's operations manager.

Petitioner claims that there was no evidence showing that she received the canned goods delivered by respondent, as the sales invoices evidencing such delivery were not signed by her.

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[15] *Id.* at 158.

[16] *Id.* at 159.

[17] *Id.* at 10.

[18] TSN, September 9, 1999, p. 3.

[19] Records, p.150, Exhibit "F".

[20] *Id.* at 13.

[21] *Id.* at 23.

[22] Records, p. 179, Exhibit "3".

The sales invoices were signed by Delumen, her operations manager. While petitioner denies having received the canned goods and knowing Delumen, respondent presented two witnesses who categorically declared and positively identified petitioner as the person whom they met several times in her store and residence for the purpose of collecting her unpaid obligations with respondent.

George Navarez, respondent's former Credit and Collection Supervisor, testified that petitioner was their former customer who failed to pay the purchases and deliveries covered by five sales invoices;[23] that he knew petitioner since he had met her several times when he was collecting her unpaid obligations;[24] that in one of his visits to petitioner, the latter offered to pay ₱50,000.00 a month as partial settlement of her total indebtedness with respondent; and that to reduce her debt, petitioner even returned some of the canned goods delivered to her.[25] Navarez, on cross examination, testified that he was the one who personally received the canned goods that petitioner returned, as he was there in the store when the goods were pulled out;[26] that the transaction regarding the returned goods was contained in three credit memos, which served as the bases for the amount deducted from petitioner's debt.[27] On re-direct, he clarified that the amount of ₱323,697.64 was the amount of the returned canned goods which was reflected as deductions in the statement of account,[28] and that the statement of account was prepared by a clerk and approved by him.[29]

Manuel Conti Uy, respondent's Regional Sales Manager, testified that he met petitioner several times when he presented

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[23] TSN, May 27, 1999, pp 6-8.

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

[25] *Id.* at 16.

[26] *Id.* at 27.

[27] *Id.* at 29.

[28] *Id.* at 30.

[29] *Id.* at 31.

to her the five unpaid sales invoices[30] that, in one instance, petitioner, who was with Eliseo Dy who could not speak because of a throat infection, asked him to just pull out the remaining unsold goods for application to her total indebtedness;[31] that he told her that he would still have to ask the approval of their credit and collection department. Uy then came back with Navarez and, in the presence of petitioner, initiated the pull-out of the goods;[32] that after deducting the amount of the returned canned goods, the remaining balance was ₱463,493.63;[33] and when he made another visit, *i.e.*, a few days after Eliseo's death, he presented to petitioner the statement of account where the amount of the returned goods was deducted, but petitioner still refused to pay.[34]

Notably, petitioner did not even rebut, either in her direct testimony or in rebuttal, the testimonies of Navarez and Uy that they met with her several times, and talked with her regarding the collection of her indebtedness and the pull-out of the canned goods. In fact, in Uy's testimony, he also mentioned Eliseo's death, and that Uy even allowed few days to pass before going to petitioner's place to collect so as to give petitioner time to comfort herself. Eliseo's death sometime in October 1997 was confirmed by petitioner.

We agree with the CA when it said that if indeed petitioner did not transact with respondent, she should not have entertained respondent's collecting officers and should not have offered settlement or returned some of the canned goods.

The testimonies of respondent's witnesses were further bolstered by the absence of any motive on their part to falsely testify against petitioner; thus, their testimonies are hereby accorded full faith and credit.

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[30] TSN, June 22, 1999, pp. 18-20.

[31] *Id.* at 23.

[32] *Id.* at 24.

[33] *Id.* at 25.

[34] *Id.* at 26.

Petitioner's defense consists of denial. We have held that denial, if unsubstantiated by clear and convincing evidence, is a negative and self-serving evidence that has no weight in law and cannot be given greater evidentiary value over the testimony of credible witnesses who testified on affirmative matters.[35]

We find that respondent has sufficiently established petitioner's liability in the amount of ₱463,493.63. Such amount must be paid with legal interest from the filing of the complaint on June 25, 1998, until fully paid. As held in the landmark case of *Eastern Shipping Lines, Inc. v. Court of Appeals*,[36] to wit:

> 1. When the obligation is breached, and it consists in the payment of a sum of money, *i.e.*, a loan or forbearance of money, the interest due should be that which may have been stipulated in writing. Furthermore, the interest due shall itself earn legal interest from the time it is judicially demanded. In the absence of stipulation, the rate of interest shall be 12% per annum to be computed from default, *i.e.*, from judicial or extrajudicial demand under and subject to the provisions of Article 1169 of the Civil Code.
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> x x x x x x x x x
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> 3. When the judgment of the court awarding a sum of money becomes final and executory, the rate of legal interest, whether the case falls under paragraph 1 or paragraph 2, above, shall be 12% per annum from such finality until its satisfaction, this interim period being deemed to be by then an equivalent to a forbearance of credit.

WHEREFORE, the decision dated September 16, 2004 of the Court of Appeals in CA-G.R. CV No. 67975 is hereby *AFFIRMED.*

SO ORDERED.

Corona (Chairperson), Velasco, Jr., Nachura, and *Mendoza, JJ.,* concur.

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[35] See *Santos, Jr. v. NLRC*, G.R. No. 115795, March 6, 1998, 287 SCRA 117, 126, citing *Abadilla v. Tabilaran, Jr.*, A.M. No. MTJ-92-16, October 25, 1995, 249 SCRA 447; *Caca v. Court of Appeals*, G.R. No. 116962, July 7, 1997, 275 SCRA 123, 126.

[36] G.R. No. 97412, July 12, 1994, 234 SCRA 78, 95.

THIRD DIVISION

[G.R. No. 166869. February 16, 2010]

PHILIPPINE HAWK CORPORATION, *petitioner, vs.* **VIVIAN TAN LEE,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; FINALITY OF THE FACTUAL FINDINGS OF THE TRIAL COURTS. — Petitioner seeks a review of the factual findings of the trial court, which were sustained by the Court of Appeals, that petitioner's driver was negligent in driving the bus, which caused physical injuries to respondent and the death of respondent's husband. The rule is settled that the findings of the trial court, especially when affirmed by the Court of Appeals, are conclusive on this Court when supported by the evidence on record. The Court has carefully reviewed the records of this case, and found no cogent reason to disturb the findings of the trial court.

2. CIVIL LAW; *QUASI-DELICTS*; FORSEEABILITY TEST TO DETERMINE THE EXISTENCE OF NEGLIGENCE, APPLIED. — Foreseeability is the fundamental test of negligence. To be negligent, a defendant must have acted or failed to act in such a way that an ordinary reasonable man would have realized that certain interests of certain persons were unreasonably subjected to a general but definite class of risks. In this case, the bus driver, who was driving on the right side of the road, already saw the motorcycle on the left side of the road before the collision. However, he did not take the necessary precaution to slow down, but drove on and bumped the motorcycle, and also the passenger jeep parked on the left side of the road, showing that the bus was negligent in veering to the left lane, causing it to hit the motorcycle and the passenger jeep.

3. ID.; ID.; EMPLOYER'S LIABILITY FOR FAILURE TO EXERCISE THE DILIGENCE OF A GOOD FATHER OF THE FAMILY IN THE SELECTION AND SUPERVISION OF ITS EMPLOYEE, UPHELD. — Whenever an employee's negligence causes

damage or injury to another, there instantly arises a presumption that the employer failed to exercise the due diligence of a good father of the family in the selection or supervision of its employees. To avoid liability for a *quasi-delict* committed by his employee, an employer must overcome the presumption by presenting convincing proof that he exercised the care and diligence of a good father of a family in the selection and supervision of his employee. The Court upholds the finding of the trial court and the Court of Appeals that petitioner is liable to respondent, since it failed to exercise the diligence of a good father of the family in the selection and supervision of its bus driver, Margarito Avila, for having failed to sufficiently inculcate in him discipline and correct behavior on the road. Indeed, petitioner's tests were concentrated on the ability to drive and physical fitness to do so. It also did not know that Avila had been previously involved in sideswiping incidents.

4. ID.; ID.; DAMAGES; INDEMNITY FOR LOSS OF EARNING CAPACITY; HOW PROVED; APPLICATION. — As a rule, documentary evidence should be presented to substantiate the claim for damages for loss of earning capacity. By way of exception, damages for loss of earning capacity may be awarded despite the absence of documentary evidence when: (1) the deceased is self-employed and earning less than the minimum wage under current labor laws, in which case, judicial notice may be taken of the fact that in the deceased's line of work no documentary evidence is available; or (2) the deceased is employed as a daily wage worker earning less than the minimum wage under current labor laws. In this case, the records show that respondent's husband was leasing and operating a Caltex gasoline station in Gumaca, Quezon. Respondent testified that her husband earned an annual income of one million pesos. Respondent presented in evidence a Certificate of Creditable Income Tax Withheld at Source for the Year 1990, which showed that respondent's husband earned a gross income of ₱950,988.43 in 1990. It is reasonable to use the Certificate and respondent's testimony as bases for fixing the gross annual income of the deceased at one million pesos before respondent's husband died on March 17, 1999. However, no documentary evidence was presented regarding the income derived from their copra business; hence, the testimony of respondent as regards such income cannot be considered.

5. ID.; ID.; ID.; ID.; HOW COMPUTED. — In the computation of loss of earning capacity, only net earnings, not gross earnings, are to be considered; that is, the total of the earnings less expenses necessary for the creation of such earnings or income, less living and other incidental expenses. In the absence of documentary evidence, it is reasonable to peg necessary expenses for the lease and operation of the gasoline station at 80 percent of the gross income, and peg living expenses at 50 percent of the net income (gross income less necessary expenses).

6. ID.; ID.; ID.; ACTUAL DAMAGES MUST BE SUBSTANTIATED BY DOCUMENTARY EVIDENCE; APPLICATION. — Actual damages must be substantiated by documentary evidence, such as receipts, in order to prove expenses incurred as a result of the death of the victim or the physical injuries sustained by the victim. A review of the valid receipts submitted in evidence showed that the funeral and related expenses amounted only to ₱114,948.60, while the medical expenses of respondent amounted only to ₱12,244.25, yielding a total of ₱127,192.85 in actual damages.

7. ID.; ID.; ID.; MORAL DAMAGES FOR THE DEATH OF A HUSBAND AND FOR PHYSICAL INJURIES SUSTAINED BY A PARTY, UPHELD. — [T]he Court of Appeals correctly sustained the award of moral damages in the amount of ₱50,000.00 for the death of respondent's husband. Moral damages are not intended to enrich a plaintiff at the expense of the defendant. They are awarded to allow the plaintiff to obtain means, diversions or amusements that will serve to alleviate the moral suffering he/she has undergone due to the defendant's culpable action and must, perforce, be proportional to the suffering inflicted. The Court of Appeals also correctly awarded respondent moral damages for the physical injuries she sustained due to the vehicular accident. Under Art. 2219 of the Civil Code, moral damages may be recovered in quasi-delicts causing physical injuries. However, the award of ₱50,000.00 should be reduced to ₱30,000.00 in accordance with prevailing jurisprudence.

8. ID.; ID.; ID.; TEMPERATE DAMAGES AWARDED IN THE ABSENCE OF PROOF OF ACTUAL DAMAGES. — [T]he Court of Appeals correctly awarded temperate damages in the amount of ₱10,000.00 for the damage caused on respondent's

motorcycle. Under Art. 2224 of the Civil Code, temperate damages "may be recovered when the court finds that some pecuniary loss has been suffered but its amount cannot, from the nature of the case, be proved with certainty." The cost of the repair of the motorcycle was prayed for by respondent in her Complaint. However, the evidence presented was merely a job estimate of the cost of the motorcycle's repair amounting to ₱17,829.00. The Court of Appeals aptly held that there was no doubt that the damage caused on the motorcycle was due to the negligence of petitioner's driver. In the absence of competent proof of the actual damage caused on the motorcycle or the actual cost of its repair, the award of temperate damages by the appellate court in the amount of ₱10,000.00 was reasonable under the circumstances.

9. ID.; ID.; ID.; CIVIL INDEMNITY FOR THE DEATH OF A HUSBAND, AWARDED. — [T]he Court of Appeals correctly awarded respondent civil indemnity for the death of her husband, which has been fixed by current jurisprudence at ₱50,000.00. The award is proper under Art. 2206 of the Civil Code.

APPEARANCES OF COUNSEL

Manuel V. Regondola for petitioner.
Clemente D. Fajardo, Jr. for respondent.

D E C I S I O N

PERALTA, *J.*:

This is a Petition for Review on *Certiorari*[1] of the Decision of the Court of Appeals in CA-G.R. CV No. 70860, promulgated on August 17, 2004, affirming with modification the Decision of the Regional Trial Court (RTC) of Quezon City, Branch 102, dated March 16, 2001, in Civil Case No. Q-91-9191, ordering petitioner Philippine Hawk Corporation and Margarito Avila to jointly and severally pay respondent Vivian Tan Lee damages as a result of a vehicular accident.

The facts are as follows:

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

On March 15, 2005, respondent Vivian Tan Lee filed before the RTC of Quezon City a Complaint[2] against petitioner Philippine Hawk Corporation and defendant Margarito Avila for damages based on *quasi-delict*, arising from a vehicular accident that occurred on March 17, 1991 in Barangay Buensoceso, Gumaca, Quezon. The accident resulted in the death of respondent's husband, Silvino Tan, and caused respondent physical injuries.

On June 18, 1992, respondent filed an Amended Complaint,[3] in her own behalf and in behalf of her children, in the civil case for damages against petitioner. Respondent sought the payment of indemnity for the death of Silvino Tan, moral and exemplary damages, funeral and interment expenses, medical and hospitalization expenses, the cost of the motorcycle's repair, attorney's fees, and other just and equitable reliefs.

The accident involved a motorcycle, a passenger jeep, and a bus with Body No. 119. The bus was owned by petitioner Philippine Hawk Corporation, and was then being driven by Margarito Avila.

In its Answer,[4] petitioner denied liability for the vehicular accident, alleging that the immediate and proximate cause of the accident was the recklessness or lack of caution of Silvino Tan. Petitioner asserted that it exercised the diligence of a good father of the family in the selection and supervision of its employees, including Margarito Avila.

On March 25, 1993, the trial court issued a Pre-trial Order[5] stating that the parties manifested that there was no possibility of amicable settlement between them. However, they agreed to stipulate on the following facts:

1. On March 17, 1991, in Bgy. Buensoceso, Gumaca, Quezon, plaintiff Vivian Lee Tan and her husband Silvino Tan, while

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[2] Records, p. 1.

[3] *Id.* at 38.

[4] *Id.* at 54.

[5] *Id.* at 80.

on board a motorcycle with [P]late No. DA-5480 driven by the latter, and a Metro Bus with [P]late No. NXR-262 driven by Margarito Avila, were involved in an accident;

2. As a result of the accident, Silvino Tan died on the spot while plaintiff Vivian Lee Tan suffered physical injuries which necessitated medical attention and hospitalization;

3. The deceased Silvino Tan is survived by his wife, plaintiff Vivian Lee Tan and four children, three of whom are now residents of the United States; and

4. Defendant Margarito Avila is an employee of defendant Philippine Hawk.[6]

The parties also agreed on the following issues:

1. Whether or not the proximate cause of the accident causing physical injuries upon the plaintiff Vivian Lee Tan and resulting in the death of the latter's husband was the recklessness and negligence of Margarito Avila or the deceased Silvino Tan; and

2. Whether or not defendant Philippine Hawk Transport Corporation exercised the diligence of a good father of the family in the selection and supervision of its driver Margarito Avila.[7]

Respondent testified that on March 17, 1991, she was riding on their motorcycle in tandem with her husband, who was on the wheel, at a place after a Caltex gasoline station in Barangay Buensoceso, Gumaca, Quezon on the way to Lopez, Quezon. They came from the Pasumbal Machine Shop, where they inquired about the repair of their tanker. They were on a stop position at the side of the highway; and when they were about to make a turn, she saw a bus running at fast speed coming toward them, and then the bus hit a jeep parked on the roadside, and their motorcycle as well. She lost consciousness and was brought to the hospital in Gumaca, Quezon, where she was confined for a week. She was later transferred to St. Luke's Hospital in

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[6] *Supra* note 2, at 80.

[7] *Id.*

Quezon City, Manila. She suffered a fracture on her left chest, her left arm became swollen, she felt pain in her bones, and had high blood pressure.[8]

Respondent's husband died due to the vehicular accident. The immediate cause of his death was massive cerebral hemorrhage.[9]

Respondent further testified that her husband was leasing[10] and operating a Caltex gasoline station in Gumaca, Quezon that yielded one million pesos a year in revenue. They also had a copra business, which gave them an income of ₱3,000.00 a month or ₱36,000.00 a year.[11]

Ernest Ovial, the driver of the passenger jeep involved in the accident, testified that in the afternoon of March 17, 1991, his jeep was parked on the left side of the highway near the Pasumbal Machine Shop. He did not notice the motorcycle before the accident. But he saw the bus dragging the motorcycle along the highway, and then the bus bumped his jeep and sped away.[12]

For the defense, Margarito Avila, the driver of petitioner's bus, testified that on March 17, 1999, at about 4:30 p.m., he was driving his bus at 60 kilometers per hour on the Maharlika Highway. When they were at Barangay Buensoceso, Gumaca, Quezon, a motorcycle ran from his left side of the highway, and as the bus came near, the motorcycle crossed the path of the bus, and so he turned the bus to the right. He heard a loud banging sound. From his side mirror, he saw that the motorcycle turned turtle ("*bumaliktad*"). He did not stop to help out of fear for his life, but drove on and surrendered to the police. He denied that he bumped the motorcycle.[13]

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[8] TSN, April 26, 1994, pp. 6-7, 14 and 22; May 11, 1994, pp. 14-15.

[9] Death Certificate, Exhibit "B", folder of exhibits, p. 3.

[10] Annex "C", folder of exhibits, p.11.

[11] TSN, April 26, 1994, pp. 12-13.

[12] TSN, March 16, 1995, pp. 4-6.

[13] TSN, February 13, 1996, pp. 5-11, 18-19 and 23; September 10, 1996, pp. 7, 10, 12 and 14.

Avila further testified that he had previously been involved in sideswiping incidents, but he forgot how many times.[14]

Rodolfo Ilagan, the bus conductor, testified that the motorcycle bumped the left side of the bus that was running at 40 kilometers per hour.[15]

Domingo S. Sisperes, operations officer of petitioner, testified that, like their other drivers, Avila was subjected to and passed the following requirements:

(1) Submission of NBI clearance;
(2) Certification from his previous employer that he had no bad record;
(3) Physical examination to determine his fitness to drive;
(4) Test of his driving ability, particularly his defensive skill; and
(5) Review of his driving skill every six months.[16]

Efren Delantar, a *Barangay Kagawad* in Buensoceso, Gumaca, Quezon, testified that the bus was running on the highway on a straight path when a motorcycle, with a woman behind its driver, suddenly emerged from the left side of the road from a machine shop. The motorcycle crossed the highway in a zigzag manner and bumped the side of the bus.[17]

In its Decision dated March 16, 2001, the trial court rendered judgment against petitioner and defendant Margarito Avila, the dispositive portion of which reads:

ACCORDINGLY, MARGARITO AVILA is adjudged guilty of simple negligence, and judgment is hereby rendered in favor of the plaintiff Vivian Lee Tan and h[er] husband's heirs ordering the defendants Philippine Hawk Corporation and Margarito Avila to pay them jointly and solidarily the sum of ₱745,575.00 representing loss of earnings and actual damages plus ₱50,000.00 as moral damages.[18]

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[14] TSN, September 10, 1996, pp. 3-4.

[15] TSN, October 22, 1996, p. 5.

[16] TSN, January 14, 1997, pp. 5-18.

[17] TSN, July 8, 1997, p. 5.

[18] Record, p. 209.

The trial court found that before the collision, the motorcycle was on the left side of the road, just as the passenger jeep was. Prior to the accident, the motorcycle was in a running position moving toward the right side of the highway. The trial court agreed with the bus driver that the motorcycle was moving ahead of the bus from the left side of the road toward the right side of the road, but disagreed that the motorcycle crossed the path of the bus while the bus was running on the right side of the road.[19]

The trial court held that if the bus were on the right side of the highway, and Margarito Avila turned his bus to the right in an attempt to avoid hitting the motorcyle, then the bus would not have hit the passenger jeep, which was then parked on the left side of the road. The fact that the bus also hit the passenger jeep showed that the bus must have been running from the right lane to the left lane of the highway, which caused the collision with the motorcycle and the passenger jeep parked on the left side of the road. The trial court stated that since Avila saw the motorcycle before the collision, he should have stepped on the brakes and slowed down, but he just maintained his speed and veered to the left.[20] The trial court found Margarito Avila guilty of simple negligence.

The trial court held petitioner bus company liable for failing to exercise the diligence of a good father of the family in the selection and supervision of Avila, having failed to sufficiently inculcate in him discipline and correct behavior on the road.[21]

On appeal, the Court of Appeals affirmed the decision of the trial court with modification in the award of damages. The dispositive portion of the decision reads:

WHEREFORE, foregoing premises considered, the appeal is DENIED. The assailed decision dated March 16, 2001 is hereby AFFIRMED with MODIFICATION. Appellants Philippine Hawk and Avila are hereby ordered to pay jointly and severally appellee the

[19] *Supra* note 18, at 208.

[20] *Id.*

[21] *Id.*

following amount: (a) ₱168,019.55 as actual damages; (b) ₱10,000.00 as temperate damages; (c) ₱100,000.00 as moral damages; (d) ₱590,000.00 as unearned income; and (e) ₱50,000.00 as civil indemnity.[22]

Petitioner filed this petition, raising the following issues:

1) The Court of Appeals committed grave abuse of discretion amounting to lack of jurisdiction in passing upon an issue, which had not been raised on appeal, and which had, therefore, attained finality, in total disregard of the doctrine laid down by this Court in *Abubakar v. Abubakar*, G.R. No. 134622, October 22, 1999.

2) The Court of Appeals committed reversible error in its finding that the petitioner's bus driver saw the motorcycle of private respondent executing a U-turn on the highway "about fifteen (15) meters away" and thereafter held that the Doctrine of Last Clear was applicable to the instant case. This was a palpable error for the simple reason that the aforesaid distance was the distance of the witness to the bus and not the distance of the bus to the respondent's motorcycle, as clearly borne out by the records.

3) The Court of Appeals committed reversible error in awarding damages in total disregard of the established doctrine laid down in *Danao v. Court of Appeals*, 154 SCRA 447 and *Viron Transportation Co., Inc. v. Delos Santos*, G.R. No. 138296, November 22, 2000.[23]

In short, the issues raised by petitioner are: (1) whether or not negligence may be attributed to petitioner's driver, and whether negligence on his part was the proximate cause of the accident, resulting in the death of Silvino Tan and causing physical injuries to respondent; (2) whether or not petitioner is liable to respondent for damages; and (3) whether or not the damages awarded by respondent Court of Appeals are proper.

Petitioner seeks a review of the factual findings of the trial court, which were sustained by the Court of Appeals, that

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[22] *Rollo* p. 32.

[23] *Id.* at 8-9.

petitioner's driver was negligent in driving the bus, which caused physical injuries to respondent and the death of respondent's husband.

The rule is settled that the findings of the trial court, especially when affirmed by the Court of Appeals, are conclusive on this Court when supported by the evidence on record.[24] The Court has carefully reviewed the records of this case, and found no cogent reason to disturb the findings of the trial court, thus:

> The Court agree[s] with the bus driver Margarito that the motorcycle was moving ahead of the bus towards the right side from the left side of the road, but disagrees with him that it crossed the path of the bus while the bus was running on the right side of the highway.
>
> If the bus were on the right side of the highway and Margarito turned his bus to the right in an attempt to avoid hitting it, then the bus would not have hit the passenger jeep vehicle which was then parked on the left side of the road. The fact that the bus hit the jeep too, shows that the bus must have been running to the left lane of the highway from right to the left, that the collision between it and the parked jeep and the moving rightways cycle became inevitable. Besides, Margarito said he saw the motorcycle before the collision ahead of the bus; that being so, an extra-cautious public utility driver should have stepped on his brakes and slowed down. Here, the bus never slowed down, it simply maintained its highway speed and veered to the left. This is negligence indeed.[25]

Petitioner contends that the Court of Appeals was mistaken in stating that the bus driver saw respondent's motorcycle "about 15 meters away" before the collision, because the said distance, as testified to by its witness Efren Delantar Ong, was Ong's distance from the bus, and not the distance of the bus from the motorcycle. Petitioner asserts that this mistaken assumption of the Court of Appeals made it conclude that the bus driver, Margarito Avila, had the last clear chance to avoid the accident, which was the basis for the conclusion that Avila was guilty of simple negligence.

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[24] *Viron Transportation Co., Inc. v. Delos Santos*, G.R. No. 138296, November 22, 2000, 345 SCRA 509.

[25] *Supra* note 18, at 208.

A review of the records showed that it was petitioner's witness, Efren Delantar Ong, who was about 15 meters away from the bus when he saw the vehicular accident.[26] Nevertheless, this fact does not affect the finding of the trial court that petitioner's bus driver, Margarito Avila, was guilty of simple negligence as affirmed by the appellate court. Foreseeability is the fundamental test of negligence.[27] To be negligent, a defendant must have acted or failed to act in such a way that an ordinary reasonable man would have realized that certain interests of certain persons were unreasonably subjected to a general but definite class of risks.[28]

In this case, the bus driver, who was driving on the right side of the road, already saw the motorcycle on the left side of the road before the collision. However, he did not take the necessary precaution to slow down, but drove on and bumped the motorcycle, and also the passenger jeep parked on the left side of the road, showing that the bus was negligent in veering to the left lane, causing it to hit the motorcycle and the passenger jeep.

Whenever an employee's negligence causes damage or injury to another, there instantly arises a presumption that the employer failed to exercise the due diligence of a good father of the family in the selection or supervision of its employees.[29] To avoid liability for a *quasi-delict* committed by his employee, an employer must overcome the presumption by presenting convincing proof that he exercised the care and diligence of a good father of a family in the selection and supervision of his employee.[30]

The Court upholds the finding of the trial court and the Court of Appeals that petitioner is liable to respondent, since it failed to exercise the diligence of a good father of the family in the

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[26] TSN, July 8, 1997, p. 27.

[27] *Achevara v. Ramos*, G.R. No. 175172, September 29, 2009.

[28] *Id*.

[29] *Macalinao v. Ong*, G.R. No. 146635, December 14, 2005, 477 SCRA 740.

[30] *Id*.

selection and supervision of its bus driver, Margarito Avila, for having failed to sufficiently inculcate in him discipline and correct behavior on the road. Indeed, petitioner's tests were concentrated on the ability to drive and physical fitness to do so. It also did not know that Avila had been previously involved in sideswiping incidents.

As regards the issue on the damages awarded, petitioner contends that it was the only one that appealed the decision of the trial court with respect to the award of actual and moral damages; hence, the Court of Appeals erred in awarding other kinds of damages in favor of respondent, who did not appeal from the trial court's decision.

Petitioner's contention is unmeritorious.

Section 8, Rule 51 of the 1997 Rules of Civil Procedure provides:

> SEC. 8. *Questions that may be decided.* — No error which does not affect the jurisdiction over the subject matter or the validity of the judgment appealed from or the proceedings therein will be considered unless stated in the assignment of errors, or closely related to or dependent on an assigned error and properly argued in the brief, save as the court pass upon plain errors and clerical errors.

Philippine National Bank v. Rabat[31] cited the book[32] of Justice Florenz D. Regalado to explain the section above, thus:

> In his book, Mr. Justice Florenz D. Regalado commented on this section, thus:
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> 1. Sec. 8, which is an amendment of the former Sec. 7 of this Rule, now includes some substantial changes in the rules on assignment of errors. The basic procedural rule is that only errors claimed and assigned by a party will be considered by the court, except errors affecting its jurisdiction over the subject matter. To this exception has now been added errors affecting the validity of the judgment appealed from or the proceedings therein.
>
> Also, even if the error complained of by a party is not expressly stated in his assignment of errors but the same is closely related to

[31] G.R. No. 134406, November 15, 2000, 344 SCRA 706.

[32] *Remedial Law Compendium*, Vol. I, 582-583 (Sixth Revised Edition, 1997).

or dependent on an assigned error and properly argued in his brief, such error may now be considered by the court. These changes are of jurisprudential origin.

2. **The procedure in the Supreme Court being generally the same as that in the Court of Appeals, unless otherwise indicated (see Secs. 2 and 4, Rule 56), it has been held that the latter is clothed with ample authority to review matters, even if they are not assigned as errors on appeal, if it finds that their consideration is necessary in arriving at a just decision of the case**. Also, an unassigned error closely related to an error properly assigned (*PCIB vs. CA, et al.*, L-34931, Mar. 18, 1988), or upon which the determination of the question raised by error properly assigned is dependent, will be considered by the appellate court notwithstanding the failure to assign it as error (*Ortigas, Jr. vs. Lufthansa German Airlines*, L-28773, June 30, 1975; *Soco vs. Militante, et al.,* G.R. No. 58961, June 28, 1983).

It may also be observed that under Sec. 8 of this Rule, the appellate court is authorized to consider a plain error, although it was not specifically assigned by the appellant (*Dilag vs. Heirs of Resurreccion*, 76 Phil. 649), otherwise it would be sacrificing substance for technicalities.[33]

In this case for damages based on *quasi-delict*, the trial court awarded respondent the sum of ₱745,575.00, representing loss of earning capacity (₱590,000.00) and actual damages (₱155,575.00 for funeral expenses), plus ₱50,000.00 as moral damages. On appeal to the Court of Appeals, petitioner assigned as error the award of damages by the trial court on the ground that it was based merely on suppositions and surmises, not the admissions made by respondent during the trial.

In its Decision, the Court of Appeals sustained the award by the trial court for loss of earning capacity of the deceased Silvino Tan, moral damages for his death, and actual damages, although the amount of the latter award was modified.

The indemnity for loss of earning capacity of the deceased is provided for by Article 2206 of the Civil Code.[34] Compensation

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[33] *Supra* note 31, at 715.

[34] Civil Code, Art. 2206. x x x

of this nature is awarded not for loss of earnings, but for loss of capacity to earn money.[35]

As a rule, documentary evidence should be presented to substantiate the claim for damages for loss of earning capacity.[36] By way of exception, damages for loss of earning capacity may be awarded despite the absence of documentary evidence when: (1) the deceased is self-employed and earning less than the minimum wage under current labor laws, in which case, judicial notice may be taken of the fact that in the deceased's line of work no documentary evidence is available; or (2) the deceased is employed as a daily wage worker earning less than the minimum wage under current labor laws.[37]

In this case, the records show that respondent's husband was leasing and operating a Caltex gasoline station in Gumaca, Quezon. Respondent testified that her husband earned an annual income of one million pesos. Respondent presented in evidence a Certificate of Creditable Income Tax Withheld at Source for the Year 1990,[38] which showed that respondent's husband earned a gross income of ₱950,988.43 in 1990. It is reasonable to use the Certificate and respondent's testimony as bases for fixing the gross annual income of the deceased at one million pesos before respondent's husband died on March 17, 1999. However, no documentary evidence was presented regarding the income derived from their copra business; hence, the testimony of respondent as regards such income cannot be considered.

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(1) The defendant shall be liable for the loss of the earning capacity of the deceased, and the indemnity shall be paid to the heirs of the latter; such indemnity shall in every case be assessed and awarded by the court, unless the deceased on account of permanent physical disability not caused by the defendant, had no earning capacity at the time of his death;

x x x x x x x x x

[35] *Heirs of George Y. Poe v. Malayan Insurance Co., Inc.*, G.R. No. 156302, April 7, 2009, 584 SCRA 178.

[36] *People v. Garchitorena*, G.R. No. 175605, August 28, 2009.

[37] *Supra* note 36.

[38] Exhibit "J", folder of exhibits, p. 20.

In the computation of loss of earning capacity, only net earnings, not gross earnings, are to be considered; that is, the total of the earnings less expenses necessary for the creation of such earnings or income, less living and other incidental expenses.[39] In the absence of documentary evidence, it is reasonable to peg necessary expenses for the lease and operation of the gasoline station at 80 percent of the gross income, and peg living expenses at 50 percent of the net income (gross income less necessary expenses).

In this case, the computation for loss of earning capacity is as follows:

Net Earning Capacity	=	Life Expectancy [2/3 (80-age at the time of death)]	x	Gross Annual Income (GAI)	–	Reasonable and Necessary Expenses (80% of GAI)
X =		[2/3 (80-65)]	x	₱1,000,000.00	-	₱800,000.00
X =		2/3 (15)	x	₱200,000.00	-	₱100,000.00 (Living Expenses)
X =		30/3	x	₱100,000.00		
X =		10	x	₱100,000.00		
X =		₱1,000,000.00				

The Court of Appeals also awarded actual damages for the expenses incurred in connection with the death, wake, and interment of respondent's husband in the amount of ₱154,575.30, and the medical expenses of respondent in the amount of ₱168,019.55.

Actual damages must be substantiated by documentary evidence, such as receipts, in order to prove expenses incurred as a result of the death of the victim[40] or the physical injuries sustained by the victim. A review of the valid receipts submitted in evidence showed that the funeral and related expenses

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[39] *Smith Bell Dodwell Shipping Agency Corporation v. Borja*, G.R. No. 143008, June 10, 2002, 383 SCRA 341, 351.

[40] *People v. Ibañez*, G.R. Nos. 133923-24, July 30, 2003, 407 SCRA 406.

amounted only to ₱114,948.60, while the medical expenses of respondent amounted only to ₱12,244.25, yielding a total of ₱127,192.85 in actual damages.

Moreover, the Court of Appeals correctly sustained the award of moral damages in the amount of ₱50,000.00 for the death of respondent's husband. Moral damages are not intended to enrich a plaintiff at the expense of the defendant.[41] They are awarded to allow the plaintiff to obtain means, diversions or amusements that will serve to alleviate the moral suffering he/she has undergone due to the defendant's culpable action and must, perforce, be proportional to the suffering inflicted.[42]

In addition, the Court of Appeals correctly awarded temperate damages in the amount of ₱10,000.00 for the damage caused on respondent's motorcycle. Under Art. 2224 of the Civil Code, temperate damages "may be recovered when the court finds that some pecuniary loss has been suffered but its amount cannot, from the nature of the case, be proved with certainty." The cost of the repair of the motorcycle was prayed for by respondent in her Complaint. However, the evidence presented was merely a job estimate[43] of the cost of the motorcycle's repair amounting to ₱17, 829.00. The Court of Appeals aptly held that there was no doubt that the damage caused on the motorcycle was due to the negligence of petitioner's driver. In the absence of competent proof of the actual damage caused on the motorcycle or the actual cost of its repair, the award of temperate damages by the appellate court in the amount of ₱10,000.00 was reasonable under the circumstances.[44]

The Court of Appeals also correctly awarded respondent moral damages for the physical injuries she sustained due to the vehicular accident. Under Art. 2219 of the Civil Code,[45]

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[41] *Hernandez v. Dolor*, G.R. No. 160286, July 30, 2004, 435 SCRA 668.

[42] *Id.*

[43] Exhibit "M", folder of exhibits, p. 47.

[44] See *Viron Transportation Co., Inc. v. Delos Santos*, *supra* note 24.

[45] Art. 2219. Moral damages may be recovered in the following and analogous cases:

moral damages may be recovered in quasi-delicts causing physical injuries. However, the award of ₱50,000.00 should be reduced to ₱30,000.00 in accordance with prevailing jurisprudence.[46]

Further, the Court of Appeals correctly awarded respondent civil indemnity for the death of her husband, which has been fixed by current jurisprudence at ₱50,000.00.[47] The award is proper under Art. 2206 of the Civil Code.[48]

In fine, the Court of Appeals correctly awarded civil indemnity for the death of respondent's husband, temperate damages, and moral damages for the physical injuries sustained by respondent in addition to the damages granted by the trial court to respondent. The trial court overlooked awarding the additional damages, which were prayed for by respondent in her Amended Complaint. The appellate court is clothed with ample authority to review matters, even if they are not assigned as errors in the appeal, if it finds that their consideration is necessary in arriving at a just decision of the case.[49]

WHEREFORE, the petition is *DENIED*. The Decision of the Court of Appeals dated August 17, 2004 in CA-G.R. CV No. 70860 is hereby *AFFIRMED* with *MODIFICATION*. Petitioner Philippine Hawk Corporation and Margarito Avila are hereby ordered to pay jointly and severally respondent Vivian Lee Tan: (a) civil indemnity in the amount of Fifty Thousand Pesos (₱50,000.00); (b) actual damages in the amount of One Hundred Twenty-Seven Thousand One Hundred Ninety-Two

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x x x x x x x x x

(2) *Quasi-delicts* causing physical injuries;

x x x x x x x x x

[46] *Guillang v. Bedania*, G.R. No. 162987, May 21, 2009, 588 SCRA 73.

[47] *Id.*; *Philtranco Service Enterprises v. Court of Appeals*, G.R. No. 120553, June 17, 1997, 273 SCRA 562.

[48] Art. 2206. The amount of damages for death caused by a crime or *quasi-delict* shall be at least three thousand pesos, even though there may have been mitigating circumstances. xxx

[49] *Korean Airlines Co., Ltd. v. Court of Appeals*, G.R. No. 114061, August 3, 1994, 234 SCRA 717.

Pesos and Eighty-Five Centavos (₱127,192.85); (c) moral damages in the amount of Eighty Thousand Pesos (₱80,000.00); (d) indemnity for loss of earning capacity in the amount of One Million Pesos (₱1,000,000.00); and (e) temperate damages in the amount of Ten Thousand Pesos (₱10,000.00).

Costs against petitioner.

SO ORDERED.

Corona (Chairperson), Velasco, Jr., Nachura, and *Mendoza, JJ.,* concur.

THIRD DIVISION

[G.R. No. 168644. February 16, 2010]

BSB GROUP, INC., represented by its President, Mr. RICARDO BANGAYAN, *petitioner vs.* **SALLY GO *a.k.a.* SALLY GO-BANGAYAN,** *respondent.*

SYLLABUS

1. CRIMINAL LAW; QUALIFIED THEFT; ELEMENTS.— Theft is present when a person, with intent to gain but without violence against or intimidation of persons or force upon things, takes the personal property of another without the latter's consent. It is qualified when, among others, and as alleged in the instant case, it is committed with abuse of confidence. The prosecution of this offense necessarily focuses on the existence of the following elements: (a) there was taking of personal property belonging to another; (b) the taking was done with intent to gain; (c) the taking was done without the consent of the owner; (d) the taking was done without violence against or intimidation of persons or force upon things; and (e) it was done with abuse of confidence.

2. ID.; ID.; THE ALLEGATION OF THEFT OF MONEY NECESSITATES THE PRESENTATION OF EVIDENCE THAT TENDS TO PROVE THE UNLAWFUL TAKING OF MONEY BELONGING TO ANOTHER; CASE AT BAR.— In theft, the act of unlawful taking connotes deprivation of personal property of one by another with intent to gain, and it is immaterial that the offender is able or unable to freely dispose of the property stolen because the deprivation relative to the offended party has already ensued from such act of execution. The allegation of theft of money, hence, necessitates that evidence presented must have a tendency to prove that the offender has unlawfully taken money belonging to another. Interestingly, petitioner has taken pains in attempting to draw a connection between the evidence subject of the instant review, and the allegation of theft in the Information by claiming that respondent had fraudulently deposited the checks in her own name. But this line of argument works more prejudice than favor, because it in effect, seeks to establish the commission, not of theft, but rather of some other crime — probably *estafa*.

3. ID.; ID.; DIFFERENCE BETWEEN CASH AND CHECK IN RELATION TO THE OFFENSE OF ESTAFA BY CONVERSION AND THEFT OF CASH, EXPLAINED.— [T]hat there is no difference between cash and check is true in other instances. In *estafa* by conversion, for instance, whether the thing converted is cash or check, is immaterial in relation to the formal allegation in an information for that offense; a check, after all, while not regarded as legal tender, is normally accepted under commercial usage as a substitute for cash, and the credit it represents in stated monetary value is properly capable of appropriation. And it is in this respect that what the offender does with the check subsequent to the act of unlawfully taking it becomes material inasmuch as this offense is a continuing one. In other words, in pursuing a case for this offense, the prosecution may establish its cause by the presentation of the checks involved. These checks would then constitute the best evidence to establish their contents and to prove the elemental act of conversion in support of the proposition that the offender has indeed indorsed the same in his own name. Theft, however, is not of such character. Thus, for our purposes, as the Information in this case accuses respondent of having stolen cash, proof tending to establish that respondent has actualized her criminal intent by indorsing

the checks and depositing the proceeds thereof in her personal account, becomes not only irrelevant but also immaterial and, on that score, inadmissible in evidence.

4. COMMERCIAL LAW; BANK SECRECY ACT OF 1955 (RA 1405); WHAT CONSTITUTES THE SUBJECT-MATTER OF LITIGATION TO VALIDLY CLAIM EXCLUSION FROM THE COVERAGE OF THE CONFIDENTIALITY RULE, EXPLAINED AND APPLIED.— What indeed constitutes the subject matter in litigation in relation to Section 2 of R.A. No. 1405 has been pointedly and amply addressed in *Union Bank of the Philippines v. Court of Appeals*, in which the Court noted that the inquiry into bank deposits allowable under R.A. No. 1405 must be premised on the fact that the money deposited in the account is **itself** the subject of the action. Given this perspective, we deduce that the subject matter of the action in the case at bar is to be determined from the indictment that charges respondent with the offense, and not from the evidence sought by the prosecution to be admitted into the records. In the criminal Information filed with the trial court, respondent, unqualifiedly and in plain language, is charged with qualified theft by abusing petitioner's trust and confidence and stealing cash in the amount of ₱1,534,135.50. The said Information makes no factual allegation that in some material way involves the checks subject of the testimonial and documentary evidence sought to be suppressed. Neither do the allegations in said Information make mention of the supposed bank account in which the funds represented by the checks have allegedly been kept. In other words, it can hardly be inferred from the indictment itself that the Security Bank account is the ostensible subject of the prosecution's inquiry. Without needlessly expanding the scope of what is plainly alleged in the Information, the subject matter of the action in this case is the money amounting to ₱1,534,135.50 alleged to have been stolen by respondent, and not the money equivalent of the checks which are sought to be admitted in evidence.

5. REMEDIAL LAW; EVIDENCE; WHEN THE DOCUMENTARY AND TESTIMONIAL EVIDENCE SOUGHT TO BE ADMITTED ARE CONSIDERED INCOMPETENT AND IRRELEVANT.— It comes clear that the admission of testimonial and documentary evidence relative to respondent's Security Bank account serves no other purpose than to establish the existence of such

account, its nature and the amount kept in it. It constitutes an attempt by the prosecution at an impermissible inquiry into a bank deposit account the privacy and confidentiality of which is protected by law. On this score alone, the objection posed by respondent in her motion to suppress should have indeed put an end to the controversy at the very first instance it was raised before the trial court. In sum, we hold that the testimony of Marasigan on the particulars of respondent's supposed bank account with Security Bank and the documentary evidence represented by the checks adduced in support thereof, are not only incompetent for being excluded by operation of R.A. No. 1405. They are likewise irrelevant to the case, inasmuch as they do not appear to have any logical and reasonable connection to the prosecution of respondent for qualified theft. We find full merit in and affirm respondent's objection to the evidence of the prosecution.

APPEARANCES OF COUNSEL

Manalo-Ang & Associates Law Firm for petitioner.
Mauricio Law Office for respondent.

D E C I S I O N

PERALTA, *J.*:

This is a Petition for Review under Rule 45 of the Rules of Court assailing the Decision of the Court of Appeals in CA-G.R. SP No. 87600[1] dated April 20, 2005, which reversed and set aside the September 13, 2004[2] and November 5, 2004[3] Orders issued by the Regional Trial Court of Manila, Branch 36[4] in Criminal Case No. 02-202158 for qualified theft. The

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[1] Penned by Associate Justice Delilah Vidallon-Magtolis, with Associate Justices Perlita J. Tria Tirona and Jose C. Reyes, Jr., concurring, CA *rollo*, pp. 136-145.

[2] Records, Vol. 2, p. 369.

[3] *Id.* at 379-381.

[4] Presided by Judge Wilfredo D. Reyes.

said orders, in turn, respectively denied the motion filed by herein respondent Sally Go for the suppression of the testimonial and documentary evidence relative to a Security Bank account, and denied reconsideration.

The basic antecedents are no longer disputed.

Petitioner, the BSB Group, Inc., is a duly organized domestic corporation presided by its herein representative, Ricardo Bangayan (Bangayan). Respondent Sally Go, alternatively referred to as Sally Sia Go and Sally Go-Bangayan, is Bangayan's wife, who was employed in the company as a cashier, and was engaged, among others, to receive and account for the payments made by the various customers of the company.

In 2002, Bangayan filed with the Manila Prosecutor's Office a complaint for *estafa* and/or qualified theft[5] against respondent, alleging that several checks[6] representing the aggregate amount of ₱1,534,135.50 issued by the company's customers in payment of their obligation were, instead of being turned over to the company's coffers, indorsed by respondent who deposited the same to her personal banking account maintained at Security Bank and Trust Company (Security Bank) in Divisoria, Manila Branch.[7] Upon a finding that the evidence adduced was uncontroverted, the assistant city prosecutor recommended the filing of the Information for qualified theft against respondent.[8]

Accordingly, respondent was charged before the Regional Trial Court of Manila, Branch 36, in an Information, the inculpatory portion of which reads:

That in or about or sometime during the period comprised (sic) between January 1988 [and] October 1989, inclusive, in the City of Manila, Philippines, the said accused did then and there willfully, unlawfully and feloniously with intent [to] gain and without the knowledge and consent of the owner thereof, take, steal and carry

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[5] Records, Vol. 1, p. 6.

[6] *Id.* at 12-21.

[7] *Id.* at 6-8.

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

away cash money in the total amount of ₱1,534,135.50 belonging to BSB GROUP OF COMPANIES represented by RICARDO BANGAYAN, to the damage and prejudice of said owner in the aforesaid amount of ₱1,534,135.50, Philippine currency.

That in the commission of the said offense, said accused acted with grave abuse of confidence, being then employed as cashier by said complainant at the time of the commission of the said offense and as such she was entrusted with the said amount of money.

Contrary to law.[9]

Respondent entered a negative plea when arraigned.[10] The trial ensued. On the premise that respondent had allegedly encashed the subject checks and deposited the corresponding amounts thereof to her personal banking account, the prosecution moved for the issuance of subpoena *duces tecum /ad testificandum* against the respective managers or records custodians of Security Bank's Divisoria Branch, as well as of the Asian Savings Bank (now Metropolitan Bank & Trust Co. [Metrobank]), in Jose Abad Santos, Tondo, Manila Branch.[11] The trial court granted the motion and issued the corresponding subpoena.[12]

Respondent filed a motion to quash the subpoena dated November 4, 2003, addressed to Metrobank, noting to the court that in the complaint-affidavit filed with the prosecutor, there was no mention made of the said bank account, to which respondent, in addition to the Security Bank account identified as Account No. 01-14-006, allegedly deposited the proceeds of the supposed checks. Interestingly, while respondent characterized the Metrobank account as irrelevant to the case, she, in the same motion, nevertheless waived her objection to the irrelevancy of the Security Bank account mentioned in the same complaint-affidavit, inasmuch as she was admittedly willing to address the allegations with respect thereto.[13]

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[9] *Supra* note 5, at 1.

[10] *Id.* at 137-138.

[11] *Id.* at 161-162.

[12] *Id.* at 163-164.

[13] *Supra* note 5 at 165-169.

Petitioner, opposing respondent's move, argued for the relevancy of the Metrobank account on the ground that the complaint-affidavit showed that there were two checks which respondent allegedly deposited in an account with the said bank.[14] To this, respondent filed a supplemental motion to quash, invoking the absolutely confidential nature of the Metrobank account under the provisions of Republic Act (R.A.) No. 1405.[15] The trial court did not sustain respondent; hence, it denied the motion to quash for lack of merit.[16]

Meanwhile, the prosecution was able to present in court the testimony of Elenita Marasigan (Marasigan), the representative of Security Bank. In a nutshell, Marasigan's testimony sought to prove that between 1988 and 1989, respondent, while engaged as cashier at the BSB Group, Inc., was able to run away with the checks issued to the company by its customers, endorse the same, and credit the corresponding amounts to her personal deposit account with Security Bank. In the course of the testimony, the subject checks were presented to Marasigan for identification and marking as the same checks received by respondent, endorsed, and then deposited in her personal account with Security Bank.[17] But before the testimony could be completed, respondent filed a Motion to Suppress,[18] seeking the exclusion of Marasigan's testimony and accompanying documents thus far received, bearing on the subject Security Bank account. This time respondent invokes, in addition to irrelevancy, the privilege of confidentiality under R.A. No. 1405.

The trial court, nevertheless, denied the motion in its September 13, 2004 Order.[19] A motion for reconsideration was subsequently

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[14] *Id.* at 173-174.

[15] *Id.* at 176-178.

[16] *Id.* at 219-221.

[17] TSN, January 8, 2004, pp. 8-50; TSN, August 20, 2004, pp. 4-65; TSN, September 22, 2004, pp. 27-54.

[18] *Supra* note 2, at 358-359.

[19] *Supra* note 2, at 369.

filed, but it was also denied in the Order dated November 5, 2004.[20] These two orders are the subject of the instant case.

Aggrieved, and believing that the trial court gravely abused its discretion in acting the way it did, respondent elevated the matter to the Court of Appeals via a petition for *certiorari* under Rule 65. Finding merit in the petition, the Court of Appeals reversed and set aside the assailed orders of the trial court in its April 20, 2005 Decision.[21] The decision reads:

> WHEREFORE, the petition is hereby GRANTED. The assailed orders dated September 13, 2004 and November 5, 2004 are REVERSED and SET ASIDE. The testimony of the SBTC representative is ordered stricken from the records.
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> SO ORDERED.[22]

With the denial of its motion for reconsideration,[23] petitioner is now before the Court pleading the same issues as those raised before the lower courts.

In this Petition[24] under Rule 45, petitioner averred in the main that the Court of Appeals had seriously erred in reversing the assailed orders of the trial court, and in effect striking out Marasigan's testimony dealing with respondent's deposit account with Security Bank.[25] It asserted that apart from the fact that the said evidence had a direct relation to the subject matter of the case for qualified theft and, hence, brings the case under one of the exceptions to the coverage of confidentiality under R.A. 1405.[26] Petitioner believed that what constituted the subject matter in litigation was to be determined by the allegations in the information and, in this respect, it alluded to the assailed

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[20] *Id.* at 379-381.

[21] CA *rollo*, pp. 136-145.

[22] *Id.* at 145.

[23] *Id.* at 173.

[24] *Rollo*, pp. 3-30.

[25] *Id.* at 14.

[26] *Id.* at 17-18.

November 5, 2004 Order of the trial court, which declared to be erroneous the limitation of the present inquiry merely to what was contained in the information.[27]

For her part, respondent claimed that the money represented by the Security Bank account was neither relevant nor material to the case, because nothing in the criminal information suggested that the money therein deposited was the subject matter of the case. She invited particular attention to that portion of the criminal Information which averred that she has stolen and carried away cash money in the total amount of ₱1,534,135.50. She advanced the notion that the term "cash money" stated in the Information was not synonymous with the checks she was purported to have stolen from petitioner and deposited in her personal banking account. Thus, the checks which the prosecution had Marasigan identify, as well as the testimony itself of Marasigan, should be suppressed by the trial court at least for violating respondent's right to due process.[28] More in point, respondent opined that admitting the testimony of Marasigan, as well as the evidence pertaining to the Security Bank account, would violate the secrecy rule under R.A. No. 1405.[29]

In its reply, petitioner asserted the sufficiency of the allegations in the criminal Information for qualified theft, as the same has sufficiently alleged the elements of the offense charged. It posits that through Marasigan's testimony, the Court would be able to establish that the checks involved, copies of which were attached to the complaint-affidavit filed with the prosecutor, had indeed been received by respondent as cashier, but were, thereafter, deposited by the latter to her personal account with Security Bank. Petitioner held that the checks represented the cash money stolen by respondent and, hence, the subject matter in this case is not only the cash amount represented by the checks supposedly stolen by respondent, but also the checks themselves.[30]

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[27] *Rollo*, p. 20.

[28] *Rollo*, pp. 173-178.

[29] *Rollo*, pp. 179-181.

[30] *Supra* note 24, at 193-210.

We derive from the conflicting advocacies of the parties that the issue for resolution is whether the testimony of Marasigan and the accompanying documents are irrelevant to the case, and whether they are also violative of the absolutely confidential nature of bank deposits and, hence, excluded by operation of R.A. No. 1405. The question of admissibility of the evidence thus comes to the fore. And the Court, after deliberative estimation, finds the subject evidence to be indeed inadmissible.

Prefatorily, fundamental is the precept in all criminal prosecutions, that the constitutive acts of the offense must be established with unwavering exactitude and moral certainty because this is the critical and only requisite to a finding of guilt. [31] Theft is present when a person, with intent to gain but without violence against or intimidation of persons or force upon things, takes the personal property of another without the latter's consent. It is qualified when, among others, and as alleged in the instant case, it is committed with abuse of confidence.[32] The prosecution of this offense necessarily focuses on the existence of the following elements: (a) there was taking of personal property belonging to another; (b) the taking was done with intent to gain; (c) the taking was done without the consent of the owner; (d) the taking was done without violence against or intimidation of persons or force upon things; and (e) it was done with abuse of confidence.[33] In turn, whether these elements concur in a way that overcomes the presumption of guiltlessness, is a question that must pass the test of relevancy and competency in accordance with Section 3[34] Rule 128 of the Rules of Court.

Thus, whether these pieces of evidence sought to be suppressed in this case — the testimony of Marasigan, as well as the checks purported to have been stolen and deposited in respondent's

[31] *Catuiran v. People*, G.R. No. 175647, May 8, 2009; and *People v. Obmiranis*, G.R. No. 181492, December 16, 2008.

[32] Reyes, *REVISED PENAL CODE*, Book II, 15th ed., 685, 708-709 (2001).

[33] *Id.* at 686.

[34] Section 3. *Admissibility of evidence.*—Evidence is admissible when it is relevant to the issue and is not excluded by the law or these rules.

Security Bank account — are relevant, is to be addressed by considering whether they have such direct relation to the fact in issue as to induce belief in its existence or non-existence; or whether they relate collaterally to a fact from which, by process of logic, an inference may be made as to the existence or non-existence of the fact in issue.[35]

The fact in issue appears to be that respondent has taken away cash in the amount of ₱1,534,135.50 from the coffers of petitioner. In support of this allegation, petitioner seeks to establish the existence of the elemental act of taking by adducing evidence that respondent, at several times between 1988 and 1989, deposited some of its checks to her personal account with Security Bank. Petitioner addresses the incongruence between the allegation of theft of cash in the Information, on the one hand, and the evidence that respondent had first stolen the checks and deposited the same in her banking account, on the other hand, by impressing upon the Court that there obtains no difference between cash and check for purposes of prosecuting respondent for theft of cash. Petitioner is mistaken.

In theft, the act of unlawful taking connotes deprivation of personal property of one by another with intent to gain, and it is immaterial that the offender is able or unable to freely dispose of the property stolen because the deprivation relative to the offended party has already ensued from such act of execution.[36] The allegation of theft of money, hence, necessitates that evidence presented must have a tendency to prove that the offender has unlawfully taken money belonging to another. Interestingly, petitioner has taken pains in attempting to draw a connection between the evidence subject of the instant review, and the allegation of theft in the Information by claiming that respondent had fraudulently deposited the checks in her own name. But this line of argument works more prejudice than favor, because

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[35] Sec. 4, Rule 128, Rules of Court; *Fishman v. Consumer's Brewing Co.*, 78 N.J.L. 300, 302, cited in *EVIDENCE RULES* 128-134, R.J. Francisco, 3rd ed., 17 (1996).

[36] *Valenzuela v. People*, G.R. No. 160188, June 21, 2007, 525 SCRA 306, 343.

it in effect, seeks to establish the commission, not of theft, but rather of some other crime — probably *estafa*.

Moreover, that there is no difference between cash and check is true in other instances. In *estafa* by conversion, for instance, whether the thing converted is cash or check, is immaterial in relation to the formal allegation in an information for that offense; a check, after all, while not regarded as legal tender, is normally accepted under commercial usage as a substitute for cash, and the credit it represents in stated monetary value is properly capable of appropriation. And it is in this respect that what the offender does with the check subsequent to the act of unlawfully taking it becomes material inasmuch as this offense is a continuing one.[37] In other words, in pursuing a case for this offense, the prosecution may establish its cause by the presentation of the checks involved. These checks would then constitute the best evidence to establish their contents and to prove the elemental act of conversion in support of the proposition that the offender has indeed indorsed the same in his own name.[38]

Theft, however, is not of such character. Thus, for our purposes, as the Information in this case accuses respondent of having stolen cash, proof tending to establish that respondent has actualized her criminal intent by indorsing the checks and depositing the proceeds thereof in her personal account, becomes not only irrelevant but also immaterial and, on that score, inadmissible in evidence.

We now address the issue of whether the admission of Marasigan's testimony on the particulars of respondent's account with Security Bank, as well as of the corresponding evidence of the checks allegedly deposited in said account, constitutes an unallowable inquiry under R.A. 1405.

It is conceded that while the fundamental law has not bothered with the triviality of specifically addressing privacy rights relative to banking accounts, there, nevertheless, exists in our jurisdiction

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[37] *Galvez v. Court of Appeals*, G.R. No. L-22760, November 29, 1971, 42 SCRA 278.

[38] *Id*.

a legitimate expectation of privacy governing such accounts. The source of this right of expectation is statutory, and it is found in R.A. No. 1405,[39] otherwise known as the Bank Secrecy Act of 1955. [40]

R.A. No. 1405 has two allied purposes. It hopes to discourage private hoarding and at the same time encourage the people to deposit their money in banking institutions, so that it may be utilized by way of authorized loans and thereby assist in economic development.[41] Owing to this piece of legislation, the confidentiality of bank deposits remains to be a basic state policy in the Philippines.[42] Section 2 of the law institutionalized this policy by characterizing as absolutely confidential in general all deposits of whatever nature with banks and other financial institutions in the country. It declares:

> **Section 2.** All deposits of whatever nature with banks or banking institutions in the Philippines including investments in bonds issued by the Government of the Philippines, its political subdivisions and its instrumentalities, are hereby considered as of an absolutely confidential nature and may not be examined, inquired or looked into by any person, government official, bureau or office, *except* upon written permission of the depositor, or in cases of impeachment, or upon order of a competent court in cases of bribery or dereliction of duty of public officials, or in cases where the money deposited or invested is the subject matter of the litigation.

Subsequent statutory enactments[43] have expanded the list of exceptions to this policy yet the secrecy of bank deposits still lies as the general rule, falling as it does within the legally recognized

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[39] It carries the title "An Act Prohibiting Disclosure of or Inquiry Into Deposits With Any Banking Institution And Providing Penalty Therefor." The law was approved on September 9, 1955.

[40] *Republic v. Eugenio*, G.R. No. 174629, February 14, 2008, 545 SCRA 384, 414.

[41] Section 1, Republic Act No. 1405.

[42] *Id*.

[43] Presidential Decree No. 1972, later on modified by R.A. No. 7653; R.A. No. 3019; R.A. No. 9160.

zones of privacy.[44] There is, in fact, much disfavor to construing these primary and supplemental exceptions in a manner that would authorize unbridled discretion, whether governmental or otherwise, in utilizing these exceptions as authority for unwarranted inquiry into bank accounts. It is then perceivable that the present legal order is obliged to conserve the absolutely confidential nature of bank deposits.[45]

The measure of protection afforded by the law has been explained in *China Banking Corporation v. Ortega*.[46] That case principally addressed the issue of whether the prohibition against an examination of bank deposits precludes garnishment in satisfaction of a judgment. Ruling on that issue in the negative, the Court found guidance in the relevant portions of the legislative deliberations on Senate Bill No. 351 and House Bill No. 3977, which later became the Bank Secrecy Act, and it held that the absolute confidentiality rule in R.A. No. 1405 actually aims at protection from unwarranted inquiry or investigation if the purpose of such inquiry or investigation is merely to determine the existence and nature, as well as the amount of the deposit in any given bank account. Thus,

> x x x The lower court did not order an examination of or inquiry into the deposit of B&B Forest Development Corporation, as contemplated in the law. It merely required Tan Kim Liong to inform the court whether or not the defendant B&B Forest Development Corporation had a deposit in the China Banking Corporation only for purposes of the garnishment issued by it, so that the bank would hold the same intact and not allow any withdrawal until further order. It will be noted from the discussion of the conference committee report on Senate Bill No. 351 and House Bill No. 3977 which later became Republic Act No. 1405, that it was not the intention of the lawmakers to place banks deposits beyond the reach of execution to satisfy a final judgment. Thus:
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> x x x Mr. Marcos: Now, for purposes of the record, I should like the Chairman of the Committee on Ways and Means

[44] *Supra* note 40.

[45] *Id*.

[46] G.R. No. L-34964, January 31, 1973, 49 SCRA 355.

to clarify this further. Suppose an individual has a tax case. He is being held liable by the Bureau of Internal Revenue [(BIR)] or, say, ₱1,000.00 worth of tax liability, and because of this the deposit of this individual [has been] attached by the [BIR].

Mr. Ramos: The attachment will only apply after the court has pronounced sentence declaring the liability of such person. **But where the primary aim is to determine whether he has a bank deposit in order to bring about a proper assessment by the [BIR], such inquiry is not allowed by this proposed law.**

Mr. Marcos: But under our rules of procedure and under the Civil Code, the attachment or garnishment of money deposited is allowed. Let us assume for instance that there is a preliminary attachment which is for garnishment or for holding liable all moneys deposited belonging to a certain individual, but such attachment or garnishment will bring out into the open the value of such deposit. Is that prohibited by... the law?

Mr. Ramos: It is only prohibited to the extent that the inquiry... is made only for the purpose of satisfying a tax liability already declared for the protection of the right in favor of the government; **but when the object is merely to inquire whether he has a deposit or not for purposes of taxation, then this is fully covered by the law.** x x x

Mr. Marcos: **The law prohibits a mere investigation into the existence and the amount of the deposit.**

Mr. Ramos: **Into the very nature of such deposit.** x x x[47]

In taking exclusion from the coverage of the confidentiality rule, petitioner in the instant case posits that the account maintained by respondent with Security Bank contains the proceeds of the checks that she has fraudulently appropriated to herself and, thus, falls under one of the exceptions in Section 2 of R.A. No. 1405 — that the money kept in said account is the subject matter in litigation. To highlight this thesis, petitioner

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[47] *Supra* note 46, at 358-359. The portion of the discussion was lifted from Vol. II, Congressional Record, House of Representatives, No. 12, pp. 3839-3840, July 27, 1955. (Emphasis supplied.)

avers, citing *Mathay v. Consolidated Bank and Trust Co.*,[48] that the subject matter of the action refers to the physical facts; the things real or personal; the money, lands, chattels and the like, in relation to which the suit is prosecuted, which in the instant case should refer to the money deposited in the Security Bank account.[49] On the surface, however, it seems that petitioner's theory is valid to a point, yet a deeper treatment tends to show that it has argued quite off-tangentially. This, because, while *Mathay* did explain what the subject matter of an action is, it nevertheless did so only to determine whether the class suit in that case was properly brought to the court.

What indeed constitutes the subject matter in litigation in relation to Section 2 of R.A. No. 1405 has been pointedly and amply addressed in *Union Bank of the Philippines v. Court of Appeals*,[50] in which the Court noted that the inquiry into bank deposits allowable under R.A. No. 1405 must be premised on the fact that the money deposited in the account is **itself** the subject of the action.[51] Given this perspective, we deduce that the subject matter of the action in the case at bar is to be determined from the indictment that charges respondent with the offense, and not from the evidence sought by the prosecution to be admitted into the records. In the criminal Information filed with the trial court, respondent, unqualifiedly and in plain language, is charged with qualified theft by abusing petitioner's trust and confidence and stealing cash in the amount of ₱1,534,135.50. The said Information makes no factual allegation that in some material way involves the checks subject of the testimonial and documentary evidence sought to be suppressed. Neither do the allegations in said Information make mention of the supposed bank account in which the funds represented by the checks have allegedly been kept.

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[48] G.R. No. L-23136, August 26, 1974, 58 SCRA 559.

[49] *Supra* note 47, at 571.

[50] G.R. No. 134699, December 23, 1999, 321 SCRA 563.

[51] *Id.* at 573. (Emphasis supplied.)

In other words, it can hardly be inferred from the indictment itself that the Security Bank account is the ostensible subject of the prosecution's inquiry. Without needlessly expanding the scope of what is plainly alleged in the Information, the subject matter of the action in this case is the money amounting to ₱1,534,135.50 alleged to have been stolen by respondent, and not the money equivalent of the checks which are sought to be admitted in evidence. Thus, it is that, which the prosecution is bound to prove with its evidence, and no other.

It comes clear that the admission of testimonial and documentary evidence relative to respondent's Security Bank account serves no other purpose than to establish the existence of such account, its nature and the amount kept in it. It constitutes an attempt by the prosecution at an impermissible inquiry into a bank deposit account the privacy and confidentiality of which is protected by law. On this score alone, the objection posed by respondent in her motion to suppress should have indeed put an end to the controversy at the very first instance it was raised before the trial court.

In sum, we hold that the testimony of Marasigan on the particulars of respondent's supposed bank account with Security Bank and the documentary evidence represented by the checks adduced in support thereof, are not only incompetent for being excluded by operation of R.A. No. 1405. They are likewise irrelevant to the case, inasmuch as they do not appear to have any logical and reasonable connection to the prosecution of respondent for qualified theft. We find full merit in and affirm respondent's objection to the evidence of the prosecution. The Court of Appeals was, therefore, correct in reversing the assailed orders of the trial court.

A final note. In any given jurisdiction where the right of privacy extends its scope to include an individual's financial privacy rights and personal financial matters, there is an intermediate or heightened scrutiny given by courts and legislators to laws infringing such rights.[52] Should there be doubts in

[52] 16B Am Jur 2d $605, pp. 73-74. See citation 83 therein.

upholding the absolutely confidential nature of bank deposits against affirming the authority to inquire into such accounts, then such doubts must be resolved in favor of the former. This attitude persists unless congress lifts its finger to reverse the general state policy respecting the absolutely confidential nature of bank deposits.[53]

WHEREFORE, the petition is *DENIED.* The Decision of the Court of Appeals in CA-G.R. SP No. 87600 dated April 20, 2005, reversing the September 13, 2004 and November 5, 2004 Orders of the Regional Trial Court of Manila, Branch 36 in Criminal Case No. 02-202158, is *AFFIRMED.*

SO ORDERED.

Corona (Chairperson), Velasco, Jr., Nachura, and *Mendoza, JJ.,* concur.

THIRD DIVISION

[G.R. No. 170864. February 16, 2010]

NELSON LAGAZO, *petitioner, vs.* **GERALD B. SORIANO and GALILEO B. SORIANO,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; THE COURT MAY CONSIDER ONLY QUESTIONS OF LAW IN RULE 45 PETITIONS; EXCEPTION THERETO, APPLIED.— Ordinarily, in a Petition for Review on *Certiorari*, this Court only considers questions of law, as it is not a trier of facts. However, there are exceptions to this general rule, such as, when the findings of fact of the appellate court are contrary to those of the trial court. Such

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[53] *Supra* note 40.

circumstance exists in this case, hence, the Court is compelled to take a closer look at the records.

2. ID.; SPECIAL CIVIL ACTIONS; FORCIBLE ENTRY; PRIOR PHYSICAL POSSESSION, PROVEN.— Prior physical possession is an indispensable element in forcible entry cases. Thus, the ultimate question here is who had prior physical possession of the disputed land. x x x [A] thorough examination of the evidence revealed that, indeed, the parties in last peaceable quiet possession of the property in question were herein respondents. The most important evidence for respondents was the testimony of Brgy. Capt. Artemio Fontanilla, who stated that he was born and had continuously resided in Balong, Tabuk, Kalinga; that the disputed land was only about three kilometers from his house; that for the longest time, he had always known that it was Arsenio Baac who was cultivating and occupying said property; and that it was only sometime in January 2001, when the police asked him to accompany them to the subject land, that he saw petitioner with some other men working said land.

APPEARANCES OF COUNSEL

Public Attorney's Office for petitioner.
Gerald B. Soriano for respondents.

D E C I S I O N

PERALTA, *J.*:

This resolves the Petition for Review on *Certiorari* under Rule 45 of the Rules of Court, praying that the Decision[1] of the Court of Appeals (CA) in CA-G.R. SP No. 80709, promulgated on October 28, 2005, granting herein respondents' petition for review, and the CA Resolution[2] promulgated on December 20, 2005, denying herein petitioner's motion for reconsideration, be reversed and set aside.

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[1] Penned by Associate Justice Renato C. Dacudao, with Associate Justices Lucas P. Bersamin (now Associate Justice of the Supreme Court) and Celia C. Librea-Leagogo, concurring; *rollo*, pp. 234-291.

[2] *Id.* at 300.

The undisputed facts are as follows.

On January 16, 2001, respondents filed with the Municipal Trial Court of Tabuk, Kalinga (MTC), a complaint for Forcible Entry with Application for Termporary Restraining Order and a Writ of Preliminary Injunction and Damages against petitioner. Respondents claimed they were the owners of a parcel of land covered by Original Certificate of Title No. P-665, Lot No. 816, Pls-93 with an area of 58,171 square meters. They allegedly acquired the same by purchase from their grandfather, Arsenio Baac, on September 10, 1998, but even prior thereto, they were already allowed by Arsenio Baac to cultivate said land. They paid real property taxes for said property from 1990 to 1998 and had been in actual possession from that time. However, on January 6, 2001, herein petitioner allegedly unlawfully entered the property by means of force, stealth, and strategy and began cultivating the land for himself.

On the other hand, petitioner insisted in his Answer that he, together with his mother, brothers, and sisters, were the lawful owners of the land in question, being the legal heirs of Alfredo Lagazo, the registered owner thereof. They denied that the subject land was sold to Arsenio Baac, alleging instead that the agreement between Alfredo Lagazo and Arsenio Baac was merely one of mortgage. Petitioner, likewise maintained that he and his co-heirs had always been in possession of the disputed land. They allegedly tried several times to redeem the property, but Baac increased the redemption price from ₱10,000.00 to ₱100,000.00. This prompted them to bring the matter before the Barangay Lupon of Balong, Tabuk, Kalinga, but no agreement was reached.

On November 23, 2001, the MTC rendered a Decision, the dispositive portion of which reads as follows:

WHEREFORE, judgment is hereby rendered as follows:

1. Dismissing the complaint of Forcible Entry filed against defendant Nelson Lagazo;

2. Ordering the plaintiffs, Gerald B. Soriano and Galileo B. Soriano to surrender Original Certificate of Title No. P-665 in the name of Alfredo Lagazo to the heirs of Lagazo which was given to Arsenio

Baac by Alfredo Lagazo when the Deed of Mortgage was executed between them;

3. Ordering the heirs of Alfredo Lagazo to execute the deed of conveyance in favor of the plaintiffs covering the one (1) hectare portion subject of the mortgage between Alfredo Lagazo and Arsenio Baac and to segregate the same from property covered by OCT P-665;

4. Plaintiffs to pay the costs of suit.

SO ORDERED.[3]

The foregoing Decision was appealed to the Regional Trial Court (RTC) of Tabuk, Kalinga. Said appellate court ruled that herein respondents failed to prove prior physical possession, thus, it reversed the MTC Decision and dismissed the complaint against herein petitioner.

Respondents then filed with the CA a Petition for Review under Rule 42 of the Rules of Court and on October 28, 2005, the CA promulgated the assailed Decision which disposed thus:

WHEREFORE, premises considered, the petition is **GRANTED**. Physical possession is hereby ordered returned to the petitioners, without prejudice to the respondent's right to take recourse to remedies provided for under the law, if he is so inclined. Actual, moral and exemplary damages cannot be granted because of lack of substantive evidence to prove the same. However, we grant the amount of ₱10,000.00 in attorney's fees plus ₱500.00 per appearance of petitioners' counsel, as well as another ₱10,000.00 in litigation expenses as prayed for in their complaint, conformably to par. 11 of Art. 2208 of the Civil Code, *i.e.* it is just and equitable under the circumstances, and considering that the award is well deserved by the petitioners who had shown evident good faith in, and respect for, the judicial system.

SO ORDERED.[4]

Petitioner moved for reconsideration, but the same was denied per CA Resolution dated December 20, 2005. Hence, this petition where the following issues are raised:

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[3] CA *rollo*, p. 125.

[4] *Rollo*, p. 291.

WHETHER THE TRIAL COURT GRAVELY ERRED IN FINDING THAT THERE WAS IMPLIED ADMISSION ON THE PART OF THE PETITIONER THAT RESPONDENTS HAD BEEN IN ACTUAL PHYSICAL POSSESSION OF THE LOT IN CONTROVERSY SINCE 1979.

WHETHER THE TRIAL COURT GRAVELY ERRED IN NOT GIVING CREDENCE TO THE EVIDENCE ADDUCED BY PETITIONER SUBSTANTIATING HIS PRIORITY IN POSSESSION OVER THE LOT IN CONTROVERSY.

WHETHER THE TRIAL COURT GRAVELY ERRED IN FINDING THAT THE RESPONDENTS HAVE BETTER RIGHT OF POSSESSION OVER THE LOT IN CONTROVERSY.[5]

The Court finds the petition unmeritorious.

Prior physical possession is an indispensable element in forcible entry cases.[6] Thus, the ultimate question here is who had prior physical possession of the disputed land.

Ordinarily, in a Petition for Review on *Certiorari*, this Court only considers questions of law, as it is not a trier of facts. However, there are exceptions to this general rule, such as, when the findings of fact of the appellate court are contrary to those of the trial court.[7] Such circumstance exists in this case, hence, the Court is compelled to take a closer look at the records.

In *Sudaria v. Quiambao*,[8] the Court held that:

Ejectment proceedings are summary proceedings intended to provide an expeditious means of protecting actual possession or right to possession of property. **Title is not involved.** The sole issue to be resolved is who is entitled to the physical or material possession of the premises or possession *de facto*. On this point, the pronouncements in *Pajuyo v. Court of Appeals* are enlightening, thus:

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[5] *Id.* at 15.

[6] *Acaylar, Jr. v. Harayo,* G.R. No. 176995, July 30, 2008, 560 SCRA 624.

[7] *Id.* at 641.

[8] G.R. No. 164305, November 20, 2007, 537 SCRA 689.

x x x x x x x x x

x x x Regardless of the actual condition of the title to the property, the party in peaceable quiet possession shall not be thrown out by a strong hand, violence or terror. Neither is the unlawful withholding of property allowed. Courts will always uphold respect for prior possession.

Thus, **a party who can prove prior possession can recover such possession even against the owner himself.** Whatever may be the character of his possession, **if he has in his favor prior possession in time, he has the security that entitles him to remain on the property until a person with a better right lawfully ejects him**. To repeat, the only issue that the court has to settle in an ejectment suit is the right to physical possession.[9] (Emphasis supplied.)

Moreover, in *De Grano v. Lacaba,*[10] it was explained that:

x x x the word "possession," as used in forcible entry and unlawful detainer cases, means nothing more than physical possession, not legal possession in the sense contemplated in civil law. When the law speaks of possession, the reference is to prior physical possession or possession *de facto*, as contra-distinguished from possession *de jure*. Only prior physical possession, not title, is the issue. **Issues as to the *right* of possession or ownership are not involved in the action; evidence thereon is not admissible, except only for the purpose of determining the issue of possession.**[11] (Emphasis supplied.)

Bearing the foregoing in mind, a thorough examination of the evidence revealed that, indeed, the parties in last peaceable quiet possession of the property in question were herein respondents.

The most important evidence for respondents was the testimony of Brgy. Capt. Artemio Fontanilla, who stated that he was born and had continuously resided in Balong, Tabuk, Kalinga; that the disputed land was only about three kilometers

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[9] *Supra* note 8, at 697-698.

[10] G.R. No. 158877, June 16, 2009, 589 SCRA 148.

[11] *Id.* at 158-159.

from his house; that for the longest time, he had always known that it was Arsenio Baac who was cultivating and occupying said property; and that it was only sometime in January 2001, when the police asked him to accompany them to the subject land, that he saw petitioner with some other men working said land. [12]

On the other hand, what petitioner's evidence sought to establish was that he and his co-heirs continued to be the owners of the land, as his predecessor never intended to sell the property to Arsenio Baac, the true agreement being only one of a mortgage. Petitioner never established the fact of his physical possession over the disputed land. Ironically, the most telling pieces of evidence that doomed petitioner's case were the testimonies of petitioner himself and his sister, Marina Niñalga. Their own admissions on the witness stand proved that respondents were indeed the ones in physical possession of the subject property. Petitioner Lagazo himself testified as follows:

Q: So, at that time that you were at Alicia, Isabela and at that time that you staying thereat, you have no knowledge to what is happening to the land which is now the subject of this case, Am I correct?

A: I was only hearing stories from my father and my mother that they want to regain back the land which was mortgaged, sir.

x x x x x x x x x

Q: It is when only on January of 2001 that you allegedly claimed over the parcel of land in question, am I correct Mr. Witness?

A: Was not only during that time but that was only the time we entered into the land, sir.

Q: So, you are now admitting Mr. Witness, its only on January 6, 2001, you entered the land in question?

A: Yes, sir.

Q: And, prior to January 6 of 2001, you never possessed or cultivated the land in question, Am I correct?

[12] TSN, February 26, 2001, pp. 26, 47-52

xxx x x x xxx

Q: Who was an apparent heir of spouses Alfredo Lagaso, you never personally cultivated or possessed the land in question prior to January 6, 2001, am I correct?

A: No, sir because according to them it was mortgaged, Your Honor.

Q: But you never personally cultivated the land prior to January 6, 2001?

A: No, sir.[13]

Meanwhile, Marina Niñalga also recounted that in 1979, they left the subject property out of fear because Arsenio Baac allegedly wanted to grab the land for himself. She testified that after they left in 1979, it was already Arsenio Baac who cultivated said land. Despite such claim that Arsenio Baac took their land with force and intimidation, Marina said they never reported the matter to the police, and never filed any criminal action in court against Arsenio Baac.[14]

Verily, the foregoing leaves no doubt in our mind that it was only on January 6, 2001 that petitioner, believing himself to be the lawful owner of the disputed land, entered the same, thereby disturbing respondents' peaceful possession thereof.

IN VIEW OF THE FOREGOING, the instant petition is dismissed. The Decision and Resolution of the Court of Appeals dated October 28, 2005 and December 20, 2005, respectively, in CA G.R. SP No. 80709 are *AFFIRMED.*

SO ORDERED.

Corona (Chairperson), Velasco, Jr., Nachura, and *Mendoza, JJ.*, concur.

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[13] TSN, June 26, 2001, pp. 220-222.

[14] TSN, July 30, 2001, pp. 274-278.

SECOND DIVISION

[G.R. No. 177747. February 16, 2010]

THE PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **IGNACIO PORAS,** *accused-appellant.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CIRCUMSTANTIAL EVIDENCE; TEST TO DETERMINE WHETHER CIRCUMSTANTIAL EVIDENCE IS SUFFICIENT TO CONVICT.— The test to determine whether or not the circumstantial evidence on record is sufficient to convict the accused requires that the duly proven series of circumstances must be consistent with each other, and that each and every circumstance must be consistent with the accused's guilt and inconsistent with his innocence. In other words, the circumstantial evidence must do more than just raise the mere possibility or even the probability of guilt. It must engender moral certainty.

2. CRIMINAL LAW; RAPE; MEDICAL FINDINGS OF HEALED LACERATIONS CANNOT SUPPORT THE CLAIM OF RAPE.— [T]he result of the medical examination did not in any way support AAA's claim that the appellant had sex with her. Dr. Cosidon testified that the deep-healed lacerations on the victim's hymen could have also been caused by a *finger*, and that these lacerations could have been present *even before* November 27, 1994. x x x In addition, we cannot equate a ruptured hymen with rape. x x x [W]hile the healed lacerations are undisputed, they can only prove, in the absence of any other evidence, that AAA has had prior sexual experience. Specific proof of penile contact, on or about the time the appellant allegedly raped her, is missing.

3. ID.; ID.; THE FACT THAT THE VICTIM'S PANTY WAS LOWERED TO HER KNEES MAKES PENILE PENETRATION EXTREMELY DIFFICULT.— [W]e find it highly unlikely that the appellant inserted his penis into AAA's vagina while the latter's panty was lowered to her knees. Common sense and ordinary human experience show that penile penetration is extremely difficult, if not almost impossible under this situation,

unless the victim's legs were spread apart. If the appellant's intention had been to consummate sexual coitus with AAA, he would have completely removed her (AAA's) underwear, given that he had the opportunity as she was then asleep.

4. ID.; ID.; ALTHOUGH ALLEGED TO HAVE BEEN DRUGGED, IT IS UNUSUAL FOR A 13-YEAR OLD VICTIM NOT TO FEEL THE PAIN AND SENSATION REASONABLY EXPECTED FROM PENIS INSERTION INTO HER VAGINA.— [C]onsidering that AAA was an unmarried 13-year old, she would have been in unusually deep sleep in order not to feel the pain and sensation reasonably expected from the insertion of a penis into her young, vaginal canal. We are baffled how could she have slept through a consummated sexual intercourse and awakened only after its completion. While AAA alleged that she had been drugged, this state – by itself and in the absence of any other evidence – only gives rise to the possibility of a consummated act of rape; the conviction in a rape case though must rest on evidence, not on mere possibility.

5. ID.; ID.; VAGINAL PAIN IS NOT AN ELEMENT OF CONSUMMATED RAPE.— [W]e cannot equate AAA's testimony of pain in her private parts with rape. Carnal knowledge, not pain, is the element of consummated rape and we believe that it would be a dangerous proposition to equate a victim's testimony of pain, in the absence of any other evidence, with carnal knowledge. The peril lies in the facility of asserting pain. Pain, too, can come from various reasons other than carnal knowledge; it is also subjective and is easy to feign.

6. REMEDIAL LAW; EVIDENCE; WITNESSES; TESTIMONIES OF THE PROSECUTION WITNESSES DID NOT ESTABLISH THE GUILT OF THE ACCUSED BEYOND REASONABLE DOUBT; EXPLANATION WHY THERE WAS TWO-DAY DELAY IN REPORTING THE RAPE INCIDENT, NOT SHOWN.— [T]he testimonies of the other prosecution witnesses did not establish with moral certainty that the appellant raped AAA. BBB's testimony that AAA admitted to her that she had been raped by the appellant is clearly hearsay and is inadmissible for the purpose of showing that the appellant raped AAA. The prosecution likewise failed to explain why BBB only reported the incident to the police on

December 4, 1994, when AAA disclosed the rape to her as early as December 2, 1994.

7. ID.; ID.; ID.; CORROBORATIVE TESTIMONY AS TO THE COMMISSION OF RAPE, MISSING.— [S]trangely missing, in our view, was any corroborative statement from CCC who, from AAA's testimony, was sleeping beside her on the night of the alleged rape. According to AAA, CCC was still beside her, but was no longer on the mattress they shared, when she (AAA) woke up and found the appellant lying beside her. The implication from AAA's testimony is that CCC slept through the whole incident of rape. We find this unusual if indeed AAA had been drugged into sleep and if the appellant had taken his time in ravishing her during her sleep. If indeed the appellant had ample time for the rape and did it silently so that CCC never awakened, it would have been unusual – as we already noted – for AAA's panty to have been simply pulled down to her knees in a position that made penile insertion extremely difficult.

8. ID.; ID.; ID.; CLAIM OF RAPE WAS A MERE AFTERTHOUGHT.— [W]e cannot help but observe that AAA, in her direct testimony, revealed that she merely came to the conclusion that the appellant had raped her *after* being told by the examining physician that the result of the medical examination was "*positive*", and that something had happened to her. x x x AAA, to our mind, jumped from the premise that the examination was "*positive*" into the conclusion that she had been raped. True, she was unconscious and could not have seen whether there had been actual penile contact. To conclude, however, that the appellant had raped her because she saw him lying beside her when she woke up, and because the examining physician later told her that something had happened to her, is not sufficient; it does not prove, to the point of moral certainty, that the appellant, to the exclusion of other possibilities, had raped her.

9. ID.; ID.; CIRCUMSTANTIAL EVIDENCE; NOT SUFFICIENT TO SUPPORT CONVICTION.— In the case before us, the pieces of circumstantial evidence do not indubitably lead to the conclusion that appellant is guilty of the crime charged. When two antithetical interpretations may be inferred from the

circumstantial evidence presented, the situation calls for the application of the equipoise rule – *i.e.*, when the evidence is consistent with a finding of innocence and also compatible with a finding of guilt, then the evidence is at equipoise and does not fulfill the test of moral certainty sufficient to support a conviction.

10. CRIMINAL LAW; ACTS OF LASCIVIOUSNESS; ELEMENTS; *"LEWD,"* DEFINED.— The elements of acts of lasciviousness are: (1) that the offender commits any act of lasciviousness or lewdness; (2) that it is done under any of the following circumstances: (a) by using force or intimidation, (b) when the offended woman is deprived of reason or otherwise unconscious; or (c) when the offended party is under twelve (12) years of age; and (3) that the offended party is another person of either sex. "*Lewd*" is defined as obscene, lustful, indecent, or lecherous. It signifies that form of immorality related to moral impurity, or that which is carried on a wanton manner.

11. ID.; ID.; ACTS OF LASCIVIOUSNESS, COMMITTED.— [T]he evidence confirms that appellant committed lewd acts against the victim when he touched her private parts. An examination of AAA's testimony shows that she did not consent to the touching of her private parts. In fact, she immediately pushed the appellant when she saw him lying beside her and touching her private parts when she woke up. The appellant's act of touching AAA's private parts demonstrated lewdness that constituted acts of lasciviousness.

12. ID.; ID.; PENALTY.— The imposable penalty for the crime of acts of lasciviousness under Article 336 of the Revised Penal Code, as amended, is *prision correccional* in its full range. Applying the Indeterminate Sentence Law, the minimum of the indeterminate penalty shall be taken from the full range of *arresto mayor* which has a range of one (1) month and one (1) day to six (6) months. Absent any modifying circumstances attendant to the crime, the maximum of the indeterminate penalty shall be taken from the medium period of *prision correccional* or two (2) years, four (4) months and one (1) day to four (4) years and two (2) months. Accordingly, the appellant is hereby meted an indeterminate penalty of six (6) months of *arresto mayor*,

as minimum, to four (4) years and two (2) months of *prision correccional*, as maximum.

13. ID.; ID.; AWARD OF DAMAGES.— [W]e award the amounts of ₱30,000.00 moral damages, ₱20,000.00 civil indemnity, and ₱2,000.00 exemplary damages to the victim in accordance with prevailing jurisprudence.

APPEARANCES OF COUNSEL

The Solicitor General for plaintiff-appellee.
Public Attorney's Office for accused-appellant.

D E C I S I O N

BRION, *J.*:

We resolve in this Decision the appeal from the November 8, 2006 decision of the Court of Appeals (*CA*) in CA-G.R. CR-HC No. 00905.[1] The CA affirmed the January 12, 2004 decision of the Regional Trial Court (*RTC*), Branch 222, Quezon City,[2] finding appellant Ignacio Poras (*appellant*) guilty beyond reasonable doubt of the crime of rape and sentencing him to *reclusion perpetua*.

THE CASE

The prosecution charged the appellant before the RTC with the crime of rape under an amended Information[3] that reads:

That on or about the 27th day of November 1994 in Quezon City, Philippines, the said accused did then and there, willfully, unlawfully and feloniously have sexual intercourse with the undersigned complainant [*AAA*],[4] a minor 13 years of age, while the latter was

[1] Penned by Associate Justice Celia C. Librea-Leagogo, and concurred in by Associate Justice Rodrigo V. Cosico, and Associate Justice Edgardo F. Sundiam; *rollo*, pp. 3-33.

[2] Penned by Judge Rogelio M. Pizarro; CA *rollo*, pp. 25-29.

[3] *Id.*, at 11.

[4] The Court shall withhold the real name of the victim-survivor and shall use fictitious initials instead to represent her. Likewise, the personal

deprived of reason or otherwise unconscious, in the following manner, to wit: having been made to drink milk with sleeping substance, as a result of which the undersigned was reduced into a state of unconsciousness and deprived of her willpower, accused Ignacio Poras *y* Benedicto had sexual intercourse with the undersigned, against her will and without her consent.

CONTRARY TO LAW. [*underscoring in the original*]

The appellant was arraigned and pleaded not guilty to the amended charge.[5] The prosecution presented the following witnesses in the trial on the merits that followed: AAA; Dr. Rosaline Cosidon (*Dr. Cosidon*); and BBB. The appellant solely testified in his own defense.

AAA first took the witness stand for the prosecution on September 20, 1995. The RTC subsequently ordered the re-taking of her testimony because the stenographer who took the transcript of stenographic notes of the proceedings on September 20, 1995 and December 4, 1995 went on absence without leave (AWOL), and the transcript of stenographic notes could no longer be located.

AAA testified that she lives in *Barangay* Pingkian, Pasong Tamo, Quezon City with the appellant and CCC, her godmother's daughter. She was 13 years old at the time of the incident complained of.[6] AAA recalled that on the night of November 27, 1994, the appellant offered her coffee with milk. She refused the proffered drink, but the appellant got angry and insisted that she drink it.[7] She did as ordered, and forthwith fell asleep. She saw the appellant beside her when she woke up in the early morning of the next day. The appellant was moving on top of her and touching her private parts. She also noticed that the strap of her bra had been removed, and her panty already

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circumstances of the victims-survivors or any other information tending to establish or compromise their identities, as well as those of their immediate family or household members, shall not be disclosed.

5 Records, pp. 48-49.

6 TSN, May 31, 2000, pp. 5-7.

7 *Id.*, at 11-12.

lowered to her knees. When she pushed the appellant, the latter raised his brief and went to his room, threatening to kill her if she would disclose the incident to anyone. She did not call for help because she felt weak.[8]

AAA further testified that she slept at the sala of the house with CCC, while the appellant slept alone in his room. She recalled that CCC was no longer beside her when she woke up, but was lying outside of the mat where they slept. According to her, it was not the appellant's usual practice to prepare coffee for her.[9] She did not reveal the incident to her brother DDD when the latter came home because she was afraid that he (DDD) would side with the appellant. She instead disclosed the incident to her school friend, "*Jennifer*". Jennifer accompanied AAA to her (AAA's) aunt, BBB, who, in turn, reported the matter to the Sangandaan Police Station.[10] The police took her testimony and referred her to Camp Crame for medical examination.[11]

AAA further narrated that she had known the appellant since she was six (6) years old and resented him because he was a "*manyakis*". [12] According to AAA, the appellant often pressed his penis against her buttocks when she was younger.[13]

On cross examination, AAA declared that she had been living with the appellant and her siblings ever since her mother died on January 31, 1994. She declared that the appellant first raped her when she was in Grade II.[14] She recalled that CCC was sleeping beside her when the appellant asked her to drink coffee in the evening of November 26, 1994. She fell asleep after drinking the coffee. She saw the appellant lying beside her

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[8] *Id.*, at 9-10.

[9] *Id.*, at 12-13.

[10] *Id.*, at 14-16.

[11] *Id.*, at 17-18.

[12] A colloquial corruption of the word "maniac", referring to an oversexed individual.

[13] TSN, May 31, 2000, pp. 19-21.

[14] TSN, April 18, 2001, pp. 2-3.

when she woke up.[15] She also saw blood on the rear end of her panty.[16] She was certain that the appellant had raped her because the latter was putting on his briefs and shorts when she woke up.[17]

AAA reiterated that CCC was no longer on the mattress where they slept when she (AAA) woke up. She further stated that their residence – a rented house — measures 4 ½ x 6 meters. The house has a sala that is approximately 3 ½ square meters wide,[18] and a room that measures 2 ½ x 1 square meters. This room has no door, but has a wooden bed inside. The sala and the room are separated by a wooden partition.[19]

Dr. Cosidon, Medico-Legal Officer of the PNP Crime Laboratory in Quezon City, testified that she conducted a medical examination of AAA on December 4, 1994 at the request of the Deputy Chief of Police of the Sangandaan Police Station.[20] The examination yielded the following findings:

Medico-Legal Report No. M-1736-94

x x x x x x x x x

GENITAL:

There is a moderate growth of pubic hair. *Labia majora* are full, convex and coaptated with the light brown *labia minora* presenting in between. On separating the same is disclosed an elastic, fleshy-type hymen with deep-healed lacerations at 3 and 9 o'clock positions. External vaginal orifice offers moderate resistance to the introduction of the examining index finger and the virgin sized vaginal speculum. Vaginal canal is narrow with prominent rugosities. Cervix is normal in size, color and consistency.

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15 *Id.*, at 8-9.

16 *Id.*, at 10.

17 *Id.*, at 11.

18 *Id.*, at 12-13.

19 TSN, October 30, 1995, pp. 5-9.

20 TSN, March 6, 1996, p. 4.

CONCLUSION:

Subject is in non-virgin state physically. There are no external signs of application of any form of violence.

REMARKS:

Vaginal and peri-urethral smears are negative for gram-negative diplococcic and for spermatozoa.[21]

Dr. Cosidon stated that the lacerations could have been caused by a hard object such as a finger or a fully erect penis.[22]

BBB, testified that the appellant was the live-in partner of her sister. BBB recalled that on December 2, 1994, AAA told her that the appellant had raped her.[23] She reported the incident to the police on December 4, 1994. After taking the statement of AAA, the police told BBB to bring her to Camp Crame for medical examination.[24]

The defense presented a different version of events.

The appellant testified that he knew AAA because the latter's mother, FFF, was his common-law wife. Prior to FFF's death in February 1994, the appellant lived with FFF and her five (5) children in a rented house in a squatter's area in *Barangay* Pingkian. This house has a small room made of plywood, with a wooden bed inside.[25]

The appellant further stated that he looked for a job after the death of FFF and stayed at a friend's house on Santiago Street, San Francisco, Del Monte, Quezon City, but he still visited his wife's children in *Barangay* Pingkian.[26] The appellant

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[21] Records, p. 155.

[22] TSN, March 6, 1996, pp. 7-9.

[23] TSN, April 22, 1996, pp. 3-4.

[24] *Id.*, at 5-6.

[25] TSN, May 15, 1998, pp. 3-7.

[26] *Id.*, at 9-11.

maintained that he was at the La Loma Cockpit Arena on November 27, 1994, and slept at the place of his friend Larry.[27]

The appellant recalled that he was in Negros when BBB informed him of his wife's death. He went to Manila to attend the wake which lasted for three (3) days. Thereafter, he looked for a job and stayed at Larry's house in Quezon City to take care of the latter's fighting cocks.[28] FFF's children occasionally visited him there to ask for support. The children got angry when he told them not to ask for money. The appellant transferred residence to Tandang Sora in December 1994 to take care of his brother's fighting cocks. He was arrested by the police in Pingkian on December 4, 1994.[29]

On cross examination, the appellant stated that Larry's house was about an hour away from his (appellant's) former house in Pingkian. FFF's children visited him at work in May 1994, but he did not give them any money as they were already of age. According to him, he did not marry FFF because the latter's former marriage was still subsisting.[30]

The RTC also ordered the re-taking of the appellant's testimony because the court stenographer who attended the proceedings went AWOL and failed to submit the transcript of stenographic notes of the proceedings. The appellant essentially reiterated his previous court testimonies.

The RTC convicted the appellant of rape in its decision of January 12, 2004 under the following terms:

WHEREFORE, premises considered, finding the accused Ignacio Poras GUILTY beyond reasonable doubt of the crime of rape under Article 266-A of the Revised Penal Code, said accused is hereby sentenced to suffer the penalty of ***Reclusion Perpetua*** and ordered

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[27] *Id.*, at 12-13.

[28] TSN, August 10, 1998, p. 2.

[29] *Id.*, at 3.

[30] *Id.*, at 4-6.

to pay private complainant AAA a civil indemnity of ₱50,000.00 and moral damages of ₱50,000.00.

Considering that the accused is a detention prisoner, let the period of his detention be credited in the service of his sentence.

With costs *de oficio*.

SO ORDERED.[31]

The records of this case were originally transmitted to this Court on appeal. Pursuant to our ruling in *People v. Mateo*,[32] we endorsed the case and its records to the CA for appropriate action and disposition.

The CA, in its decision dated November 8, 2006, affirmed the RTC decision with the modification that the appellant be held liable for rape under Article 335, as the rape was committed prior to the enactment of the Anti-Rape Law of 1997. It relied on the evaluation made by the RTC regarding AAA's credibility, as the trial court had the unique opportunity to observe the witnesses' attitude, conduct, and demeanor. According to the appellate court, the victim's testimony proved that the appellant had sex with her while she was unconscious. The CA added that the totality of established circumstances constituted an unbroken chain of events leading to a fair and reasonable conclusion that the appellant had raped the victim. In addition, Dr. Cosidon's findings that the victim suffered deep-healed lacerations on her private parts corroborated AAA's testimony.

The CA further observed that minor inconsistencies in the victim's testimony strengthened her credibility because they eliminated the chance of a rehearsed testimony. The appellate court also noted that the victim's delay in reporting the rape was not an indication of a fabricated charge; victims of harrowing experiences would rather bear their ignominy and pain in private rather than reveal their shame to the world.

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

[32] G.R. Nos. 147678-87, July 7, 2004, 433 SCRA 640, 656.

Finally, the CA stated that the appellant's uncorroborated *alibi* and denial cannot prevail over the victim's positive testimony. It ruled that the appellant failed to show that it was physically impossible for him to be at the crime scene at the time of its commission.

In his brief,[33] the appellant argued that the RTC erred in convicting him of the crime charged despite the prosecution's failure to prove his guilt beyond reasonable doubt. According to the appellant, AAA gave different versions of the incident, but never testified that there was any penetration of her private parts. AAA only concluded that she had been raped when she learned of the result of the medical examination and because she felt weak when she woke up.

THE COURT'S RULING

We find that the prosecution failed to prove the appellant's guilt beyond reasonable doubt of the crime of rape. We convict him instead of the lesser crime of **acts of lasciviousness,** included in rape, as the evidence on record shows the presence of all the elements of this crime.

Circumstantial Evidence Insufficient To Establish Carnal Knowledge

The review of a criminal case opens up the case in its entirety. The totality of the evidence presented by both the prosecution and the defense is weighed, thus, avoiding general conclusions based on isolated pieces of evidence.

In a charge of rape, the review begins with the reality that rape is a very serious accusation that is painful to make. At the same time, it is a charge that is not hard to lay against another by one with malice in her mind. Because of the private nature of the crime that justifies the acceptance of the lone testimony of a credible victim to convict, it is not easy for the accused, although innocent, to disprove his guilt. These realities compel us to approach the appeal with great caution, and to

[33] CA *rollo*, pp. 96-110.

scrutinize the statements of the victim on whose sole testimony conviction or acquittal depends.[34]

By definition, rape is committed by having carnal knowledge of a woman with the use of force or intimidation, or when she is deprived of reason or otherwise unconscious, or when she is under twelve (12) years of age or is demented. Although full penetration is not required to sustain a conviction of rape, there must at least be proof beyond reasonable doubt of the entrance of the male organ within the *labia* of the pudendum of the female organ.

In this case, no direct evidence exists showing the required penetration; AAA could not have seen the appellant insert his penis into her vagina because she was unconscious. However, direct evidence of the commission of the crime is not the only basis from which courts may draw their findings and conclusions. Where the victim could not testify on the actual penetration that the crime of rape requires because she had been rendered unconscious at the time of the crime, Rule 133, Section 4, of the Revised Rules on Evidence allows the courts to rule on the basis of circumstantial evidence, thus:

> Sec. 4. *Circumstantial evidence, when sufficient*. – Circumstantial evidence is sufficient for conviction if:
>
> There is more than one circumstance;
>
> The facts from which the inferences are derived are proven; and
>
> The combination of all the circumstances is such as to produce a conviction beyond reasonable doubt.

A related rule is that the totality or the unbroken chain of the circumstances proved leads to no other logical conclusion than the guilt of the appellant.[35]

In the present case, the lower courts convicted the appellant of rape based on the following circumstances: (a) the appellant

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[34] *People v. Fabito*, G.R. No. 179933, April 16, 2009.

[35] See *People v. Moran, Jr.*, G.R. No. 170849, March 7, 2007, 517 SCRA 714.

made AAA drink coffee which made her fall asleep; (b) AAA saw the appellant lying beside her, moving on top of her, and touching her private parts *when she woke up*; (c) AAA's panty had been lowered to her knees, and the strap of her bra had been removed; (d) the appellant put on his briefs and shorts after AAA pushed her; (e) AAA felt pain in her private parts, and saw blood stains on her panty; (f) the appellant threatened to kill AAA if she disclosed the incident to anyone; and (g) the examining physician found deep-healed lacerations in AAA's vagina.

The test to determine whether or not the circumstantial evidence on record is sufficient to convict the accused requires that the duly proven series of circumstances must be consistent with each other, and that each and every circumstance must be consistent with the accused's guilt and inconsistent with his innocence.[36] In other words, the circumstantial evidence must do more than just raise the mere possibility or even the probability of guilt. It must engender moral certainty.

In the present case, we can only conclude, after due consideration of the evidence adduced, that the circumstantial evidence failed to clearly establish an unbroken chain leading to the fair and reasonable conclusion that the appellant raped AAA.

First, the result of the medical examination did not in any way support AAA's claim that the appellant had sex with her. Dr. Cosidon testified that the deep-healed lacerations on the victim's hymen could have also been caused by a *finger*, and that these lacerations could have been present *even before* November 27, 1994. To directly quote from the records:

ATTY. IGNACIO BANDAL, JR.:

Q: Dr., will you please, you said seven (7) days or more on deep healed lacerations you mentioned. [*sic*] Could it be possible that this [*sic*] lacerations at 3 and 9 o'clock positions in your Medico Legal Report No. M-1736-94, could it

[36] *People v. Canlas*, 423 Phil. 665 (2001).

happened a long time ago or **before November 27, 1994**? [*sic*]

DR. COSIDON:

A: It could be possible.

Q: Now, could it be possible that this deep laceration that your finding the 3 and 9 o'clock position [*sic*] **could have been caused by a finger of any person inserted to the vagina**?

A: Could be possible.

x x x [*emphasis ours*][37]

In addition, we cannot equate a ruptured hymen with rape. In *People v. Domantay*,[38] we had occasion to expound on the evidentiary value of a finding of hymenal lacerations, as follows:

> [A] medical certificate or the testimony of the physician is presented not to prove that the victim was raped but to show that the latter had lost her virginity. Consequently, standing alone, a physician's finding that the hymen of the alleged victim was lacerated does not prove rape. It is only when this is corroborated by other evidence proving carnal knowledge that rape may be deemed to have been established.

Thus, while the healed lacerations are undisputed, they can only prove, in the absence of any other evidence, that AAA has had prior sexual experience. Specific proof of penile contact, on or about the time the appellant allegedly raped her, is missing.

Even assuming, for the sake of argument, that the appellant succeeded in inserting his fingers in AAA's vagina, this act still would not suffice to convict the appellant of rape. In 1994, the insertion of one or more fingers into a woman's vagina without her consent did not constitute rape. It was only in 1997 that the law on rape was expanded to include this act.[39]

Second, we find it highly unlikely that the appellant inserted his penis into AAA's vagina while the latter's panty was lowered

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[37] TSN, March 6, 1996, pp. 8-9.

[38] 366 Phil. 459, 479 (1999).

[39] *People v. Quijano Sr.*, 451 Phil. 729 (2003).

to her knees. Common sense and ordinary human experience show that penile penetration is extremely difficult, if not almost impossible under this situation, unless the victim's legs were spread apart. If the appellant's intention had been to consummate sexual coitus with AAA, he would have completely removed her (AAA's) underwear, given that he had the opportunity as she was then asleep.

Third, considering that AAA was an unmarried 13-year old, she would have been in unusually deep sleep in order not to feel the pain and sensation reasonably expected from the insertion of a penis into her young, vaginal canal. We are baffled how could she have slept through a consummated sexual intercourse and awakened only after its completion. While AAA alleged that she had been drugged, this state – by itself and in the absence of any other evidence – only gives rise to the possibility of a consummated act of rape; the conviction in a rape case though must rest on evidence, not on mere possibility.[40]

Fourth, we cannot equate AAA's testimony of pain in her private parts with rape. Carnal knowledge, not pain, is the element of consummated rape and we believe that it would be a dangerous proposition to equate a victim's testimony of pain, in the absence of any other evidence, with carnal knowledge. The peril lies in the facility of asserting pain. Pain, too, can come from various reasons other than carnal knowledge; it is also subjective and is easy to feign.[41]

Fifth, the testimonies of the other prosecution witnesses did not establish with moral certainty that the appellant raped AAA. BBB's testimony that AAA admitted to her that she had been raped by the appellant is clearly hearsay and is inadmissible for the purpose of showing that the appellant raped AAA. The prosecution likewise failed to explain why BBB only reported the incident to the police on December 4, 1994, when AAA disclosed the rape to her as early as December 2, 1994.

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[40] *People v. Abino*, 423 Phil. 263 (2001).

[41] *People v. Quarre*, 427 Phil. 422 (2002).

Likewise strangely missing, in our view, was any corroborative statement from CCC who, from AAA's testimony, was sleeping beside her on the night of the alleged rape. According to AAA, CCC was still beside her, but was no longer on the mattress they shared, when she (AAA) woke up and found the appellant lying beside her.The implication from AAA's testimony is that CCC slept through the whole incident of rape. We find this unusual if indeed AAA had been drugged into sleep and if the appellant had taken his time in ravishing her during her sleep. If indeed the appellant had ample time for the rape and did it silently so that CCC never awakened, it would have been unusual – as we already noted – for AAA's panty to have been simply pulled down to her knees in a position that made penile insertion extremely difficult. In sum, AAA's testimony on the details of the alleged rape, and the fact of rape, does not simply add up into a coherent whole.

Finally, we cannot help but observe that AAA, in her direct testimony, revealed that she merely came to the conclusion that the appellant had raped her *after* being told by the examining physician that the result of the medical examination was "*positive*", and that something had happened to her. For clarity and precision, we directly quote from the records:

FISCAL LORNA CHUA CHENG:

Q: Miss witness, during your direct examination, you testified that you were allegedly raped by your step-father Ignacio Poras, **why do you say that you were allegedly raped while you were asleep then?**

[AAA]:

Because when I woke up, **I saw him beside me** and **because of the result of the medical examination.**

Q: Why, were you able to talk to the doctor who examined you?

A: Yes, Ma'am.

Q: What did he [*sic*] tell you, if any?

A: **He [*sic*] told me it is positive.**

Q: What do you mean by positive?

A: **That there was something that happened.**

COURT:

Q: Something happened to whom?

A: To me, sir.

x x x x x x x x x[42]

[*emphasis supplied*]

AAA, to our mind, jumped from the premise that the examination was "*positive*" into the conclusion that she had been raped.[43] True, she was unconscious and could not have seen whether there had been actual penile contact. To conclude, however, that the appellant had raped her because she saw him lying beside her when she woke up, and because the examining physician later told her that something had happened to her, is not sufficient; it does not prove, to the point of moral certainty, that the appellant, to the exclusion of other possibilities, had raped her.

For one, when Dr. Cosidon told AAA that "*it is positive*," and that something "*had happened*" to her, the doctor could have simply been confirming what she wrote in her medico-legal report, that she found the victim *to be in a non-virgin state, with deep-healed hymenal lacerations* — a finding that did not necessarily mean that AAA had been raped on the occasion that gave rise to the medical examination. As previously discussed, Dr. Cosidon did not discount the possibility that the deep-healed lacerations could have been inflicted before November 27, 1997 and that a finger could have also caused these lacerations. In fact, Dr. Cosidon could not have concluded that AAA had been raped; whether the facts alleged and proven constitute the crime of rape is a legal conclusion for this Court to make.[44]

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[42] TSN, September 25, 1995, p. 2.

[43] *People v. Masalihit*, 360 Phil. 332 (1998).

[44] See *People v. Valenzuela*, G.R. No. 182057, February 6, 2009, 578 SCRA 157, 175.

We are not unmindful of decided cases where the victim was unconscious and was not aware of the sexual intercourse that transpired, yet the accused was found guilty on the basis of circumstantial evidence.

In *People v. Sabardan*,[45] the victim felt dizzy and lost consciousness after the accused forced her to drink beer. On waking up, she found herself completely naked and felt severe pains in her vagina. The Court upheld the culpability of the accused for rape.

In *People v. Gaufo*,[46] the victim was hit on her head by the accused but she fought back and asked for help. The accused then punched her abdomen causing her to lose consciousness. Upon regaining her bearings, she noticed that her underwear was missing, her vagina was bleeding and her body was painful. The combination of these circumstances, among others, led the Court to adjudge the accused guilty of rape.

In *People v. Perez*,[47] this Court ruled that the victim's positive identification of the accused as the person who came to her room and covered her nose and mouth with a foul smelling handkerchief until she lost consciousness, the blood and white substance found in her aching vagina, her torn shorts and her missing panty, all led the Court to the conclusion that accused had raped her while she was unconscious.

In all these cases, the totality of the circumstances led to no other logical conclusion than the fact of rape and its commission by the accused. Other cases, however, are also on record where this Court did not hesitate to set aside convictions in rape cases involving unconscious victims where the circumstantial evidence was found insufficient to convict.

In *People v. Sumarago*,[48] the victim testified that the accused boxed her, rendering her unconscious. When she regained

[45] G.R. No. 132135, May 21, 2004, 429 SCRA 9.

[46] 469 Phil. 66 (2004).

[47] 366 Phil. 741 (1999).

[48] 466 Phil. 956 (2004).

consciousness, she had a severe headache. However, she still had her clothes on. She suspected that the appellant had carnal knowledge of her because her vagina was painful. The examining physician also found incomplete lacerations on her private parts. In acquitting the accused,[49] the Court explained:

> There is no proof beyond reasonable doubt that the appellant's penis entered the *labia* of the pudendum of Norelyn. It is possible that while [the victim] was unconscious, the appellant undressed her, removed her panties and inserted his private organ into her vagina; and after satisfying himself, put her clothes back on before she regained consciousness. But such possibility is not synonymous with evidence. That the appellant had carnal knowledge of the victim cannot be presumed simply because she felt pain in her vagina when she regained consciousness, and that for over a period of time, the appellant warned her not to tell anybody.

In *People v. Arcillas*,[50] the accused hit the victim with a wooden stick on the head rendering her unconscious. When she woke up, she found herself covered in blood. The laboratory examination showed that she was positive for sperm cells in her private parts. In setting aside the accused's conviction of rape with frustrated homicide, this Court held that although the prosecution amply proved that private complainant had been clubbed into unconsciousness by the accused, the proffered evidence was inadequate to prove that she had been raped. The mere presence of spermatozoa in the vagina, according to the Court, did not prove that the accused raped the private complainant since these sperm cells could have been introduced by sexual contact earlier or later than the alleged rape.

Similarly, in *People v. Daganta*,[51] the accused was acquitted of the charge of raping a minor. According to the prosecution, the accused invited the supposed victim to his room and once inside, the accused started kissing her on the cheek and then on her lips. He then sprayed an insect repellant on her face,

[49] The Court, however, found the accused guilty for the other four (4) counts of rape.

[50] 401 Phil. 963 (2000).

[51] 370 Phil. 751 (1999).

rendering her unconscious. When she woke up, she found the accused sitting outside his room. The lower portion of her umbilicus was painful; she felt pain in her private parts when she urinated. The physical examination of the alleged victim revealed that there was hymenal laceration at five o'clock indicative of the entry of a hard object into her private parts. Despite all these, the Court reversed the lower court decision based on reasonable doubt, and held that the prosecution's evidence was hazy, contradictory and sorely lacking in material details. It added that the chain of circumstances did not show a coherent and consistent story that would give rise to a certitude sufficient to convince this Court to impose on the accused the grave penalty of *reclusion perpetua*.

Finally, in *People v. Masalihit*,[52] the victim saw the accused on top of her and wiping his private parts when she woke up. Nonetheless, the Court acquitted the accused because there was no evidence showing that the act of "wiping" was preceded by an intercourse; the prosecution also failed to show that what was wiped was semen.

In rape cases, the prosecution bears the primary duty to present its case with clarity and persuasion, to the end that conviction becomes the only logical and inevitable conclusion. The Constitution requires moral certainty or proof beyond reasonable doubt; a conviction cannot be made to rest on possibilities.[53]

In the case before us, the pieces of circumstantial evidence do not indubitably lead to the conclusion that appellant is guilty of the crime charged. When two antithetical interpretations may be inferred from the circumstantial evidence presented, the situation calls for the application of the equipoise rule – *i.e.*, when the evidence is consistent with a finding of innocence and also compatible with a finding of guilt, then the evidence is at equipoise and does not fulfill the test of moral certainty sufficient to support a conviction.[54]

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[52] *Supra* note 43.

[53] *Id.* at 39.

[54] *People v. Erguiza*, G.R. No. 171348, November 26, 2008, 571 SCRA 634.

Lewd or Lascivious Design Proven

Notwithstanding the prosecution's failure to prove the appellant's guilt for rape, the Court holds that sufficient evidence exists to convict him of acts of lasciviousness under Article 336 of the Revised Penal Code. A charge of acts of lasciviousness is necessarily included in a complaint for rape.[55] The elements of acts of lasciviousness are: (1) that the offender commits any act of lasciviousness or lewdness; (2) that it is done under any of the following circumstances: (a) by using force or intimidation, (b) when the offended woman is deprived of reason or otherwise unconscious; or (c) when the offended party is under twelve (12) years of age; and (3) that the offended party is another person of either sex.[56]

"*Lewd*" is defined as obscene, lustful, indecent, or lecherous. It signifies that form of immorality related to moral impurity, or that which is carried on a wanton manner.[57]

AAA's testimony during direct examination showed how the appellant committed lewd conduct against her:

x x x x x x x x x

ASSISTANT CITY PROSECUTOR LORNA CHUA CHENG:

Q: Miss witness, you said when you woke up on November 27, 1994, you saw the accused embracing you, what did he do to you while embracing you?

[AAA]:

A: He was **touching** me.

Q: What part of your body was he **touching**?

A: **My organ**.

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[55] *People v. Abulon*, G.R. No. 174473, August 17, 2007, 530 SCRA 675, 704.

[56] *People v. Mingming*, G.R. No. 174195, December 10, 2008, 573 SCRA 509, 534-535.

[57] *People v. Lizada*, 444 Phil. 67 (2003).

Q: **What was he using while touching you?**

A: **His fingers**.

Q: After that what happened?

A: When I was fully awakened he told me not to tell anybody.

Q: And while the accused was **still touching your private part**, were you still having your panty on? [*sic*]

A: No more.[58] [*emphasis ours*]

AAA likewise confirmed on cross examination that the appellant **fondled her breasts**. During the re-taking of her direct examination, AAA reiterated that the appellant **touched her private parts**.

Undeniably, the evidence confirms that appellant committed lewd acts against the victim when he touched her private parts. An examination of AAA's testimony shows that she did not consent to the touching of her private parts. In fact, she immediately pushed the appellant when she saw him lying beside her and touching her private parts when she woke up. The appellant's act of touching AAA's private parts demonstrated lewdness that constituted acts of lasciviousness.

The imposable penalty for the crime of acts of lasciviousness under Article 336 of the Revised Penal Code, as amended, is *prision correccional* in its full range. Applying the Indeterminate Sentence Law, the minimum of the indeterminate penalty shall be taken from the full range of *arresto mayor* which has a range of one (1) month and one (1) day to six (6) months. Absent any modifying circumstances attendant to the crime, the maximum of the indeterminate penalty shall be taken from the medium period of *prision correccional* or two (2) years, four (4) months and one (1) day to four (4) years and two (2) months. Accordingly, the appellant is hereby meted an indeterminate penalty of six (6) months of *arresto mayor,* as minimum, to four (4) years and two (2) months of *prision correccional,* as maximum.

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[58] TSN, September 25, 1995, pp. 3-4.

In addition, we award the amounts of ₱30,000.00 moral damages, ₱20,000.00 civil indemnity, and ₱2,000.00 exemplary damages to the victim in accordance with prevailing jurisprudence.[59]

WHEREFORE, premises considered, the November 8, 2006 decision of the Court of Appeals in CA-G.R. CR-HC No. 00905 is *MODIFIED* as follows:

The conviction for the crime of rape under Article 335 of the Revised Penal Code is *VACATED,* and —

(1) we find appellant Ignacio Poras *GUILTY* of the crime of acts of lasciviousness penalized under Article 336 of the same Code;

(2) we *SENTENCE* the appellant to suffer the indeterminate penalty of imprisonment for six (6) months of *arresto mayor*, as minimum, to four (4) years and two (2) months of *prision correccional,* as maximum; and

(3) we *ORDER* him to *PAY* the victim the amounts of ₱30,000.00 as moral damages; ₱20,000.00 as civil indemnity; and ₱2,000.00 as exemplary damages.

Costs against appellant Ignacio Poras.

SO ORDERED.

Carpio (Chairperson), Del Castillo, Abad, and *Perez, JJ.*, concur.

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[59] *People v. Abello*, G.R. No. 151952, March 25, 2009.

THIRD DIVISION

[G.R. No. 179702. February 16, 2010]

ROLANDO P. ANCHETA, *petitioner, vs.* **DESTINY FINANCIAL PLANS, INC. and ARSENIO BARTOLOME,** *respondents.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; TERMINATION OF EMPLOYMENT; TWO REQUISITES FOR A VALID DISMISSAL.— Two requisites must concur in order that there be a valid dismissal from employment, namely: (1) the dismissal must be for any of the causes expressed in Article 282 of the Labor Code; and (2) the employee must be given an opportunity to be heard and to defend himself.

2. ID.; ID.; ID.; LOSS OF CONFIDENCE AS A GROUND FOR DISMISSAL, EXPLAINED.— The doctrine of loss of confidence requires the concurrence of the following: (1) loss of confidence should not be simulated; (2) it should not be used as a subterfuge for causes which are improper, illegal, or unjustified; (3) it may not be arbitrarily asserted in the face of overwhelming evidence to the contrary; (4) it must be genuine, not a mere afterthought to justify an earlier action taken in bad faith; and (5) the employee involved holds a position of trust and confidence. Loss of confidence, as a just cause for termination of employment, is premised on the fact that the employee concerned holds a position of responsibility, trust and confidence. He must be invested with confidence on delicate matters, such as the custody, handling, care, and protection of the employer's property and/or funds. In order to constitute a just cause for dismissal, the act complained of must be "work-related" such as would show the employee concerned to be unfit to continue working for the employer.

3. ID.; ID.; ID.; REQUIRED PROOF IN THE DISMISSAL OF MANAGERIAL PERSONNEL AND RANK-AND-FILE EMPLOYEES BASED ON LOSS OF CONFIDENCE, DISTINGUISHED.— As a rule, employers are allowed a wide latitude of discretion in terminating the employment of

managerial personnel or those who, while not of similar rank, perform functions which by their nature require the employers' full trust and confidence. Proof beyond reasonable doubt is not required. It is sufficient that there is some basis for loss of confidence, such as when the employer has reasonable ground to believe that the employee concerned is responsible for the purported misconduct, and the nature of his participation therein renders him unworthy of the trust and confidence demanded by his position. This must be distinguished from the case of ordinary rank-and-file employees, whose termination on the basis of these same grounds requires a higher proof of involvement in the events in question; mere uncorroborated assertions and accusations by the employer will not suffice.

4. ID.; ID.; ID.; DISMISSAL OF A MANAGERIAL EMPLOYEE, UPHELD.— Petitioner was a managerial employee of respondent company, holding a highly sensitive position. Being the Head of the Marketing Group of respondent company, he was in charge, among others, of the over-all production and sales performance of the company. Thus, as aptly pointed out by the CA, his performance was practically the lifeblood of the corporation, because its earnings depended on the sales of the marketing group, which he used to head. The position held by petitioner required the highest degree of trust and confidence of his employer in the former's exercise of managerial discretion insofar as the conduct of the latter's business was concerned. Petitioner's inability to perform the functions of his office to the satisfaction of his employer and the former's poor judgment as marketing head caused the company huge financial losses. If these were not timely addressed and corrected, the company could have collapsed, to the detriment of its policy holders, stockholders, employees, and the public in general. The power to dismiss an employee is a recognized prerogative inherent in the employer's right to freely manage and regulate his business. The dismissal of an employee, in a way, is a measure of self preservation. The law, in protecting the rights of the laborers, authorizes neither oppression nor self-destruction of the employer. The worker's right to security of tenure is not an absolute right, for the law provides that he may be dismissed for cause. In this case, as admitted by petitioner, he was hired because of his expertise in the pre-need industry. His competence and satisfactory performance as head of the marketing group assumed primordial

importance for his continued employment in the company. His dismal performance was causing the company financial losses; thus, it was not wise for the company to continue his services. To be sure, an employer cannot be compelled to continue with the employment of workers when continued employment will prove inimical to the employer's interest.

5. ID.; ID.; ID.; ID.; FAILURE TO OBSERVE PROCEDURAL DUE PROCESS DOES NOT INVALIDATE THE DISMISSAL BUT MAKES THE EMPLOYER LIABLE FOR NOMINAL DAMAGES; AWARD OF NOMINAL DAMAGES, REDUCED.— Respondents' failure to observe due process in the termination of employment of petitioner for a just cause does not invalidate the dismissal but makes respondent company liable for non-compliance with the procedural requirements of due process. The violation of petitioner's right to statutory due process warrants the payment of nominal damages, the amount of which is addressed to the sound discretion of the court, taking into account the relevant circumstances. In the instant case, considering that respondent company already suffered financially because of poor sales performance under petitioner's watch, it is just proper to reduce the amount of nominal damages awarded to petitioner to Thirty Thousand Pesos (₱30,000.00). The amount of nominal damages awarded is not intended to enrich the employee, but to deter employers from future violations of the statutory due process rights of employees.

APPEARANCES OF COUNSEL

Quasha Ancheta Peña & Nolasco for petitioner.
Tan Venturanza Valdez for respondents.

D E C I S I O N

NACHURA, *J.*:

Before the Court is a petition for review on *certiorari* under Rule 45 of the Rules of Court, assailing the Decision[1] dated

[1] Penned by Associate Justice Remedios A. Salazar-Fernando, with Associate Justices Rosalinda Asuncion-Vicente and Enrico A. Lanzanas, concurring; *rollo,* pp. 9-20.

April 19, 2007 and the Resolution[2] dated September 17, 2007 of the Court of Appeals (CA) in CA-G.R. SP No. 96059.

The undisputed facts of the case are as follows:

On December 1, 2002, respondent Destiny Financial Plans, Inc., a pre-need insurance company, hired petitioner as Head of its Marketing Group, with a compensation package of Ninety Thousand Pesos (₱90,000.00) a month.[3]

On February 2, 2004, a Marketing Committee meeting was called by respondent Arsenio Bartolome (Bartolome) at the conference room of respondent company. Present at the meeting were petitioner, respondent Bartolome, various leaders of the marketing team, and the operations director of the company. During the meeting, respondent Bartolome made several announcements. However, to the surprise of petitioner, respondent Bartolome announced that petitioner was to resign from the respondent company.[4]

On February 11, 2004, petitioner received a letter[5] from respondent company, asking him to explain within forty-eight (48) hours why his services should not be terminated for loss of confidence in his ability to perform the functions of Marketing Director of the company.[6] The pertinent portions of the letter read:

> You will recall that when you were hired in November of 2002[,] when the new stockholders took over management of the Company, you were tasked to reorganize and set up the Marketing Group, the core group of which was finally set up after much delay, mid year of 2003. Upon your recommendation and representation on the projected output of these new groups, management agreed to the compensation scheme proposed, onerous as they may have been,

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

[3] *Rollo*, p. 205.

[4] *Id.* at 205-206, 124.

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

[6] *Id.* at 206,126.

trusting in your assurance that you have worked with these people and that they will deliver as they have undertaken.

As early as September[,] however, your attention was already called by Mr. A. M. Bartolome regarding the dismal performance of these groups, turning in only 20%-30% of their targeted sales. Despite your assurances that the figures will turn in as projected, they did not. While figures improved in October (albeit still not reaching even 50% of projections), a severe down trend of the already dismal figures occurred in the following months. This [led] to subsequent talks with you that extreme measure should be undertaken considering the monthly deficit of about ₱1 Million which the Company has been suffering.

When the new marketing and operation plans were discussed with you, you appeared to have agreed with the measures and cooperate in the implementation of the same as stated above. Your behavior in the last few days, however, has become very alarming and confirmed that had the Marketing group and therefore the lifeblood of the Company, been left to your management and direction, the Company would have no way to end but fold up. You appear to either refuse to accept the realities of the sales and financial figures or simply do not understand their implications in respect [to] the Company's future. This is not to mention your failure to liquidate company funds for which you are accountable as well as certain conduct which are in conflict of interest with the Company such as including your son in a binary slot. Worse, you instructed the plan administration staff to keep this matter under wraps.

The management had initially been willing to accede to your graceful exit and in fact work with you as an independent agent if only to soften the financial implications on you and to maintain the cordial relationship. Furthermore, management was initially willing and had in the past turned a blind eye on your past conduct in dealing with some of the marketing staff including, among others, your marketing trip to Baguio and use of company property and assets. However, you seem to have the propensity to repeat this unacceptable behavior.

This letter is intentionally sent today as one of our Directors was tasked to talk to you over the weekend and explore less drastic measures to give due courtesy to you in light of the position you hold. During your meeting last Monday, you once again undertook to send our Mr. A.B.K. Tan a proposal on the terms of your engagement

as Management Consultant/Independent Agent. You failed to see Mr. Tan on the appointed time and when asked, you gave an excuse and advised that you will text him a message the following day. You did not send in any proposal as you have undertaken to do, instead you sent a letter yesterday afternoon, "urging" management to dismiss you instead. Today, you did not report for work and instead instructed a staff member to pack up your belongings in your room.

Kindly therefore respond to this letter to air your side. Meanwhile, also kindly turn in the Executive elevator key assigned to you to Ms. Twinkle Hipolilto as well as the duplicate keys to the Company car and surrender possession of the same so the marketing group which is in dire need [of] transportation to carry out their duties may use the same, instead of your devoting the same to your and your family's personal use. Your failure to respond within the allotted 48 hours will constitute as a waiver of your right to air your side in this matter.[7]

On February 13, 2004, petitioner submitted his letter of explanation[8] to respondent company. In response to the allegations of the latter, petitioner argued that:

First of all, permit me to correct your reference to me as "Marketing Director" which is just for external purposes. My correct title is "Head, Marketing Group." This clarification is necessary as I have never been a Director of the Company nor a Vice President.

Thank you for giving me a chance to explain why I should not be "terminated for loss of confidence" in my "ability to perform the functions" of Head, Marketing Group. There are several reasons why the Board should not terminate me.

1. Your "loss of confidence" ground has no basis. The Board is practically saying it has lost its confidence as well on the Management Committee headed by Mr. Arsenio Bartolome (AMB) because no significant decision in Marketing and Operations is made without AMB's go signal. Many a time, [sic] my recommendations which were based on my industry experience and which were in the best interest of the company long-term, were turned down.

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

[8] *Id.* at 206, 128-131.

2. You are right. I was hired only in November 2002. I was hired because of my exposure and experience in the pre-need industry. The Company when it took over USPI started with no "Marketing" organization. I recruited the Marketing group. There were no marketing documents to start with- no Agents' contract forms, no rate sheets, no product manual, no other marketing materials. I created and organized all these. The only materials available were the binary materials, which were more focused on the income potential rather than product orientation. I organized the Traditional Sales Team, The Network Sales Team, the Military Sales and the Institutional Sales Team.

3. You mentioned the ₱1 Million monthly deficit. Assuming that to be true, I know, and I mentioned this repeatedly, that in this industry, particularly at these economic hard times, it is very, very difficult to make money in the first year, even in the second year, the obvious reason being the high commission to be paid for the first year contracts plus the overhead and marketing expenses. True, management and Marketing people can set targets, but targets are not realistic most of the time. Be that as it may, it must have been reported in the last Friday's board meeting that the total Sales from July 2003 to Jan. 2004 (GCP) was at ₱42,067.356 against only ₱4.0M in allowance released. This shows that the cost-to-sales ratio is only less than 10% which means if our collection efforts are efficient then this cost may be recovered in less than a year.

4. In your fifth paragraph how can you say that may (sic) behavior is alarming when I even represented the company in the Pre-Need Forum mostly with my sales team heads at the Shangri-La Hotel in Makati last February 5? How would you feel if your boss requests for a resignation letter effective retroactively? I spent two nights of anxiety, which caused me severe headaches and wounded feelings. I even called Lito Quimel to notify him of my sick leaves. The sales figures are clear to me that is why I kept on requesting for an honest to goodness financial planning session but what we had last December was like a revalida session. I still believe that if we follow the marketing Group's recommendation, things would turn out well.

5. I did not propose an agency agreement. What I simply mentioned during my dinner with Nonoy Tan was that things could probably be better if people who would be asked to leave could be offered some sort of an agency arrangement instead of them representing competitor companies. I asked Mr. Tan if he had an offer for me. He said the company cannot make such [an] offer. I left it at that.

6. I am advised that as an employee I have security of tenure under the Labor Code and that I cannot be dismissed without lawful cause. You know very well that your reason of "loss of confidence" has no factual or legal basis. If indeed the Board wants to dismiss me in any event, then it should do so in a decent manner and with a decent separation package.

7. On the petty matter of my son's joining the binary, I sent a memo via email to ABKT and AMB sometime first week of August 2003 informing them of this. It was a memo wherein I was strongly recommending full support to networking Sales strategy, as it will enhance our cash flow in tandem with the Traditional sales. I even mentioned and I quote[,] "As a personal contribution I will ask my adult sons to join…" This was further discussed with AMB personally and I mentioned to him that instead of making my children join First Quadrant, which was beginning to be popular in schools[,] I urged them to go on a savings plan instead. I should have been congratulated by that gesture but now it turns out to be conflict of interest. Please ask for a genealogy [sic] if my sons gained from their slots. I even remitted gross without commissions on these plans. I remember AMB openly mentioning the pension plan of Mr. AP Bartolome, to be paid net of commissions. I saw nothing wrong therefore in buying a plan for my adult sons. I did not instruct a staff to keep matters under wraps. I simply asked if it was a "big deal" with AMB because knowing him he would look into small details often with suspicion.

8. It may be worth mentioning that last Jan. 11, 2004 I returned from a successful sales rally in Davao attended by at least 100 sales managers now operating in Herway-Davao and in one occasion I was given two pairs of Levi's pants by the spouse of one of the applicants. Instead of keeping the two pairs of pants, I raffled them off to the staff employees and Twinkle and Grace won the raffle. Looking back this

could have been an issue of conflict of interest. I also don't remember reading a memo on conflict of interest, which AMB has been openly mentioning.

9. On the matter of unliquidated items please give me a copy of any, and if my memory serves me right any item I can not justify I simply sign my name and request it to be charged against my account. At the very least I should have been given a notice about these petty matters. To me all these are forms of harassment.

10. There are other instances in the past that will prove to the board that I did my level best (in spite of my limitations) to show that there is no cause for loss of confidence. On the other hand, I have shown loyalty to the company and to AMB when I defended issues about Urban Bank and AMB, I pacified angry USPI planholders exercising their rights for a cash surrender. I even went to a point of talking to a radio announcer to ease the tension and negative impact to the company. That was the time a guard was hired at the 5th floor. I also remember Lito Quimel requesting me to face the angry planholders from the Mayor's office headed by Lina Hilario. I pacified them since Lina's husband is a co-Rotarian in my club. The group of Lina then agreed to continue their plans under the new scheme but had some reservations about the Urban Bank issue (which I mentioned to AMB). I just reassured them that they should not be comparing Destiny and Urban Bank.

11. I deny allegations in your paragraph seven about unacceptable behavior. I went on a trip to Baguio on a Holy Tuesday last year to call on the several group accounts. Since I know that Mr. Bartolome might use his suspicious mind on this trip I texted him my whereabouts and even asked Ms. Tere Rocales (then my co-proponent for the Network sales) and her husband to join me. We went to BGH but managed to talk to Dra. Cruz on the phone as we missed her for a meeting. We had two other meetings with USPI clients to regain the accounts. I thought I should be commended for working during Holy Week and regaining clients for Destiny. Instead, Lito Quimel was asked to go to Baguio to investigate if I really went there. Of course embarrassing to note they were wrong in their suspicion. It might interest you to know that in at least several occasions I arranged for our Baguio

> townhouse to be used for company business just to save money for the company. Instead of charging the company[,] I just kept quiet about my simple contribution. I also confronted AKT about alleged conduct in dealing with marketing staff at his office. Even the raisin bread issue become a big deal when in fact the next day I brought and distributed it to the staff. What was worse was Mr. Bartolome had to use my cousin to bring these poor taste "Chismis" out to my family. I remember my sister discussing these in one Sunday dinner at my father's house. My elder sister could have gathered this information only from my female cousin who is a close confidant of Mr. Bartolome.

Your last paragraph is contradictory and premature. Are you not asking me to explain my side so that the Board can decide whether or not to terminate me after I shall have submitted this explanation? The Board will have to meet and decide first before you ask for the turn over of the elevator key and the car, which I am using as part of my employment package. Before that happens I am still an employee. Your [sic] asking me to explain and demanding turnover of [the] property as if I am already terminated is dealing with me in bad faith. It is obvious the Board has already made up its mind no matter what my explanation would be. Be that as it may, I expect to hear what the Board will decide and to receive a formal termination letter for my guidance.

On February 17, 2004, the board of directors of respondent company terminated petitioner's services on the ground of loss of confidence.[9] Thus, on March 16, 2004, petitioner filed before the Labor Arbiter a complaint for illegal dismissal, with prayer for reinstatement, payment of full backwages, payment of 13th month pay, moral and exemplary damages, and attorney's fees, against respondent.[10]

On April 28, 2005, the Labor Arbiter rendered a Decision,[11] the dispositive portion of which reads:

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[9] *Id.* at 14.

[10] *Id.* at 10.

[11] Penned by Labor Arbiter Joel S. Lustria; *rollo*, pp. 204-220.

WHEREFORE, premises considered, judgment is hereby rendered, declaring complainant's dismissal from employment to be illegal. Accordingly, respondents are jointly and severally liable:

1) To reinstate complainant to his former and/or substantially equivalent position without loss of seniority rights, benefits and other privileges;

2) To pay complainant his backwages, from the time he was illegally dismissed up to his actual reinstatement. As of the present, his backwages amounted to ₱1,365,000.00;

3) To pay complainant the amount of ₱100,000.00, representing moral damages; and the sum of ₱100,000.00 as exemplary damages;

4) To pay complainant the amount equivalent to ten (10%) percent of the total judgment award as and for attorney's fees.

SO ORDERED.[12]

On appeal, the National Labor Relations Commission (NLRC) reversed the decision of the Labor Arbiter in a Decision[13] dated February 28, 2006, the *fallo* of which reads:

WHEREFORE, the decision dated April 28, 2005 is hereby VACATED. Judgment is hereby rendered, DISMISSING the complaint for lack of merit.

SO ORDERED.[14]

Petitioner filed a motion for reconsideration. However, the same was denied in a Resolution[15] dated June 28, 2006.

Aggrieved, petitioner filed a petition for *certiorari* under Rule 65 of the Rules of Court before the CA. On April 19,

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[12] *Id.* at 220.

[13] Penned by Presiding Commissioner Raul T. Aquino, with Commissioners Victoriano R. Calaycay and Angelita A. Gacutan, concurring; *rollo*, pp. 77-94.

[14] *Id.* at 94.

[15] *Rollo*, pp. 301-303.

2007, the CA rendered a Decision,[16] affirming with modification the decision of the NLRC, *viz.*:

> WHEREFORE, premises considered, the assailed Decision dated February 28, 2006 and Resolution dated June 28, 2006 of the NLRC, Second Division, in NLRC NCR CASE NO. 00-03-03655-04/NLRC NCR CA NO. 044669-05 are hereby**AFFIRMED** with the **MODIFICATION** that private respondent Destiny is hereby ordered to pay petitioner Ancheta the amount of ₱100,000.00 as nominal damages for non-compliance with statutory due process.
>
> SO ORDERED.

Both petitioner and respondents filed their respective motions for partial consideration. However, the motions of both parties were denied in a Resolution[17] dated September 17, 2007.

Hence, the instant petition.

The sole issue for resolution is whether petitioner's employment was validly terminated because of loss of confidence.

Two requisites must concur in order that there be a valid dismissal from employment, namely: (1) the dismissal must be for any of the causes expressed in Article 282 of the Labor Code; and (2) the employee must be given an opportunity to be heard and to defend himself.[18]

In the instant case, to justify the dismissal of petitioner from respondent company, respondents invoked breach of trust and confidence. Under Article 282(c) of the Labor Code, an employer can terminate the employment of the employee concerned for "fraud or willful breach by an employee of the trust reposed in him by his employer or duly authorized representative."

The doctrine of loss of confidence requires the concurrence of the following: (1) loss of confidence should not be simulated; (2) it should not be used as a subterfuge for causes which are

[16] *Supra* note 1.

[17] *Rollo*, pp. 22-23.

[18] *Mapalo v. National Labor Relations Commission*, G.R. No. 107940, June 17, 1994, 233 SCRA 266.

improper, illegal, or unjustified; (3) it may not be arbitrarily asserted in the face of overwhelming evidence to the contrary; (4) it must be genuine, not a mere afterthought to justify an earlier action taken in bad faith; and (5) the employee involved holds a position of trust and confidence.[19]

Loss of confidence, as a just cause for termination of employment, is premised on the fact that the employee concerned holds a position of responsibility, trust and confidence. He must be invested with confidence on delicate matters, such as the custody, handling, care, and protection of the employer's property and/or funds. In order to constitute a just cause for dismissal, the act complained of must be "work-related" such as would show the employee concerned to be unfit to continue working for the employer.[20]

As a rule, employers are allowed a wide latitude of discretion in terminating the employment of managerial personnel or those who, while not of similar rank, perform functions which by their nature require the employers' full trust and confidence. Proof beyond reasonable doubt is not required. It is sufficient that there is some basis for loss of confidence, such as when the employer has reasonable ground to believe that the employee concerned is responsible for the purported misconduct, and the nature of his participation therein renders him unworthy of the trust and confidence demanded by his position.[21]

This must be distinguished from the case of ordinary rank-and-file employees, whose termination on the basis of these same grounds requires a higher proof of involvement in the events in question; mere uncorroborated assertions and accusations by the employer will not suffice.[22]

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[19] *Midas Touch Food Corp. v. NLRC,* G.R. No. 111639, July 29, 1996, 259 SCRA 652.

[20] *Gonzales v. NLRC,* G.R. No. 131653, March 26, 2001, 355 SCRA 195, 207.

[21] *Rentokil (Initial) Philippines, Inc. v. Sanchez*, G.R. No. 176219, December 23, 2008, 575 SCRA 324.

[22] *Aurelio v. NLRC,* G.R. No. 99034, April 12, 1993, 221 SCRA 432.

Petitioner was a managerial employee of respondent company, holding a highly sensitive position. Being the Head of the Marketing Group of respondent company, he was in charge, among others, of the over-all production and sales performance of the company.[23] Thus, as aptly pointed out by the CA, his performance was practically the lifeblood of the corporation, because its earnings depended on the sales of the marketing group, which he used to head. The position held by petitioner required the highest degree of trust and confidence of his employer in the former's exercise of managerial discretion insofar as the conduct of the latter's business was concerned.[24] Petitioner's inability to perform the functions of his office to

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[23] The job description of petitioner in respondent company reads:

JOB DESCRIPTION: Appointed by the Board of Directors as Head of Marketing Group for the company. As Chief Marketing Officer, he is also a member of the Management Committee and is tasked to oversee the entire sales and Marketing operations. Duties and responsibilities include the following:

1. Report to the board of directors monthly as to the over-all production and performance of the company as far as sales is concerned[;]
2. Hire Marketing Associates as deemed necessary for the company expansion program[;]
3. Plan and organize the marketing activities of the company from day-to-day[;]
4. Create and develop strategic partnership with various organizations and companies for mutually beneficial business activities;
5. Develop the sales and marketing skills of the sales agents of the sister company, Herway Inc.[;]
6. Conduct Sales training and product seminars for the company[;]
7. Pursue high level client call to various institutions nationwide;
8. Delegate simultaneous marketing activities to marketing assistants;
9. Organize branch offices in strategic areas nationwide;
10. Train and develop sales agents for the company;
11. Update products and services for the company;
12. Over-all marketing strategist for the company;
13. Implement action plans set by the board of Directors and the Management committee. (*Rollo*, p. 123.)

[24] *Rollo,* p. 10.

the satisfaction of his employer and the former's poor judgment as marketing head caused the company huge financial losses. If these were not timely addressed and corrected, the company could have collapsed, to the detriment of its policy holders, stockholders, employees, and the public in general.

The power to dismiss an employee is a recognized prerogative inherent in the employer's right to freely manage and regulate his business. The dismissal of an employee, in a way, is a measure of self preservation.[25] The law, in protecting the rights of the laborers, authorizes neither oppression nor self-destruction of the employer. The worker's right to security of tenure is not an absolute right, for the law provides that he may be dismissed for cause.[26] In this case, as admitted by petitioner, he was hired because of his expertise in the pre-need industry. His competence and satisfactory performance as head of the marketing group assumed primordial importance for his continued employment in the company. His dismal performance was causing the company financial losses; thus, it was not wise for the company to continue his services. To be sure, an employer cannot be compelled to continue with the employment of workers when continued employment will prove inimical to the employer's interest.[27]

With regard to respondent company's compliance with procedural due process, we agree with the CA when it enunciated that:

> Be that as it may, this Court finds that the private respondents did not strictly comply with the "two notice" requirement in dismissing petitioner Ancheta. While private respondents sent a show cause letter to petitioner Ancheta, the same letter precipitately implemented termination procedures, *i.e.*, demanded the return of the Executive elevator key which allows petitioner Ancheta access to the office premises and the surrender of the company car assigned

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[25] *Perez v. Medical City General Hospital,* G.R. No. 150198, March 6, 2006, 484 SCRA 138.

[26] *Manila Electric Company v. NLRC,* G.R. No. 90030, June 25, 1990, 186 SCRA 763.

[27] *Rentokil (Initial) Philippines, Inc. v. Sanchez, supra* note 23.

to him, even as petitioner Ancheta had yet to answer and air his side. Such betrays the fact that the said show cause letter was but a formality and petitioner Ancheta's dismissal is a foregone conclusion. It is thus apparent that private respondents did not comply with the procedural requirements of due process in dismissing petitioner Ancheta.[28]

Respondents' failure to observe due process in the termination of employment of petitioner for a just cause does not invalidate the dismissal but makes respondent company liable for non-compliance with the procedural requirements of due process. The violation of petitioner's right to statutory due process warrants the payment of nominal damages, the amount of which is addressed to the sound discretion of the court, taking into account the relevant circumstances.[29] In the instant case, considering that respondent company already suffered financially because of poor sales performance under petitioner's watch, it is just proper to reduce the amount of nominal damages awarded to petitioner to Thirty Thousand Pesos (₱30,000.00). The amount of nominal damages awarded is not intended to enrich the employee, but to deter employers from future violations of the statutory due process rights of employees.

WHEREFORE, in view of the foregoing, the instant appeal is *DENIED* for lack of merit. The Decision dated April 19, 2007 and the Resolution dated September 17, 2007 of the Court of Appeals in CA-G.R. SP No. 96059 are hereby *AFFIRMED WITH MODIFICATION* in that the nominal damages awarded to petitioner Rolando P. Ancheta shall be reduced to Thirty Thousand Pesos (₱30,000.00).

SO ORDERED.

Corona (Chairperson), Velasco, Jr., Peralta, and *Mendoza, JJ.,* concur.

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[28] *Rollo,* pp. 18-19.

[29] *Agabon v. NLRC*, G.R. No. 158693, November 17, 2004, 442 SCRA 616.

THIRD DIVISION

[G.R. No. 180356. February 16, 2010]

SOUTH AFRICAN AIRWAYS, *petitioner, vs.* **COMMISSIONER OF INTERNAL REVENUE,** *respondent.*

SYLLABUS

1. TAXATION; INCOME TAX; FOREIGN CORPORATION; SECTIONS 28 (A) (3) (a) AND 28 (A) (1) OF THE NIRC, CONSTRUED; THE *BRITISH OVERSEAS AIRWAYS* APPLIES TO THE INSTANT CASE.— [T]he difference cited by petitioner between the 1939 and 1997 NIRCs with regard to the taxation of off-line air carriers is more apparent than real. We point out that Sec. 28(A)(3)(a) of the 1997 NIRC does not, in any categorical term, exempt all international air carriers from the coverage of Sec. 28(A)(1) of the 1997 NIRC. Certainly, had legislature's intentions been to completely exclude all international air carriers from the application of the general rule under Sec. 28(A)(1), it would have used the appropriate language to do so; but the legislature did not. Thus, the logical interpretation of such provisions is that, if Sec. 28(A)(3)(a) is applicable to a taxpayer, then the general rule under Sec. 28(A)(1) would not apply. If, however, Sec. 28(A)(3)(a) does not apply, a resident foreign corporation, whether an international air carrier or not, would be liable for the tax under Sec. 28(A)(1). Clearly, no difference exists between *British Overseas Airways* and the instant case, wherein petitioner claims that the former case does not apply. Thus, *British Overseas Airways* applies to the instant case. The findings therein that an off-line air carrier is doing business in the Philippines and that income from the sale of passage documents here is Philippine-source income must be upheld.

2. ID.; ID.; ID.; AN INTERNATIONAL CARRIER WITH NO FLIGHTS TO AND FROM THE PHILIPPINES IS SUBJECT TO INCOME TAX AT THE RATE OF 32% OF ITS TAXABLE INCOME.— In the instant case, the general rule is that resident foreign corporations shall be liable for a 32% income tax on their income from within the Philippines,

except for resident foreign corporations that are international carriers that derive income "from carriage of persons, excess baggage, cargo and mail originating from the Philippines" which shall be taxed at 2 1/2% of their Gross Philippine Billings. Petitioner, being an international carrier with no flights originating from the Philippines, does not fall under the exception. As such, petitioner must fall under the general rule. This principle is embodied in the Latin maxim, *exception firmat regulam in casibus non exceptis*, which means, a thing not being excepted must be regarded as coming within the purview of the general rule. To reiterate, the correct interpretation of the above provisions is that, if an international air carrier maintains flights to and from the Philippines, it shall be taxed at the rate of 2 1/2% of its Gross Philippine Billings, while international air carriers that do not have flights to and from the Philippines but nonetheless earn income from other activities in the country will be taxed at the rate of 32% of such income.

APPEARANCES OF COUNSEL

Baniqued & Baniqued for petitioner.
The Solicitor General for respondent.

D E C I S I O N

VELASCO, JR., *J.*:

The Case

This Petition for Review on *Certiorari* under Rule 45 seeks the reversal of the July 19, 2007 Decision[1] and October 30, 2007 Resolution[2] of the Court of Tax Appeals (CTA) *En Banc* in CTA E.B. Case No. 210, entitled *South African Airways v. Commissioner of Internal Revenue*. The assailed decision

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[1] *Rollo*, pp. 68-79. Penned by Associate Justice Erlinda P. Uy and concurred in by Presiding Justice Ernesto D. Acosta and Associate Justices Lovell R. Bautista and Olga Palanca-Enriquez.

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

affirmed the Decision dated May 10, 2006[3] and Resolution dated August 11, 2006[4] rendered by the CTA First Division.

The Facts

Petitioner South African Airways is a foreign corporation organized and existing under and by virtue of the laws of the Republic of South Africa. Its principal office is located at Airways Park, Jones Road, Johannesburg International Airport, South Africa. In the Philippines, it is an internal air carrier having no landing rights in the country. Petitioner has a general sales agent in the Philippines, Aerotel Limited Corporation (Aerotel). Aerotel sells passage documents for compensation or commission for petitioner's off-line flights for the carriage of passengers and cargo between ports or points outside the territorial jurisdiction of the Philippines. Petitioner is not registered with the Securities and Exchange Commission as a corporation, branch office, or partnership. It is not licensed to do business in the Philippines.

For the taxable year 2000, petitioner filed separate quarterly and annual income tax returns for its off-line flights, summarized as follows:

	Period	Date Filed		2.5% Gross Phil. Billings
For Passenger	1st Quarter	May 30, 2000	PhP	222,531.25
	2nd Quarter	August 29, 2000		424,046.95
	3rd Quarter	November 29, 2000		422,466.00
	4th Quarter	April 16, 2000		453,182.91
Sub-total			PhP	1,522,227.11
For Cargo	1st Quarter	May 30, 2000	PhP	81,531.00
	2nd Quarter	August 29, 2000		50,169.65
	3rd Quarter	November 29, 2000		36,383.74
	4th Quarter	April 16, 2000		37,454.88
Sub-total			PhP	205,539.27
TOTAL				1,727,766.38

[3] *Id.* at 339-347.

[4] *Id.* at 367-373.

Thereafter, on February 5, 2003, petitioner filed with the Bureau of Internal Revenue, Revenue District Office No. 47, a claim for the refund of the amount of PhP 1,727,766.38 as erroneously paid tax on Gross Philippine Billings (GPB) for the taxable year 2000. Such claim was unheeded. Thus, on April 14, 2003, petitioner filed a Petition for Review with the CTA for the refund of the abovementioned amount. The case was docketed as CTA Case No. 6656.

On May 10, 2006, the CTA First Division issued a Decision denying the petition for lack of merit. The CTA ruled that petitioner is a resident foreign corporation engaged in trade or business in the Philippines. It further ruled that petitioner was not liable to pay tax on its GPB under Section 28(A)(3)(a) of the National Internal Revenue Code (NIRC) of 1997. The CTA, however, stated that petitioner is liable to pay a tax of 32% on its income derived from the sales of passage documents in the Philippines. On this ground, the CTA denied petitioner's claim for a refund.

Petitioner's Motion for Reconsideration of the above decision was denied by the CTA First Division in a Resolution dated August 11, 2006.

Thus, petitioner filed a Petition for Review before the CTA *En Banc*, reiterating its claim for a refund of its tax payment on its GPB. This was denied by the CTA in its assailed decision. A subsequent Motion for Reconsideration by petitioner was also denied in the assailed resolution of the CTA *En Banc*.

Hence, petitioner went to us.

The Issues

Whether or not petitioner, as an off-line international carrier selling passage documents through an independent sales agent in the Philippines, is engaged in trade or business in the Philippines subject to the 32% income tax imposed by Section 28 (A)(1) of the 1997 NIRC.

Whether or not the income derived by petitioner from the sale of passage documents covering petitioner's off-line flights is Philippine-source income subject to Philippine income tax.

Whether or not petitioner is entitled to a refund or a tax credit of erroneously paid tax on Gross Philippine Billings for the taxable year 2000 in the amount of ₱1,727,766.38.[5]

The Court's Ruling

This petition must be denied.

Petitioner Is Subject to Income Tax at the Rate of 32% of Its Taxable Income

Preliminarily, we emphasize that petitioner is claiming that it is exempted from being taxed for its sale of passage documents in the Philippines. Petitioner, however, failed to sufficiently prove such contention.

In *Commissioner of Internal Revenue v. Acesite (Philippines) Hotel Corporation*,[6] we held, "Since an action for a tax refund partakes of the nature of an exemption, which cannot be allowed unless granted in the most explicit and categorical language, it is strictly construed against the claimant who must discharge such burden convincingly."

Petitioner has failed to overcome such burden.

In essence, petitioner calls upon this Court to determine the legal implication of the amendment to Sec. 28(A)(3)(a) of the 1997 NIRC defining GPB. It is petitioner's contention that, with the new definition of GPB, it is no longer liable under Sec. 28(A)(3)(a). Further, petitioner argues that because the 2 1/2% tax on GPB is inapplicable to it, it is thereby excluded from the imposition of any income tax.

Sec. 28(b)(2) of the 1939 NIRC provided:

(2) Resident Corporations. — A corporation organized, authorized, or existing under the laws of a foreign country, engaged in trade or business within the Philippines, shall be taxable as provided in subsection (a) of this section upon the total net income received in the preceding taxable year from all sources within the Philippines:

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[5] *Id.* at 11.

[6] G.R. No. 147295, February 16, 2007, 516 SCRA 93, 103.

Provided, however, that international carriers shall pay a tax of two and one-half percent on their gross Philippine billings.

This provision was later amended by Sec. 24(B)(2) of the 1977 NIRC, which defined GPB as follows:

"Gross Philippine billings" include gross revenue realized from uplifts anywhere in the world by any international carrier doing business in the Philippines of passage documents sold therein, whether for passenger, excess baggage or mail, provided the cargo or mail originates from the Philippines.

In the 1986 and 1993 NIRCs, the definition of GPB was further changed to read:

"Gross Philippine Billings" means gross revenue realized from uplifts of passengers anywhere in the world and excess baggage, cargo and mail originating from the Philippines, covered by passage documents sold in the Philippines.

Essentially, prior to the 1997 NIRC, GPB referred to revenues from uplifts anywhere in the world, provided that the passage documents were sold in the Philippines. Legislature departed from such concept in the 1997 NIRC where GPB is now defined under Sec. 28(A)(3)(a):

"Gross Philippine Billings" refers to the amount of gross revenue derived from carriage of persons, excess baggage, cargo and mail originating from the Philippines in a continuous and uninterrupted flight, irrespective of the place of sale or issue and the place of payment of the ticket or passage document.

Now, it is the place of sale that is irrelevant; as long as the uplifts of passengers and cargo occur to or from the Philippines, income is included in GPB.

As correctly pointed out by petitioner, inasmuch as it does not maintain flights to or from the Philippines, it is not taxable under Sec. 28(A)(3)(a) of the 1997 NIRC. This much was also found by the CTA. But petitioner further posits the view that due to the non-applicability of Sec. 28(A)(3)(a) to it, it is precluded from paying any other income tax for its sale of passage documents in the Philippines.

Such position is untenable.

In *Commissioner of Internal Revenue v. British Overseas Airways Corporation* (*British Overseas Airways*),[7] which was decided under similar factual circumstances, this Court ruled that off-line air carriers having general sales agents in the Philippines are engaged in or doing business in the Philippines and that their income from sales of passage documents here is income from within the Philippines. Thus, in that case, we held the off-line air carrier liable for the 32% tax on its taxable income.

Petitioner argues, however, that because *British Overseas Airways* was decided under the 1939 NIRC, it does not apply to the instant case, which must be decided under the 1997 NIRC. Petitioner alleges that the 1939 NIRC taxes resident foreign corporations, such as itself, on all income from sources within the Philippines. Petitioner's interpretation of Sec. 28(A)(3)(a) of the 1997 NIRC is that, since it is an international carrier that does not maintain flights to or from the Philippines, thereby having no GPB as defined, it is exempt from paying any income tax at all. In other words, the existence of Sec. 28(A)(3)(a) according to petitioner precludes the application of Sec. 28(A)(1) to it.

Its argument has no merit.

First, the difference cited by petitioner between the 1939 and 1997 NIRCs with regard to the taxation of off-line air carriers is more apparent than real.

We point out that Sec. 28(A)(3)(a) of the 1997 NIRC does not, in any categorical term, exempt all international air carriers from the coverage of Sec. 28(A)(1) of the 1997 NIRC. Certainly, had legislature's intentions been to completely exclude all international air carriers from the application of the general rule under Sec. 28(A)(1), it would have used the appropriate language to do so; but the legislature did not. Thus, the logical interpretation of such provisions is that, if Sec. 28(A)(3)(a) is

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[7] G.R. Nos. 65773-74, April 30, 1987, 149 SCRA 395.

applicable to a taxpayer, then the general rule under Sec. 28(A)(1) would not apply. If, however, Sec. 28(A)(3)(a) does not apply, a resident foreign corporation, whether an international air carrier or not, would be liable for the tax under Sec. 28(A)(1).

Clearly, no difference exists between *British Overseas Airways* and the instant case, wherein petitioner claims that the former case does not apply. Thus, *British Overseas Airways* applies to the instant case. The findings therein that an off-line air carrier is doing business in the Philippines and that income from the sale of passage documents here is Philippine-source income must be upheld.

Petitioner further reiterates its argument that the intention of Congress in amending the definition of GPB is to exempt off-line air carriers from income tax by citing the pronouncements made by Senator Juan Ponce Enrile during the deliberations on the provisions of the 1997 NIRC. Such pronouncements, however, are not controlling on this Court. We said in *Espino v. Cleofe*:[8]

> A cardinal rule in the interpretation of statutes is that the meaning and intention of the law-making body must be sought, first of all, in the words of the statute itself, read and considered in their natural, ordinary, commonly-accepted and most obvious significations, according to good and approved usage and without resorting to forced or subtle construction. Courts, therefore, as a rule, cannot presume that the law-making body does not know the meaning of words and rules of grammar. Consequently, the grammatical reading of a statute must be presumed to yield its correct sense. x x x **It is also a well-settled doctrine in this jurisdiction that statements made by individual members of Congress in the consideration of a bill do not necessarily reflect the sense of that body and are, consequently, not controlling in the interpretation of law.** (Emphasis supplied.)

Moreover, an examination of the subject provisions of the law would show that petitioner's interpretation of those provisions is erroneous.

Sec. 28(A)(1) and (A)(3)(a) provides:

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[8] G.R. No. L-33410, July 13, 1973, 52 SCRA 92, 98.

SEC. 28. Rates of Income Tax on Foreign Corporations. —

(A) Tax on Resident Foreign Corporations. -

(1) In General. — Except as otherwise provided in this Code, a corporation organized, authorized, or existing under the laws of any foreign country, engaged in trade or business within the Philippines, shall be subject to an income tax equivalent to thirty-five percent (35%) of the taxable income derived in the preceding taxable year from all sources within the Philippines: provided, That effective January 1, 1998, the rate of income tax shall be thirty-four percent (34%); effective January 1, 1999, the rate shall be thirty-three percent (33%), and effective January 1, 2000 and thereafter, the rate shall be thirty-two percent (32%).

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(3) International Carrier. — An international carrier doing business in the Philippines shall pay a tax of two and one-half percent (2 1/2%) on its 'Gross Philippine Billings' as defined hereunder:

(a) International Air Carrier. – 'Gross Philippine Billings' refers to the amount of gross revenue derived from carriage of persons, excess baggage, cargo and mail originating from the Philippines in a continuous and uninterrupted flight, irrespective of the place of sale or issue and the place of payment of the ticket or passage document: Provided, That tickets revalidated, exchanged and/or indorsed to another international airline form part of the Gross Philippine Billings if the passenger boards a plane in a port or point in the Philippines: Provided, further, That for a flight which originates from the Philippines, but transshipment of passenger takes place at any port outside the Philippines on another airline, only the aliquot portion of the cost of the ticket corresponding to the leg flown from the Philippines to the point of transshipment shall form part of Gross Philippine Billings.

Sec. 28(A)(1) of the 1997 NIRC is a general rule that resident foreign corporations are liable for 32% tax on all income from sources within the Philippines. Sec. 28(A)(3) is an exception to this general rule.

An exception is defined as "that which would otherwise be included in the provision from which it is excepted. It is a clause which exempts something from the operation of a statue

by express words."[9] Further, "an exception need not be introduced by the words 'except' or 'unless'. An exception will be construed as such if it removes something from the operation of a provision of law."[10]

In the instant case, the general rule is that resident foreign corporations shall be liable for a 32% income tax on their income from within the Philippines, except for resident foreign corporations that are international carriers that derive income "from carriage of persons, excess baggage, cargo and mail originating from the Philippines" which shall be taxed at 2 1/2% of their Gross Philippine Billings. Petitioner, being an international carrier with no flights originating from the Philippines, does not fall under the exception. As such, petitioner must fall under the general rule. This principle is embodied in the Latin maxim, *exception firmat regulam in casibus non exceptis*, which means, a thing not being excepted must be regarded as coming within the purview of the general rule.[11]

To reiterate, the correct interpretation of the above provisions is that, if an international air carrier maintains flights to and from the Philippines, it shall be taxed at the rate of 2 1/2% of its Gross Philippine Billings, while international air carriers that do not have flights to and from the Philippines but nonetheless earn income from other activities in the country will be taxed at the rate of 32% of such income.

As to the denial of petitioner's claim for refund, the CTA denied the claim on the basis that petitioner is liable for income tax under Sec. 28(A)(1) of the 1997 NIRC. Thus, petitioner raises the issue of whether the existence of such liability would preclude their claim for a refund of tax paid on the basis of Sec. 28(A)(3)(a). In answer to petitioner's motion for reconsideration, the CTA First Division ruled in its Resolution dated August 11, 2006, thus:

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[9] R. Agpalo, *STATUTORY CONSTRUCTION* 241 (4th ed., 1998).

[10] *Id.* at 242.

[11] *Id.*

On the fourth argument, petitioner avers that a deficiency tax assessment does not, in any way, disqualify a taxpayer from claiming a tax refund since a refund claim can proceed independently of a tax assessment and that the assessment cannot be offset by its claim for refund.

Petitioner's argument is erroneous. Petitioner premises its argument on the existence of an assessment. In the assailed Decision, this Court did not, in any way, assess petitioner of any deficiency corporate income tax. The power to make assessments against taxpayers is lodged with the respondent. For an assessment to be made, respondent must observe the formalities provided in Revenue Regulations No. 12-99. This Court merely pointed out that petitioner is liable for the regular corporate income tax by virtue of Section 28(A)(3) of the Tax Code. Thus, there is no assessment to speak of.[12]

Precisely, petitioner questions the offsetting of its payment of the tax under Sec. 28(A)(3)(a) with their liability under Sec. 28(A)(1), considering that there has not yet been any assessment of their obligation under the latter provision. Petitioner argues that such offsetting is in the nature of legal compensation, which cannot be applied under the circumstances present in this case.

Article 1279 of the Civil Code contains the elements of legal compensation, to wit:

> Art. 1279. In order that compensation may be proper, it is necessary:
>
> (1) That each one of the obligors be bound principally, and that he be at the same time a principal creditor of the other;
>
> (2) That both debts consist in a sum of money, or if the things due are consumable, they be of the same kind, and also of the same quality if the latter has been stated;
>
> (3) That the two debts be due;
>
> (4) That they be liquidated and demandable;
>
> (5) That over neither of them there be any retention or controversy, commenced by third persons and communicated in due time to the debtor.

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[12] *Rollo*, p. 372.

And we ruled in *Philex Mining Corporation v. Commissioner of Internal Revenue*,[13] thus:

> In several instances prior to the instant case, we have already made the pronouncement that taxes cannot be subject to compensation for the simple reason that the government and the taxpayer are not creditors and debtors of each other. There is a material distinction between a tax and debt. Debts are due to the Government in its corporate capacity, while taxes are due to the Government in its sovereign capacity. We find no cogent reason to deviate from the aforementioned distinction.

Prescinding from this premise, in *Francia v. Intermediate Appellate Court*, we categorically held that taxes cannot be subject to set-off or compensation, thus:

> We have consistently ruled that there can be no off-setting of taxes against the claims that the taxpayer may have against the government. A person cannot refuse to pay a tax on the ground that the government owes him an amount equal to or greater than the tax being collected. The collection of a tax cannot await the results of a lawsuit against the government.

The ruling in *Francia* has been applied to the subsequent case of *Caltex Philippines, Inc. v. Commission on Audit*, which reiterated that:

> . . . a taxpayer may not offset taxes due from the claims that he may have against the government. Taxes cannot be the subject of compensation because the government and taxpayer are not mutually creditors and debtors of each other and a claim for taxes is not such a debt, demand, contract or judgment as is allowed to be set-off.

Verily, petitioner's argument is correct that the offsetting of its tax refund with its alleged tax deficiency is unavailing under Art. 1279 of the Civil Code.

Commissioner of Internal Revenue v. Court of Tax Appeals,[14] however, granted the offsetting of a tax refund with a tax deficiency in this wise:

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[13] G.R. No. 125704, August 28, 1998, 294 SCRA 687, 695-696.

[14] G.R. No. 106611, July 21, 1994, 234 SCRA 348, 356-358.

Further, it is also worth noting that the Court of Tax Appeals erred in denying petitioner's supplemental motion for reconsideration alleging bringing to said court's attention the existence of the deficiency income and business tax assessment against Citytrust. The fact of such deficiency assessment is intimately related to and inextricably intertwined with the right of respondent bank to claim for a tax refund for the same year. To award such refund despite the existence of that deficiency assessment is an absurdity and a polarity in conceptual effects. Herein private respondent cannot be entitled to refund and at the same time be liable for a tax deficiency assessment for the same year.

The grant of a refund is founded on the assumption that the tax return is valid, that is, the facts stated therein are true and correct. The deficiency assessment, although not yet final, created a doubt as to and constitutes a challenge against the truth and accuracy of the facts stated in said return which, by itself and without unquestionable evidence, cannot be the basis for the grant of the refund.

Section 82, Chapter IX of the National Internal Revenue Code of 1977, which was the applicable law when the claim of Citytrust was filed, provides that "(w)hen an assessment is made in case of any list, statement, or return, which in the opinion of the Commissioner of Internal Revenue was false or fraudulent or contained any understatement or undervaluation, no tax collected under such assessment shall be recovered by any suits unless it is proved that the said list, statement, or return was not false nor fraudulent and did not contain any understatement or undervaluation; but this provision shall not apply to statements or returns made or to be made in good faith regarding annual depreciation of oil or gas wells and mines."

Moreover, to grant the refund without determination of the proper assessment and the tax due would inevitably result in multiplicity of proceedings or suits. If the deficiency assessment should subsequently be upheld, the Government will be forced to institute anew a proceeding for the recovery of erroneously refunded taxes which recourse must be filed within the prescriptive period of ten years after discovery of the falsity, fraud or omission in the false or fraudulent return involved. This would necessarily require and entail additional efforts and expenses on the part of the Government, impose a burden on and a drain of government funds, and impede or

delay the collection of much-needed revenue for governmental operations.

Thus, to avoid multiplicity of suits and unnecessary difficulties or expenses, it is both logically necessary and legally appropriate that the issue of the deficiency tax assessment against Citytrust be resolved jointly with its claim for tax refund, to determine once and for all in a single proceeding the true and correct amount of tax due or refundable.

In fact, as the Court of Tax Appeals itself has heretofore conceded, it would be only just and fair that the taxpayer and the Government alike be given equal opportunities to avail of remedies under the law to defeat each other's claim and to determine all matters of dispute between them in one single case. It is important to note that in determining whether or not petitioner is entitled to the refund of the amount paid, it would [be] necessary to determine how much the Government is entitled to collect as taxes. This would necessarily include the determination of the correct liability of the taxpayer and, certainly, a determination of this case would constitute *res judicata* on both parties as to all the matters subject thereof or necessarily involved therein. (Emphasis supplied.)

Sec. 82, Chapter IX of the 1977 Tax Code is now Sec. 72, Chapter XI of the 1997 NIRC. The above pronouncements are, therefore, still applicable today.

Here, petitioner's similar tax refund claim assumes that the tax return that it filed was correct. Given, however, the finding of the CTA that petitioner, although not liable under Sec. 28(A)(3)(a) of the 1997 NIRC, is liable under Sec. 28(A)(1), the correctness of the return filed by petitioner is now put in doubt. As such, we cannot grant the prayer for a refund.

Be that as it may, this Court is unable to affirm the assailed decision and resolution of the CTA *En Banc* on the outright denial of petitioner's claim for a refund. Even though petitioner is not entitled to a refund due to the question on the propriety of petitioner's tax return subject of the instant controversy, it would not be proper to deny such claim without making a determination of petitioner's liability under Sec. 28(A)(1).

It must be remembered that the tax under Sec. 28(A)(3)(a) is based on GPB, while Sec. 28(A)(1) is based on taxable income, that is, gross income less deductions and exemptions, if any. It cannot be assumed that petitioner's liabilities under the two provisions would be the same. There is a need to make a determination of petitioner's liability under Sec. 28(A)(1) to establish whether a tax refund is forthcoming or that a tax deficiency exists. The assailed decision fails to mention having computed for the tax due under Sec. 28(A)(1) and the records are bereft of any evidence sufficient to establish petitioner's taxable income. There is a necessity to receive evidence to establish such amount *vis-à-vis* the claim for refund. It is only after such amount is established that a tax refund or deficiency may be correctly pronounced.

WHEREFORE, the assailed July 19, 2007 Decision and October 30, 2007 Resolution of the CTA *En Banc* in CTA E.B. Case No. 210 are *SET ASIDE*. The instant case is *REMANDED* to the CTA *En Banc* for further proceedings and appropriate action, more particularly, the reception of evidence for both parties and the corresponding disposition of CTA E.B. Case No. 210 not otherwise inconsistent with our judgment in this Decision.

SO ORDERED.

Corona (Chairperson), Leonardo-de Castro,[*] *Peralta,* and *Mendoza, JJ.,* concur.

[*] Additional member per raffle dated February 3, 2010.

EN BANC

[G.R. No. 182498. February 16, 2010]

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. REMEDIAL LAW; EVIDENCE; RULE ON THE WRIT OF *AMPARO*; CONDUCT OF PROPER INVESTIGATION ON THE ENFORCED DISAPPEARANCE OF THE VICTIM USING EXTRAORDINARY DILIGENCE, REQUIRED IN CASE AT BAR. — We hold that our directive to implead Col. Kasim as a party to the present case has been rendered moot and academic by his death. x x x His intervening death, however, does not necessarily signify the loss of the information Col. Kasim may have left behind, particularly the network of "*assets*" he utilized while he was in the service. Intelligence gathering is not an activity conducted in isolation, and involves an interwoven network of informants existing on the basis of symbiotic relationships with the police and the military. It is not farfetched that a resourceful investigator, utilizing the extraordinary diligence that the Rule on the Writ of *Amparo* requires, can still access or reconstruct the information Col. Kasim received from his "*asset*" or network of assets during his lifetime. The extinction of Col. Kasim's personal accountability and obligation to disclose material information, known to him and his assets, does not also erase the burden of disclosure and investigation that rests with the PNP and the CIDG. Lest this Court be misunderstood, we reiterate that our holding in our December 3, 2009 Decision that the PNP — through the incumbent PNP Chief; and the PNP-CIDG, through its incumbent Chief — are **directly responsible** for the disclosure of material facts known to the government and to their offices

regarding the disappearance of Tagitis; and that the conduct of proper investigation using extraordinary diligence still subsists. These are continuing obligations that will not truly be terminated until the enforced disappearance of the victim, Engr. Morced N. Tagitis, is fully addressed by the *responsible* or *accountable* parties, as we directed in our Decision.

2. ID.; ID.; ID.; *AMPARO* SITUATION, PRESENT IN CASE AT BAR. — We see no merit in the petitioners' submitted position that no sufficient evidence exists to support the conclusion that the Kasim evidence unequivocally points to some government complicity in the disappearance. Contrary to the petitioners' claim that our conclusions only relied on Col. Kasim's report, our Decision plainly and pointedly considered other evidence supporting our conclusion, particularly the consistent denials by government authorities of any complicity in the disappearance of Tagitis; the dismissive approach of the police authorities to the report of the disappearance; and the conduct of haphazard investigations that did not translate into any meaningful results. x x x In cruder but more understandable language, the run-around given to the respondent and the government responses to the request for meaningful investigation, considered in the light of the Kasim evidence, pointed to the conclusion that the Tagitis affair carried a "*foul smell*" indicative of government complicity or, at the very least, an attempt at cover-up and concealment. This is the situation that the Writ of *Amparo* specifically seeks to address.

3. ID.; ID.; ID.; EVIDENTIARY STANDARD SPECIFIC TO THE WRIT OF *AMPARO*. — [W]e see no merit in the petitioners' claim that the Kasim evidence does not amount to substantial evidence required by the Rule on the Writ of *Amparo*. This is not a new issue; we extensively and thoroughly considered and resolved it in our December 3, 2009 Decision. At this point, we need not go into another full discussion of the justifications supporting an evidentiary standard specific to the Writ of *Amparo*. Suffice it to say that we continue to adhere to the substantial evidence rule that the Rule on the Writ of *Amparo* requires, with some adjustments for flexibility in considering the evidence presented. When we ruled that hearsay evidence (usually considered inadmissible under the general rules of evidence) may be admitted as the circumstances of the case may require, we did not thereby dispense with the

substantial evidence rule; we merely relaxed the evidentiary rule on the *admissibility of evidence*, maintaining all the time the standards of reason and relevance that underlie every evidentiary situation. This, we did, by considering the totality of the obtaining situation and the consistency of the hearsay evidence with the other available evidence in the case.

4. ID.; ID.; ID.; RELATED CASES. — An *Amparo* situation subsisted in *Manalo* x x x because of the continuing threat to the brothers' right to security; the brothers claimed that since the persons responsible for their enforced disappearance were still at large and had not been held accountable, the former were still under the threat of being once again abducted, kept captive or even killed, which threat constituted a direct violation of their right to security of person. In ruling that substantial evidence existed to support the conclusion that the respondents' right to security had been violated, the Court not only considered the respondents' affidavit and testimony which positively identified the perpetrators, but *also noted other evidence showing the* ***ineffective investigation and protection*** *on the part of the military*. x x x Similarly in *Velasquez Rodriguez*, the Inter-American Court of Human Rights (*IACHR*) acknowledged that when the Honduran Government carried out or tolerated enforced disappearances, the police customarily used a distinctive form of kidnapping. Consequently, the IACHR presumed that Velasquez disappeared at the "*hands of or with the acquiescence of those officials within the framework of that practice*." Moreover, the **IACHR found that negative inferences may be drawn** from the **fact that the government failed to investigate or to inquire into his disappearance**, and thwarted the attempts by the victim's family to do so; these according to the Court **strongly suggested the government's involvement in the disappearance**, even if there was no direct evidence indicating that the government kidnapped Velasquez. x x x Finally, in *Timurtas*, the European Court of Human Rights (*ECHR*) altered the prevailing jurisprudence by permitting **a lesser evidentiary burden** in cases of enforced disappearances. The ECHR **dismissed the need for direct evidence** previously held necessary in the leading case of *Kurt v. Turkey*, and instead **permitted the use of circumstantial evidence** to establish a violation of the right to life. It stated that "whether the **failure on the part of authorities to provide a plausible explanation as to a detainee's fate, in the**

absence of a body, might raise issues under Article 2 of the Convention (right to life), will depend on **the circumstances of the case and, in particular, on the existence of sufficient circumstantial evidence based on concrete elements**, from which it may be concluded to the requisite standard of proof that the detainee must be presumed to have died in custody." Significantly (in the context of the present case), the *ECHR* also noted that the inadequacy of the investigation into the disappearance of Timurtas also constituted a violation of his right to life under Article 2 of the European Convention on Human Rights. Thus viewed, common threads that plainly run in the three cited cases are applicable to the present case. There is the evidence of ineffective investigation in *Manalo* and *Velasquez Rodriguez*, while in all three was the recognition that the burden of proof must be lowered or relaxed (either through the use of circumstantial or indirect evidence or even by logical inference); the requirement for direct evidence to establish that an enforced disappearance occurred — as the petitioners effectively suggest — would render it extremely difficult, if not impossible, to prove that an individual has been made to disappear. In these lights, we emphasized in our December 3, 2009 Decision that while the need for substantial evidence remains the rule, flexibility must be observed where appropriate (as the Courts in *Velasquez Rodriguez* and *Timurtas* did) for the protection of the precious rights to life, liberty and security. This flexibility, we noted, requires that "*we should 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*."

APPEARANCES OF COUNSEL

The Solicitor General for petitioners.
Linzag Arcilla and Associates Law Office for respondent.

R E S O L U T I O N

BRION, *J.*:

We resolve in this Resolution the Motion for Reconsideration filed by the petitioners — Gen. Avelino I. Razon, former Chief of the Philippine National Police (*PNP*);[1] Gen. Edgardo M. Doromal, former Chief of the Criminal Investigation and Detection Group (*CIDG*), PNP;[2] Police Senior Superintendent Leonardo A. Espina, former Chief of the Police Anti-Crime and Emergency Response (PACER), PNP;[3] and Gen. Joel Goltiao, former Regional Director of the PNP-Autonomous Region of Muslim Mindanao[4] (*petitioners*) — addressing our Decision of December 3, 2009. This Decision affirmed the Court of Appeals' (*CA*) decision of March 7, 2008 confirming the enforced disappearance of Engineer Morced N. Tagitis (*Tagitis*) and granting the Writ of *Amparo*.

Our December 3, 2009 Decision was based, among other considerations, on the finding that Col. Julasirim Ahadin Kasim (*Col. Kasim*) informed the respondent Mary Jean Tagitis (*respondent*) and her friends that her husband had been under surveillance since January 2007 because an informant notified the authorities, through a letter, that Tagitis was a liaison for the JI;[5] that he was "*in good hands*" and under custodial

[1] General/Police Director General Avelino I. Razon was compulsorily retired from the PNP service effective September 27, 2008. Police Director General Jesus A. Versoza is currently the incumbent Chief of the PNP.

[2] General/Police Director Edgardo M. Doromal was compulsorily retired from the PNP service effective February 9, 2008. The PNP-CIDG is currently headed by Police Director Raul Castañeda.

[3] Police Senior Superintendent (now, Police Chief Superintendent) Leonardo A. Espina has been reassigned to the OCPNP, specifically, the PNP's Public Information Office (PIO), effective June 4, 2009. At present, the incumbent Chief of PACER is Police Senior Superintendent Isagani R. Nerez.

[4] General/Police Chief Superintendent Joel Goltiao was compulsorily retired from the PNP service effective September 19, 2008. Police Senior Superintendent Bienvenido Latag is currently the Acting Regional Director of the ARMM Police Regional Office.

[5] Jema'ah Islamiah.

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 (*Kasim evidence*).

We considered Col. Kasim's information, together with the consistent denials by government authorities of any complicity in the disappearance of Tagitis, the dismissive approach of the police authorities to the report of the disappearance, as well as the haphazard investigations conducted that did not translate into any meaningful results, to be indicative of government complicity in the disappearance of Tagitis (for purposes of the Rule on the Writ of *Amparo*).

We explained that although the Kasim evidence was patently hearsay (and was thus incompetent and inadmissible under our rules of evidence), the unique evidentiary difficulties posed by enforced disappearance cases compel us to adopt standards that were appropriate and responsive to the evidentiary difficulties faced. We noted that while we must follow the substantial evidence rule, we must also observe *flexibility* in considering the evidence that we shall take into account. Thus, we introduced a new evidentiary standard for Writ of *Amparo* cases in this wise:

> 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 the other pieces of adduced evidence, Thus, even hearsay evidence can be admitted if it satisfies this minimum test.** [Emphasis in the original]

We held further that the Kasim evidence was crucial to the resolution of the present case for two reasons: *first*, it supplied the gaps that were never looked into or clarified by police investigation; and *second*, it qualified a simple missing person report into an enforced disappearance case by injecting the element of participation by agents of the State and thus brought into question how the State reacted to the disappearance.

Based on these considerations, we held that the government in general, through the PNP and the PNP-CIDG, and in particular, the Chiefs of these organizations, together with Col. Kasim, were **fully accountable**[6] for the enforced disappearance of Tagitis. Specifically, we held Col. Kasim accountable for his failure to disclose under oath information relating to the enforced disappearance; for the purpose of this accountability, we ordered that Col. Kasim be impleaded as a party to this case. Similarly, we also held the PNP accountable for the suppression of vital information that Col. Kasim could, but did not, provide with the same obligation of disclosure that Col. Kasim carries.

The Motion for Reconsideration

The petitioners cited two grounds in support of their Motion for Reconsideration.

First, the petitioners argue that there was no sufficient evidence to conclude that Col. Kasim's disclosure unequivocally points to some government complicity in the disappearance of Tagitis. Specifically, the petitioners contend that this Court erred in unduly relying on the raw information given to Col. Kasim by a personal intelligence "*asset*" without any other evidence to support it. The petitioners also point out that the Court misapplied its cited cases (*Secretary of Defense v. Manalo*,[7] *Velasquez*

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[6] In our December 3, 2009 ruling, we defined the concept of responsibility and accountability for Writ of *Amparo* cases as follows: "**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 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** refers to 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."

[7] G.R. No. 180906, October 7, 2008, 568 SCRA 1.

Rodriguez v. Honduras,[8] and *Timurtas v. Turkey*[9]) to support its December 3, 2009 decision; in those cases, more than one circumstance pointed to the complicity of the government and its agents. The petitioners emphasize that in the present case, the respondent only presented a "*token piece of evidence*" that points to Col. Kasim as the source of information that Tagitis was under custodial investigation for having been suspected as a "*terrorist supporter*." This, according to the petitioners, cannot be equated to the substantial evidence required by the Rule on the Writ of *Amparo*.[10]

Second, the petitioners contend that Col. Kasim's death renders impossible compliance with the Court's directive in its December 3, 2009 decision that Col. Kasim be impleaded in the present case and held accountable with the obligation to disclose information known to him and to his "*assets*" on the enforced disappearance of Tagitis.The petitioners alleged that Col. Kasim was killed in an encounter with the Abu Sayaff Group on May 7, 2009. To prove Col. Kasim's death, the petitioners attached to their motion a copy of an article entitled "*Abus kill Sulu police director*" published by the Philippine Daily Inquirer on May 8, 2009.[11] This article alleged that "*Senior Supt. Julasirim Kasim, his brother Rosalin, a police trainee, and two other police officers were killed in a fire fight with Abu Sayyaf bandits that started at about 1 p.m. on Thursday, May 7, 2009 at the boundaries of Barangays Kulasi and Bulabog in Maimbung town, Sulu*." The petitioners also attached an official copy of General Order No. 1089 dated May 15, 2009 issued by the PNP National Headquarters, indicating that "PS SUPT [Police Senior Superintendent] Julasirim Ahadin Kasim 0-05530, PRO ARMM, is posthumously retired from PNP service effective May 8, 2009."[12] Additionally, the petitioners point out that the

[8] I/A Court H.R. Velasquez Rodriguez Case, Judgment of July 29, 1988, Series C No. 4.

[9] (23531/94) [2000] ECHR 221 (13 June 2000).

[10] THE RULE ON THE WRIT OF *AMPARO*, Section 17.

[11] Annex "A", Petitioners' Motion for Reconsideration dated January 4, 2010.

[12] Annex "A-1", Petitioners' Motion for Reconsideration dated January 4, 2010.

intelligence "*assets*" who supplied the information that Tagitis was under custodial investigation were personal to Col. Kasim; hence, the movants can no longer comply with this Court's order to disclose any information known to Col. Kasim and his "*assets*".

The Court's Ruling

We hold that our directive to implead Col. Kasim as a party to the present case has been rendered moot and academic by his death. Nevertheless, we resolve to deny the petitioners' motion for reconsideration for lack of merit.

Paragraph (e) of the dispositive portion of our December 3, 2009 decision directs:

> 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;

Undisputably, this directive can no longer be enforced, and has been rendered moot and academic, given Col. Kasim's demise. His intervening death, however, does not necessarily signify the loss of the information Col. Kasim may have left behind, particularly the network of "*assets*" he utilized while he was in the service. Intelligence gathering is not an activity conducted in isolation, and involves an interwoven network of informants existing on the basis of symbiotic relationships with the police and the military. It is not farfetched that a resourceful investigator, utilizing the extraordinary diligence that the Rule on the Writ of *Amparo* requires,[13] can still access or reconstruct the information Col. Kasim received from his "*asset*" or network of assets during his lifetime.

The extinction of Col. Kasim's personal accountability and obligation to disclose material information, known to him and his assets, does not also erase the burden of disclosure and investigation that rests with the PNP and the CIDG. Lest this Court be misunderstood, we reiterate that our holding in our

[13] *Supra* note 10.

December 3, 2009 Decision that the PNP — through the incumbent PNP Chief; and the PNP-CIDG, through its incumbent Chief — are **directly responsible**[14] for the disclosure of material facts known to the government and to their offices regarding the disappearance of Tagitis; and that the conduct of proper investigation using extraordinary diligence still subsists. These are continuing obligations that will not truly be terminated until the enforced disappearance of the victim, Engr. Morced N. Tagitis, is fully addressed by the *responsible* or *accountable* parties, as we directed in our Decision.

We now turn to the petitioners' substantial challenge to the merits of our December 3, 2009 decision.

We see no merit in the petitioners' submitted position that no sufficient evidence exists to support the conclusion that the Kasim evidence unequivocally points to some government complicity in the disappearance. Contrary to the petitioners' claim that our conclusions only relied on Col. Kasim's report, our Decision plainly and pointedly considered other evidence supporting our conclusion, particularly the consistent denials by government authorities of any complicity in the disappearance of Tagitis; the dismissive approach of the police authorities to the report of the disappearance; and the conduct of haphazard investigations that did not translate into any meaningful results. We painstakingly ruled:

> 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.
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> x x x

[14] See *Supra* note 6.

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.

x x x

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. [Emphasis in the original]

Likewise, we see no merit in the petitioners' claim that the Kasim evidence does not amount to substantial evidence required by the Rule on the Writ of *Amparo*. This is not a new issue; we extensively and thoroughly considered and resolved it in our December 3, 2009 Decision. At this point, we need not go into another full discussion of the justifications supporting an evidentiary standard specific to the Writ of *Amparo.* Suffice it to say that we continue to adhere to the substantial evidence rule that the Rule on the Writ of *Amparo* requires, with some adjustments for flexibility in considering the evidence presented. When we ruled that hearsay evidence (usually considered inadmissible under the general rules of evidence) may be admitted as the circumstances of the case may require, we did not thereby dispense with the substantial evidence rule; we merely relaxed the evidentiary rule on the *admissibility of evidence,* maintaining all the time the standards of reason and relevance that underlie every evidentiary situation. This, we did, by considering the totality of the obtaining situation and the consistency of the hearsay evidence with the other available evidence in the case.

We also cannot agree with the petitioners' contention that we misapplied *Secretary of Defense v. Manalo*,[15] *Velasquez Rodriguez v. Honduras*,[16] and *Timurtas v. Turkey*[17] to support our December 3, 2009 decision. The petitioners make this claim with the view that in these cases, more than one circumstance pointed to the government or its agents as the parties responsible for the disappearance, while we can only point to the Kasim evidence. A close reading of our December 3, 2009 Decision shows that it rests on more than one basis.

At the risk of repetition, we stress that other pieces of evidence point the way towards our conclusion, particularly the unfounded and consistent denials by government authorities of any complicity in the disappearance; the dismissive approach of the police to the report of the disappearance; and the haphazard handling of the investigation that did not produce any meaningful

[15] *Supra* note 7.

[16] *Supra* note 8.

[17] *Supra* note 9.

results. In cruder but more understandable language, the run-around given to the respondent and the government responses to the request for meaningful investigation, considered in the light of the Kasim evidence, pointed to the conclusion that the Tagitis affair carried a "*foul smell*" indicative of government complicity or, at the very least, an attempt at cover-up and concealment. This is the situation that the Writ of *Amparo* specifically seeks to address.

Manalo, *Velasquez Rodriguez* and *Timurtas*, read in proper perspective, fully support our findings and conclusions in this case.

Manalo is different from *Tagitis* in terms of their factual settings, as enforced disappearance was no longer a problem in that case. The enforced disappearance of the brothers Raymond and Reynaldo Manalo effectively ended when they escaped from captivity and surfaced, while Tagitis is still nowhere to be found and remains missing more than two years after his reported disappearance. An *Amparo* situation subsisted in *Manalo*, however, because of the continuing threat to the brothers' right to security; the brothers claimed that since the persons responsible for their enforced disappearance were still at large and had not been held accountable, the former were still under the threat of being once again abducted, kept captive or even killed, which threat constituted a direct violation of their right to security of person. In ruling that substantial evidence existed to support the conclusion that the respondents' right to security had been violated, the Court not only considered the respondents' affidavit and testimony which positively identified the perpetrators, but *also noted other evidence showing the* ***ineffective investigation and protection*** *on the part of the military*. The Court significantly found that:

> **Next, the violation of the right to security as protection by the government.** Apart from the failure of military elements to provide protection to respondents by themselves perpetrating the abduction, detention, and torture, **they also miserably failed in conducting an effective investigation of respondents' abduction as revealed by the testimony and investigation report of**

petitioners' own witness, Lt. Col. Ruben Jimenez, Provost Marshall of the 7th Infantry Division.

The one-day investigation conducted by Jimenez was very limited, superficial, and one-sided. He merely relied on the Sworn Statements of the six implicated members of the CAFGU and civilians whom he met in the investigation for the first time. He was present at the investigation when his subordinate Lingad was taking the sworn statements, but he did not propound a single question to ascertain the veracity of their statements or their credibility. He did not call for other witnesses to test the alibis given by the six implicated persons nor for the family or neighbors of the respondents.

In his affidavit, petitioner Secretary of National Defense attested that in a Memorandum Directive dated October 31, 2007, he issued a policy directive addressed to the AFP Chief of Staff, that the AFP should adopt rules of action in the event the writ of *amparo* is issued by a competent court against any members of the AFP, which should essentially include verification of the identity of the aggrieved party; recovery and preservation of relevant evidence; identification of witnesses and securing statements from them; determination of the cause, manner, location and time of death or disappearance; identification and apprehension of the person or persons involved in the death or disappearance; and bringing of the suspected offenders before a competent court. Petitioner AFP Chief of Staff also submitted his own affidavit attesting that he received the above directive of respondent Secretary of National Defense and that acting on this directive, he immediately caused to be issued a directive to the units of the AFP for the purpose of establishing the circumstances of the alleged disappearance and the recent reappearance of the respondents, and undertook to provide results of the investigations to respondents. To this day, however, almost a year after the policy directive was issued by petitioner Secretary of National Defense on October 31, 2007, respondents have not been furnished the results of the investigation which they now seek through the instant petition for a writ of *amparo*.

Under these circumstances, there is substantial evidence to warrant the conclusion that there is a violation of respondents' right to security as a guarantee of protection by the government. [Emphasis supplied][18]

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[18] *Supra* note 7, pp. 62-64.

Similarly in *Velasquez Rodriguez*, the Inter-American Court of Human Rights (*IACHR*) acknowledged that when the Honduran Government carried out or tolerated enforced disappearances, the police customarily used a distinctive form of kidnapping. Consequently, the IACHR presumed that Velasquez disappeared at the "*hands of or with the acquiescence of those officials within the framework of that practice*." Moreover, the **IACHR found that negative inferences may be drawn** from the **fact that the government failed to investigate or to inquire into his disappearance**, and thwarted the attempts by the victim's family to do so; these according to the Court **strongly suggested the government's involvement in the disappearance**, even if there was no direct evidence indicating that the government kidnapped Velasquez.[19] The Court thus held:[20]

iii. In the case of Manfredo Velásquez, there were the same **type of denials by his captors and the Armed Forces**, **the same omissions of the latter and of the Government in investigating and revealing his whereabouts**, and the same ineffectiveness of the courts where three writs of *habeas corpus* and two criminal complaints were brought (testimony of Miguel Angel Pavón Salazar, Ramón Custodio López, Zenaida Velásquez, press clippings and documentary evidence).

h. There is no evidence in the record that Manfredo Velásquez had disappeared in order to join subversive groups, other than a letter from the Mayor of Langue, which contained rumors to that effect. The letter itself shows that the Government associated him with activities it considered a threat to national security. However, the Government did not corroborate the view expressed in the letter with any other evidence. Nor is there any evidence that he was kidnapped by common criminals or other persons unrelated to the practice of disappearances existing at that time.

148. Based upon the above, the Court finds that the following facts have been proven in this proceeding: (1) a practice of

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[19] Gobind Singh Sethi, *The European Court of Human Rights Jurisprudence on Issue of Enforced Disappearances*, 8 No. 3Hum. Rts. Brief 29 (2001).

[20] *Supra* note 8.

disappearances carried out or tolerated by Honduran officials existed between 1981 and 1984; (2) Manfredo Velásquez disappeared at the hands of or with the acquiescence of those officials within the framework of that practice; and (3) the Government of Honduras failed to guarantee the human rights affected by that practice.

Finally, in *Timurtas*, the European Court of Human Rights (*ECHR*) altered the prevailing jurisprudence by permitting **a lesser evidentiary burden** in cases of enforced disappearances. The ECHR **dismissed the need for direct evidence** previously held necessary in the leading case of *Kurt v. Turkey*,[21] and instead **permitted the use of circumstantial evidence** to establish a violation of the right to life. It stated that "whether the **failure on the part of authorities to provide a plausible explanation as to a detainee's fate**, **in the absence of a body**, might raise issues under Article 2 of the Convention (right to life), will depend on t**he circumstances of the case and, in particular, on the existence of sufficient circumstantial evidence based on concrete elements**, from which it may be concluded to the requisite standard of proof that the detainee must be presumed to have died in custody."[22] The ECHR found that:[23]

> Noting that more than six and a half years has gone by since Abdulvahap Timurtas' apprehension and having regard to all the other circumstances of the case, **the Court found that the disappearance of Abdulvahap Timurtas after he had been taken into detention led, in the circumstances of this case, to a presumption that he had died**. No explanation having been provided by the Government as to what had happened to him during his detention, the Government was liable for his death and there was a violation of Article 2 of the Convention. [Emphasis supplied]

Significantly (in the context of the present case), the *ECHR* also noted that the inadequacy of the investigation into the disappearance of Timurtas also constituted a violation of his

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[21] 27 Eur. H.R. Rep. 373 (1998).

[22] *Supra* note 19.

[23] *Supra* note 9.

right to life under Article 2 of the European Convention on Human Rights.

Thus viewed, common threads that plainly run in the three cited cases are applicable to the present case. There is the evidence of ineffective investigation in *Manalo* and *Velasquez Rodriguez,* while in all three was the recognition that the burden of proof must be lowered or relaxed (either through the use of circumstantial or indirect evidence or even by logical inference); the requirement for direct evidence to establish that an enforced disappearance occurred — as the petitioners effectively suggest — would render it extremely difficult, if not impossible, to prove that an individual has been made to disappear. In these lights, we emphasized in our December 3, 2009 Decision that while the need for substantial evidence remains the rule, flexibility must be observed where appropriate (as the Courts in *Velasquez Rodriguez* and *Timurtas* did) for the protection of the precious rights to life, liberty and security. This flexibility, we noted, requires that "*we should 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*." From these perspectives, we see no error that we should rectify or reconsider.

WHEREFORE, premises considered, we resolve to *GRANT* the motion to declare the inclusion of PS/Supt. Julasirim Ahadin Kasim moot and academic, but, otherwise, *DENY* the petitioners' motion for reconsideration. Let this case be remanded to the Court of Appeals for further proceedings as directed in our Decision of December 3, 2009.

SO ORDERED.

Puno, C.J., Carpio, Corona, Carpio Morales, Velasco, Jr., Nachura, Leonardo-de Castro, Peralta, Bersamin, Del Castillo, Abad, Villarama, Jr., Perez, and *Mendoza, JJ.,* concur.

THIRD DIVISION

[G.R. No. 185954. February 16, 2010]

OFFICE OF THE OMBUDSMAN, *petitioner, vs.* **MAXIMO D. SISON,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; INTERVENTION; ALLOWANCE OR DISALLOWANCE OF A MOTION TO INTERVENE, ADDRESSED TO THE SOUND DISCRETION OF THE COURT. — It is fundamental that the allowance or disallowance of a Motion to Intervene is addressed to the sound discretion of the court. The permissive tenor of the rules shows the intention to give to the court the full measure of discretion in permitting or disallowing the intervention, thus: **"SECTION 1.** *Who may intervene*. x x x **SECTION 2.** *Time to intervene.* – The motion to intervene **may be filed at any time before rendition of judgment by the trial court.** x x x"

2. ID.; ID.; ID.; DEFINED. — Simply, intervention is a procedure by which third persons, not originally parties to the suit but claiming an interest in the subject matter, come into the case in order to protect their right or interpose their claim. Its main purpose is to settle in one action and by a single judgment all conflicting claims of, or the whole controversy among, the persons involved.

3. ID.; ID.; ID.; REQUISITES. — To warrant intervention under Rule 19 of the Rules of Court, two requisites must concur: (1) the movant has a legal interest in the matter in litigation; and (2) intervention must not unduly delay or prejudice the adjudication of the rights of the parties, nor should the claim of the intervenor be capable of being properly decided in a separate proceeding. The interest, which entitles one to intervene, must involve the matter in litigation and of such direct and immediate character that the intervenor will either gain or lose by the direct legal operation and effect of the judgment.

4. ID.; ID.; APPEALS; JUDGES SHOULD DETACH THEMSELVES FROM CASES WHERE THEIR DECISIONS ARE APPEALED TO A HIGHER COURT FOR REVIEW. — [T]he Office of the

Ombudsman is not an appropriate party to intervene in the instant case. It must remain partial and detached. More importantly, it must be mindful of its role as an adjudicator, not an advocate. It is an established doctrine that judges should detach themselves from cases where their decisions are appealed to a higher court for review. The *raison d'etre* for such a doctrine is the fact that judges are not active combatants in such proceeding and must leave the opposing parties to contend their individual positions and the appellate court to decide the issues without the judges' active participation. When judges actively participate in the appeal of their judgment, they, in a way, cease to be judicial and have become adversarial instead.

5. ID.; ID.; ID.; PETITION FOR REVIEW UNDER RULE 43 OF THE RULES OF COURT; THE COURT OR THE ADMINISTRATIVE AGENCY THAT RENDERED THE JUDGMENT APPEALED FROM IS NOT A PARTY IN THE APPEAL. — [T]he facts reveal that this case was elevated to the CA via a verified Petition for Review under Rule 43 of the Rules of Court and Supreme Court Administrative Circular No. 1-95 dated May 16, 1995, which govern appeals to the CA from judgments or final orders of quasi-judicial agencies. Rule 43, as well as Administrative Circular No. 1-95, provides that the petition for review shall state the full names of the parties to the case **without impleading the court or agencies either as petitioners or respondents.** Thus, the only parties in such an appeal are the appellant as petitioner and appellee as respondent. The court or, in this case, the administrative agency that rendered the judgment appealed from, is not a party in the said appeal. Therefore, the Office of the Ombudsman does not have the legal interest to intervene.

6. ID.; ID.; INTERVENTION; NOT PERMITTED AFTER A DECISION HAS ALREADY BEEN RENDERED. — [T]he Rules provides explicitly that a motion to intervene may be filed at any time **before rendition of judgment by the trial court.** In the instant case, the Omnibus Motion for Intervention was filed only on July 22, 2008, after the Decision of the CA was promulgated on June 26, 2008. In support of its position, petitioner cites *Office of the Ombudsman v. Samaniego*. That case, however, is not applicable here, since the Office of the

Ombudsman filed the motion for intervention during the pendency of the proceedings before the CA. It should be noted that the Office of the Ombudsman was aware of the appeal filed by Sison. The Rules of Court provides that the appeal shall be taken by filing a verified petition for review with the CA**, with proof of service of a copy on the court or agency *a quo*.** Clearly, the Office of the Ombudsman had sufficient time within which to file a motion to intervene. As such, its failure to do so should not now be countenanced. The Office of the Ombudsman is expected to be an "activist watchman," not merely a passive onlooker. In this case, it cannot be denied that the Omnibus Motion for Intervention was belatedly filed. As we held in *Rockland Construction Co., Inc. v. Singzon, Jr.*, no intervention is permitted after a decision has already been rendered.

APPEARANCES OF COUNSEL

Office of Legal Affairs (Ombudsman) for petitioner.
Cesar R. Singson for respondent.

D E C I S I O N

VELASCO, JR., *J.*:

The Case

Before us is a Petition for Review on *Certiorari* under Rule 45 assailing and seeking to set aside the Resolution[1] dated December 18, 2008 of the Court of Appeals (CA) in CA-G.R. SP No. 96611, entitled *Maximo D. Sison v. Fr. Noel Labendia for Himself and in Representation of Isog Han Samar Movement, Diocese of Calbayog, Catbalogan, Samar*. The CA Resolution denied petitioner Office of the Ombudsman's Omnibus Motion for Intervention and to Admit Attached Motion for Reconsideration of the CA's June 26, 2008 Decision.[2]

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[1] *Rollo*, pp. 52-58.

[2] *Id.* at 60-81. Penned by Associate Justice Agustin S. Dizon (retired)

The Facts

On October 11, 2004, the Isog Han Samar Movement, represented by Fr. Noel Labendia of the Diocese of Calbayog, Catbalogan, Samar, filed a letter-complaint addressed to then Ombudsman, Hon. Simeon Marcelo, accusing Governor Milagrosa T. Tan and other local public officials[3] of the Province of Samar, including respondent Maximo D. Sison, of highly anomalous transactions entered into by them amounting to several millions of pesos. Sison was the Provincial Budget Officer.

The letter-complaint stemmed from the audit investigation dated August 13, 2004 conducted by the Legal and Adjudication Office (LAO), Commission on Audit (COA), which found, among others, that various purchases totaling PhP 29.34 million went without proper bidding procedures and documentations; that calamity funds were expended without a State of Calamity having been declared by the President; and that purchases for rice, medicines, electric fans, and cement were substantially overpriced.

The Special Audit Team, which was created under LAO Office Order No. 2003-059 dated July 7, 2003, summarized the corresponding COA audit findings and observations, to wit:

1. Rules and regulations pertaining to procurement of supplies and materials were consciously and continually violated as disclosed in the verification of selected purchases of the Province. Below were the findings and observations:

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and concurred in by Associate Justices Vicente S.E. Veloso and Celia C. Librea-Leagogo.

[3] The other local public officials accused were: Ernesto Carcillar Arcales (Vice-Governor); Aurelio A. Bardaje, Jr. (General Service Officer); Numeriano C. Legaspi (GSO Record Officer and Inspector); Rolando Bolastig Montejo (Administrative Officer); Damiano Zerda Conde, Jr. (Treasurer); Romeo Chan Reales (Accountant); Rosie Amaro Villacorte (Representative, Budget Office); and the following *Sangguniang Panlalawigan* Members: Felix T. Babalcon, Jr., Fe Ortega Tan Arcales, Jimmy R. Dy, Juan Colinares Latorre, Jr., Ma. Lourdes Cortez Uy, Bienvenida P. Repol, Susano Dimakiling Salurio, Ramon P. Dean, Jr., Anamie P. Manatad-Nuñez, Bartolome R. Castillo III, Bartolome P. Figeuroa, Rosenaida A. Rosales, and Antonio De Leon Bolastig III.

a. Purchases of various items, totaling at least PhP 29.34 million and allegedly procured through public bidding, were found highly irregular for lack of proper bidding procedures and documentation;

b. At least PhP 28.165 million worth of purchases through repeat orders were made by the Province without observing the pertinent law, rules and regulations governing this mode of procurement; and

c. Emergency purchases of medicines and assorted goods totaling PhP 14.67 million were found not complying with the requirements set forth under the Rules and Regulations on Supplies and Property Management in Local Governments (RRSPMLG). Moreover, the purchases were charged against the calamity fund, despite absence of any declaration from the President that Samar was under a state of calamity, in violation of Sec. 324(d) of R.A. 7160.

2. Inconsistencies in the dates of supporting documents relating to the purchases discussed in finding No. 1 were so glaring that they raised doubts on the validity of the transactions per se;

3. The use of the 5% budgetary reserves for calamity as funding source of emergency purchases was not legally established, there being no declaration from the Office of the President that Samar was under a state of calamity, as required under Sec. 324(d) of R.A. 7160;

4. Splitting of requisitions and purchase orders was resorted to in violation of COA Circular No. 76-41 dated July 30, 1976;

5. There was overpricing in the purchase of rice, medicines, electric fans and cement in the amount of PhP 580,000.00, PhP 322,760.00, PhP 341,040.00, and PhP 3.6 million, respectively. An overpayment was also committed in the payments of cement in the amount of PhP 96,364.09;

6. Other observations gathered corollary to the purchases made are the following:

a. Purchase Orders were not duly accomplished to include a complete description of the items to be purchased, the delivery date and the terms of payment, in violation of the provisions of Section

74 and other corollary provisions of RRSPMLG. Some were even acknowledged by suppliers;

b. At least 36 vouchers/claims were not supported with an official receipt, in violation of the provisions of Section 4 of PD 1445 that all disbursements must be supported with complete documentation; and

c. Advanced deliveries of medicines and assorted goods were made on some purchases even before the purchase orders were prepared and before the public biddings were conducted.

7. The necessity and veracity of the distribution of t-shirts/caps, medicines, assorted goods and cement purchased by the Province of Samar could not be established due to rampant inconsistencies in dates, quantities, as well as the signatures of the alleged recipients in the Requisition and Issue Slip; and,

8. Financial Assistance (FA)/Assistance to Individuals in Crisis Situation (AICS) totaling at least PhP 5.4 million in 2002 and PhP 2.78 million as of April 2003 were granted to various applicant-recipients without subjecting them to the guidelines set forth by the Department of Social Welfare and Development (DSWD).[4] x x x

On January 24, 2005, the Office of the Ombudsman, through Director Jose T. De Jesus, Jr., found basis to proceed with the administrative case against the impleaded provincial officials of Samar, docketed as OMB-C-A-05-0051-B. The latter were then required to file their counter-affidavits and countervailing evidence against the complaint.

In his counter-affidavit, Sison vehemently denied the accusations contained in the letter-complaint and claimed his innocence on the charges. He asserted that his function is limited to the issuance of a certification that an appropriation for the requisition exists, that the corresponding amount has been obligated, and that funds are available. He did not, in any way, vouch for the truthfulness of the certification issued by the

[4] *Rollo*, pp. 88-91.

requesting parties. In addition, he averred that he never participated in the alleged irregularities as shown in the minutes and attendance sheet of the bidding.

Further, he alleged that not one of the documentary evidences so far attached in the letter-complaint bore his signature and that he was neither factually connected nor directly implicated in the complaint.

On May 6, 2005, Sison submitted his Position Paper to the Office of the Ombudsman and reiterated that he had not participated in the alleged anomalous purchases and use of public funds by the Province of Samar.

On August 22, 2006, the Office of the Ombudsman rendered a Decision, finding Sison and several other local officials of the Province of Samar guilty of grave misconduct, dishonesty, and conduct prejudicial to the best interest of the service and dismissing him from service. The dispositive portion of the Decision reads:

VIEWED IN THE FOREGOING LIGHT, DECISION is hereby rendered as follows:

1. Respondents ROLANDO B. MONTEJO, DAMIANO Z. CONDE, JR., ROMEO C. REALES, **MAXIMO D. SISON**, AURELIO A. BARDAJE and NUMERIANO C. LEGASPI are FOUND GUILTY of GRAVE MISCONDUCT, DISHONESTY and CONDUCT PREJUDICIAL TO THE BEST INTEREST OF THE SERVICE, and are METED the penalty of DISMISSAL FROM SERVICE, and shall carry with it the cancellation of eligibility, forfeiture of retirement benefits, and the perpetual disqualification for re-employment in the government service.

Accordingly, Governor Milagrosa T. Tan and Executive Director Presentacion R. Montesa of the Bureau of Local Government Finance, Department of Finance, are respectfully directed to implement this Order upon receipt hereof and to forthwith inform the Office of compliance herewith.

2. The administrative complaint against respondents MILAGROSA T. TAN, FE ORTEGA TAN ARCALES, SUSANO DIMAKILING SALURIO, BARTOLOME P. FIGUEROA, ANTONIO DE LEON BOLASTIG, III, ROSENAIDA A.

ROSALES and BARTOLOME R. CASTILLO III is DISMISSED in view of their re-election in May 2004;

3. The administrative complaint against ERNESTO CARCILLAR ARCALES, FELIX T. BABALCON, JR., JIMMY R. DY, JUAN COLINARES LATORRE, JR., MARIA LOURDES CORTEZ UY, BIENVENIDA P. REPOL and RAMON P. DEAN, JR., who are no longer public officials, is DISMISSED.

4. For insufficiency of evidence, the administrative complaint against ANAMIE P. MANATAD-NUNEZ and ROSIE AMARO VILLACORTE is DISMISSED.

5. The Fact-Finding and Intelligence Office is DIRECTED to conduct further fact-finding investigations on the following:

   a. On DV Nos. 221-2002-12-083 and 221-2002-11-065: (a) to DETERMINE the other public officials who may be held administratively liable; and (b) to FILE, if necessary, the corresponding Complaint;

   b. On Bid Nos. 079-2002, 442-2002, 554-2002, 861-2002, 937-2002, 947-2002, 1221-2002, 1375-2002, 1411-2002, 007-2003, 014-2003, 023-2003, 047-2003 and 082-2002: (a) to VERIFY whether actual public biddings took place relative to the transactions covered by these bids; (b) to CHECK the veracity of the documents relative to the repeat orders made; (c) to DETERMINE the other public officials who may appear to be administratively liable therefor; and (d) to FILE, if warranted, the corresponding Complaint; and

   c. On Bid Nos. 078-2002, 448-2002, 931-2002, 1230-2001, 411-2002, 944-2002, 1244-2002, 1407-2001, 198-2002, 316-2002 and 431-2002: (a) to DETERMINE whether actual public biddings were held relative to the above-mentioned transactions; (b) to CHECK the veracity of the documents relative to the repeat orders made; (c) to ASCERTAIN the other public officials who may be held administratively liable therefor; and (d) to FILE the corresponding Complaint, if warranted.

Accordingly, let a copy of this Memorandum be furnished the Fact- Finding and Intelligence Office for its appropriate action.

SO ORDERED.[5] (Emphasis supplied.)

Aggrieved, Sison appealed to the CA via a Petition for Review under Rule 43, docketed as CA-G.R. SP No. 96611.

On June 26, 2008, the CA rendered a decision reversing and setting aside the decision of the Office of the Ombudsman against Sison. The *fallo* of the CA decision reads:

> WHEREFORE, the decision of the Ombudsman dated 22 August 2006 in OMB-C-A-05-0051-B in so far as it finds the herein petitioner MAXIMO D. SISON administratively liable for grave misconduct, dishonesty and conduct prejudicial to the best interest of service is hereby REVERSED and SET ASIDE for insufficiency of evidence. Accordingly, he is absolved from administrative liability as charged.
>
> SO ORDERED.[6]

In ruling thus, the CA held that the Office of the Ombudsman failed to adduce substantial evidence in order to convict Sison. Moreover, it reasoned that Sison's responsibility as Provincial Budget Officer was to ensure that appropriations exist in relation to the emergency purchase being made and that he had no hand or discretion in characterizing a particular purchase as emergency in nature. Hence, he cannot be held administratively liable for simply attesting to the existence of appropriations for a certain purpose, save if such certification is proved to be false.

On July 22, 2008, the Office of the Ombudsman filed an Omnibus Motion for Intervention and to Admit Attached Motion for Reconsideration, which was subsequently denied by the CA in its assailed resolution of December 18, 2008.

Hence, we have this petition.

The Issues

I

Whether the [CA] gravely erred in denying petitioner's right to intervene in the proceedings, considering that (a) the Office of the

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

[6] *Id.* at 80.

Ombudsman has sufficient legal interest warranting its intervention in the proceedings before the [CA] since it rendered the subject decision pursuant to its administrative authority over public officials and employees; and (b) contrary to the appellate court *a quo's* ruling, petitioner Office of the Ombudsman filed its Omnibus Motion to Intervene and to Admit Attached Motion for Reconsideration on a patently erroneous decision of the [CA] which has not yet attained finality.

II

Whether the [CA] erred in ruling that the finding of the Office of the Ombudsman was not supported by substantial evidence.

III

Whether the [CA] erred in giving due course to respondent's petition for review when this was prematurely filed as it disregarded the well-entrenched jurisprudential doctrine of exhaustion of administrative remedies.

Our Ruling

The appeal lacks merit.

Intervention Is Discretionary upon the Court

The pivotal issue in this case is whether the Office of the Ombudsman may be allowed to intervene and seek reconsideration of the adverse decision rendered by the CA.

In its Decision, the CA did not allow the Office of the Ombudsman to intervene, because (1) the Office of the Ombudsman is not a third party who has a legal interest in the administrative case against petitioner; (2) the Omnibus Motion for Intervention was filed after the CA rendered its Decision; and (3) the Office of the Ombudsman was the quasi-judicial body which rendered the impugned decision.

In its Petition, however, the Office of the Ombudsman asserts that it has sufficient legal interest to warrant its intervention in the proceedings, since it rendered the subject decision pursuant to its administrative authority over public officials and employees. Further, it contends that the Omnibus Motion to Intervene was

timely filed, since, at the time of its filing, the decision of the CA had not yet attained finality.

We are not persuaded.

It is fundamental that the allowance or disallowance of a Motion to Intervene is addressed to the sound discretion of the court.[7] The permissive tenor of the rules shows the intention to give to the court the full measure of discretion in permitting or disallowing the intervention,[8] thus:

SECTION 1. *Who may intervene*. – A person who has a legal interest in the matter in litigation, or in the success of either of the parties, or an interest against both, or is so situated as to be adversely affected by a distribution or other disposition of property in the custody of the court or of an officer thereof may, with leave of court, be allowed to intervene in the action. The court shall consider whether or not the intervention will unduly delay or prejudice the adjudication of the rights of the original parties, and whether or not the intervenor's rights may be fully protected in a separate proceeding.

SECTION 2. *Time to intervene.* – The motion to intervene **may be filed at any time before rendition of judgment by the trial court**. A copy of the pleading-in-intervention shall be attached to the motion and served on the original parties.[9] (Emphasis supplied.)

Simply, intervention is a procedure by which third persons, not originally parties to the suit but claiming an interest in the subject matter, come into the case in order to protect their right or interpose their claim.[10] Its main purpose is to settle in one action and by a single judgment all conflicting claims of, or the whole controversy among, the persons involved.[11]

To warrant intervention under Rule 19 of the Rules of Court, two requisites must concur: (1) the movant has a legal interest

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[7] *Heirs of Geronimo Restrivera v. De Guzman*, G.R. No. 146540, July 14, 2004, 434 SCRA 456, 463.

[8] *Id.*

[9] RULES OF COURT, Rule 19.

[10] *BLACK'S LAW DICTIONARY* 820 (6th ed.).

[11] *Union Bank of the Philippines v. Concepcion*, G.R. No. 160727, June 26, 2007, 525 SCRA 672, 687.

in the matter in litigation; and (2) intervention must not unduly delay or prejudice the adjudication of the rights of the parties, nor should the claim of the intervenor be capable of being properly decided in a separate proceeding. The interest, which entitles one to intervene, must involve the matter in litigation and of such direct and immediate character that the intervenor will either gain or lose by the direct legal operation and effect of the judgment.[12]

In support of its argument that it has legal interest, the Office of the Ombudsman cites *Philippine National Bank v. Garcia, Jr.* (*Garcia*).[13] In the said case, the Philippine National Bank (PNB) imposed upon its employee, Garcia, the penalty of forced resignation for gross neglect of duty. On appeal, the Civil Service Commission (CSC) exonerated Garcia from the administrative charges against him. In accordance with the ruling in *Civil Service Commission v. Dacoycoy*,[14] this Court affirmed the standing of the PNB to appeal to the CA the CSC resolution exonerating Garcia. After all, PNB was the aggrieved party which complained of Garcia's acts of dishonesty. Should Garcia be finally exonerated, it might then be incumbent upon PNB to take him back into its fold. PNB should, therefore, be allowed to appeal a decision that, in its view, hampered its right to select honest and trustworthy employees, so that it can protect and preserve its name as a premier banking institution in the country.

Based on the facts above, the Office of the Ombudsman cannot use *Garcia* to support its intervention in the appellate court for the following reasons:

First, Sison was not exonerated from the administrative charges against him, and was, in fact, dismissed for grave misconduct, dishonesty, and conduct prejudicial to the best interest of the service by the Office of the Ombudsman in the administrative case, OMB-C-A-05-0051-B. Thus, it was Sison

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[12] *Id.*

[13] G.R. No. 141246, September 9, 2002, 388 SCRA 485.

[14] G.R. No. 135805, April 29, 1999, 306 SCRA 425.

who appealed to the CA being, unquestionably, the party aggrieved by the judgment on appeal.

Second, the issue here is the right of the Office of the Ombudsman to intervene in the appeal of its decision, not its right to appeal.

And *third*, *Garcia* should be read along with *Mathay, Jr. v. Court of Appeals*[15] and *National Appellate Board of the National Police Commission v. Mamauag* (*Mamauag*),[16] in which this Court qualified and clarified the exercise of the right of a government agency to actively participate in the appeal of decisions in administrative cases. In *Mamauag*, this Court ruled:

> RA 6975 itself does not authorize a private complainant to appeal a decision of the disciplining authority. Sections 43 and 45 of RA 6975 authorize 'either party' to appeal in the instances that the law allows appeal. One party is the PNP member-respondent when the disciplining authority imposes the penalty of demotion or dismissal from the service. The other party is the government when the disciplining authority imposes the penalty of demotion but the government believes that dismissal from the service is the proper penalty.
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> However, the government party that can appeal is not the disciplining authority or tribunal which previously heard the case and imposed the penalty of demotion or dismissal from the service. The government party appealing must be the one that is prosecuting the administrative case against the respondent. Otherwise, an anomalous situation will result where the disciplining authority or tribunal hearing the case, instead of being impartial and detached, becomes an active participant in prosecuting the respondent. Thus, in *Mathay, Jr. v. Court of Appeals*, decided after *Dacoycoy*, the Court declared:
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> > To be sure when the resolutions of the Civil Service Commission were brought to the Court of Appeals, the Civil Service Commission was included only as a nominal party. As a quasi-judicial body, the Civil Service Commission can be

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[15] G.R. No. 124374, December 15, 1999, 320 SCRA 703.

[16] G.R. No. 149999, August 12, 2005, 466 SCRA 624, 641-642.

likened to a judge who should "detach himself from cases where his decision is appealed to a higher court for review."

In instituting G.R. No. 126354, the Civil Service Commission dangerously departed from its role as adjudicator and became an advocate. Its mandated function is to "hear and decide administrative cases instituted by or brought before it directly or on appeal, including contested appointments and to review decisions and actions of its offices and agencies," not to litigate.

Clearly, the Office of the Ombudsman is not an appropriate party to intervene in the instant case. It must remain partial and detached. More importantly, it must be mindful of its role as an adjudicator, not an advocate.

It is an established doctrine that judges should detach themselves from cases where their decisions are appealed to a higher court for review. The *raison d'etre* for such a doctrine is the fact that judges are not active combatants in such proceeding and must leave the opposing parties to contend their individual positions and the appellate court to decide the issues without the judges' active participation.[17] When judges actively participate in the appeal of their judgment, they, in a way, cease to be judicial and have become adversarial instead.[18]

In *Pleyto v. Philippine National Police Criminal Investigation and Detection Group (PNP-CIDG)*,[19] the Court applied this doctrine when it held that the CA erred in granting the Motion to Intervene filed by the Office of the Ombudsman, to wit:

The court or the quasi-judicial agency must be detached and impartial, not only when hearing and resolving the case before it, but even when its judgment is brought on appeal before a higher

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[17] *Pleyto v. Philippine National Police Criminal Investigation and Detection Group (PNP-CIDG)*, G.R. No. 169982, November 23, 2007, 538 SCRA 534, 549.

[18] *Calderon v. Solicitor General*, G.R. Nos. 103752-53, November 25, 1992, 215 SCRA 876, 881.

[19] *Supra* note 17.

court. The judge of a court or the officer of a quasi-judicial agency must keep in mind that he is an adjudicator who must settle the controversies between parties in accordance with the evidence and applicable laws, regulations and/or jurisprudence. His judgment should already clearly and completely state his findings of fact and law. There must be no more need for him to justify further his judgment when it is appealed before appellate courts. When the court judge or the quasi-judicial officer intervenes as a party in the appealed case, he inevitably forsakes his detachment and impartiality, and his interest in the case becomes personal since his objective now is no longer only to settle the controversy between the original parties (which he had already accomplished by rendering his judgment), but more significantly, to refute the appellant's assignment of errors, defend his judgment, and prevent it from being overturned on appeal.

Likewise, the facts reveal that this case was elevated to the CA via a verified Petition for Review under Rule 43 of the Rules of Court and Supreme Court Administrative Circular No. 1-95 dated May 16, 1995, which govern appeals to the CA from judgments or final orders of quasi-judicial agencies.

Rule 43, as well as Administrative Circular No. 1-95, provides that the petition for review shall state the full names of the parties to the case **without impleading the court or agencies either as petitioners or respondents**.[20] Thus, the only parties in such an appeal are the appellant as petitioner and appellee as respondent. The court or, in this case, the administrative agency that rendered the judgment appealed from, is not a party in the said appeal.

Therefore, the Office of the Ombudsman does not have the legal interest to intervene. As the CA held correctly:

The Office of the Ombudsman is not a third party who has a legal interest in the administrative case against the petitioner such that it would be directly affected by the judgment that this Court had rendered. It must be remembered that the legal interest required for an intervention must be direct and immediate in character. Lest it be forgotten, what was brought on appeal before this Court is the

[20] RULES OF COURT, Rule 43, Sec. 6(a); Revised Administrative Circular No. 1-95, Sec. 6(a).

very Decision by the Office of the Ombudsman. Plainly, the Office of the Ombudsman, as an adjudicator, and not an advocate, has no legal interest at stake in the outcome of this Rule 43 Petition.[21]

Motion for Intervention Was Not Filed on Time

Furthermore, the Rules provides explicitly that a motion to intervene may be filed at any time **before rendition of judgment by the trial court**. In the instant case, the Omnibus Motion for Intervention was filed only on July 22, 2008, after the Decision of the CA was promulgated on June 26, 2008.

In support of its position, petitioner cites *Office of the Ombudsman v. Samaniego*.[22] That case, however, is not applicable here, since the Office of the Ombudsman filed the motion for intervention during the pendency of the proceedings before the CA.

It should be noted that the Office of the Ombudsman was aware of the appeal filed by Sison. The Rules of Court provides that the appeal shall be taken by filing a verified petition for review with the CA, **with proof of service of a copy on the court or agency *a quo***.[23] Clearly, the Office of the Ombudsman had sufficient time within which to file a motion to intervene. As such, its failure to do so should not now be countenanced. The Office of the Ombudsman is expected to be an "activist watchman," not merely a passive onlooker.[24]

In this case, it cannot be denied that the Omnibus Motion for Intervention was belatedly filed. As we held in *Rockland Construction Co., Inc. v. Singzon, Jr.*, no intervention is permitted after a decision has already been rendered.[25]

In light of the foregoing considerations, all other issues raised in the petition are rendered moot and academic and no further discussion is necessary.

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[21] *Rollo*, p. 55.

[22] G.R. No. 175573, September 11, 2008, 564 SCRA 567.

[23] Rule 43, Sec. 5; and Revised Administrative Circular No. 1-95, Sec. 5.

[24] *Office of the Ombudsman v. Lucero*, G.R. No. 168718, November 24, 2006, 508 SCRA 107, 115

[25] A.M. No. RTJ-06-2002, November 24, 2006, 508 SCRA 1, 11.

WHEREFORE, the petition is *DENIED*. The CA Resolution dated December 18, 2008 in CA-G.R. SP No. 96611 is *AFFIRMED*.

SO ORDERED.

Corona (Chairperson), Nachura, Peralta, and *Mendoza, JJ.,* concur.

SECOND DIVISION

[G.R. No. 187120. February 16, 2010]

PHILIPPINE JOURNALISTS, INC., *petitioner, vs.* **NATIONAL LABOR RELATIONS COMMISSION, LABOR ARBITER FEDRIEL S. PANGANIBAN and EDUARDO S. RIVERA,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; PETITION FOR REVIEW ON *CERTIORARI*; SHALL RAISE ONLY QUESTIONS OF LAW; EXCEPTION; PRESENT IN CASE AT BAR. — While as a rule, a petition for review on *certiorari* shall raise only questions of law, we deem it appropriate to examine the facts in this review, given the conflicting factual findings between the Labor Arbiter, on the one hand and, the NLRC and the CA, on the other. The Labor Arbiter sustained Rivera's dismissal with the finding that he committed acts of dishonesty or fraud against his employer. The NLRC and the CA held that no substantial evidence existed to support Rivera's dismissal.

2. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; TERMINATION OF EMPLOYMENT; JUST CAUSES; LOSS OF TRUST AND CONFIDENCE; TO BE A GROUND FOR DISMISSAL, THE LAW REQUIRES ONLY THAT THERE BE AT LEAST SOME BASIS TO JUSTIFY THE

DISMISSAL; CASE AT BAR. — [W]e are convinced that a pattern of concealment and dishonesty marred the purchase of paper materials for the Women's Journal's special project, with Rivera playing the principal and most active role. There is no question in our mind that he failed to make a reasonable canvass of the prices of the paper materials required by a company's special project, resulting in substantial losses to the company. As we previously stated, that a rush job was involved, is no excuse as a canvass could be done even in a day's time as shown by the audit department's canvass. That Rivera was responsible for concealment and omissions also appears clear to us; he failed to seasonably disclose to PJI, under dubious circumstances, material information with financial impact on the purchase transaction. Thus, we cannot but conclude that substantial evidence exists justifying Rivera's dismissal for a just cause – loss of trust and confidence. For loss of trust and confidence to be a ground for dismissal, the law requires only that there be at least some basis to justify the dismissal.

3. REMEDIAL LAW; EVIDENCE; WEIGHT AND SUFFICIENCY OF EVIDENCE; SUBSTANTIAL EVIDENCE; QUANTUM OF PROOF REQUIRED IN ADMINISTRATIVE CASES. — Enough basis exists x x x to support the PJI's position that Rivera was responsible for acts and omissions that made him unworthy of the trust and confidence PJI reposed on him. To place this conclusion in Rivera's own terms, contrary to what he claimed, his dismissal was not on the basis of "*mere speculation and conjecture*," but on the basis of relevant evidence that a reasonable mind might accept to support a conclusion. In legal terms, this is the quantum of proof required in administrative proceedings. The fact that he had been with the company for 25 years cannot erase the conclusion that he had become a liability to the company whose interests he miserably failed to protect.

APPEARANCES OF COUNSEL

Cruz Law Firm for petitioner.
Ponciano R. Solosa for private respondent.

D E C I S I O N

BRION, *J.*:

We resolve in this Decision the petition for review on *certiorari*[1] filed by the Philippine Journalists, Inc. (*PJI*), assailing the decision[2] dated February 24, 2009 of the Court of Appeals (*CA*) in CA-G.R. SP No. 98666.[3]

The Antecedents

The facts, as set out in the assailed decision, are summarized below.

PJI is a corporation engaged in the publication of People's Journal, People's Journal Tonight, People's Journal International, People's Taliba, Women's Journal, and Insider. In December 1978, it employed respondent Eduardo S. Rivera (*Rivera*) as proof reader. Rivera rose from the ranks over the years, becoming purchasing manager in 1998. His primary duty involved the canvassing and purchase of paper and other materials for PJI's day-to-day operations. He received a monthly salary of ₱25,000.00, exclusive of allowances and other benefits.

Sometime in November 2002, Women's Journal implemented a calendar insertion project requiring paper-coated materials. Rivera canvassed and purchased 68,500 sheets of C25 120 coated paper, 170 gsm size 23" x 27" from the Nation Paper Products Corporation (*NAPPCO*) at ₱6.50 a sheet for the total amount of ₱445,250.00.[4]

On January 8, 2003, PJI's Corporate Secretary and Chief Legal Counsel, Atty. Ruby Ruiz-Bruno (*Ruiz-Bruno*), issued a memorandum[5] requiring Rivera to explain in writing why he "*should not be terminated from employment for defrauding or*

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[1] *Rollo*, pp. 43-64; filed pursuant to Rule 45 of the Rules of Court.

[2] *Id.*, at 9-31; penned by Associate Justice Ramon M. Bato, Jr., with Associate Justices Andres B. Reyes, Jr. and Jose C. Mendoza, concurring.

[3] *Philippine Journalists, Inc. v. NLRC, et al.*

[4] *Rollo*, p. 105; PJI's Position Paper, Annex "B".

[5] *Id.* at 106; PJI's Position Paper, Annex "C".

attempting to defraud the Company x x x" in the canvassing and purchase of Women's Journal's paper requirements. The memo alluded to a "*reliable quotation from NAPPCO for 68,000 sheets of this kind of paper with exactly the same specifications, shows a price of only ₱3.40/sheet.*" Pending investigation of the matter, PJI placed Rivera under preventive suspension.

On January 10, 2003, PJI's Audit Supervisor, Nepthalie E. Hernandez (*Hernandez*), submitted a report[6] to PJI President Bobby Dela Cruz (*Dela Cruz*) about the canvass of the price of the Women's Journal paper requirements. The canvass showed: a price of ₱3.91/sheet from Security Commercial although no quotation from the supplier was secured; the lowest price with quotation was ₱4.12/sheet from Purity Enterprises Co.; and, a telephone canvass with NAPPCO revealed an offer of ₱3.80/sheet.

On January 13, 2003, Rivera submitted his written explanation,[7] denying that he defrauded or attempted to defraud PJI. In support of his position, he attached a letter dated January 9, 2003 from NAPPCO's Vice-President Kenneth Chong (*Chong*) to Dela Cruz.[8] Chong denied in his letter giving a quotation of ₱3.40/sheet for PJI's paper requirement. He explained that NAPPCO quoted a price of ₱5.80 cash on delivery (*COD*), but since PJI could not meet its terms, it quoted a price of ₱6.50 at 30-90 days credit.

Rivera, in a letter dated January 31, 2003 addressed to Dela Cruz, explained the details of the purchase transaction with NAPPCO.[9] As a result of this letter-explanation, Ruiz-Bruno issued a memorandum on the same day to Assistant Purchasing Manager Jean Alvarado (*Alvarado*), requiring her to explain the difference in the quotation of ₱6.50 from NAPPCO and

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[6] *Id.* at 107; PJI's Position Paper, Annex "D".

[7] *Id.* at 109; PJI's Position Paper, Annex "E".

[8] *Id.* at 131; Rivera's Position Paper, Annex "D".

[9] *Id.* at 130; Rivera's Position Paper, Annex "C".

₱4.26/piece (23x27) and ₱4.68/piece (25x27) from LAMCO, another supplier.[10]

On the same day, Alvarado submitted her explanation,[11] stating that she signed the canvass sheet as instructed by Rivera, but she was not aware that Rivera included LAMCO. She claimed that the canvass sheet (No. 20800)[12] itself showed that the figures were written by Rivera himself.

In a memorandum dated February 7, 2003,[13] Ruiz-Bruno notified Rivera of the termination of his service effective February 8, 2003, "*on the ground of loss of confidence*" after finding Rivera's "*acts and omissions are indicative of fraud and a clear manifestation of your inability as a Manager to protect the Company's interests*." The memo stated that: during the open investigation, Rivera admitted the truth of Alvarado's statements; he also admitted that the figures he wrote on the canvass sheet were fictitious because no such figures were given by LAMCO; and he purposely made the insertions to provide a comparative pricing and to facilitate the approval of the purchase order. Ruiz-Bruno further stated in her memorandum that: she interviewed NAPPCO officials who informed her that they had the available stocks cut to give PJI the exact 23" x 27" size of paper it needed, with the wastage to be passed on to PJI, thus, the price of ₱6.50/sheet; Rivera failed to disclose this detail of NAPPCO's offer, nor did he inform the company if the waste materials were ever delivered to PJI for its disposition; and that Rivera had been talking directly with NAPPCO, contrary to what he said to Ruiz-Bruno that the purchase was based on Alvarado's canvass.

On October 14, 2003, Rivera filed a complaint for illegal dismissal against PJI, Dela Cruz, Executive Vice-President Arnold Banares and Ruiz-Bruno.

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[10] *Id.* at 111; PJI's Position Paper, Annex "F".

[11] *Id.* at 112; PJI's Position Paper, Annex "G", p. 127.

[12] *Id.* at 104; PJI's Position Paper, Annex "A".

[13] *Id.* at 113-115; PJI's Position Paper, Annex "H".

The Compulsory Arbitration Decisions

On October 29, 2004, Labor Arbiter Fedriel S. Panganiban found, in his decision of October 29, 2004,[14] that Rivera's dismissal was for cause on the ground that he "*committed acts of dishonesty, or has committed fraud*." The labor arbiter observed that as purchasing manager – a position of trust and confidence – Rivera had the duty to canvass and purchase PJI's needed materials in a manner most beneficial to the company. Rivera failed in this regard.

On appeal, the National Labor Relations Commission (*NLRC*) reversed the labor arbiter's decision, ruling that Rivera's dismissal was illegal.[15] It opined that: Alvarado's statements in her January 31, 2003 letter[16] cannot prejudice Rivera as the "*rights of a party cannot be prejudiced by an act, declaration, or omission of another,*" citing the Rules of Court in that regard;[17] Rivera had not been involved in any work-related controversy; neither did he commit any infraction of company rules and regulations, nor did he have any derogatory record at PJI. Rivera cannot be held liable for fraud because PJI did not present any record of investigation showing the admissions Rivera allegedly made during the investigation.

The NLRC awarded Rivera backwages and separation pay in lieu of reinstatement on the finding that strained relations had resulted from the parties' "*respective imputations of bad faith against each other*."

The NLRC denied PJI's motion for reconsideration on January 31, 2007.[18] PJI thus sought relief from the CA *via* a petition for *certiorari* under Rule 65 of the Rules of Court. PJI prayed as well for the issuance of a writ of preliminary injunction to stop

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[14] *Id.* at 144-151; Petition, Annex "G".

[15] *Id.* at 170-180; Petition, Annex "I".

[16] *Supra* note 12.

[17] Rule 130, Section 128.

[18] *Rollo*, pp. 183-184; Petition, Annex "J".

the enforcement of the NLRC decision. The CA issued the writ after PJI posted a bond equivalent to the ₱1,862,687.50 award.

The CA Decision

The CA denied the petition for lack of merit.[19] It fully affirmed the assailed NLRC rulings and lifted the writ of preliminary injunction it issued on July 24, 2007. The CA declared that "*after a thorough evaluation of the evidence submitted by the parties, from the facts borne by the records in this case, we are constrained to rule that the dismissal of Rivera based on loss of confidence is not clearly established and supported by substantial evidence*." PJI now seeks relief from the Court through a petition for review on *certiorari* pursuant to Rule 45 of the Rules of Court.[20]

The Petition

PJI submits that the CA seriously erred in failing to recognize that the commission of fraud by an employee is a ground under the law for termination of employment. It insists that Rivera was dismissed for cause; as manager of the Purchasing Department, tasked primarily with the canvassing and purchase of supplies for the company's operations, he handled the paper requirements of the Women's Journal project in a manner that breached his employer's trust and confidence in him.

Specifically, PJI faults Rivera for his failure to make a thorough canvass of the price of the project's paper requirement, as well as for dishonesty that resulted in a transaction disadvantageous to the company. PJI cites Rivera's limited canvass, covering only NAPPCO and LAMCO, where NAPPCO quoted the price of ₱6.50, while LAMCO's quotation was reflected in the canvass sheet only to show that an actual canvass had been made when in fact there was none. PJI insists that during the investigation, Rivera admitted that he inserted a fictitious quotation from LAMCO to provide the appearance of comparative pricing and that this was done after Alvarado had prepared the canvass sheet.

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[19] Decision dated February 24, 2009; *supra* note 2.

[20] *Supra* note 1.

While PJI admits that no written report of the investigation was made, it claims that Rivera never rebutted the findings made at the investigation. When he submitted his written explanation dated January 13, 2003,[21] he only referred to NAPPCO, not to LAMCO; he made no explanation on LAMCO's pricing, a clear indication that no canvass was made on LAMCO. Further, PJI contends that Rivera only relied on NAPPCO's pricing which, at ₱6.50, was higher than the prices of other suppliers of the same material. It points out that an actual canvass of the unit price of the coated paper material showed that there were other suppliers offering the same material at lower prices, yet Rivera failed to canvass these other suppliers, to the company's prejudice. PJI adds that Rivera did not only fail to conduct a proper canvass; he also failed to disclose to the company NAPPCO's quotation of ₱5.80 for a COD purchase.

PJI concludes that Rivera had been remiss in the performance of his duty in relation with the transaction, and had committed fraud and acts of dishonesty against the company, to its prejudice and loss amounting to ₱200,000.00; Rivera had as well breached the employer's trust and confidence. All these, the company proved by substantial evidence. It finally posits that for Rivera, a managerial employee, the mere existence of a basis to believe that he had breached the employer's trust is sufficient cause for dismissal.

The Case for Rivera

In his Comment[22] filed on May 29, 2009, Rivera prays that the petition be dismissed for lack of merit, for "*it is very apparent that the malicious charges*" brought against him "*had no leg to stand on and therefore had no basis but speculation and conjectures*." Rivera contends that PJI failed to prove how he committed the alleged fraud; instead, the company simulated and fabricated findings that he did not conduct a canvass before he made the purchase of the Women's Journal's paper requirements.

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[21] *Supra* note 7.

[22] *Rollo,* pp. 233-269.

To prove his innocence, Rivera cites the January 9, 2003 letter of NAPPCO's vice president, Chong,[23] and the memorandum dated January 3, 2003 of Alvarado, to show that a canvass may be done, not only in writing, but also by phone. Also, Rivera claims that Chong denied the "*reliable quotation*" of ₱3.40 mentioned in Ruiz-Bruno's memo to Rivera, which quotation was even contradicted by the Report of Canvass[24] submitted to PJI President Dela Cruz by Hernandez; Hernandez's report was accompanied by a summary of canvass that showed a unit price of ₱6.00 for 25" x 38" coated paper required by PJI's project from both NAPPCO and LAMCO. Rivera posits that the evidence proved that there was nothing irregular with the price of ₱6.50; the verbal quotation by NAPPCO was for ₱5.80 not ₱3.40 and the ₱6.50 was anchored on credit purchase conditions that took into account the cost of money, capacity to pay, the ability to deliver, the availability of the seasonal supplies, and the texture and grammage of the supplies required.

Additionally, Rivera submits that the transaction involved the supply of paper materials for a purpose different from the paper requirements of the company's day-to-day operations. The calendar insertion project was also certified as a "*rush*" job by PJI's advertising department.

Rivera disputes PJI's submission that he admitted the company's assertions during the open investigation conducted by the investigating panel. He contends that PJI bears the burden of proving its allegations; the company's assertions have no factual basis as it failed to present an investigation report. In particular, Rivera questions PJI's insinuation of his guilt when he did not mention the LAMCO pricing (also ₱6.50) and referred only to NAPPCO in his explanation letter dated January 13, 2003. He contends that these insinuations are inappropriate and misleading as he was required to explain only the purchase with NAPPCO; no mention of LAMCO was made at all in Ruiz-Bruno's memorandum. He denies that he inserted a fictitious figure for LAMCO in the canvass sheet as implied in the Alvarado

[23] *Supra* note 8.

[24] *Supra* note 6.

memorandum because Alvarado was not aware that he included LAMCO in the canvass; nowhere did Alvarado's memo say that the figures were fictitious, nor that he did not conduct a canvass. On the contrary, he maintains, the Alvarado memo confirmed the practice of conducting a canvass by phone and that suppliers at times do not give written quotations.

On PJI's contention that his failure to advise the company of his actions and the developments is indicative of fraud, Rivera argues that as purchasing manager, he is empowered to decide on behalf of the company purchase strategies and procedures without compromising the integrity of the company, and that he observed the standard procedures for rush transactions in the calendar insertion project. He maintains that the conduct of twenty or more canvasses would entail enormous time that could hinder the implementation of the project. He views the audit canvass the company presented in evidence as inconclusive and a mere recitation of quoted prices without any indication of the conditionalities involved. Rivera further submits that there is no truth to PJI's claim that he failed to advise the company that NAPPCO cut the available sheets that it had (25" x 38") to the required 23" x 27" measurement. He argues that he explained the matter to Dela Cruz in his letter dated January 31, 2003.[25]

Summing up, Rivera insists that PJI failed to prove that he had been dismissed for a just cause; even managerial employees like him enjoy security of tenure, among other rights. Procedurally, Rivera contends that PJI failed to submit any question of law to the Court; the core issue of whether the company was prejudiced by the purchase of coated paper material from NAPPCO is a factual matter appropriately ruled upon by the NLRC. When subsequently sustained by the CA, these factual findings can no longer be disturbed.

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[25] *Supra* note 9.

The Court's Ruling

We first resolve whether the petition was properly filed in light of the private respondent's position that it solely raises questions of fact that are improper for a Rule 45 petition.

While as a rule,[26] a petition for review on *certiorari* shall raise only questions of law, we deem it appropriate to examine the facts in this review, given the conflicting factual findings between the Labor Arbiter, on the one hand and, the NLRC and the CA, on the other.[27] The Labor Arbiter sustained Rivera's dismissal with the finding that he committed acts of dishonesty or fraud against his employer. The NLRC and the CA held that no substantial evidence existed to support Rivera's dismissal.

The CA declared in its assailed decision:

> Verily, private respondent Rivera's explanation, embodied in his letter dated January 13, 2003 addressed to Atty. Ruby Ruiz-Bruno and his letter dated January 31, 2003 addressed to PJI President Bobby dela Cruz, supported by the letter dated January 9, 2003 of NAPPCO Vice-President Kenneth Chong as well as the letter explanation dated January 31,2003 of PJI Assistant Manager Jean Alvarado, totally negated the presence of substantial evidence that would justify the dismissal of Rivera based on loss of trust and confidence. Ostensibly, as purchasing manager, Rivera opted to purchase the subject coated paper materials from NAPPCO simply because the calendar project was certified as "RUSH" by the advertising department of PJI and NAPPCO could deliver it on time apart from the unrefuted fact that PJI's term of payment is not COD but 30-90 days from delivery.

We see the case differently.

Contrary to the CA's pronouncement, we find substantial evidence in the records to justify Rivera's dismissal. As the company's purchasing manager, Rivera held a position of trust and confidence; his role in the procurement of the company's operational requirements is critical. PJI is a publication company

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[26] RULES OF COURT, Rule 45, Section 1.

[27] *Cadiz v. Court of Appeals*, G.R. No. 153784, October 25, 2005, 474 SCRA 232; *Fujitsu Computer Products Corporation of the Philippines v. Court of Appeals*, G.R. No. 158232, March 31, 2005, 454 SCRA 732.

and is engaged in a highly competitive enterprise; it is an active player in the print media industry. As in any other industry dependent on externally-sourced materials for its operations, its continued viability rests on the cost of production, a major part of which is the cost of the printing materials on which news is written; the street selling prices of its newspapers depend on these costs, and competitors can have a decided price advantage if the cost of PJI's printing materials is above those of the competition.

A costing issue triggered PJI's action to terminate Rivera's employment; it found the cost of the paper materials required in one of its special projects questionable because it was higher than the price of a "*reliable quotation*." The purchase covered 68,000 sheets of coated paper, size 23" x 27" at ₱6.50/sheet or a total price of ₱445,250.00. The "reliable quotation" from NAPPCO, the supplier, purportedly was at ₱3.40/sheet. It was Rivera who arranged the purchase, and PJI charged him of fraud for this questionable transaction.[28] Rivera denied the charge.[29] To explain his denial, he attached the letter of NAPPCO's vice president, Chong,[30] denying that NAPPCO made a quotation at ₱3.40. Rivera also explained that NAPPCO made a verbal quotation of ₱5.80/sheet COD and ₱6.50 at 30-90 days credit.

Had the matter involved only the ₱6.50 pricing compared to the alleged "*reliable quotation*" of ₱3.40, there is no question that Rivera could not be found liable as NAPPCO denied having been made any quotation at ₱3.40. As the investigation of the transaction unraveled, however, the company uncovered reasons to seriously doubt Rivera's integrity and his reliability as a purchasing manager.

In the course of the investigation, PJI looked into the files of the purchasing department and obtained a copy of canvass sheet form no. 20800 dated November 27, 2002[31] which Alvarado

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[28] *Supra* note 5.

[29] *Supra* note 7.

[30] *Supra* note 8.

[31] *Supra* note 12.

signed as the canvasser of prices from NAPPCO and LAMCO which both showed the uniform quoted price of ₱6.50. On January 31, 2003, LAMCO faxed a quotation showing a price of only ₱4.68 per piece of 25" x 27" material, and only ₱4.26/ piece of 23" x 27" material (no rolls), for the same kind of paper; neither price is near the ₱6.50 she wrote in the canvass sheet according to Ruiz-Bruno's memo dated the same day.[32] Ruiz-Bruno thus asked Alvarado to explain the disparity in pricing.

On the same day, Alvarado submitted her explanation[33] stating that she had just come from her maternity leave; she admitted having written the canvass sheet as instructed by Rivera, but she did not bother to check the official quotation from NAPPCO since Rivera informed her that he had talked with Letty Torrevillas (*Torrevillas*) of NAPPCO and she also knew Torrevillas from previous dealings with her. Alvarado claimed that figures in the canvass sheet were written by Rivera himself and that she was not aware that Rivera included LAMCO in the canvass sheet. She also stated that the price difference with NAPPCO was attributable to PJI's past failure to comply with its credit line of COD-7 days. She explained that LAMCO's quotation addressed to the audit department did not specify the payment terms, but she was sure the prices were COD/CASH.

Earlier, on January 10, 2003, audit supervisor Hernandez submitted a report[34] to PJI President Dela Cruz regarding the audit department's own canvass of coated paper materials from two sources: (1) NAPPCO and LAMCO, the company's two suppliers,[35] and (2) from other suppliers. Hernandez reported that the lowest price that his department received was ₱3.91 from Security Commercial although it did not give a quotation, with the lowest quoted price of ₱4.12 from Purity Enterprises Co. A telephone canvass with NAPPCO's employee, Torrevillas disclosed that the standard size available from NAPPCO was

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[32] *Supra* note 10.

[33] *Supra* note 11.

[34] *Supra* note 6.

[35] Based on canvass sheet no. 20800.

25" x 38", but NAPPCO could provide a special cut and at 3% discount; the resulting price for the size 23" x 27" material was ₱3.80/sheet.

The circumstances surrounding the purchase of the coated paper material for the company's calendar insertion project, examined in their totality, convince us that PJI had sufficient reason to terminate Rivera's employment for loss of trust and confidence. Our reading of the attendant facts shows that he arranged a purchase transaction markedly disadvantageous to the company mainly due to: (1) his failure to conduct an honest-to-goodness canvass of prices for the required paper material and (2) his dishonesty, or at least his misrepresentations, in making it appear that he canvassed two suppliers when he really dealt only with one of them.

Rivera's Failure to Conduct a Canvass

The canvass of prices of production supplies is routine work for any purchasing department. It was Rivera's duty as purchasing manager, and that of his department, to look for prices that would be most advantageous to the company. Rivera failed to perform this duty. He allowed the purchase of materials at a price considerably higher than the quotations of other suppliers in the market. For his own reasons, he settled on one supplier on the pretext that the purchase was certified as a "*rush job*" by the company's advertising department, and that the material was a special kind of paper readily available from NAPPCO, the supplier of his choice.

Granting that the purchase was a "rush" request, a meaningful canvass could still have been made, had Rivera and his department exerted genuine efforts to undertake one, for even a phone canvass would do, as noted not only by Rivera, but also by Alvarado, Hernandez and Ruiz-Bruno. In fact, PJI's audit department conducted a canvass and, in no time, came out with a pricing considerably lower than ₱6.50 even at credit terms. He did not have to canvass twenty (20) or so suppliers as Rivera put it, to make a real canvass. A representative sampling of the market certainly would have served the purpose.

If only for his failure to conduct a real canvass, PJI cannot be blamed for losing its trust and confidence in Rivera.

Rivera's Misrepresentations

Rivera did not only fail to canvass the market for the company's paper requirement. Worse than this, he made it appear that he conducted a canvass, undoubtedly to reflect on paper that a canvass had been made, to enable him to comply with a basic purchase requirement and tie the company, for his own reasons, to a higher purchase cost from his favored supplier.

We find it significant that Rivera did not deny Alvarado's statement that she prepared the canvass sheet pursuant to Rivera's instructions, and that she did not bother to check the quotations from NAPPCO because Rivera told her he already talked with NAPPCO's employee, Torrevillas. Alvarado was not aware that Rivera included LAMCO in the canvass sheet and that the numbers for LAMCO (₱6.50 and ₱445,000.00) were written by Rivera himself. To rebut Alvarado's statement, Rivera later claimed that she did not see him insert the LAMCO entries; even if the insertion was true, it did not prove that the entries referring to LAMCO were fictitious or that he did not canvass LAMCO.[36]

We consider Rivera's rebuttal to be lame excuses. While he communicated NAPPCO's quotation to Alvarado so that the latter made no further inquiries, yet, for reasons known only to Rivera, he failed to tell Alvarado about LAMCO's quotation, if indeed there had been one. With the canvass limited to NAPPCO and LAMCO, and with just the two of them involved in the preparation of the canvass sheet, we find it indeed strange that Rivera did not tell Alvarado about LAMCO's pricing.

Separately from Rivera's credibility gap on the matter of LAMCO's insertion in the canvass and Alvarado's statement, we consider it significant that LAMCO subsequently faxed PJI a quotation (on January 31, 2003)[37] different from what

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[36] *Rollo*, p. 262; Rivera's Comment.

[37] *Supra* note 10.

Rivera stated in his canvass report. Apparently, LAMCO itself did not know that a quotation for ₱6.50 under its name had been earlier submitted. This is another circumstance that counts against Rivera's story, separately still from Ruiz-Bruno's assertion that Rivera admitted during the investigation that the LAMCO canvass was fictitious.[38]

Other Acts Indicative of Dishonesty

Still another occasion that smacks of dishonesty (or at least the failure to communicate critical information to the employer) relates to the letter dated January 9, 2003[39] of Chong that Rivera himself attached to his letter- explanation of January 13, 2007.[40] The NAPPCO official mentioned in his letter that the COD price of ₱5.80 was verbally made to PJI. This verbal quotation could have only been made to Rivera as he was the only one who obtained the NAPPCO quotation (through Torrevillas). Strangely, this ₱5.80 quotation never reached PJI until it was mentioned by Chong long after the purchase order (PO) for ₱6.50 was made on November 27, 2002.[41] Stranger still, the PO itself and the canvass sheet indicated a purchase on COD terms, although the unit price was ₱6.50 in both documents. While a typographical error might have occurred, the lapse can hardly be excused since COD and credit terms are very different, and at the same time very material and critical in the business world. At the very least, Rivera had been very sloppy in missing this lapse. But whatever the cause of the discrepancy might have been, the reality is that PJI missed the price of ₱5.80 COD (already a high price compared with the prices canvassed by the company's auditing department) and settled for ₱6.50, still at COD. Thus, PJI was clearly placed at a disadvantage.

Again, separately from all the above, is the matter of the waste paper material that, as Rivera himself explained,[42] resulted

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38 *Supra* note 13.

39 *Supra* note 8.

40 *Supra* note 7.

41 *Rollo*, p. 105.

42 *Supra* note 9.

from trimming the available 25" x 38" material into the project's 23" x 27" required size. The trimming resulted in waste paper of 2" x 11" that can be retrieved from NAPPCO and resold or used for some other purposes. For PJI, this information again came too late as Rivera gave it to PJI's President Dela Cruz only on January 31, 2003, or long after the purchased materials had been ordered and delivered. Significantly, the records do not show that this feature of the transaction was ever disclosed to the company before the purchase; neither was it in the canvass sheet or in the PO, nor was it ever mentioned to any company official. Had the purchase not been investigated, PJI top management could not have learned about the waste material. To be sure, this was a loss to the company and a gain for whoever knew of this feature of the transaction and took advantage of it.

Our Conclusion

As we look at the total picture, we are convinced that a pattern of concealment and dishonesty marred the purchase of paper materials for the Women's Journal's special project, with Rivera playing the principal and most active role. There is no question in our mind that he failed to make a reasonable canvass of the prices of the paper materials required by a company's special project, resulting in substantial losses to the company. As we previously stated, that a rush job was involved, is no excuse as a canvass could be done even in a day's time as shown by the audit department's canvass. That Rivera was responsible for concealment and omissions also appears clear to us; he failed to seasonably disclose to PJI, under dubious circumstances, material information with financial impact on the purchase transaction.

Thus, we cannot but conclude that substantial evidence exists justifying Rivera's dismissal for a just cause – loss of trust and confidence. For loss of trust and confidence to be a ground for dismissal, the law requires only that there be at least some basis to justify the dismissal.[43]

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[43] *Ramatek Philippines, Inc. v. De Los Reyes*, G.R. No. 139526, October 25, 2005, 474 SCRA 129.

Enough basis exists, as detailed above, to support the PJI's position that Rivera was responsible for acts and omissions that made him unworthy of the trust and confidence PJI reposed on him. To place this conclusion in Rivera's own terms, contrary to what he claimed, his dismissal was not on the basis of "*mere speculation and conjecture*," but on the basis of relevant evidence that a reasonable mind might accept to support a conclusion. In legal terms, this is the quantum of proof required in administrative proceedings.[44] The fact that he had been with the company for 25 years cannot erase the conclusion that he had become a liability to the company whose interests he miserably failed to protect.

WHEREFORE, premises considered, we *GRANT* the petition, and accordingly *SET ASIDE* the assailed decision of the Court of Appeals in CA-G.R. SP No. 98666 and *DISMISS* the complaint for illegal dismissal.

SO ORDERED.

Carpio (Chairperson), Del Castillo, Abad, and *Perez, JJ.,* concur.

THIRD DIVISION

[G.R. No. 188353. February 16, 2010]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **LEOZAR DELA CRUZ *y* BALOBAL,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; MURDER; ELEMENTS. — [F]or the charge of murder to prosper, the prosecution must prove that: (1) the

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[44] *Gil A. Valera, et al. v. Office of the Ombudsman, et al.*, G.R. No. 167278, February 27, 2008, 547 SCRA 42.

offender killed the victim, (2) **through treachery**, or by any of the other five qualifying circumstances, duly alleged in the Information. Generally, the elements of murder are: "1. That a person was killed. 2. That the accused killed him. 3. That the killing was attended by *any* of the qualifying circumstances mentioned in Art. 248. 4. The killing is not parricide or infanticide."

2. ID.; QUALIFYING CIRCUMSTANCES; TREACHERY; ELEMENTS. — There is treachery when the offender commits any of the crimes against persons, employing means, methods, or forms in the execution, which tend directly and specially to insure its execution, without risk to the offender arising from the defense which the offended party might make. The essence of treachery is that the attack comes without a warning and in a swift, deliberate, and unexpected manner, affording the hapless, unarmed, and unsuspecting victim no chance to resist or escape. For treachery to be considered, two elements must concur: (1) the employment of means of execution that gives the persons attacked no opportunity to defend themselves or retaliate; and (2) the means of execution were deliberately or consciously adopted.

3. CIVIL LAW; DAMAGES; CIVIL INDEMNITY *EX DELICTO*, MORAL DAMAGES AND EXEMPLARY DAMAGES; GRANTED IN CASE AT BAR. — Civil indemnity *ex delicto* is mandatory and is granted to the heirs of the victim without need of any evidence or proof of damages other than the commission of the crime. Based on current jurisprudence, the award of civil indemnity *ex delicto* of PhP 50,000 in favor of the heirs of Vincent Pimentel is in order. The CA also correctly awarded moral damages in the amount of PhP 50,000 in view of the violent death of the victim and the resultant grief to his family. Moreover, if a crime is committed with an aggravating circumstance, either qualifying or generic, an award of PhP 30,000 as exemplary damages is justified under Art. 2230 of the Civil Code. Besides, the entitlement to moral damages having been established, the award of exemplary damages is proper.

APPEARANCES OF COUNSEL

The Solicitor General for plaintiff-appellee.
Public Attorney's Office for accused-appellant.

D E C I S I O N

VELASCO, JR., *J.*:

The Case

Leozar Dela Cruz appeals to us the Decision[1] dated February 27, 2008 of the Court of Appeals (CA) in CA-G.R. CR No. 02562, which affirmed with modification the September 5, 2006 Decision[2] in Criminal Case No. 03-2871 of the Regional Trial Court (RTC), Branch 62 in Makati City. The RTC convicted him of the crime of murder qualified by treachery.

The Facts

In an Information[3] filed on August 11, 2003, accused-appellant Leozar Dela Cruz *y* Balobal was indicted for the crime of murder under Article 248 of the Revised Penal Code (RPC), allegedly committed as follows:

> That on or about the 30th day of April, 2003, in the City of Makati, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, armed with a samurai, with intent to kill and with treachery and evident premeditation, and with superior strength did then and there, willfully, unlawfully and feloniously hack with a samurai one VINCENT PIMENTEL *Y* APOON cutting the latter's neck thereby inflicting mortal wounds which directly caused his untimely death.

Upon arraignment, Elmer pleaded not guilty to the above charge.

Gleaned from the testimonies of eye-witness Sheryll C. Blanco; Carolina Agullana, the common-law wife of the victim; Police Officer 2 Ricardo Valenton Tan, who investigated the crime; and Police Inspector (P/Insp.) Dr. Benjamin Venancio

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[1] *Rollo*, pp. 2-19. Penned by Associate Justice Portia Aliño-Hormachuelos and concurred in by Associate Justices Lucas P. Bersamin (now a member of this Court) and Estela M. Perlas-Bernabe.

[2] CA *rollo*, pp. 19-30. Penned by Judge Selma Palacio Alaras.

[3] *Id.* at 9.

J. Lara, the facts as found by the trial court and established by the prosecution are as follows:

In the evening of April 30, 2003, at about quarter past 7 o'clock, Leozar, a part-time tricycle driver, was standing about two meters from Sheryll who was with her friends Arman Taculod and Mark Anthony Medida with his wife Charissema Daton. Sheryll and her friends were passing time and seated at Mockingbird St. near Blueberry and Milkweed Sts. in *Barangay* Rizal, Makati City.They saw three girls arrive who handed Leozar a letter. Leozar then left and after about five to 10 minutes, Leozar emerged from an alley with a two-foot samurai in his hands. Leozar was very angry, cursing, and hacking plants with the samurai. Upon seeing what Leozar was doing, Mark Anthony and Charissema went inside their house while Sheryll and Arman moved to a store some six to seven meters away from Leozar.

Meanwhile, arriving from Blueberry St. where he left his common-law wife Carolina inside a tricycle, Vincent Pimentel turned left to Mockingbird St. Leozar then greeted Vincent and announced that the latter owes him money, at which Vincent gave Leozar PhP 50 then proceeded to the alley. When Vincent went out of the alley and returned to Mockingbird St., Leozar suddenly placed his arm around Vincent and slit Vincent's neck with the samurai. Leozar then ran away while Vincent staggered towards Blueberry St. and fell.[4] Carolina, who was inside a tricycle, saw Vincent holding his neck and fall down bleeding. Carolina and Arman rushed Vincent to the hospital but the latter died before reaching it.[5] The cause of Vincent's death was "hemorrhagic shock secondary to an incised wound of the neck."[6]

Subsequently, on February 10, 2005 or almost two years after the killing, when Sheryll went to the Makati City Jail to

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[4] TSN, August 3, 2005, pp. 7-93 and October 3, 2005, pp. 3-19, testimony of Sheryll C. Blanco.

[5] TSN, April 11, 2005, pp. 3-22, testimony of Carolina Agullana.

[6] Records, p. 110, Death Certificate of Vincent Pimentel.

visit her live-in partner, she saw Leozar—detained for the killing of Vincent—who told her not to testify against him.[7]

On the other hand, Leozar denied the charges against him and proffered the defense of alibi. His defense was that he could not have been at the scene of the killing for he was drinking with his friend Mark Magat at the latter's house located on Bougainvilla St., *Barangay* Pembo, Makati City, from 3:00 p.m. to 11:00 p.m. and passed the night at the latter's place as he got drunk. This alibi was corroborated by the testimonies of Mark[8] and Mark's father and grandmother, Pedro Magat[9] and Emolina Buccat.[10]

The defense likewise presented Leozar's co-detainees at the Makati City Jail, Mark Anthony and Christopher Labradores. Mark Anthony testified on seeing Mark with Vincent just prior to the killing and seeing Mark toting a samurai immediately after the killing.[11] Christopher testified that he was cooking at his house in Block 131, Lot 10, Mockingbird St., *Barangay* Rizal, Makati City at the time of the incident when he saw Arman carrying a samurai in his hands, and heard a commotion thereafter caused by the death of Vincent who was slashed in the throat.[12]

It must be noted that Arman Taculod died before he could testify for the prosecution. It is quite apparent that the defense tried to pin Arman as the assailant of Vincent, perhaps on account of his death. This is quite unbelievable for it was Arman who accompanied Carolina in bringing Vincent to the hospital. Upon the investigation of the police, Arman likewise executed a sworn statement[13] identifying Leozar as the assailant of Vincent but was not able to testify in court on account of his death.

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[7] TSN, August 3, 2005, pp. 63-66, testimony of Sheryll C. Blanco.

[8] TSN, May 15, 2003, pp. 5-23, testimony of Mark Magat.

[9] TSN, April 3, 2006, pp. 4-39, testimony of Pedro Magat.

[10] TSN, May 8, 2008, pp. 20-35, testimony of Emolina Buccat.

[11] TSN, April 17, 2006, pp. 3-61, testimony of Mark Anthony Medida.

[12] TSN, May 8, 2005, pp. 4-18, testimony of Christopher Labradores.

[13] Records, pp. 9-11.

Mark Anthony, however, could not, when shown his *Sinumpaang Salaysay*,[14] explain why he identified Leozar as the assailant of Vincent. (It must be noted that he was an eyewitness to the crime being with Mark Magat, Sheryll, and his wife Charissema when the incident happened.) He merely denied executing it and averred that all he could recall was that the police coerced him to sign a blank piece of paper with the promise that they will give him money so he can go home to Cebu.

The Ruling of the RTC

On September 5, 2006, the RTC rendered its Decision, finding Leozar guilty beyond reasonable doubt of murder attended by treachery and sentencing him to *reclusion perpetua*. The dispositive portion reads:

> WHEREFORE, in view thereof, the Court, in finding the accused guilty of the crime of Murder qualified by the aggravating circumstance of treachery without an (sic) mitigating circumstance being proven, the Court sentences Leozar dela Cruz *y* Balobal to suffer the penalty of *reclusion perpetua* and orders him to pay moral damages of ₱100,000 in addition to the civil indemnity of ₱50,000.00.
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> SO ORDERED.[15]

The trial court found the testimony of eye-witness Sheryll of how the killing transpired to be factual, straightforward, and convincing. She was unwavering and certain in her identification of Leozar as the assailant of Vincent. The testimony of Vincent's common-law wife Carolina on what happened after the slashing of Vincent's throat corroborated the testimony of Sheryll. Moreover, the trial court appreciated the testimony of P/Insp. Lara on the explanation of the conclusions regarding the nature and variety of neck wounds and how they can cause death in a victim, as in this case.

Maintaining, however, that the crime committed was only homicide, Leozar appealed the above decision to the appellate court.

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[14] *Id.* at 12-13, Exhibit "P".

[15] CA *rollo*, p. 30.

The Ruling of the CA

On February 27, 2008, the CA rendered the appealed decision, affirming the findings of the RTC and the conviction of Leozar but modifying the award of damages. The *fallo* reads:

> WHEREFORE, premises considered, the appealed Decision is hereby **AFFIRMED** with **MODIFICATION** in that the award of moral damages is reduced to PHP50,000.00 and PHP 25,000.00 is additionally awarded as exemplary damages. In all other respects the appealed Decision is **AFFIRMED**. With double costs against the appellant.
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> SO ORDERED.[16]

At the outset, the appellate court aptly noted that Leozar, in his appeal, no longer disputes the fact that he committed the killing of Vincent. The sole question remaining is whether the killing of Vincent was attended with treachery so as to qualify the crime to murder.

In rejecting Leozar's contention that there was no treachery and in affirming the factual findings of the RTC, the appellate court held that the prosecution sufficiently established all the elements of treachery as enumerated in *People v. Aguila*[17] and *People v. Recepcion*.[18] Moreover, citing *People v. Agudez*,[19] it ratiocinated that the use of the samurai with a 24-inch blade which inflicted the fatal wound and the location of the wound at the neck of Vincent demonstrated the deliberate and treacherous nature of the assault.

The CA's modified decision granted exemplary damages of PhP 25,000 following *People v. Galigao*,[20] and reduced moral damages to PhP 50,000 in conformity with *People v. Samson*.[21] Thus, the instant appeal is before us.

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[16] *Rollo*, p. 18.

[17] G.R. No. 171017, December 6, 2006, 510 SCRA 642, 659.

[18] G.R. Nos. 141943-45, November 13, 2002, 391 SCRA 558, 590.

[19] G.R. Nos. 138386-87, May 20, 2004, 428 SCRA 692.

[20] G.R. Nos. 140961-63, January 14, 2003, 395 SCRA 195, 209.

[21] G.R. No. 124666, February 15, 2002, 377 SCRA 25.

The Issues

Both accused-appellant Leozar and the Office of the Solicitor General (OSG), representing the People of the Philippines, opted not to file any supplemental brief, since neither are there new issues raised nor are there supervening events transpired. They correspondingly filed their respective Manifestation and Motion[22] and Manifestation,[23] to the effect that the Brief for the Accused-Appellant[24] and Brief for the Appellee[25] filed before the CA are adopted in this appeal.

Leozar raises the same assignment of errors as in his Brief, to wit: *first*, that the courts *a quo* erred in appreciating the qualifying aggravating circumstance of treachery; and *second*, that the courts *a quo* gravely erred in convicting him of murder instead of homicide.

The Court's Ruling

The appeal is without merit.

Murder is defined and penalized under Art. 248 of the RPC, as amended, which provides:

ART. 248. *Murder*.—Any person who, not falling within the provisions of Article 246, shall kill another, shall be guilty of murder and shall be punished by *reclusion perpetua*, to death if committed with any of the following attendant circumstances:

1. With **treachery**, taking advantage of superior strength, with the aid of armed men, or employing means to weaken the defense, or of means or persons to insure or afford impunity;

2. In consideration of a price, reward, or promise;

3. By means of inundation, fire, poison, explosion, shipwreck, stranding of a vessel, derailment or assault upon a railroad, fall of an airship, by means of motor vehicles, or with the use of any other means involving great waste and ruin;

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[22] *Rollo*, pp. 34-36, dated October 5, 2009.

[23] *Id.* at 37-38, dated October 8, 2009.

[24] CA *rollo*, pp. 39-56.

[25] *Id.* at 75-96.

4. On occasion of any calamities enumerated in the preceding paragraph, or of an earthquake, eruption of a volcano, destructive cyclone, epidemic, or any other public calamity;

5. With evident premeditation;

6. With cruelty, by deliberately and inhumanly augmenting the suffering of the victim, or outraging or scoffing at his person or corpse. (Emphasis supplied.)

Thus, for the charge of murder to prosper, the prosecution must prove that: (1) the **offender killed the victim**, (2) **through treachery**, or by any of the other five qualifying circumstances, duly alleged in the Information. Generally, the elements of murder are:

1. That a person was killed.

2. That the accused killed him.

3. That the killing was attended by *any* of the qualifying circumstances mentioned in Art. 248.

4. The killing is not parricide or infanticide.[26]

Here, the fact of the death of Vincent Pimentel is undisputed, that it is neither parricide nor infanticide, and that Leozar killed him. This was established by the trial and appellate courts. In fact, in his appeal before the CA and the one at bench, Leozar solely questions the appreciation of the qualifying aggravating circumstance of treachery, which, if not appreciated, would make the offense he committed merely homicide instead of murder.

What is, thus, before us is the same core issue resolved by the CA on whether the killing of Vincent Pimentel was attended by treachery. In qualifying the crime to murder, the trial court correctly appreciated, as affirmed by the CA, the qualifying aggravating circumstance of treachery.

There is treachery when the offender commits any of the crimes against persons, employing means, methods, or forms

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[26] 2 L.B. Reyes, *THE REVISED PENAL CODE CRIMINAL LAW* 469 (16th ed., 2006).

in the execution, which tend directly and specially to insure its execution, without risk to the offender arising from the defense which the offended party might make.[27] The essence of treachery is that the attack comes without a warning and in a swift, deliberate, and unexpected manner, affording the hapless, unarmed, and unsuspecting victim no chance to resist or escape.[28] For treachery to be considered, two elements must concur: (1) the employment of means of execution that gives the persons attacked no opportunity to defend themselves or retaliate; and (2) the means of execution were deliberately or consciously adopted.[29]

Thus, the issue of the presence of treachery hinges on the account of eyewitness Sheryll. She was not only certain and unwavering in her positive identification of accused-appellant Leozar as the assailant of Vincent Pimentel, but her testimony, aptly noted by the courts *a quo*, was factual, straightforward, and convincing on how the murder transpired. To quote directly from her testimony:

> Fiscal Odronia: Was accused Leozar Dela Cruz already holding a samurai when he walked to the alley?
>
> Sheryll: None yet, sir.
>
> Q: So, you're telling this Honorable court that it was only after he came out from the alley that you saw him holding a samurai?
>
> A: Yes, sir.
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> x x x x x x x x x
>
> Q: And the place where you were, could you still see Leozar Dela Cruz?

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[27] *People v. Amazan*, G.R. Nos. 136251 & 138606-07, January 16, 2001, 349 SCRA 218, 233; *People v. Bato*, G.R. No. 127843, December 15, 2000, 348 SCRA 253, 261.

[28] *People v. Albarido*, G.R. No. 102367, October 25, 2001, 368 SCRA 194, 208; citing *People v. Francisco*, G.R. No. 130490, June 19, 2000, 333 SCRA 725, 746.

[29] *People v. Amazan*, *supra* note 27.

A: Yes, sir.

x x x x x x x x x

Q: Do you know how much Vic Pimentel paid Leozar Dela Cruz?

A: Fifty Pesos (Php50.00), sir.

Q: How did you get to know that Vic Pimentel paid the amount of Php50.00 to Leozar Dela Cruz?

A: We heard it, sir.

Q: Was Leozar Dela Cruz still holding the samurai which you earlier claimed he was holding when Vic Pimentel paid him Php50.00?

A: Yes, sir.

Q: When Vic Pimentel paid Php50.00 Leozar Dela Cruz, did they converse afterwards?

A: No more, sir, then he proceeded to Mocking Bird [sic] Street.

Q: Immediately after Vic Pimentel paid Leozar Dela Cruz, what did Vic Pimentel do?

A: He walked towards at [sic] Milkweed Street.

Q: So, are you telling this Honorable Court that he went away from where Leozar Dela Cruz was at that time?

A: Yes, sir, because he went somewhere.

Q: So, when Vic Pimentel walked away from Leozar Dela Cruz, what else happened, if any?

A: **When he emerged from the alley (*eskinita*) Leozar put his arms around him and then he slit (*ginilitan*) his neck**.

Q: **What did Leozar Dela Cruz use in slashing the neck of Vincent Pimentel**?

A: **Samurai, sir**.

Q: Earlier you mentioned that Vic Pimentel entered an alley, is that correct?

A: Yes, sir.

Q: And **when he emerged from the alley Leozar Dela Cruz in the vernacular "*inakbayan siya*" and afterwards slashed his neck, is that correct**?

A: **Yes, sir**.

x x x x x x x x x

Q: Are you telling this Honorable Court that the place where Leozar Dela Cruz slashed the neck of Vincent Pimentel is precisely the same place where Vincent Pimentel paid Leozar Dela Cruz Php50.00?

A: Yes, sir.

Q: With that answer would you mind then to reconcile your earlier answer that after Vincent Pimentel paid Leozar Dela Cruz fifty pesos he walked away?

A: He left, sir, then when he emerged from the alley while he was walking Leozar approached him and then it also happened there almost at exactly at the same place where he paid.

x x x x x x x x x

Q: **When Vincent Pimentel paid Leozar Dela Cruz the amount of fifty pesos, did they quarrel**?

A: **No, sir**.

Q: **Immediately before Leozar Dela Cruz in the vernacular "*inakbayan si* Vincent Pimentel" did they quarrel**?

A: **No, sir**.

Q: So, after Leozar Dela Cruz slashed the neck of Vincent Pimentel, what else happened, if any?

A: After that, he ran and Vic was still walking towards Blueberry Street and afterwards he just fell.

Q: How about the samurai which you claimed Leozar Dela Cruz using slashing the neck of Vincent Pimentel, did Leozar Dela Cruz taking with him when he [ran] away?

A: Yes, sir.

Q: How far were you in relation to the place where Leozar Dela Cruz in the vernacular "*inakbayan si* Vincent Pimentel" and slashed his neck?

A: From my place to where you are seated.

FISCAL ODRONIA: May we ask if the defense is willing to stipulate that the **distance is around two (2) to three (3) meters**, Your Honor.

ATTY. PAGGAO: **We stipulate, Your Honor**.

COURT: Noted.

Fiscal Odronia: By the way, you mentioned about samurai could you mind to describe to the Honorable Court **how long that samurai is**?

A: **Around twenty four (24) inches**.

COURT: What else did you notice?

A: No more, Your Honor.

x x x x x x x x x

Fiscal Odronia: Earlier you mentioned and you actually identified the person by the name of Leozar Dela Cruz, is that correct?

A: Yes, sir.

Q: My question is, how is this Leozar Dela Cruz related to the Leozar Dela Cruz, which you claimed you saw in the vernacular "*inakbayan si* Vincent Pimentel" and slashed Vincent Pimentel's neck?

A: Yes, sir.

Q: **And is this Leozar Dela Cruz present in the courtroom today**?

A: **Yes, sir**.

Q: And can you identify if he is indeed present in this courtroom?

A: Yes, sir.

Q: **Please point to him if he is indeed present**?

A: **Yes, sir**.

INTERPRETER: **Witness tapped the shoulder of the accused and when asked his name he identified himself as Leozar Dela Cruz**.[30] (Emphasis supplied.)

From the foregoing transcript, it is clear that the attack was sudden, affording the victim absolutely no opportunity to defend

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[30] TSN, August 3, 2005, pp. 13-37.

himself, much less to retaliate.The above testimony was not at all rebutted by the defense. And more revealing is the fact that the appeal of Leozar merely focuses on the appreciation of the qualifying aggravating circumstance of treachery, which for all intents and purposes amounts to owning up to the killing of Vincent Pimentel.

The fact that Leozar and Vincent did not quarrel prior to the killing is indicative of the treachery employed by Leozar. After Vincent paid Leozar some money, he left and went inside the alley. When Vincent came back to Mockingbird St. from the alley, Leozar deliberately employed means with treachery affording Vincent no opportunity to defend himself, *i.e.*, Leozar draped his arm around Vincent and slash/slit his neck using a 24-inch bladed samurai. The fatal neck wound caused Vincent's death, described in his death certificate as "hemorrhagic shock secondary to an incised wound of the neck." All told, the victim was unaware of the imminent attempt on his life, and was not in a position to defend himself. Clearly, treachery was present in this killing.

Finally, as regards the damages awarded by the CA, we find them in order. Civil indemnity *ex delicto* is mandatory and is granted to the heirs of the victim without need of any evidence or proof of damages other than the commission of the crime.[31] Based on current jurisprudence, the award of civil indemnity *ex delicto* of PhP 50,000 in favor of the heirs of Vincent Pimentel is in order.[32] The CA also correctly awarded moral damages in the amount of PhP 50,000 in view of the violent death of the victim and the resultant grief to his family.[33]

Moreover, if a crime is committed with an aggravating circumstance, either qualifying or generic, an award of

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[31] *People v. Ausa*, G.R. No. 174194, March 20, 2007, 518 SCRA 602, 617.

[32] *Id.*; *España v. People*, G.R. No. 163351, June 21, 2005, 460 SCRA 547, 555-556.

[33] *People v. Tubongbanua*, G.R. No. 171271, August 31, 2006, 500 SCRA 727, 743.

PhP 30,000 as exemplary damages is justified under Art. 2230 of the Civil Code. Besides, the entitlement to moral damages having been established, the award of exemplary damages is proper.[34]

WHEREFORE, premises considered, we *AFFIRM* with *MODIFICATION* the CA's February 27, 2008 Decision in CA-G.R. CR No. 02562, in that the award of exemplary damages is increased to *PhP 30,000.*

No pronouncement as to costs.

SO ORDERED.

Corona (Chairperson), Nachura, Peralta, and *Mendoza, JJ.,* concur.

THIRD DIVISION

[G.R. No. 188669. February 16, 2010]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **ILDEFONSO MENDOZA *y* BERIZO,** *appellant.*

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; APPEALS; GUIDING PRINCIPLES IN REVIEWING RAPE CASES. — In the review of rape cases, we are guided by the following principles: (1) an accusation for rape can be made with facility; it is difficult to prove but more difficult for the person accused, though innocent, to disprove; (2) in view of the nature of the crime of rape where only two persons are usually involved, the testimony of the complainant is scrutinized with extreme caution; and (3) the evidence for the prosecution stands or falls on its own merits and cannot be allowed to draw strength

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[34] *Frias v. San Diego-Sison,* G.R. No. 155223, April 3, 2007, 520 SCRA 244, 258.

from the weakness of the defense. Ultimately, in a prosecution for rape, the complainant's credibility becomes the single most important issue.

2. ID.; EVIDENCE; CREDIBILITY OF WITNESSES; TESTIMONIES OF THE RAPE VICTIM AND THE PROSECUTION WITNESSES, FOUND CREDIBLE BY THE TRIAL COURT IN CASE AT BAR. — We are in full accord with the lower courts' separate rulings on the credibility of CMS. On this issue, the RTC declared: "The Court gives weight to the testimony of the private complainant, a minor, who has never been exposed to the ways of the world and who has not even experienced menstruation. Her cry that she was raped deserves full credence and should not be discarded. The attention of the court has not been called to any dubious reason or improper motive on the part of private complainant and her family that would have impelled them to charge and testify against him. Her testimony which is characterized by clarity, spontaneity and coherence passes the test of judicial scrutiny. The conduct of Anna Loth and private complainant's mother in reporting the incident to the private complainant's grandmother after they discovered its commission is of utmost importance in establishing the truth of the charge. The promptness and spontaneity of the act shown by Anna Loth in looking for the elder brother of the private complainant manifest the natural reaction of persons who have seen a wrong done to fight for justice. Based on their testimonies, the court finds them credible and they are in no way cold-blooded liars."

3. CIVIL LAW; DAMAGES; CIVIL INDEMNITY, MORAL DAMAGES AND EXEMPLARY DAMAGES; AWARDED IN CASE AT BAR. — [A]s regards the civil liability of appellant, we increase the appellate court's award of civil indemnity to ₱75,000.00. We, likewise, increase the grant of moral damages to ₱75,000.00, without need of proof, and the award of exemplary damages to ₱30,000.00.

APPEARANCES OF COUNSEL

The Solicitor General for appellee.
Public Attorney's Office for appellant.

R E S O L U T I O N

NACHURA, *J.*:

For review is the Decision[1] of the Court of Appeals (CA) in CA-G.R. CR-HC No. 03066, which affirmed the decision[2] of the Regional Trial Court (RTC), Branch 207, Muntinlupa City, finding appellant Ildefonso Mendoza guilty of Statutory Rape under Article 266-A of the Revised Penal Code.

The accused was charged in an Information which reads:

> The undersigned Assistant City Prosecutor accuses ILDEFONSO MENDOZA *Y* BERISO @ "JUN JUN" of the crime of Statutory Rape, under Art. 266-A, Par. 1(d), in relation to Art. 266-B, 1st Paragraph, of the Revised Penal Code, as amended by R.A. 8353, committed as follows:
>
> That on or about the 28th day of May, 2003, in the City of Muntinlupa, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, being a man, by means of force, threat or intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge of the complainant, CMS, an 8-year old girl, by pressing his penis against and into the vagina of the said girl for purposes of penetrating the same for lust, against the latter's will and consent.
>
> Contrary to law.

The factual antecedents as summarized by the CA:

> During the trial, the prosecution presented, as witnesses, the private complainant herself, CMS; and eyewitness, Anna Loth Fernandez. As stated in the "Counter-Statement of Facts" in the Appellee's Brief, the thrust of its evidence is as follows:
>
> > On May 28, 2003, at about 2:30 in the afternoon, in West 3-B Cabulusan, Muntinlupa City, eight-year-old CMS, the victim, was at home inside their sala and was about to sleep when

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[1] Penned by Associate Justice Jose Catral Mendoza (now a member of this Court), with Associate Justices Conrado M. Vasquez, Jr. and Ramon M. Bato, Jr., concurring; *rollo,* pp. 2-15.

[2] Penned by Presiding Judge Philip A. Aguinaldo; CA *rollo,* pp. 12-15.

apellant Ildefonso Mendoza, a friend of her father, removed her shorts and panty, kissed and licked her vagina, and thereafter inserted his penis in her vagina. CMS felt pain and shouted "*Aray*!" prompting apellant to remove his penis. Thereafter, appellant told CMS not to tell her grandmother about what happened.

Incidentally, eighteen-year-old Anna Loth Fernandez was standing in front of the door of the house of CMS at the time of the incident. Anna Loth noticed a moving blanket inside CMS's house. Curious, she went inside her house, which happened to be adjacent to the victim's house, proceeded to the second floor, then peeped through a hole on the wall, where she saw a blanket covering appellant's lower body. Also, she saw appellant pull CMS's feet, removed the latter's shorts and kissed the latter's vagina. She further saw the victim trying to escape as appellant tried to open the former's legs. At that point, Anna Loth called her cousins, her siblings and Joseph, the victim's brother, to come upstairs to see what was happening. Thereafter, the group went down, talked about what they saw, and then, decided to tell Anna Loth's mother and grandmother of the incident, as they were scared of stopping appellant from what he was doing to the victim.

Only the accused, Ildefonso Mendoza, testified in his defense. His version is succinctly stated in the Appellant's Brief as follows:

EVIDENCE FOR THE DEFENSE

To rebut the evidence of the prosecution, the lone testimony of the accused, Ildefonso Mendoza, was offered in court.

Ildefonso Mendoza was sleeping in the house of Romeo Serrada, where he was then residing, on 28 May 2003 at around 2:30 o'clock p.m. He was then unable to report to work because he was having a fever. He was awakened around 10:00 o'clock in the evening when Alice, the mother of Anna Loth, was running amuck, as there was a snake in their house. On 29 May 2003, around 1:00 p.m. in the morning, he was invited to the Barangay hall by Crispin Almeda. It was then and there that he was informed that he is being charged of raping the victim. He was even kicked while in the *Barangay* hall. From there, he was brought to the municipal hall, where he was incarcerated.

The RTC rendered a decision, giving credence to the version of the prosecution that rape transpired:

> WHEREFORE, accused is found guilty beyond reasonable doubt of the crime of statutory rape and is sentenced to suffer the penalty of *reclusion perpetua*. He is ordered to pay the victim Christine Mariel M. Serrada ₱50,000.00 as civil indemnity, ₱50,000.00 as moral damages and ₱25,000.00 as exemplary damages. His preventive imprisonment is credited in his favor.
>
> SO ORDERED.[3]

On appeal, the CA affirmed the RTC:

> WHEREFORE, the September 28, 2007 Decision of the Regional Trial Court, Branch 207, Muntinlupa City, in Criminal Case No. 03-391, is AFFIRMED.
>
> SO ORDERED.[4]

Appellant filed a notice of appeal and is now before us insisting on his innocence and beseeching the reversal of the lower courts' finding of guilt.

We abide by the identical conclusion of the lower courts that accused raped CMS.

In the review of rape cases, we are guided by the following principles: (1) an accusation for rape can be made with facility; it is difficult to prove but more difficult for the person accused, though innocent, to disprove; (2) in view of the nature of the crime of rape where only two persons are usually involved, the testimony of the complainant is scrutinized with extreme caution; and (3) the evidence for the prosecution stands or falls on its own merits and cannot be allowed to draw strength from the weakness of the defense.[5] Ultimately, in a prosecution for rape,

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[3] *Id*. at 15.

[4] *Supra* note 1, at 15.

[5] *People v. Brondial*, G.R. No. 135517, October 18, 2000, 343 SCRA 600; *People v. Sevilla*, G.R. No. 126199, December 8, 1999, 320 SCRA 107; *People v. Baygar*, G.R. No. 132238, November 17, 1999, 318 SCRA 358; *People v. Sta. Ana*, G.R. Nos. 115657-59, June 26, 1998, 291 SCRA 188; *People v. Auxtero*, G.R. No. 118314, April 15, 1998, 289 SCRA 75;

the complainant's credibility becomes the single most important issue.[6]

A perusal of CMS' testimony leads us to the inevitable conclusion that appellant raped her. As the CA had found, CMS' testimony accurately and vividly details, with the aid of paper dolls, what transpired on that fateful day, to wit:

Q. What was that something bad that he did to you?

A. He removed my shorts and panty, ma'am.

Q. An (sic) then, after he removed your shorts and panty, what did he do next?

A. He kissed my vagina and licked my vagina, ma'am.

Q. Other than kissing your vagina and licking it, what else did he do?

A. He inserted his penis to my vagina, ma'am.

x x x x x x x x x

SSP ALEJO:

Q. Likewise, you mentioned earlier that he kissed your vagina and then he licked it. Can you show it to us with the use of anatomical drawings what he did to you?

COURT INTERPRETER:

Witness is putting the head of the male paper doll over the vagina of the female paper doll.

SSP ALEJO:

Q. And you said earlier, he inserted his penis inside your vagina, can you show to this Honorable Court with the use of those anatomical drawings?

COURT INTERPRETER:

Witness placing the male paper doll over the female paper doll.

People v. Balmoria, G.R. Nos. 120620-21, March 20, 1998, 287 SCRA 687; *People v. Barrientos*, G.R. No. 119835, January 28, 1998, 285 SCRA 221; *People v. Gallo*, G.R. No. 124736, January 22, 1998, 284 SCRA 590.

[6] *People v. Abellano*, G.R. No. 169061, June 8, 2007, 524 SCRA 388.

CMS' testimony is corroborated by Anna Loth's direct testimony that while she was on the second floor of her house, adjacent to CMS' house, she peeped through a hole and noticed a moving blanket which turned out to be covering appellant's lower body. She then saw appellant pull CMS' feet, remove her shorts and kiss her vagina. Anna Loth's testimony consists of the following:

Q. When you entered your house to verify what's happening to CMS what did you see, if any?

A. I first went upstairs, there's a hole on the wall and I saw a blanket covering the lower half of Kuya Jun-Jun and I saw him, he was trying to pull with force the feet of Mariel.

Q. What else did you see, if any?

A. I saw also he was trying to remove the shorts of CMS.

Q. Was he able to remove the shorts of CMS?

A. Yes, ma'am but CMS was able to wear it.

Q. What else did you see?

A. He opened the short pants of CMS then kissed vagina of CMS.

Q. What else did you see?

A. He is trying to put CMS in a position.

Q. What position?

COURT INTERPRETER:

Both were sitting down side by side on the floor and Jun-Jun was trying to open the legs of CMS and CMS was trying to escape.

SSP ALEJO:

Q. And then what happened when CMS was trying to escape?

A. Then I called my cousins and my siblings and the brother of CMS, Joseph, and then they went upstairs and then they peeped on the hole.

Q. What did they see, if any, when they peep[ed through] the hole?

A. They saw everything that happened.

Q. What was that that they saw?

A. Also what I saw that Jun-Jun was kissing the vagina of CMS and then we went down and we talked.

x x x x x x x x x

Q. x x x During the cross examination, Madam Witness, you testified that the accused kissed the vagina of the private complainant in this case, what else have you noticed from the place where you were peeping because you also testified that you peeped from a wall, Madam Witness?

A. The accused touched the vagina of the private complainant, ma'am.

Q. After witnessing the accused touch the vagina of the private complainant, what else transpired while you were peeing in the wall?

A. I saw him kiss that vagina, ma'am, and I saw him also pulling the legs of CMS.

Q. And after he pulled the legs of CMS, what else transpired, if any.

A. I also saw him trying to remove the shorts of CMS, ma'am.

Q. Was he able to remove the shorts?

A. Yes ma'am, but CMS pulled it up also.

Q. And then, what else happened?

A. I saw that she was being positioned and I already described that during the last hearing, ma'am.

Q. After that incident what did you do if any? After you saw that incident, what did you do, if any?

A. I called my cousin and the sibling of CMS, ma'am.

Q. What did your cousin and the sibling do, if any?

A. They went upstairs and they witnesses (sic) what happened upstairs, ma'am.

Q. And then?

A. They also saw what I have seen there, ma'am.[7]

In stark contrast to the foregoing testimonies is appellant's barefaced denial. Appellant simply claims that he could not have raped CMS as, at that time and day, he was nursing a fever and sleeping at the house of a certain Romeo Serrada. He did not even bother to present as witness this person he claims to have stayed with at that time.

We are in full accord with the lower courts' separate rulings on the credibility of CMS. On this issue, the RTC declared:

> The Court gives weight to the testimony of the private complainant, a minor, who has never been exposed to the ways of the world and who has not even experienced menstruation. Her cry that she was raped deserves full credence and should not be discarded. The attention of the court has not been called to any dubious reason or improper motive on the part of private complainant and her family that would have impelled them to charge and testify against him. Her testimony which is characterized by clarity, spontaneity and coherence passes the test of judicial scrutiny. The conduct of Anna Loth and private complainant's mother in reporting the incident to the private complainant's grandmother after they discovered its commission is of utmost importance in establishing the truth of the charge. The promptness and spontaneity of the act shown by Anna Loth in looking for the elder brother of the private complainant manifest the natural reaction of persons who have seen a wrong done to fight for justice. Based on their testimonies, the court finds them credible and they are in no way cold-blooded liars.[8]

However, as regards the civil liability of appellant, we increase the appellate court's award of civil indemnity to ₱75,000.00. We, likewise, increase the grant of moral damages to ₱75,000.00, without need of proof, and the award of exemplary damages to ₱30,000.00.

WHEREFORE, the decision of the Regional Trial Court in Criminal Case No. 03-391 and the Decision of the Court of Appeals in CA-G.R. CR-HC No. 03066 are *AFFIRMED with*

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[7] *Rollo,* pp. 7-9.

[8] CA *rollo*, p. 15.

MODIFICATION. Appellant Ildefonso Mendoza is *SENTENCED* to suffer the penalty of *reclusion perpetua* with no eligibility for parole and to pay the victim, CMS, the amounts of ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages, and ₱30,000.00 as exemplary damages, plus costs.

SO ORDERED.

Corona (Chairperson), Carpio Morales,[*] *Velasco, Jr.,* and *Peralta, JJ.,* concur.

EN BANC

[G.R. No. 188920. February 16, 2010]

JOSE L. ATIENZA, JR., MATIAS V. DEFENSOR, JR., RODOLFO G. VALENCIA, DANILO E. SUAREZ, SOLOMON R. CHUNGALAO, SALVACION ZALDIVAR-PEREZ, HARLIN CAST-ABAYON, MELVIN G. MACUSI and ELEASAR P. QUINTO, *petitioners, vs.* **COMMISSION ON ELECTIONS, MANUEL A. ROXAS II, FRANKLIN M. DRILON and J.R. NEREUS O. ACOSTA,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; PARTIES TO CIVIL ACTIONS; INDISPENSABLE PARTY; THE LIBERAL PARTY IN CASE AT BAR IS NOT AN INDISPENSABLE PARTY AS NO WRONG HAD BEEN IMPUTED TO IT NOR HAD SOME AFFIRMATIVE RELIEF BEEN SOUGHT FROM IT. — Respondents Roxas, *et al.* assert that the Court should dismiss the petition for failure of petitioners Atienza,

[*] Additional member in lieu of Associate Justice Jose Catral Mendoza per Raffle dated January 11, 2010.

et al. to implead the LP as an indispensable party. Roxas, *et al*. point out that, since the petition seeks the issuance of a writ of mandatory injunction against the NECO, the controversy could not be adjudicated with finality without making the LP a party to the case. But petitioners Atienza, *et al*.'s causes of action in this case consist in respondents Roxas, *et al*.'s disenfranchisement of Atienza, *et al*. from the election of party leaders and in the illegal election of Roxas as party president. Atienza, *et al*. were supposedly excluded from the elections by a series of "despotic acts" of Roxas, *et al*., who controlled the proceedings. Among these acts are Atienza, *et al*.'s expulsion from the party, their exclusion from the NECO, and respondent Drilon's "railroading" of election proceedings. Atienza, *et al*. attributed all these illegal and prejudicial acts to Roxas, *et al*. Since no wrong had been imputed to the LP nor had some affirmative relief been sought from it, the LP is not an indispensable party. Petitioners Atienza, *et al*.'s prayer for the undoing of respondents Roxas, *et al*.'s acts and the reconvening of the NECO are directed against Roxas, *et al*.

2. ID.; ID.; ID.; REAL PARTIES-IN-INTEREST; DEFINED. — [A]s the Court held in *David v. Macapagal-Arroyo*, legal standing in suits is governed by the "real parties-in-interest" rule under Section 2, Rule 3 of the Rules of Court. This states that "every action must be prosecuted or defended in the name of the real party-in-interest." And "real party-in-interest" is one who stands to be benefited or injured by the judgment in the suit or the party entitled to the avails of the suit. In other words, the plaintiff's standing is based on his own right to the relief sought.

3. ID.; ID.; ID.; ID.; PETITIONERS IN CASE AT BAR ARE REAL PARTIES-IN-INTEREST SINCE THEY STAND TO BE BENEFITED OR PREJUDICED BY THE COURT'S DECISION. — In raising petitioners Atienza, *et al*.'s lack of standing as a threshold issue, respondents Roxas, *et al*. would have the Court hypothetically assume the truth of the allegations in the petition. Here, it is precisely petitioners Atienza, *et al*.'s allegations that respondents Roxas, *et al*. deprived them of their rights as LP members by summarily excluding them from the LP roster and not allowing them to take part in the election of its officers and that not all who sat in the NECO were in the correct list of NECO members. If Atienza, *et al*.'s allegations were correct, they would have been irregularly expelled from

the party and the election of officers, void. Further, they would be entitled to recognition as members of good standing and to the holding of a new election of officers using the correct list of NECO members. To this extent, therefore, Atienza, *et al*. who want to take part in another election would stand to be benefited or prejudiced by the Court's decision in this case. Consequently, they have legal standing to pursue this petition.

4. POLITICAL LAW; ELECTION LAWS; POLITICAL PARTIES; LIBERAL PARTY; NATIONAL EXECUTIVE COUNCIL; MEMBERSHIP THEREIN, NOT PERMANENT. — [T]he list of NECO members appearing in the party's 60th Anniversary Souvenir Program was drawn before the May 2007 elections. After the 2007 elections, changes in the NECO membership had to be redrawn to comply with what the amended LP Constitution required. Respondent Drilon adopted the souvenir program as common exhibit in the earlier cases only to prove that the NECO, which supposedly elected Atienza as new LP president on March 2, 2006, had been improperly convened. It cannot be regarded as an immutable list, given the nature and character of the NECO membership. Nothing in the Court's resolution in the earlier cases implies that the NECO membership should be pegged to the party's 60th Anniversary Souvenir Program. There would have been no basis for such a position. The amended LP Constitution did not intend the NECO membership to be permanent. Its Section 27 provides that the NECO shall include all incumbent senators, members of the House of Representatives, governors, and mayors who were LP members in good standing for at least six months. It follows from this that with the national and local elections taking place in May 2007, the number and composition of the NECO would have to yield to changes brought about by the elections. Former NECO members who lost the offices that entitled them to membership had to be dropped. Newly elected ones who gained the privilege because of their offices had to come in. Furthermore, former NECO members who passed away, resigned from the party, or went on leave could not be expected to remain part of the NECO that convened and held elections on November 26, 2007. In addition, Section 27 of the amended LP Constitution expressly authorized the party president to nominate "persons of national stature" to the NECO. Thus, petitioners Atienza, *et al*. cannot validly object to the admission of 12 NECO members nominated by respondent

Drilon when he was LP president. Even if this move could be regarded as respondents Roxas, *et al*.'s way of ensuring their election as party officers, there was certainly nothing irregular about the act under the amended LP Constitution. The NECO was validly convened in accordance with the amended LP Constitution. Respondents Roxas, *et al*. explained in details how they arrived at the NECO composition for the purpose of electing the party leaders.

5. ID.; CONSTITUTIONAL LAW; CONSTITUTION; CONSTITUTIONAL COMMISSIONS; COMMISSION ON ELECTIONS; DOES NOT HAVE JURISDICTION OVER A PURELY MEMBERSHIP ISSUE. — [P]etitioners Atienza, *et al*. cannot claim that their expulsion from the party impacts on the party leadership issue or on the election of respondent Roxas as president so that it was indispensable for the COMELEC to adjudicate such claim. Under the circumstances, the validity or invalidity of Atienza, *et al*.'s expulsion was purely a membership issue that had to be settled within the party. It is an internal party matter over which the COMELEC has no jurisdiction.

6. ID.; ID.; ID.; ID.; ID.; HAS JURISDICTION OVER INTRA-PARTY LEADERSHIP DISPUTE AS AN INCIDENT OF ITS POWER TO REGISTER POLITICAL PARTIES. — The COMELEC's jurisdiction over intra-party disputes is limited. It does not have blanket authority to resolve any and all controversies involving political parties. Political parties are generally free to conduct their activities without interference from the state. The COMELEC may intervene in disputes internal to a party only when necessary to the discharge of its constitutional functions. The COMELEC's jurisdiction over intra-party leadership disputes has already been settled by the Court. The Court ruled in *Kalaw v. Commission on Elections* that the COMELEC's powers and functions under Section 2, Article IX-C of the Constitution, "include the ascertainment of the identity of the political party and its legitimate officers responsible for its acts." The Court also declared in another case that the COMELEC's power to register political parties necessarily involved the determination of the persons who must act on its behalf. Thus, the COMELEC may resolve an intra-party leadership dispute, in a proper case brought before it, as an incident of its power to register political parties.

7. ID.; ID.; ID.; ID.; ID.; ID.; RATIONALE; CASE AT BAR. — The validity of respondent Roxas' election as LP president is a leadership issue that the COMELEC had to settle. Under the amended LP Constitution, the LP president is the issuing authority for certificates of nomination of party candidates for all national elective positions. It is also the LP president who can authorize other LP officers to issue certificates of nomination for candidates to local elective posts. In simple terms, it is the LP president who certifies the official standard bearer of the party. The law also grants a registered political party certain rights and privileges that will redound to the benefit of its official candidates. It imposes, too, legal obligations upon registered political parties that have to be carried out through their leaders. The resolution of the leadership issue is thus particularly significant in ensuring the peaceful and orderly conduct of the elections.

8. ID.; ADMINISTRATIVE LAW; ADMINISTRATIVE PROCEEDINGS; ADMINISTRATIVE DUE PROCESS; INAPPLICABLE TO AFFAIRS OF POLITICAL PARTIES. — [T]he requirements of administrative due process do not apply to the internal affairs of political parties. The due process standards set in *Ang Tibay* cover only administrative bodies created by the state and through which certain governmental acts or functions are performed. An administrative agency or instrumentality "contemplates an authority to which the state delegates governmental power for the performance of a state function." The constitutional limitations that generally apply to the exercise of the state's powers thus, apply too, to administrative bodies.

9. POLITICAL LAW; CONSTITUTIONAL LAW; CONSTITUTION; BILL OF RIGHTS; DUE PROCESS; MEANT TO PROTECT ORDINARY CITIZENS AGAINST ARBITRARY GOVERNMENT ACTION, BUT NOT FROM THE ACTS COMMITTED BY PRIVATE INDIVIDUALS OR ENTITIES. — The constitutional limitations on the exercise of the state's powers are found in Article III of the Constitution or the Bill of Rights. The Bill of Rights, which guarantees against the taking of life, property, or liberty without due process under Section 1 is generally a limitation on the state's powers in relation to the rights of its citizens. The right to due process is meant to protect ordinary citizens against arbitrary government action, but not from acts

committed by private individuals or entities. In the latter case, the specific statutes that provide reliefs from such private acts apply. The right to due process guards against unwarranted encroachment by the state into the fundamental rights of its citizens and cannot be invoked in private controversies involving private parties.

10. ID.; ID.; ID.; ID.; ID.; DISCIPLINE OF MEMBERS BY A POLITICAL PARTY, NOT A DUE PROCESS ISSUE; EXPLAINED. — Although political parties play an important role in our democratic set-up as an intermediary between the state and its citizens, it is still a private organization, not a state instrument. The discipline of members by a political party does not involve the right to life, liberty or property within the meaning of the due process clause. An individual has no vested right, as against the state, to be accepted or to prevent his removal by a political party. The only rights, if any, that party members may have, in relation to other party members, correspond to those that may have been freely agreed upon among themselves through their charter, which is a contract among the party members. Members whose rights under their charter may have been violated have recourse to courts of law for the enforcement of those rights, but not as a due process issue against the government or any of its agencies. But even when recourse to courts of law may be made, courts will ordinarily not interfere in membership and disciplinary matters within a political party. A political party is free to conduct its internal affairs, pursuant to its constitutionally-protected right to free association. In *Sinaca v. Mula*, the Court said that judicial restraint in internal party matters serves the public interest by allowing the political processes to operate without undue interference. It is also consistent with the state policy of allowing a free and open party system to evolve, according to the free choice of the people.

APPEARANCES OF COUNSEL

Abayon Silva Salanatin & Associates and *Luis Angel G. Aseoche* for petitioners.

The Solicitor General for public respondent.

Wilfred D. Asis for private respondents.

D E C I S I O N

ABAD, *J.*:

This petition is an offshoot of two earlier cases already resolved by the Court involving a leadership dispute within a political party. In this case, the petitioners question their expulsion from that party and assail the validity of the election of new party leaders conducted by the respondents.

Statement of the Facts and the Case

For a better understanding of the controversy, a brief recall of the preceding events is in order.

On July 5, 2005 respondent Franklin M. Drilon (Drilon), as erstwhile president of the Liberal Party (LP), announced his party's withdrawal of support for the administration of President Gloria Macapagal-Arroyo. But petitioner Jose L. Atienza, Jr. (Atienza), LP Chairman, and a number of party members denounced Drilon's move, claiming that he made the announcement without consulting his party.

On March 2, 2006 petitioner Atienza hosted a party conference to supposedly discuss local autonomy and party matters but, when convened, the assembly proceeded to declare all positions in the LP's ruling body vacant and elected new officers, with Atienza as LP president. Respondent Drilon immediately filed a petition[1] with the Commission on Elections (COMELEC) to nullify the elections. He claimed that it was illegal considering that the party's electing bodies, the National Executive Council (NECO) and the National Political Council (NAPOLCO), were not properly convened. Drilon also claimed that under the amended LP Constitution,[2] party officers were elected to a fixed three-year term that was yet to end on November 30, 2007.

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[1] Docketed as COMELEC Case SPP 06-002.

[2] The original LP Constitution was known as the "Salonga Constitution". It was amended several times under the party leadership of Senators Raul Daza and Franklin M. Drilon. The amended LP Constitution came to be known as the "Daza/Drilon Constitution".

On the other hand, petitioner Atienza claimed that the majority of the LP's NECO and NAPOLCO attended the March 2, 2006 assembly. The election of new officers on that occasion could be likened to "people power", wherein the LP majority removed respondent Drilon as president by direct action. Atienza also said that the amendments[3] to the original LP Constitution, or the Salonga Constitution, giving LP officers a fixed three-year term, had not been properly ratified. Consequently, the term of Drilon and the other officers already ended on July 24, 2006.

On October 13, 2006, the COMELEC issued a resolution,[4] partially granting respondent Drilon's petition. It annulled the March 2, 2006 elections and ordered the holding of a new election under COMELEC supervision. It held that the election of petitioner Atienza and the others with him was invalid since the electing assembly did not convene in accordance with the Salonga Constitution. But, since the amendments to the Salonga Constitution had not been properly ratified, Drilon's term may be deemed to have ended. Thus, he held the position of LP president in a holdover capacity until new officers were elected.

Both sides of the dispute came to this Court to challenge the COMELEC rulings. On April 17, 2007 a divided Court issued a resolution,[5] granting respondent Drilon's petition and denying that of petitioner Atienza. The Court held, through the majority, that the COMELEC had jurisdiction over the intra-party leadership dispute; that the Salonga Constitution had been validly amended; and that, as a consequence, respondent Drilon's term as LP president was to end only on November 30, 2007.

Subsequently, the LP held a NECO meeting to elect new party leaders before respondent Drilon's term expired. Fifty-nine NECO members out of the 87 who were supposedly qualified to vote attended. Before the election, however, several persons

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[3] Referred to as the Daza-Drilon amendments.

[4] *Rollo*, pp. 91-107.

[5] The Court did not render a full-blown decision but, instead, issued a resolution to which was appended the individual opinions of Justices Antonio T. Carpio, Dante O. Tinga and Cancio C. Garcia.

associated with petitioner Atienza sought to clarify their membership status and raised issues regarding the composition of the NECO. Eventually, that meeting installed respondent Manuel A. Roxas II (Roxas) as the new LP president.

January 11, 2008 petitioners Atienza, Matias V. Defensor, Jr., Rodolfo G. Valencia, Danilo E. Suarez, Solomon R. Chungalao, Salvacion Zaldivar-Perez, Harlin Cast-Abayon, Melvin G. Macusi, and Eleazar P. Quinto, filed a petition for mandatory and prohibitory injunction[6] before the COMELEC against respondents Roxas, Drilon and J.R. Nereus O. Acosta, the party secretary general. Atienza, *et al*. sought to enjoin Roxas from assuming the presidency of the LP, claiming that the NECO assembly which elected him was invalidly convened. They questioned the existence of a quorum and claimed that the NECO composition ought to have been based on a list appearing in the party's 60th Anniversary Souvenir Program. Both Atienza and Drilon adopted that list as common exhibit in the earlier cases and it showed that the NECO had 103 members.

Petitioners Atienza, *et al*. also complained that Atienza, the incumbent party chairman, was not invited to the NECO meeting and that some members, like petitioner Defensor, were given the status of "guests" during the meeting. Atienza's allies allegedly raised these issues but respondent Drilon arbitrarily thumbed them down and "railroaded" the proceedings. He suspended the meeting and moved it to another room, where Roxas was elected without notice to Atienza's allies.

On the other hand, respondents Roxas, *et al*. claimed that Roxas' election as LP president faithfully complied with the provisions of the amended LP Constitution. The party's 60th Anniversary Souvenir Program could not be used for determining the NECO members because supervening events changed the body's number and composition. Some NECO members had died, voluntarily resigned, or had gone on leave after accepting positions in the government. Others had lost their re-election bid or did not run in the May 2007 elections, making them ineligible

[6] Docketed as COMELEC Case SPP 08-001.

to serve as NECO members. LP members who got elected to public office also became part of the NECO. Certain persons of national stature also became NECO members upon respondent Drilon's nomination, a privilege granted the LP president under the amended LP Constitution. In other words, the NECO membership was not fixed or static; it changed due to supervening circumstances.

Respondents Roxas, *et al*. also claimed that the party deemed petitioners Atienza, Zaldivar-Perez, and Cast-Abayon resigned for holding the illegal election of LP officers on March 2, 2006. This was pursuant to a March 14, 2006 NAPOLCO resolution that NECO subsequently ratified. Meanwhile, certain NECO members, like petitioners Defensor, Valencia, and Suarez, forfeited their party membership when they ran under other political parties during the May 2007 elections. They were dropped from the roster of LP members.

On June 18, 2009 the COMELEC issued the assailed resolution denying petitioners Atienza, *et al*.'s petition. It noted that the May 2007 elections necessarily changed the composition of the NECO since the amended LP Constitution explicitly made incumbent senators, members of the House of Representatives, governors and mayors members of that body. That some lost or won these positions in the May 2007 elections affected the NECO membership. Petitioners failed to prove that the NECO which elected Roxas as LP president was not properly convened.

As for the validity of petitioners Atienza, *et al*.'s expulsion as LP members, the COMELEC observed that this was a membership issue that related to disciplinary action within the political party. The COMELEC treated it as an internal party matter that was beyond its jurisdiction to resolve.

Without filing a motion for reconsideration of the COMELEC resolution, petitioners Atienza, *et al*. filed this petition for *certiorari* under Rule 65.

The Issues Presented

Respondents Roxas, *et al*. raise the following threshold issues:

1. Whether or not the LP, which was not impleaded in the case, is an indispensable party; and

2. Whether or not petitioners Atienza, *et al.*, as ousted LP members, have the requisite legal standing to question Roxas' election.

Petitioners Atienza, *et al.*, on the other hand, raise the following issues:

3. Whether or not the COMELEC gravely abused its discretion when it upheld the NECO membership that elected respondent Roxas as LP president;

4. Whether or not the COMELEC gravely abused its discretion when it resolved the issue concerning the validity of the NECO meeting without first resolving the issue concerning the expulsion of Atienza, *et al*. from the party; and

5. Whether or not respondents Roxas, *et al*. violated petitioners Atienza, *et al*.'s constitutional right to due process by the latter's expulsion from the party.

The Court's Ruling

One. Respondents Roxas, *et al*. assert that the Court should dismiss the petition for failure of petitioners Atienza, *et al*. to implead the LP as an indispensable party. Roxas, *et al*. point out that, since the petition seeks the issuance of a writ of mandatory injunction against the NECO, the controversy could not be adjudicated with finality without making the LP a party to the case.[7]

But petitioners Atienza, *et al*.'s causes of action in this case consist in respondents Roxas, *et al*.'s disenfranchisement of Atienza, *et al*. from the election of party leaders and in the illegal election of Roxas as party president. Atienza, *et al*. were supposedly excluded from the elections by a series of "despotic acts" of Roxas, *et al*., who controlled the proceedings. Among these acts are Atienza, *et al*.'s expulsion from the party, their exclusion from the NECO, and respondent Drilon's

[7] *Rollo*, pp. 756-757.

"railroading" of election proceedings. Atienza, *et al*. attributed all these illegal and prejudicial acts to Roxas, *et al*.

Since no wrong had been imputed to the LP nor had some affirmative relief been sought from it, the LP is not an indispensable party. Petitioners Atienza, *et al*.'s prayer for the undoing of respondents Roxas, *et al*.'s acts and the reconvening of the NECO are directed against Roxas, *et al*.

Two. Respondents Roxas, *et al*. also claim that petitioners Atienza, *et al*. have no legal standing to question the election of Roxas as LP president because they are no longer LP members, having been validly expelled from the party or having joined other political parties.[8] As non-members, they have no stake in the outcome of the action.

But, as the Court held in *David v. Macapagal-Arroyo*,[9] legal standing in suits is governed by the "real parties-in-interest" rule under Section 2, Rule 3 of the Rules of Court. This states that "every action must be prosecuted or defended in the name of the real party-in-interest." And "real party-in-interest" is one who stands to be benefited or injured by the judgment in the suit or the party entitled to the avails of the suit. In other words, the plaintiff's standing is based on his own right to the relief sought. In raising petitioners Atienza, *et al*.'s lack of standing as a threshold issue, respondents Roxas, *et al*. would have the Court hypothetically assume the truth of the allegations in the petition.

Here, it is precisely petitioners Atienza, *et al*.'s allegations that respondents Roxas, *et al*. deprived them of their rights as LP members by summarily excluding them from the LP roster and not allowing them to take part in the election of its officers and that not all who sat in the NECO were in the correct list of NECO members. If Atienza, *et al*.'s allegations were correct, they would have been irregularly expelled from the party and the election of officers, void. Further, they would be entitled to recognition as members of good standing and to the holding

[8] *Id.* at 757-761.

[9] G.R. No. 171396, May 3, 2006, 489 SCRA 160, 216.

of a new election of officers using the correct list of NECO members. To this extent, therefore, Atienza, *et al*. who want to take part in another election would stand to be benefited or prejudiced by the Court's decision in this case. Consequently, they have legal standing to pursue this petition.

Three. In assailing respondent Roxas' election as LP president, petitioners Atienza, *et al*. claim that the NECO members allowed to take part in that election should have been limited to those in the list of NECO members appearing in the party's 60th Anniversary Souvenir Program. Atienza, *et al*. allege that respondent Drilon, as holdover LP president, adopted that list in the earlier cases before the COMELEC and it should thus bind respondents Roxas, *et al*. The Court's decision in the earlier cases, said Atienza, *et al*., anointed that list for the next party election. Thus, Roxas, *et al*. in effect defied the Court's ruling when they removed Atienza as party chairman and changed the NECO's composition.[10]

But the list of NECO members appearing in the party's 60th Anniversary Souvenir Program was drawn before the May 2007 elections. After the 2007 elections, changes in the NECO membership had to be redrawn to comply with what the amended LP Constitution required. Respondent Drilon adopted the souvenir program as common exhibit in the earlier cases only to prove that the NECO, which supposedly elected Atienza as new LP president on March 2, 2006, had been improperly convened. It cannot be regarded as an immutable list, given the nature and character of the NECO membership.

Nothing in the Court's resolution in the earlier cases implies that the NECO membership should be pegged to the party's 60th Anniversary Souvenir Program. There would have been no basis for such a position. The amended LP Constitution did not intend the NECO membership to be permanent. Its Section 27[11] provides that the NECO shall include all incumbent

[10] *Rollo*, pp. 27-31.

[11] SECTION 27. COMPOSITION. – The National Executive Council (NECO) shall be composed of the following members:

1. The Party Chairperson;

senators, members of the House of Representatives, governors, and mayors who were LP members in good standing for at least six months. It follows from this that with the national and local elections taking place in May 2007, the number and composition of the NECO would have to yield to changes brought about by the elections.

Former NECO members who lost the offices that entitled them to membership had to be dropped. Newly elected ones

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2. The Party Vice-Chairperson;

3. The Party President;

4. The Party Executive Vice-President;

5. The Party Vice-Presidents for Policy, Platform and Advocacy, External Affairs, Luzon, Visayas, Mindanao, the National Capital Region and Sectors;

6. The Party Secretary General;

7. The Party Deputy Secretary General;

8. The Party Treasurer;

9. The Party Deputy Treasurer;

10. The Party Legal Counsel;

11. The Party Spokesperson;

12. The Party Deputy Spokesperson;

13. The Party Director General;

14. All incumbent Senators and members of the House of Representatives who are members of the Party in good standing for at least six (6) months;

15. All incumbent Governors of Provinces who are members of the Party in good standing for at least six (6) months;

16. All incumbent Mayors of Cities who are members in good standing for at least six (6) months;

17. All former Presidents and Vice-Presidents of the Republic who are members of the Party in good standing for at least six (6) months;

18. All Past Presidents of the Party;

19. The National Presidents of all established Allied Sectoral Groups (Youth, Women, Urban Poor, Labor, *etc*.);

20. Such other persons of National Stature nominated by the Party President and approved by the National Directorate.

Interim vacancies for these offices shall be filled by the NECO but only for the remaining portion of the term.

who gained the privilege because of their offices had to come in. Furthermore, former NECO members who passed away, resigned from the party, or went on leave could not be expected to remain part of the NECO that convened and held elections on November 26, 2007. In addition, Section 27 of the amended LP Constitution expressly authorized the party president to nominate "persons of national stature" to the NECO. Thus, petitioners Atienza, *et al*. cannot validly object to the admission of 12 NECO members nominated by respondent Drilon when he was LP president. Even if this move could be regarded as respondents Roxas, *et al*.'s way of ensuring their election as party officers, there was certainly nothing irregular about the act under the amended LP Constitution.

The NECO was validly convened in accordance with the amended LP Constitution. Respondents Roxas, *et al*. explained in details how they arrived at the NECO composition for the purpose of electing the party leaders.[12] The explanation is logical and consistent with party rules. Consequently, the COMELEC did not gravely abuse its discretion when it upheld the composition of the NECO that elected Roxas as LP president.

Petitioner Atienza claims that the Court's resolution in the earlier cases recognized his right as party chairman with a term, like respondent Drilon, that would last up to November 30, 2007 and that, therefore, his ouster from that position violated the Court's resolution. But the Court's resolution in the earlier cases did not preclude the party from disciplining Atienza under Sections 29[13] and 46[14] of the amended LP Constitution. The

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12 *Rollo*, pp. 750-754.

13 SECTION 29. TENURE. — All Party officers and members of the NECO shall hold office for three (3) years and until their successors shall have been duly elected and qualified or *unless sooner removed for cause.*

14 SECTION 46. DISCIPLINARY ACTIONS. — Any officer of the Party may be removed or suspended on the following grounds:

1. Commission of any act antagonistic to the Party objectives or inimical to its interests, or for violation of or deliberate failure to support any of its fundamental decisions;

party could very well remove him or any officer for cause as it saw fit.

Four. Petitioners Atienza, *et al*. lament that the COMELEC selectively exercised its jurisdiction when it ruled on the composition of the NECO but refused to delve into the legality of their expulsion from the party. The two issues, they said, weigh heavily on the leadership controversy involved in the case. The previous rulings of the Court, they claim, categorically upheld the jurisdiction of the COMELEC over intra-party leadership disputes.[15]

But, as respondents Roxas, *et al*. point out, the key issue in this case is not the validity of the expulsion of petitioners Atienza, *et al*. from the party, but the legitimacy of the NECO assembly that elected respondent Roxas as LP president. Given the COMELEC's finding as upheld by this Court that the membership of the NECO in question complied with the LP Constitution, the resolution of the issue of whether or not the party validly expelled petitioners cannot affect the election of officers that the NECO held.

While petitioners Atienza, *et al*. claim that the majority of LP members belong to their faction, they did not specify who these members were and how their numbers could possibly affect the composition of the NECO and the outcome of its election of party leaders. Atienza, *et al*. has not bothered to assail the individual qualifications of the NECO members who voted for Roxas. Nor did Atienza, *et al*. present proof that the

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2. Membership in another political party, either by act or deed;

3. Dishonesty, oppression or misconduct while in office, gross negligence, abuse of authority or dereliction of duty; and

4. Failure to attend two (2) consecutive Party meetings or at least ½ of the meetings duly convened within a calendar year of the appropriate committee or Party organ.

Any officer of the Party may be subjected to disciplinary actions, including suspension from effective exercise of his Party rights for a period of one year or less for the same or less serious cause as may be established by the National Executive Council or the national Political Council.

[15] *Rollo*, pp. 33-38.

NECO had no quorum when it then assembled. In other words, the claims of Atienza, *et al*. were totally unsupported by evidence.

Consequently, petitioners Atienza, *et al*. cannot claim that their expulsion from the party impacts on the party leadership issue or on the election of respondent Roxas as president so that it was indispensable for the COMELEC to adjudicate such claim. Under the circumstances, the validity or invalidity of Atienza, *et al*.'s expulsion was purely a membership issue that had to be settled within the party. It is an internal party matter over which the COMELEC has no jurisdiction.

What is more, some of petitioner Atienza's allies raised objections before the NECO assembly regarding the status of members from their faction. Still, the NECO proceeded with the election, implying that its membership, whose composition has been upheld, voted out those objections.

The COMELEC's jurisdiction over intra-party disputes is limited. It does not have blanket authority to resolve any and all controversies involving political parties. Political parties are generally free to conduct their activities without interference from the state. The COMELEC may intervene in disputes internal to a party only when necessary to the discharge of its constitutional functions.

The COMELEC's jurisdiction over intra-party leadership disputes has already been settled by the Court. The Court ruled in *Kalaw v. Commission on Elections*[16] that the COMELEC's powers and functions under Section 2, Article IX-C of the Constitution, "include the ascertainment of the identity of the political party and its legitimate officers responsible for its acts." The Court also declared in another case[17] that the COMELEC's power to register political parties necessarily involved the determination of the persons who must act on its behalf. Thus, the COMELEC may resolve an intra-party leadership

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[16] G.R. No. 80218, Minute Resolution dated November 5, 1987.

[17] *Palmares v. Commission on Elections*, G.R. Nos. 86177-78, Minute Resolution dated August 31, 1989.

dispute, in a proper case brought before it, as an incident of its power to register political parties.

The validity of respondent Roxas' election as LP president is a leadership issue that the COMELEC had to settle. Under the amended LP Constitution, the LP president is the issuing authority for certificates of nomination of party candidates for all national elective positions. It is also the LP president who can authorize other LP officers to issue certificates of nomination for candidates to local elective posts.[18] In simple terms, it is the LP president who certifies the official standard bearer of the party.

The law also grants a registered political party certain rights and privileges that will redound to the benefit of its official candidates. It imposes, too, legal obligations upon registered political parties that have to be carried out through their leaders. The resolution of the leadership issue is thus particularly significant in ensuring the peaceful and orderly conduct of the elections.[19]

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[18] Section 51 of the amended LP Constitution reads:

"SECTION 51. CERTIFICATES OF NOMINATION – Certificates shall be issued by the Party President or the General Secretary upon authorization by the former, for candidates for President, Vice- President, Senators and members of the House of Representatives.

The Party President or the General Secretary may authorize in writing other Party officers to issue Certificates of Nomination to candidates for local elective positions.

Certificates of Nomination as guest candidates may only be issued by the Party President or the General Secretary, upon the latter's authorization."

[19] In *Laban ng Demokratikong Pilipino v. Commission on Elections*, 468 Phil. 70, 83 (2004), the Court cited the rights and privileges of political parties and its official candidates as follows:

"x x x The dominant majority party, the dominant minority party as determined by the COMELEC, for instance, is entitled to a copy of the election returns. The six (6) accredited major political parties may nominate the principal watchers to be designated by the Commission. The two principal watchers representing the ruling coalition and the dominant opposition coalition in a precinct shall, if available, affix their signatures and thumbmarks on the election returns for that precinct. Three (3) of the six accredited major political parties are entitled to receive copies of the certificate of canvass. Registered political parties whose candidates obtained at least ten percent (10%) of the total votes cast in the next preceding senatorial election shall each have a watcher and/or

Five. Petitioners Atienza, *et al*. argue that their expulsion from the party is not a simple issue of party membership or discipline; it involves a violation of their constitutionally-protected right to due process of law. They claim that the NAPOLCO and the NECO should have first summoned them to a hearing before summarily expelling them from the party. According to Atienza, *et al*., proceedings on party discipline are the equivalent of administrative proceedings[20] and are, therefore, covered by the due process requirements laid down in *Ang Tibay v. Court of Industrial Relations*.[21]

But the requirements of administrative due process do not apply to the internal affairs of political parties. The due process standards set in *Ang Tibay* cover only administrative bodies created by the state and through which certain governmental acts or functions are performed. An administrative agency or instrumentality "contemplates an authority to which the state delegates governmental power for the performance of a state function."[22] The constitutional limitations that generally apply to the exercise of the state's powers thus, apply too, to administrative bodies.

The constitutional limitations on the exercise of the state's powers are found in Article III of the Constitution or the Bill of Rights. The Bill of Rights, which guarantees against the taking of life, property, or liberty without due process under Section 1 is generally a limitation on the state's powers in relation to the rights of its citizens. The right to due process is meant to protect ordinary citizens against arbitrary government action,

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representative in the procurement and watermarking of papers to be used in the printing of election returns and official ballots and in the printing, numbering, storage and distribution thereof. Finally, a candidate and his political party are authorized to spend more per voter than a candidate without a political party." (Citations omitted)

20 *Rollo*, pp. 41-43.

21 9 Phil. 635 (1940).

22 *Administrative Law, Law on Public Officers and Election Law*, 2005 Edition, Ruben E. Agpalo, pp. 3-4, citing *Luzon Development Bank v. Association of Luzon Development Bank Employees*, 319 Phil. 262 (1995).

but not from acts committed by private individuals or entities. In the latter case, the specific statutes that provide reliefs from such private acts apply. The right to due process guards against unwarranted encroachment by the state into the fundamental rights of its citizens and cannot be invoked in private controversies involving private parties.[23]

Although political parties play an important role in our democratic set-up as an intermediary between the state and its citizens, it is still a private organization, not a state instrument. The discipline of members by a political party does not involve the right to life, liberty or property within the meaning of the due process clause. An individual has no vested right, as against the state, to be accepted or to prevent his removal by a political party. The only rights, if any, that party members may have, in relation to other party members, correspond to those that may have been freely agreed upon among themselves through their charter, which is a contract among the party members. Members whose rights under their charter may have been violated have recourse to courts of law for the enforcement of those rights, but not as a due process issue against the government or any of its agencies.

But even when recourse to courts of law may be made, courts will ordinarily not interfere in membership and disciplinary matters within a political party. A political party is free to conduct its internal affairs, pursuant to its constitutionally-protected right to free association. In *Sinaca v. Mula*,[24] the Court said that judicial restraint in internal party matters serves the public interest by allowing the political processes to operate without undue interference. It is also consistent with the state policy of allowing a free and open party system to evolve, according to the free choice of the people.[25]

To conclude, the COMELEC did not gravely abuse its discretion when it upheld Roxas' election as LP president but

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[23] *City of Manila v. Hon. Laguio, Jr.*, 495 Phil. 289, 311 (2005).

[24] 373 Phil. 896, 912 (1999).

[25] Section 6, Article IX-C of the Constitution.

refused to rule on the validity of Atienza, *et al*.'s expulsion from the party. While the question of party leadership has implications on the COMELEC's performance of its functions under Section 2, Article IX-C of the Constitution, the same cannot be said of the issue pertaining to Atienza, *et al*.'s expulsion from the LP. Such expulsion is for the moment an issue of party membership and discipline, in which the COMELEC cannot intervene, given the limited scope of its power over political parties.

WHEREFORE, the Court *DISMISSES* the petition and *UPHOLDS* the Resolution of the Commission on Elections dated June 18, 2009 in COMELEC Case SPP 08-001.

SO ORDERED.

Carpio Morales, Velasco, Jr., Nachura, Leonardo-de Castro, Brion, Peralta, Bersamin, Del Castillo, Villarama, Jr., Perez, and *Mendoza, JJ.,* concur.

Carpio, J., concurs but the COMELEC's jurisdiction over leadership disputes of political parties is merely for purposes of determining whether they shall be registered.

Puno, C.J., in the result.

Corona, J., no part.

THIRD DIVISION

[A.M. No. 05-8-463-RTC. February 17, 2010]

REQUEST OF JUDGE NIÑO A. BATINGANA, REGIONAL TRIAL COURT, BRANCH 6, MATI, DAVAO ORIENTAL FOR EXTENSION OF TIME TO DECIDE CIVIL CASES NOS. 2063 AND 1756.

SYLLABUS

1. **LEGAL ETHICS; JUDGES; UNDUE DELAY IN RENDERING A DECISION OR ORDER; CLASSIFIED AS A LESS SERIOUS CHARGE; PENALTY. —** The Constitution provides that all lower courts must decide all cases filed within three months. Further, the Code of Judicial Conduct states that a judge shall dispose of the court's business promptly and decide the cases within the required periods. Delay in the disposition of cases erodes the faith and confidence of the people in the judiciary, lowers its standards, and brings it to disrepute. Judges should not abuse the grant of an extension to decide a case, and strive to decide the case within the extended period granted by the Court. Under Sec. 9, Rule 140 of the Rules of Court, undue delay in rendering a decision or order is classified as a less serious charge punishable with suspension from office without salary and other benefits for not less than one (1) nor more than three (3) months; or a fine of more than ₱10,000.00, but not exceeding ₱20,000.00.

2. **ID.; ID.; ID.; COMMITTED IN CASE AT BAR. —** In this case, Judge Batingana decided Civil Case No. 2063 four years after the first extension granted to him by the Court, and two years after the Court denied his seventh request for extension and directed him to submit a copy of his decision through the OCA, but he failed to decide Civil Case No. 1759 despite the numerous extensions granted to him. The Court notes that Judge Batingana had previously been found guilty of undue delay in rendering a decision in A.M. No. 08-2-107-RTC (Request for Extension of Time to Decide Criminal Case No. 4745-05), which was promulgated on February1, 2010. He was fined in the amount of ₱11,000.00, with a warning that a repetition of the same act shall be dealt with more severely.

D E C I S I O N

PERALTA, *J.*:

This administrative matter stemmed from the undue delay of Judge Niño A. Batingana, Presiding Judge, Regional Trial

Court, Branch 6, Mati, Davao Oriental in deciding Civil Case No. 2063,[1] and his failure to decide Civil Case No. 1756.[2]

In separate letters, both dated June 23, 2005, Judge Batingana requested for a 90-day extension from June 29, 2005 within which to decide Civil Case No. 2063, and also a 90-day extension from July 5, 2005 within which to decide Civil Case No. 1756. He claimed that he was devoting his time for the resolution of Crim. Case No. 4651 and Civil Case No. 1890, and the resolution of other civil and criminal cases with incidents that needed to be acted upon immediately.

On August 31, 2005, the Court issued a Resolution granting both requests. Judge Batingana was required to submit to the Court, through the Office of the Court Administrator (OCA), a copy of his decision in each civil case within 10 days after its promulgation.

In the letters dated September 27, 2005 and October 3, 2005, Judge Batingana sought a second extension of 90 days from September 27, 2005 within which to decide Civil Case No. 2063, and another 90 days from October 3, 2005 within which to decide Civil Case No. 1756.

Moreover, in separate letters, both dated December 21, 2005, Judge Batingana sought a third extension of 90 days from December 27, 2005 within which to decide Civil Case No. 2063, and 90 days from January 2, 2006 within which to decide Civil Case No. 1756.

In a Resolution dated September 18, 2006, the Court granted the second and third requests for extension, and noted that Judge Batingana had been granted a total of 180 days to decide both civil cases. He was required to submit to the Court, through the OCA, a copy of his decision in each case within 10 days from promulgation.

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[1] Entitled *Spouses Vicente Bacaltos, et al. v. Manuel Donayre, et al.* for Ejectment with Damages.

[2] Entitled *Miraluna Maguinsawan Manguiob, et al. v. Spouses Salvacion Lunay, et al.* for Annulment of Documents and/or Reconveyance, Accounting, Damages and Attorney's Fees.

Judge Batingana sought a fourth extension of 90 days from March 27, 2006 within which to decide Civil Case No. 2063 in a letter dated March 27, 200[6], and another 90-day extension from April 2, 2006 within which to decide Civil Case No. 1756 in a letter dated April 3, 200[6].

In his letters dated June 23, 2006 and June 30, 2006, Judge Batingana sought a fifth extension of 90 days from June 25, 2006 within which to decide Civil Case No. 2063, and another 90-day extension from July 1, 2006 within which to decide Civil Case No. 1756.

In a Resolution dated November 29, 2006, the Court granted the fourth and fifth extensions sought by Judge Batingana. He was directed to furnish the Court, through the OCA, a copy of his decision in each case.

In a letter dated September 22, 2006, Judge Batingana requested for the sixth time an extension of 90 days from September 23, 2006 within which to decide Civil Case No. 2063. Likewise, in his letter dated September 28, 2006, he sought an extension of 90 days from September 29, 2006 within which to decide Civil Case No. 1759. In both letters, he stated that he was devoting his time for the resolution of other civil and criminal cases with incidents that had to be acted upon immediately.

His separate letters both dated January 15, 2007 marked the seventh time Judge Batingana asked for another extension of 90 days from December 22, 2006 within which to decide Civil Case No. 2063, and 90 days from December 28, 2006 within which to decide Civil Case No. 1759.

In a Resolution dated March 28, 2007, the Court denied the extensions sought in the letters dated September 22 and 28, 2006, and the two letters dated January 15, 2007.Judge Batingana was directed to submit to the Court, through the OCA, a copy of his decision in each case within 10 days from notice.

Meantime, in a letter dated March 21, 2007, Judge Batingana sought for the eighth time an extension of 90 days from March 22, 2007 within which to decide Civil Case No. 2063. In another

letter dated March 23, 2007, he asked for an extension of 90 days from March 28, 2007 within which to decide Civil Case No. 1759.

In a Resolution dated July 30, 2007, the Court denied the requests for extension dated March 21 and 28, 2007 on the ground that sufficient time had been given Judge Batingana to decide the civil cases.

Despite the Resolution dated March 28, 2007 denying his requests for extension to decide the civil cases, Judge Batingana still requested in a letter dated June 20, 2007 an extension of 90 days from June 21, 2007 within which to decide Civil Case No. 2063, which was his ninth request for extension. He also sought, in a letter dated June 26, 2007, an extension of 90 days from June 27, 2007 within which to decide Civil Case No. 1759. He alleged that he needed additional time to decide the two cases considering that he was devoting his time for the resolution of other civil and criminal cases with incidents that needed to be acted upon immediately.

In a Resolution dated September 24, 2007, the Court denied the requests for extension dated June 20 and 26, 2007, as already stated in its Resolution dated March 28, 2007. Judge Batingana was directed to submit to the Court, through the OCA, a copy of his decision in each case within 10 days from notice, with a stern warning that failure to decide a case within the reglementary period was tantamount to gross inefficiency, which would be administrative sanctioned by the court.

In a letter dated September 18, 2007, Judge Batingana made his tenth request for an extension of 90 days from September 18, 2007 within which to decide Civil Case No. 2063. Similarly, in his letter dated September 25, 2007, he requested for another 90 days from September 25, 2007 within which to decide Civil Case No. 1759.

In a Resolution dated February 27, 2008, the Court denied the requests for extension dated September 18 and 25, 2007. The Court directed Judge Batingana to submit to the Court, through the OCA, a copy of his decision in each case as directed

in the Resolutions dated March 28, 2007 and September 24, 2007, and to comment within 10 days from notice on why he should not be administratively dealt with for his continuous filing of requests for extension of time to decide the cases and for his failure to decide them within the reglementary period.

In a letter dated December 11, 2008, Judge Batingana requested another extension of 90 days from September 12, 2007 within which to decide Civil Case No. 2063. The request was denied in the Resolution dated June 8, 2009, wherein the Court directed Judge Batingana to immediately decide the case and furnish the OCA a copy of his decision.

On November 12, 2009, the OCA received a copy of the Decision in Civil Case No. 2063 dated October 14, 2009, but Judge Batingana failed to render a decision in Civil Case No. 1756. Moreover, he failed to comply with the Resolution dated February 27, 2008, which directed him to comment within 10 days from notice on why he should not be administratively dealt with for his continuous requests for extension of time to decide the civil cases and for his failure to decide them within the reglementary period.

The Constitution[3] provides that all lower courts must decide all cases filed within three months. Further, the Code of Judicial Conduct[4] states that a judge shall dispose of the court's business promptly and decide the cases within the required periods.

Delay in the disposition of cases erodes the faith and confidence of the people in the judiciary, lowers its standards, and brings it to disrepute.[5] Judges should not abuse the grant of an extension to decide a case, and strive to decide the case within the extended period granted by the Court.

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[3] The Constitution, Art. VIII. Sec. 15 (1) All cases or matters filed after the effectivity of this Constitution must be decided or resolved within twenty-four months from date of submission for the Supreme Court, and, unless reduced by the Supreme Court, twelve months for all lower collegiate courts, and three months for all other lower courts.

[4] Canon 3, Rule 3.05.

[5] *Lagamon v. Paderanga*, A.M. No. RTJ-08-2123, July 14, 2008, 558 SCRA 50.

Under Sec. 9, Rule 140 of the Rules of Court, undue delay in rendering a decision or order is classified as a less serious charge punishable with suspension from office without salary and other benefits for not less than one (1) nor more than three (3) months; or a fine of more than ₱10,000.00, but not exceeding ₱20,000.00.

In this case, Judge Batingana decided Civil Case No. 2063 four years after the first extension granted to him by the Court, and two years after the Court denied his seventh request for extension and directed him to submit a copy of his decision through the OCA, but he failed to decide Civil Case No. 1759 despite the numerous extensions granted to him.

The Court notes that Judge Batingana had previously been found guilty of undue delay in rendering a decision in A.M. No. 08-2-107-RTC (Request for Extension of Time to Decide Criminal Case No. 4745-05), which was promulgated on February 1, 2010. He was fined in the amount of ₱11,000.00, with a warning that a repetition of the same act shall be dealt with more severely.

WHEREFORE, Judge Niño A. Batingana, Presiding Judge, Regional Trial Court, Branch 6, Mati City, Davao Oriental, is held administratively liable under Sec. 9 (1), Rule 140 of the Rules of Court for undue delay in rendering a decision in Civil Case No. 2063 and Civil Case No. 1756, and he is, therefor, *FINED* in the amount of Twenty Thousand Pesos (₱20,000.00). He is directed to submit to the Court, through the Office of the Court Administrator, a copy of the decision in Civil Case No. 1759 within fifteen (15) days from notice of this Decision, with a warning that a repetition of the same or similar act shall be dealt with more severely.

SO ORDERED.

Corona (Chairperson), Carpio,[*] *Nachura,* and *Mendoza, JJ.,* concur.

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* Designated to sit as an additional Member, in lieu of Justice Presbitero J. Velasco, Jr., per raffle dated February 10, 2010.

THIRD DIVISION

[G.R. No. 169195. February 17, 2010]

FRANCISCO APARIS *y* SANTOS, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. CRIMINAL LAW; ILLEGAL SALE OF *SHABU*; ELEMENTS. — To secure a conviction for illegal sale of *shabu*, the following essential elements must be established: (1) the identity of the buyer and the seller, the object of the sale and the consideration; and (2) the delivery of the thing sold and the payment thereof. In prosecutions for illegal sale of *shabu*, what is material is the proof that the transaction or sale actually took place, coupled with the presentation in court of the *corpus delicti* as evidence.

2. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; FINDINGS THEREON BY TRIAL COURT, GENERALLY ACCORDED GREAT RESPECT; EXCEPTIONS. — As to the question of credibility of the police officers who served as principal witnesses for the prosecution, settled is the rule that prosecutions involving illegal drugs depend largely on the credibility of the police officers who conducted the buy-bust operation. It is a fundamental rule that findings of the trial courts which are factual in nature and which involve credibility are accorded respect when no glaring errors; gross misapprehension of facts; or speculative, arbitrary, and unsupported conclusions can be gathered from such findings. The reason for this is that the trial court is in a better position to decide the credibility of witnesses, having heard their testimonies and observed their deportment and manner of testifying during the trial. The rule finds an even more stringent application where said findings are sustained by the Court of Appeals, as in the present case. Moreover, in the process of converting into written form the statements of living human beings, not only fine nuances but a world of meaning apparent to the judge present, watching and listening, may escape the reader of the translated words. Considering that this Court has access only to the cold and impersonal records of the proceedings, it generally relies upon the assessment of the trial court, which had the distinct advantage of observing the

conduct and demeanor of the witnesses during trial. Hence, their factual findings are accorded great weight, absent any showing that certain facts of relevance and substance bearing on the elements of the crime have been overlooked, misapprehended or misapplied. No cogent reason exists for the Court to deviate from this rule.

3. ID.; ID.; ID.; NOT ADVERSELY AFFECTED BY INACCURACIES IN THE TESTIMONIES OF WITNESSES ON MINOR DETAILS. — The inaccuracies in the testimonies of the arresting officers alluded to by petitioner are inconsequential and minor to adversely affect their credibility. Moreover the alleged inconsistencies pointed to by petitioner, namely: (a) the target of the buy-bust operation; (b) the presence or absence of a prior surveillance; and (c) the identity of the team leader, were not necessary to establish the elements of the crime committed.

4. ID.; ID.; ID.; TESTIMONIES OF WITNESSES NEED ONLY TO CORROBORATE ONE ANOTHER ON MATERIAL DETAILS SURROUNDING THE ACTUAL COMMISSION OF THE CRIME. — The RTC, as upheld by the CA, found that the testimonies of PO3 Labrador, Police Inspector (P/Insp.) Gozar, and Senior Police Officer 1 (SPO1) Edwin Anaviso were unequivocal, definite and straightforward. More importantly, their testimonies were consistent in material respects with each other and with other testimonies and physical evidence. Time and again, the Court has ruled that the testimonies of witnesses need only to corroborate one another on material details surrounding the actual commission of the crime. In the present case, what is essential is that the prosecution witnesses positively identified petitioner as the one who sold and delivered the *shabu* to PO3 Labrador. There is nothing on record that sufficiently casts doubt on the credibility of the police operatives.

5. CRIMINAL LAW; BUY-BUST OPERATIONS; PRIOR SURVEILLANCE, NOT NECESSARY WHERE THE POLICE OPERATIVES ARE ACCOMPANIED BY THEIR INFORMANT DURING THE ENTRAPMENT. — Neither does the Court give credit to petitioner's contention that the conduct of the buy-bust operation was highly irregular, as there was no surveillance made before the operation. Flexibility is a trait of good police work. The court has held that when time

is of the essence, the police may dispense with the need for prior surveillance. Moreover, prior surveillance is not necessary, especially where the police operatives are accompanied by their informant during the entrapment. In the instant case, the entrapment or buy-bust operation was conducted without the necessity of any prior surveillance because the informant, who was previously tasked by PO3 Labrador to deal with petitioner's assistant, accompanied the team and PO3 Labrador himself when the latter bought *shabu* from petitioner. To be sure, there is no textbook method of conducting buy-bust operations. The Court has left to the discretion of police authorities the selection of effective means to apprehend drug dealers. Thus, the Court has refused to establish on *a priori* basis what detailed acts the police authorities might credibly undertake in their entrapment operations.

6. REMEDIAL LAW; EVIDENCE; DENIAL AND FRAME UP; VIEWED BY THE COURT WITH DISFAVOR, AS THESE CAN EASILY BE CONCOCTED; FRAME-UP, WHEN TO PROSPER AS A DEFENSE. — [L]ike alibi, the defenses of denial and frame-up are viewed by the Court with disfavor, as these can easily be concocted and are commonly used as standard lines of defense in most prosecutions arising from illegal sale of drugs. Moreover, for the claim of frame-up to prosper, the defense must present clear and convincing evidence to overcome the presumption that the arresting policemen performed their duties in a regular and proper manner.

7. ID.; ID.; MOTIVE; CLAIM OF ILL MOTIVE CAN BE OVERCOME BY CATEGORICAL AND CONVINCING TESTIMONIES OF WITNESSES, SUPPORTED BY PHYSICAL EVIDENCE. — Petitioner failed to substantiate his claim that he was an unfortunate prey to a supposed ploy concocted by the police. By all indications and, in fact, by his own admission, he did not know anyone of the members of the buy-bust team which apprehended him. There was, therefore, no motive for them to trump up any charge against him. Neither was petitioner able to substantiate his allegation that the police officers who arrested him were paid to frame him up. Absent any proof of motive to falsely accuse him of such a grave offense, the presumption of regularity in the performance of official duty and the findings of the trial court with respect to the credibility of witnesses shall prevail over petitioner's bare allegation that he was framed

up. In other words, the categorical and convincing testimonies of the policemen, backed up by physical evidence, overcome the unsubstantiated claim of ill motive by petitioner.

8. ID.; CRIMINAL PROCEDURE; TERRITORIAL JURISDICTION IN CRIMINAL CASES; EXPLAINED. — [I]t is a fundamental rule that for jurisdiction to be acquired by courts in criminal cases, the offense should have been committed or any one of its essential ingredients should have taken place within the territorial jurisdiction of the court. Territorial jurisdiction in criminal cases is the territory where the court has jurisdiction to take cognizance or to try the offense allegedly committed therein by the accused. The jurisdiction of a court over a criminal case is determined by the allegations in the complaint or information. Once these are shown, the court may validly take cognizance of the case.

APPEARANCES OF COUNSEL

So Malazarte Mijares Garcia for petitioner.
The Solicitor General for respondent.

D E C I S I O N

PERALTA, *J.*:

Before the Court is a Petition For Review on *Certiorari* under Rule 45 of the Rules of Court assailing the Decision[1] of the Court of Appeals (CA) promulgated on August 31, 2004 in *CA-G.R. CR No. 24238* and its Resolution[2] dated August 5, 2005. The challenged Decision of the CA affirmed with modification the March 31, 2000 Decision[3] of the Regional Trial Court (RTC) of Makati, Branch 64 in Criminal Case No. 96-147, finding herein petitioner Francisco Aparis *y* Santos guilty beyond reasonable doubt of violating Section 15, Article III of

[1] Penned by Associate Justice Edgardo P. Cruz with Justices Godardo A. Jacinto and Jose C. Mendoza concurring; CA *rollo*, pp. 238-245.

[2] *Rollo*, p. 273.

[3] *Id.* at 161-178.

Republic Act No. 6425 (RA 6425), otherwise known as the Dangerous Drugs Act of 1972, as amended; while its questioned Resolution denied petitioner's motion for reconsideration.

The prosecution's version of the facts, as summarized by the trial court, are as follows:

> On [January] 17, 1996 at about 2:30 o'clock in the morning, elements of the PNP Narcotics Command based at Camp Crame, Quezon City and headed by Police Inspector Randolfo Gozar, conducted a buy-bust operation at Dian Street, corner Zobel Street, Barangay Palanan, Makati City which resulted in the apprehension of accused Edilberto Campos *y* Ibalid and [herein petitioner] Francisco Aparis *y* Santos. Several Days prior to the actual buy-bust, PO3 Nelson Labrador and confidential informant had entered into a drug deal with a certain "Boyet Aparis". The name "Boyet Aparis" is in the drug watchlist of the NARCOM. In the planned buy-bust operation the poseur buyer, PO3 Nelson Labrador, was to buy from the accused ₱100,000.00 worth of *shabu* which would be delivered at Dian Street, corner Zobel Street, Bgy. Palanan, Makati City. They reported the "deal" to their superior, Police Capt. David Noora who directed them to conduct the buy-bust operation. On the aforesaid date and time, from Camp Crame the team composed of Police Inspector Randolfo Gozar, SPO1 Edwin Anaviso, PO3 Nelson Labrador and the confidential informant went to Dian Street, corner Zobel Street, Palanan, Makati City on board three unmarked vehicles. PO3 Labrador and the confidential informant were together in one vehicle. Upon their arrival at the place the buy-bust team deployed themselves at strategic position[s] while they waited for their "quarry". After sometime a white Lancer GLI with Conduction No. 97-AYZ arrived with two (2) male persons on board. A male person seated at the passenger side of the car alighted and approached the car of PO3 Nelson Labrador. PO3 Nelson Labrador and the confidential informant alighted from their car and proceeded to the car of accused and they went inside at the backseat of the car. They were accompanied by the man who earlier alighted from the white Lancer GLI and who was later on identified as Edilberto Campos. In a little while PO3 Labrador executed the pre-arranged signal signifying that the buy-bust operation had been accomplished. x x x Upon receiving the signal, P/Insp. Gozar and his other police teammates rushed to where PO3 Labrador and the confidential informant were and they gave their assistance to effect the arrest of the accused. x x x The police [were] able to confiscate the *shabu*

subject of the buy-bust and the buy-bust money... x x x The man from whom PO3 Labrador bought *shabu* was identified as Francisco S. Aparis *alias* Boyet Aparis, and his companion who was seated at the front passenger seat of the white Lancer GLI, and who alighted from the car upon seeing PO3 Labrador and the confidential informant, and who accompanied the two to the Lancer GLI, was identified as the accused Edilberto Campos. The alleged *shabu* was examined at the PNP Crime Laboratory and was found to be positive for Methamphetamine Hydrochloride or *Shabu*, a regulated drug. x x x[4]

In an Information dated January 18, 1996, petitioner and co-accused Edilberto Campos (Campos) were charged with violation of Section 15, Article III of Republic Act No. 6425. Pertinent portions of the Information filed against petitioner and Campos read as follows:

That on or about the 17th day of January, 1996, in the City of Makati, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, without the corresponding license or prescription, did then and there willfully, unlawfully and feloniously sell, give away, distribute and deliver 101.11 gms of Methamphetamine Hydrochloride (*Shabu*) which is a regulated drug.

CONTRARY TO LAW.[5]

Upon arraignment, petitioner and Campos both pleaded not guilty to the offense charged.[6] Thereafter, trial ensued.

In his defense, petitioner denied the occurrence of any buy-bust operation, which the prosecution claimed to have conducted, and which led to his and Campos' arrest. Petitioner alleged that he was billeted at the Manila Hotel as early as January 15, 1996. Campos, whom he claimed to be his driver, followed him to the hotel the following day. In the early morning of January 17, 1996, while he was driving his car along Roxas Boulevard, Manila, on his way to a casino in Silahis Hotel, his vehicle was suddenly blocked by two cars. Thereafter he was

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[4] *Id.* at 162-164.

[5] Original records, pp. 2 and 4.

[6] *Id.* at 34 and 42.

apprehended at gun point by persons unknown to him. They took over his car, blindfolded, handcuffed him and robbed him of his money and other valuables. They then proceeded to his room in the Manila Hotel, where he was further robbed of his previous winnings in the casino worth ₱1,000,000.00, as well as other personal records and documents. Petitioner also claims that Campos was arrested at the hotel. Petitioner alleged that he was simply framed up, and that he was a victim of a conspiracy designed by his former wife, or by a police colonel, both of whom had an ax to grind against him.

On March 31, 2000, the RTC rendered judgment and disposed as follows:

> WHEREFORE, in view of the foregoing, judgment is rendered as follows:
>
> 1. In Criminal Case No. 96-146, the accused EDILBERTO CAMPOS *y* IBALID is ACQUITTED for insufficiency of evidence.
>
> 2. In Criminal Case No. 96-147, the accused FRANCISCO APARIS *y* SANTOS *alias* "BOYET'' is GUILTY beyond reasonable doubt of the crime as charged, and is sentenced to suffer the indeterminate prison term of SIX (6) YEARS of *PRISION CORRECCIONAL* as minimum to TWELVE (12) YEARS of *PRISION MAYOR*, as maximum.
>
> SO ORDERED.[7]

Insofar as petitioner is concerned, the trial court found that all the elements of the crime charged were present and were proven beyond reasonable doubt by the documentary and object evidence presented by the prosecution, as well as the testimonies of the witnesses, especially Police Officer 3 PO3 Labrador, who acted as the poseur-buyer; and Police Inspector Gozar, the team leader who led the buy-bust operation.

With respect to Campos, however, the RTC ruled that the prosecution failed to present sufficient evidence to prove that he actually sold or delivered *shabu* to PO3 Labrador, or that he was in conspiracy with petitioner in selling the said drugs.

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[7] *Id.* at 439-456.

Aggrieved by the Decision of the RTC, petitioner filed an appeal with the CA.

On August 31, 2004, the CA promulgated the presently assailed Decision with the following dispositive portion:

> WHEREFORE, the appealed decision of the Regional Trial Court of Makati City (Branch 64) is **AFFIRMED** with **MODIFICATION** on the sentence imposed on accused-appellant Francisco Aparis *y* Santos in that he shall suffer the indeterminate penalty of six (6) years of *prision correccional*, as minimum, to eight (8) years and eight (8) months of *prision mayor*, as maximum.
>
> SO ORDERED.[8]

The CA ruled that the trial court committed no error in giving credence to the testimonies of the prosecution witnesses as against those of petitioner. The CA also held that petitioner failed to substantiate his defense that he was framed up.

Petitioner filed a Motion for Reconsideration, but the CA denied it in its Resolution of August 5, 2005.

Hence, the instant petition based on the following grounds:

> I
>
> WHETHER OR NOT THE PRESIDING JUDGE OF RTC-BR. 64, MAKATI CITY AND THE HONORABLE COURT OF APPEALS COMMITTED REVERSIBLE ERRORS IN THE APPRECIATION OF THE EVIDENCE, INCLUDING THE MATTER OF JURISDICTION.
>
> II
>
> WHETHER OR NOT THE FUNDAMENTAL RIGHTS OF THE PETITIONER WERE VIOLATED WHEN HE WAS ALLEGEDLY ARRESTED BY THE POLICE OFFICERS.[9]

Petitioner maintained his innocence and insisted that he was a victim of frame-up and robbery. He contends that the police officers who testified against him were paid to falsely charge him with a crime he did not commit.

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[8] *Supra* note 1.

[9] *Supra* note 1, at 18.

Petitioner also asserted that the testimonies of the prosecution witnesses contradicted each other. In particular, he claimed that the first two witnesses testified that he (petitioner) was the target of the buy-bust operation, that his name was in the Drug Watch List of the Narcotics Command (NARCOM), and that surveillance was conducted by PO3 Labrador, who acted as the poseur-buyer. However, petitioner averred that Labrador categorically denied knowing petitioner prior to his arrest, and he admitted that no surveillance was conducted.

Petitioner further contends that the RTC of Makati had no jurisdiction over his case, as the place where the crime was supposedly committed is within Manila.

Lastly, petitioner claims that he was not properly apprised of his fundamental rights when he was arrested.

The Court is not persuaded.

To secure a conviction for illegal sale of *shabu*, the following essential elements must be established: (1) the identity of the buyer and the seller, the object of the sale and the consideration; and (2) the delivery of the thing sold and the payment thereof.[10] In prosecutions for illegal sale of *shabu*, what is material is the proof that the transaction or sale actually took place, coupled with the presentation in court of the *corpus delicti* as evidence.[11]

In the case before the Court, the prosecution was able to establish—through testimonial, documentary, and object evidence—the said elements. PO3 Labrador, who acted as the poseur-buyer, categorically testified about the buy-bust operation – from the time he and the confidential informant waited for petitioner to arrive, to the time when petitioner met them and asked them if they had money, to the actual exchange of the marked money with the plastic bag containing a white substance, which was later proved to be *shabu*; until the apprehension of petitioner, to wit:

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[10] *People v. Lazaro*, G.R. No. 186418, October 16, 2009.

[11] *People v. Sy*, G.R. No. 185284, June 22, 2009, 590 SCRA 511, 524; *People v. Hernandez*, G.R. No. 184804, June 18, 2009, 589 SCRA 625, 635.

PROS. BAGAOISAN
Now, what time did you leave your office?
WITNESS
Almost 2:00 o'clock, sir.

PROS. BAGAOISAN
And, where was your destination?
WITNESS
Dian Street corner Zobel, Barrio Palanan, Makati City, sir.

PROS. BAGAOISAN
And, what means of transporation did you take in going to Dian corner Zobel Streets, Barrio Palanan, Makati City?
WITNESS
We were aboard three cars, sir.

PROS. BAGAOISAN
Who was with you on that car that you were riding?
WITNESS
My informant, sir.

PROS. BAGAOISAN
So, there were only two of you on that car?
WITNESS
Yes, sir.

PROS. BAGAOISAN
What time did you arrive at Dian corner Zobel Streets, Barrio Palanan, Makati City?
WITNESS
In the morning, sir.

PROS. BAGAOISAN
What did you do next upon arrival at Dian corner Zobel Streets?
WITNESS
We waited for the person to whom we had a deal, sir.

PROS. BAGAOISAN
And, you were referring to Francisco "Boyet" Aparis?
WITNESS
Yes, sir.

PROS. BAGAOISAN
Did Francisco "Boyet" Aparis arrive?
WITNESS
It was not long before the white lancer arrived, that don't (*sic*) have plate number but some sort of sticker, sir.

x x x

PROS. BAGAOISAN
Now, what happened after this white lancer car arrived?
WITNESS
A man alighted from the car and he approached us and we came to know later on that the name of the man is Edilberto Campos, sir.

PROS. BAGAOISAN
When you said "*lumapit sa amin*" whom you are referring? (*sic*)
WITNESS
The informant and me, sir.

PROS. BAGAOISAN
So, what did the man tell you, if he did tell you anything?
WITNESS
He told my informant that *alias* Boyet was there inside the car, sir.

PROS. BAGAOISAN
So, what happened after you were informed by the man that Boyet Aparis was inside the car?
WITNESS
They asked us to transfer to their car, sir.

PROS. BAGAOISAN
Who asked you to transfer to the car?
WITNESS
Edilberto Campos, sir. He was the one who gave us the signal to transfer to their car.

PROS. BAGAOISAN
Did you transfer to the white lancer car?

WITNESS
Yes, sir

PROS. BAGAOISAN
Now, in what portion of the car did you position yourself?
WITNESS
We got in the passenger's seat of the car, at the backseat of the car, sir.

PROS. BAGAOISAN
Now, where was Boyet Aparis positioned?
WITNESS
At the driver's seat, sir.

PROS. BAGAOISAN
How about Edilberto Campos, where was he?
WITNESS
They were side by side, sir.

PROS. BAGAOISAN
How about you, where were you positioned?
WITNESS
I was at the back of Francisco Aparis, sir.

PROS. BAGAOISAN
How about your informant, where was he positioned?
WITNESS
He was at the side, sir, at the back of Edilberto Campos.

PROS. BAGAOISAN
What happened next when you were positioned as such?
WITNESS
Aparis asked us if the money was with us, sir.

PROS. BAGAOISAN
What was your reply if there was any?
WITNESS
We asked if they have the stuff, sir.

PROS. BAGAOISAN
To whom did you address that question?

WITNESS

Aparis sir, because he was the one who talked.

PROS. BAGAOISAN

What happened after that?

WITNESS

Sir, he took the stuff from the bag which was inside the car and gave to me the stuff, then after that, I gave him the buy bust money, sir.

PROS. BAGAOISAN

Now, will you please describe to us this stuff that you have just mentioned?

WITNESS

It was inside the improvised plastic bag, sir.

PROS. BAGAOISAN

How big is this plastic bag?

WITNESS

About this size, sir. (Witness indicating the size of about 3 x 2 inches)

PROS. BAGAOISAN

Does it have any color?

WITNESS

Whitees (*sic*), sir.

x x x x x x x x x

PROS. BAGAOISAN

So, what happened after the accused Aparis handed to you this stuff and you also handed to him the buy bust money?

WITNESS

When I realized that the sale was already consummated, I pressed the voyager beeper, and that's the signal to our companion to give assistance to us and effect the arrest of the accused.

x x x x x x x x x

PROS. BAGAOISAN

What happened after you pressed that voyager beeper?

WITNESS

When I saw that my companions were already approaching, I put my left arm around Aparis' neck and I introduced myself as Narcom agent and informed them that they were under arrest, sir.

PROS. BAGAOISAN
What happened next after that?
WITNESS
After that, they were already arrested and we were able to recover the buy bust money and the stuff. And, when we conducted the search, we found some paraphernalias (sic), sir.

PROS. BAGAOISAN
What are these paraphernalias (*sic*)?
WITNESS
The improvised toother (*sic*), burner, and the alcohol they used for the burner, sir.

x x x x x x x x x

PROS. BAGAOISAN
Now, what did you do next after you were able to arrest the two accused?
WITNESS
We went to our office in Camp Crame to turn over the evidence to the police investigator for proper investigation and disposition, sir.

PROS. BAGAOISAN
Were you able to turn over the evidence and the persons of the accused to the investigator?
WITNESS
Yes, sir.

x x x x x x x x x

PROS. BAGAOISAN
Did you come to know what happened to the stuff that was sold by the accused?
WITNESS
After it was have been marked (sic), I know that it could be submitted for examination to verify whether it is really "shabu", sir.
PROS. BAGAOISAN
And, did you come to know the result of the examination conducted?

WITNESS

I learned that it was positive, sir...[12]

Upon examination, the white crystalline substance, bought by PO3 Labrador for ₱100,000.00 from petitioner during the buy-bust operation, later yielded a positive result for *shabu* per Physical Sciences Report No. D-64-96 issued by the Philippine National Police Crime Laboratory on January 17, 1996.[13]

As to the question of credibility of the police officers who served as principal witnesses for the prosecution, settled is the rule that prosecutions involving illegal drugs depend largely on the credibility of the police officers who conducted the buy-bust operation.[14] It is a fundamental rule that findings of the trial courts which are factual in nature and which involve credibility are accorded respect when no glaring errors; gross misapprehension of facts; or speculative, arbitrary, and unsupported conclusions can be gathered from such findings.[15] The reason for this is that the trial court is in a better position to decide the credibility of witnesses, having heard their testimonies and observed their deportment and manner of testifying during the trial.[16] The rule finds an even more stringent application where said findings are sustained by the Court of Appeals, as in the present case.[17]

Moreover, in the process of converting into written form the statements of living human beings, not only fine nuances but a world of meaning apparent to the judge present, watching and listening, may escape the reader of the translated words. Considering that this Court has access only to the cold and impersonal records of the proceedings, it generally relies upon

[12] TSN, November 27, 1997, pp. 15-39.

[13] Exhibit "C", records, p. 240.

[14] *People v. Mateo*, G.R. No. 179478, July 28, 2008, 560 SCRA 397, 412.

[15] *People v. Macatingag*, G.R. No. 181037, January 19, 2009, 576 SCRA 354, 366.

[16] *Id.*

[17] *Id.; People v. Encila*, G.R. No. 182419, February 10, 2009, 578 SCRA 341, 355.

the assessment of the trial court, which had the distinct advantage of observing the conduct and demeanor of the witnesses during trial.[18] Hence, their factual findings are accorded great weight, absent any showing that certain facts of relevance and substance bearing on the elements of the crime have been overlooked, misapprehended or misapplied.[19] No cogent reason exists for the Court to deviate from this rule.

The inaccuracies in the testimonies of the arresting officers alluded to by petitioner are inconsequential and minor to adversely affect their credibility. Moreover the alleged inconsistencies pointed to by petitioner, namely: (a) the target of the buy-bust operation; (b) the presence or absence of a prior surveillance; and (c) the identity of the team leader, were not necessary to establish the elements of the crime committed.

The RTC, as upheld by the CA, found that the testimonies of PO3 Labrador, Police Inspector (P/Insp.) Gozar, and Senior Police Officer 1 (SPO1) Edwin Anaviso were unequivocal, definite and straightforward. More importantly, their testimonies were consistent in material respects with each other and with other testimonies and physical evidence. Time and again, the Court has ruled that the testimonies of witnesses need only to corroborate one another on material details surrounding the actual commission of the crime.[20] In the present case, what is essential is that the prosecution witnesses positively identified petitioner as the one who sold and delivered the *shabu* to PO3 Labrador. There is nothing on record that sufficiently casts doubt on the credibility of the police operatives.

Neither does the Court give credit to petitioner's contention that the conduct of the buy-bust operation was highly irregular, as there was no surveillance made before the operation.

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[18] *Id.*

[19] *People v. Darisan*, G.R. No. 176151, January 30, 2009, 577 SCRA 486, 491.

[20] *People v. Razul*, G.R. No. 146470, November 22, 2002, 392 SCRA 553, 570; *People v. Gonzales*, G.R. No. 143805, April 11, 2002, 380 SCRA 689, 698.

Flexibility is a trait of good police work. The court has held that when time is of the essence, the police may dispense with the need for prior surveillance.[21] Moreover, prior surveillance is not necessary, especially where the police operatives are accompanied by their informant during the entrapment.[22] In the instant case, the entrapment or buy-bust operation was conducted without the necessity of any prior surveillance because the informant, who was previously tasked by PO3 Labrador to deal with petitioner's assistant, accompanied the team and PO3 Labrador himself when the latter bought *shabu* from petitioner. To be sure, there is no textbook method of conducting buy-bust operations. The Court has left to the discretion of police authorities the selection of effective means to apprehend drug dealers. Thus, the Court has refused to establish on *a priori* basis what detailed acts the police authorities might credibly undertake in their entrapment operations.[23]

For his part, petitioner could not offer any viable defense except to deny that there was a buy-bust operation and to claim that he was, instead, a victim of frame-up and extortion by the police officers. However, like alibi, the defenses of denial and frame-up are viewed by the Court with disfavor, as these can easily be concocted and are commonly used as standard lines of defense in most prosecutions arising from illegal sale of drugs.[24] Moreover, for the claim of frame-up to prosper, the defense must present clear and convincing evidence to overcome the presumption that the arresting policemen performed their duties in a regular and proper manner.[25] This, petitioner failed to do.

Petitioner failed to substantiate his claim that he was an unfortunate prey to a supposed ploy concocted by the police. By all indications and, in fact, by his own admission, he did

[21] *Id*.

[22] *Quinicot v. People*, G.R. No. 179700, June 22, 2009, 590 SCRA 458, 470 citing *People v. Gonzales*, *supra*.

[23] *Id*.

[24] *Zalameda v. People*, G.R. No. 183656, September 4, 2009; *People v. Cabugatan*, G.R. No. 172019, February 12, 2007, 515 SCRA 537, 551.

[25] *People v. Teodoro*, G.R. No. 185164, June 22, 2009, 590 SCRA 494,

not know anyone of the members of the buy-bust team which apprehended him. There was, therefore, no motive for them to trump up any charge against him. Neither was petitioner able to substantiate his allegation that the police officers who arrested him were paid to frame him up. Absent any proof of motive to falsely accuse him of such a grave offense, the presumption of regularity in the performance of official duty and the findings of the trial court with respect to the credibility of witnesses shall prevail over petitioner's bare allegation that he was framed up.[26] In other words, the categorical and convincing testimonies of the policemen, backed up by physical evidence, overcome the unsubstantiated claim of ill motive by petitioner.

With respect to petitioner's contention that the RTC of Makati had no jurisdiction over the case, it is a fundamental rule that for jurisdiction to be acquired by courts in criminal cases, the offense should have been committed or any one of its essential ingredients should have taken place within the territorial jurisdiction of the court.[27] Territorial jurisdiction in criminal cases is the territory where the court has jurisdiction to take cognizance or to try the offense allegedly committed therein by the accused.[28] The jurisdiction of a court over a criminal case is determined by the allegations in the complaint or information.[29] Once these are shown, the court may validly take cognizance of the case.[30] In the instant case, the Information clearly alleged that the the crime was committed in Makati. The allegation in the Information was sufficiently proven by the testimonies of the prosecution witnesses. Moreover, the Court finds no cogent reason to depart from the findings of the CA and the RTC that the defense failed to present sufficient evidence to substantiate its allegation that the place where the buy-bust operation took

508; *People v. Cabugatan, supra*.

[26] *Id*.

[27] *Foz, Jr. v. People*, G.R. No. 167764, October 9, 2009 citing *Macasaet v. People*, G.R. No. 156747, February 23, 2005, 452 SCRA 255, 271.

[28] *Id*.

[29] *Id*.

[30] *Id*.

place was within the territorial jurisdiction of Manila and not of Makati. The trial court was correct in holding that the testimony of the defense witness, who was an engineering assistant at the Office of the City Engineer of Manila, cannot be given credence, considering that his claims were not backed up by any supporting evidence. While the defense referred to a certification issued by a certain Magdiwang Recato from the Office of the City Engineer of Manila, to the effect that the place where the buy-bust operation was conducted was within the territorial jurisdiction of the city of Manila, the same was not offered in evidence and, hence, cannot be given evidentiary value.

Lastly, petitioner claims in the present petition that he and Campos were presented for inquest proceedings only after a week of being incarcerated. However, his claim was contradicted by his own admission during his direct examination that the inquest proceedings were conducted within two days after their arrest.[31] This was consistent with his admission in his brief filed with the CA that the day following their arrest, they were brought to Makati for inquest and, a day thereafter, an Information was already filed against them.

With respect to petitioner's claim that he was not informed of his constitutional rights at the time of his arrest, the same cannot prevail over the testimonies of P/Insp. Gozar and SPO1 Anaviso, who were members of the apprehending team, attesting to the fact that petitioner was sufficiently apprised of his rights during his arrest.[32] As earlier discussed, in the absence of clear and convincing evidence that the members of the buy-bust team were inspired by any improper motive or were not properly performing their duty, their testimonies on the operation were given full faith and credit.

In sum, the Court finds no cogent reason to overturn the findings and conclusions of the CA and the RTC in the present case. The positive identification made by the poseur-buyer and

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[31] *See* TSN, August 19, 1999, p. 14.

[32] *See* TSN, December 3, 1996, p. 54; TSN May 6, 1997, pp. 77-80.

the arresting officers and the laboratory report, not to mention the dubious defenses of denial and frame-up which petitioner has resorted to, sufficiently prove beyond reasonable doubt that he committed the crime charged.

WHEREFORE, the Decision of the Court of Appeals in CA-G.R. CR No. 24238, which affirmed, with modification, the Decision of the Regional Trial Court of Makati City, Branch 64, finding petitioner Francisco Aparis *y* Santos guilty beyond reasonable doubt of violating Section 15, Article III of Republic Act No. 6425, as amended, and sentencing him to an indeterminate penalty of six (6) years of *prision correccional*, as minimum, to eight (8) years and eight (8) months of *prision mayor*, as maximum, is *AFFIRMED*.

SO ORDERED.

Corona (Chairperson), Velasco, Jr., Nachura, and *Perez, *JJ.*, concur.

THIRD DIVISION

[G.R. No. 171231. February 17, 2010]

PNCC SKYWAY TRAFFIC MANAGEMENT AND SECURITY DIVISION WORKERS ORGANIZATION (PSTMSDWO), represented by its President, RENE SORIANO, *petitioner, vs.* **PNCC SKYWAY CORPORATION,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; PARTS OF A PLEADING; RULE ON VERIFICATION; NON-COMPLIANCE THEREWITH DOES NOT NECESSARILY RENDER THE PETITION

* Designated Additional Member per Raffle dated February 3, 2010.

DEFECTIVE. — The purpose of requiring verification is to secure an assurance that the allegations in the petition have been made in good faith; or are true and correct, not merely speculative. This requirement is simply a condition affecting the form of pleadings, and non-compliance therewith does not necessarily render it fatally defective. Truly, verification is only a formal, not a jurisdictional, requirement.

2. ID.; ID.; ID.; REQUIREMENT ON CERTIFICATION OF NON-FORUM SHOPPING; CAN BE RELAXED UNDER THE RULE OF SUBSTANTIAL COMPLIANCE. — With respect to the certification of non-forum shopping, it has been held that the certification requirement is rooted in the principle that a party-litigant shall not be allowed to pursue simultaneous remedies in different *fora*, as this practice is detrimental to an orderly judicial procedure. However, this Court has relaxed, under justifiable circumstances, the rule requiring the submission of such certification considering that, although it is obligatory, it is not jurisdictional. Not being jurisdictional, it can be relaxed under the rule of substantial compliance.

3. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; COLLECTIVE BARGAINING AGREEMENT; HOW CONSTRUED. — The rule is that where the language of a contract is plain and unambiguous, its meaning should be determined without reference to extrinsic facts or aids. The intention of the parties must be gathered from that language, and from that language alone. Stated differently, where the language of a written contract is clear and unambiguous, the contract must be taken to mean that which, on its face, it purports to mean, unless some good reason can be assigned to show that the words used should be understood in a different sense. In the case at bar, the contested provision of the CBA is clear and unequivocal. Article VIII, Section 1 (b) of the CBA categorically provides that the scheduling of vacation leave *shall* be under the option of the employer. The preference requested by the employees is not controlling because respondent retains its power and prerogative to consider or to ignore said request. Thus, if the terms of a CBA are clear and leave no doubt upon the intention of the contracting parties, the literal meaning of its stipulation shall prevail. In fine, the CBA must be strictly adhered to and respected if its ends have to be achieved, being the law between the parties. *In Faculty Association of Mapua*

Institute of Technology (FAMIT) v. Court of Appeals, this Court held that the CBA during its lifetime binds all the parties. The provisions of the CBA must be respected since its terms and conditions constitute the law between the parties. The parties cannot be allowed to change the terms they agreed upon on the ground that the same are not favorable to them.

4. ID.; ID.; ID.; MANAGEMENT PREROGATIVES; GRANT OF VACATION LEAVE; NOT A STANDARD OF LAW BUT A PREROGATIVE OF MANAGEMENT. — In the grant of vacation leave privileges to an employee, the employer is given the leeway to impose conditions on the entitlement to and commutation of the same, as the grant of vacation leave is not a standard of law, but a prerogative of management. It is a mere concession or act of grace of the employer and not a matter of right on the part of the employee. Thus, it is well within the power and authority of an employer to impose certain conditions, as it deems fit, on the grant of vacation leaves, such as having the option to schedule the same.

5. ID.; ID.; ID.; ID.; ID.; PURPOSE. — In *Cuajo v. Chua Lo Tan*, We said that the purpose of a vacation leave is to afford a laborer a chance to get a much-needed rest to replenish his worn-out energy and acquire a new vitality to enable him to efficiently perform his duties, and not merely to give him additional salary and bounty. x x x Accordingly, the vacation leave privilege was not intended to serve as additional salary, but as a non-monetary benefit. To give the employees the option not to consume it with the aim of converting it to cash at the end of the year would defeat the very purpose of vacation leave.

6. CIVIL LAW; CONTRACTS; PRINCIPLE OF AUTONOMY OF CONTRACTS; EXCEPTIONS. — Although it is a rule that a contract freely entered into between the parties should be respected, since a contract is the law between the parties, there are, however, certain exceptions to the rule, specifically Article 1306 of the Civil Code, which provides: "The contracting parties may establish such stipulations, clauses, terms and conditions as they may deem convenient, provided they are not contrary to law, morals, good customs, public order, or public policy."

7. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; COLLECTIVE BARGAINING AGREEMENT; MAY BE VOIDED WHEN THE PROVISIONS THEREIN ARE CONTRARY TO

LAW, PUBLIC MORALS, OR PUBLIC POLICY. — [T]he relations between capital and labor are not merely contractual. "They are so impressed with public interest that labor contracts must yield to the common good x x x." The supremacy of the law over contracts is explained by the fact that labor contracts are not ordinary contracts; they are imbued with public interest and therefore are subject to the police power of the state. However, it should not be taken to mean that provisions agreed upon in the CBA are absolutely beyond the ambit of judicial review and nullification. If the provisions in the CBA run contrary to law, public morals, or public policy, such provisions may very well be voided.

8. ID.; ID.; ID.; ID.; ACCOUNTABILITY FOR THE IN-SERVICE TRAINING OF SECURITY GUARDS, EXPLAINED; CASE AT BAR. — Article XXI, Section 6 of the CBA provides that "*All expenses of security guards in securing/ renewing their licenses shall be for their personal account*." A reading of the provision would reveal that it encompasses all possible expenses a security guard would pay or incur in order to secure or renew his license. In-service training is a requirement for the renewal of a security guard's license. Hence, following the aforementioned CBA provision, the expenses for the same must be on the personal account of the employee. x x x Since it is the primary responsibility of operators of company security forces to maintain and upgrade the standards of efficiency, discipline, performance and competence of their personnel, it follows that the expenses to be incurred therein shall be for the personal account of the company. Further, the intent of the law to impose upon the employer the obligation to pay for the cost of its employees' training is manifested in the x x x provision [of R.A. No. 5487] that *Where the quality of training is better served by centralization, the CFSD Directors may activate a training staff from local talents to assist. The cost of training shall be pro-rated among the participating agencies/private companies.* It can be gleaned from the said provision that cost of training shall be pro-rated among participating agencies and companies if the training is best served by centralization. The law mandates pro-rating of expenses because it would be impracticable and unfair to impose the burden of expenses suffered by all participants on only one participating agency or company. Thus, it follows that if there is no centralization, there can be no pro-rating,

and the company that has its own security forces shall shoulder the entire cost for such training. If the intent of the law were to impose upon individual employees the cost of training, the provision on the pro-rating of expenses would not have found print in the law. Further, petitioner alleged that prior to the inking of the CBA, it was the respondent company providing for the in-service training of the guards. Respondent never controverted the said allegation and is thus deemed to have admitted the same. Implicit from respondent's actuations was its acknowledgment of its legally mandated responsibility to shoulder the expenses for in-service training.

APPEARANCES OF COUNSEL

Victoria Lim Law Offices for petitioner.
Ronald O. Guillermo and *Michael M. Racelis* for respondent.

D E C I S I O N

PERALTA, *J.*:

Before this Court is a Petition for Review on C*ertiorari* under Rule 45 of the Rules of Court seeking to set aside the Decision[1] and the Resolution[2] of the Court of Appeals (CA) in CA-G.R. SP. No. 87069, which annulled and set aside the Decision and Order of the Voluntary Arbitrator dated July 12, 2004 and August 11, 2004, respectively.

The factual antecedents are as follows:

Petitioner PNCC Skyway Corporation Traffic Management and Security Division Workers' Organization (PSTMSDWO) is a labor union duly registered with the Department of Labor and Employment (DOLE). Respondent PNCC Skyway Corporation is a corporation duly organized and operating under and by virtue of the laws of the Philippines.

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[1] Penned by Associate Justice Andres B. Reyes, Jr., with Associate Justices Rosmari D. Carandang and Monina Arevalo-Zenarosa, concurring; *rollo*, pp. 32-43.

[2] *Id.* at 45.

On November 15, 2002, petitioner and respondent entered into a Collective Bargaining Agreement (CBA) incorporating the terms and conditions of their agreement which included vacation leave and expenses for security license provisions.

The pertinent provisions of the CBA relative to vacation leave and sick leave are as follows:

ARTICLE VIII

VACATION LEAVE AND SICK LEAVE

Section 1. Vacation Leave.

[a] Regular Employees covered by the bargaining unit who have completed at least one [1] year of continuous service shall be entitled to vacation leave with pay depending on the length of service as follows:

1-9 years of service	- 15 working days
10-15 years of service	- 16 working days
16-20 years of service	- 17 working days
21-25 years of service	- 18 working days
26 and above years of service	- 19 working days.

[b] ***The company shall schedule the vacation leave of employees during the year taking into consideration the request of preference of the employees.***(emphasis supplied)

[c] Any unused vacation leave shall be converted to cash and shall be paid to the employees on the first week of December each year."

ARTICLE XXI

Section 6. Security License – All covered employees must possess a valid License [Security Guard License] issued by the Chief, Philippine National Police or his duly authorized representative, to perform his duties as security guard. All expenses of security guard in securing/renewing their licenses shall be for their personal account. Guards, securing/renewing their license must apply for a leave of absence and/or a change of schedule. Any guard who fails to renew his security guard license should be placed on forced leave until such time that he can present a renewed security license.

In a Memorandum dated December 29, 2003,[3] respondent's Head of the Traffic Management and Security Department (TMSD) published the scheduled vacation leave of its TMSD personnel for the year 2004. Thereafter, the Head of the TMSD issued a Memorandum[4] dated January 9, 2004 to all TMSD personnel. In the said memorandum, it was provided that:

SCHEDULED VACATION LEAVE WITH PAY.

The 17 days (15 days SVL plus 2-day-off) scheduled vacation leave (SVL) with pay for the year 2004 had been published for everyone to take a vacation with pay which will be our opportunity to enjoy quality time with our families and perform our other activities requiring our personal attention and supervision. Swapping of SVL schedule is allowed on a one-on-one basis by submitting a written request at least 30 days before the actual schedule of SVL duly signed by the concerned parties. However, the undersigned may consider the re-scheduling of the SVL upon the written request of concerned TMSD personnel at least 30 days before the scheduled SVL. Re-scheduling will be evaluated taking into consideration the TMSDs operational requirement.

Petitioner objected to the implementation of the said memorandum. It insisted that the individual members of the union have the right to schedule their vacation leave. It opined that the unilateral scheduling of the employees' vacation leave was done to avoid the monetization of their vacation leave in December 2004. This was allegedly apparent in the memorandum issued by the Head HRD,[5] addressed to all department heads, which provides:

FOR : All Dept. Heads
FROM : Head, HRD
SUBJECT : Leave Balances as of January 01, 2004
DATE : January 9, 2004

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[3] Records, pp. 4-9.

[4] *Supra* note 1, at 76-77.

[5] *Supra* note 3, at 3.

We are furnishing all the departments the leave balances of their respective staff as of January 01, 2004, so as to have them monitor and program the schedule of such leave.

Please consider the leave credit they earned each month [1-2-0], one day and two hours in anticipation of the later schedule. As we are targeting the zero conversion comes December 2004, it is suggested that the leave balances as of to date be given preferential scheduling.

x x x x x x x x x

Petitioner also demanded that the expenses for the required in-service training of its member security guards, as a requirement for the renewal of their license, be shouldered by the respondent. However, the respondent did not accede to petitioner's demands and stood firm on its decision to schedule all the vacation leave of petitioner's members.

Due to the disagreement between the parties, petitioner elevated the matter to the DOLE-NCMB for preventive mediation. For failure to settle the issue amicably, the parties agreed to submit the issue before the voluntary arbitrator.

The voluntary arbitrator issued a Decision dated July 12, 2004, the dispositive portion of which reads:

WHEREFORE, premises all considered, declaring that:

a) The scheduling of all vacation leaves under Article VIII, Section 6, thereof, shall be under the discretion of the union members entitled thereto, and the management to convert them into cash all the leaves which the management compelled them to use.

b) To pay the expenses for the in-service-training of the company security guards, as a requirement for renewal of licenses, shall not be their personal account but that of the company.

All other claims are dismissed for lack of merit.

SO ORDERED.[6]

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[6] *Supra* note 1, at 113-118.

Respondent filed a motion for reconsideration, which the voluntary arbitrator denied in the Order[7] dated August 11, 2004.

Aggrieved, on October 22, 2004, respondent filed a Petition for *Certiorari* with Prayer for Temporary Restraining Order and/or Writ of Preliminary Injunction with the CA, and the CA rendered a Decision dated October 4, 2005,[8] annulling and setting aside the decision and order of the voluntary arbitrator. The CA ruled that since the provisions of the CBA were clear, the voluntary arbitrator has no authority to interpret the same beyond what was expressly written.

Petitioner filed a motion for reconsideration, which the CA denied through a Resolution dated January 23, 2006.[9] Hence, the instant petition assigning the following errors:

I

WITH ALL DUE RESPECT, THE HONORABLE PUBLIC RESPONDENT COURT OF APPEALS [THIRTEENTH DIVISION] ERRED IN HOLDING THAT:

A) THE MANAGEMENT HAS THE SOLE DISCRETION TO SCHEDULE THE VACATION LEAVE OF HEREIN PETITIONER.

B) THE MANAGEMENT IS NOT LIABLE FOR THE IN-SERVICE-TRAINING OF THE SECURITY GUARDS

II

THE HONORABLE PUBLIC RESPONDENT ERRED IN OVERSEEING THE CONVERSION ASPECT OF THE UNUSED LEAVE.

Before considering the merits of the petition, We shall first address the objection based on technicality raised by respondent.

Respondent alleged that the petition was fatally defective due to the lack of authority of its union president, Rene Soriano,

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[7] *Supra* note 1, 120-124.

[8] *Id.* 32-43.

[9] *Id.* 45.

to sign the certification and verification against forum shopping on petitioner's behalf. It alleged that the authority of Rene Soriano to represent the union was only conferred on June 30, 2006 by virtue of a board resolution,[10] while the Petition for Review had long been filed on February 27, 2006. Thus, Rene Soriano did not possess the required authority at the time the petition was filed on February 27, 2006.

The petitioner countered that the Board Resolution[11] dated June 30, 2006 merely reiterated the authority given to the union president to represent the union, which was conferred as early as October 2005. The resolution provides in part that:

> WHEREAS, in a *meeting duly called for October 2005*, the Union decided to file a Motion for Reconsideration and if the said motion be denied, to file a petition before the Supreme Court. (Emphasis supplied)

Thus, the union president, representing the union, was clothed with authority to file the petition on February 27, 2006.

The purpose of requiring verification is to secure an assurance that the allegations in the petition have been made in good faith; or are true and correct, not merely speculative. This requirement is simply a condition affecting the form of pleadings, and non-compliance therewith does not necessarily render it fatally defective. Truly, verification is only a formal, not a jurisdictional, requirement.

With respect to the certification of non-forum shopping, it has been held that the certification requirement is rooted in the principle that a party-litigant shall not be allowed to pursue simultaneous remedies in different *fora*, as this practice is detrimental to an orderly judicial procedure. However, this Court has relaxed, under justifiable circumstances, the rule requiring the submission of such certification considering that, although it is obligatory, it is not jurisdictional. Not being jurisdictional, it can be relaxed under the rule of substantial compliance.[12]

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[10] *Supra* note 1, at 154-155.

[11] *Id.* at 172-173.

[12] *People of the Philippines v. Joven de Grano, Armando de Grano,*

In *Cagayan Valley Drug Corporation v. Commissioner of Internal Revenue*,[13] We said that:

> In a slew of cases, however, we have recognized the authority of some corporate officers to sign the verification and certification against forum shopping. In *Mactan-Cebu International Airport Authority v. CA*, we recognized the authority of a general manager or acting general manager to sign the verification and certificate against forum shopping; in *Pfizer v. Galan*, we upheld the validity of a verification signed by an "employment specialist" who had not even presented any proof of her authority to represent the company; in *Novelty Philippines, Inc., v. CA*, we ruled that a personnel officer who signed the petition but did not attach the authority from the company is authorized to sign the verification and non-forum shopping certificate; and in *Lepanto Consolidated Mining Company v. WMC Resources International Pty. Ltd.* (*Lepanto*), we ruled that the Chairperson of the Board and President of the Company can sign the verification and certificate against non-forum shopping even without the submission of the board's authorization.
>
> In sum, we have held that the following officials or employees of the company can sign the verification and certification without need of a board resolution: (1) the Chairperson of the Board of Directors, (2) the President of a corporation, (3) the General Manager or Acting General Manager, (4) Personnel Officer, and (5) an Employment Specialist in a labor case.
>
> While the above cases do not provide a complete listing of authorized signatories to the verification and certification required by the rules, the determination of the sufficiency of the authority was done on a case to case basis. The rationale applied in the foregoing cases is to justify the authority of corporate officers or representatives of the corporation to sign the verification or certificate against forum shopping, being "in a position to verify the truthfulness and correctness of the allegations in the petition."

In the case at bar, We rule that Rene Soriano has sufficient authority to sign the verification and certification against forum shopping for the following reasons: *First*, the resolution dated June 30, 2006 was merely a reiteration of the authority given

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Domingo Landicho and Estanislao Lacaba, G.R. No. 167710, June 5, 2009.

[13] G.R. No. 151413, February 13, 2008, 545 SCRA 10, 17-19.

to the Union President to file a case before this Court assailing the CBA violations committed by the management, which was previously conferred during a meeting held on October 5, 2005. Thus, it can be inferred that even prior to the filing of the petition before Us on February 27, 2006, the president of the union was duly authorized to represent the union and to file a case on its behalf. *Second*, being the president of the union, Rene Soriano is in a position to verify the truthfulness and correctness of the allegations in the petition. *Third*, assuming that Mr. Soriano has no authority to file the petition on February 27, 2006, the passing on June 30, 2006 of a Board Resolution authorizing him to represent the union is deemed a ratification of his prior execution, on February 27, 2006, of the verification and certificate of non-forum shopping, thus curing any defects thereof. Ratification in agency is the adoption or confirmation by one person of an act performed on his behalf by another without authority.[14]

We now go to the merits of the case.

Petitioner insisted that their union members have the preference in scheduling their vacation leave. On the other hand, respondent argued that Article VIII, Section 1 (b) gives the management the final say regarding the vacation leave schedule of its employees. Respondent may take into consideration the employees' preferred schedule, but the same is not controlling.

Petitioner also requested the respondent to provide and/or shoulder the expenses for the in-service training of their members as a requirement for the renewal of the security guards' license. Respondent did not accede to the union's request invoking the CBA provision which states that all expenses of security guards in securing /renewing their license shall be for their personal account. The petitioner further argued that any doubts or ambiguity in the interpretation of the CBA should be resolved in favor of the laborer.

As to the issue on vacation leaves, the same has no merit.

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[14] *Filipinas Life Assurance Company v. Pedroso*, G.R. No. 159489, February 4, 2008, 543 SCRA 542, 547.

The rule is that where the language of a contract is plain and unambiguous, its meaning should be determined without reference to extrinsic facts or aids. The intention of the parties must be gathered from that language, and from that language alone. Stated differently, where the language of a written contract is clear and unambiguous, the contract must be taken to mean that which, on its face, it purports to mean, unless some good reason can be assigned to show that the words used should be understood in a different sense.[15]

In the case at bar, the contested provision of the CBA is clear and unequivocal. Article VIII, Section 1 (b) of the CBA categorically provides that the scheduling of vacation leave *shall* be under the option of the employer. The preference requested by the employees is not controlling because respondent retains its power and prerogative to consider or to ignore said request.

Thus, if the terms of a CBA are clear and leave no doubt upon the intention of the contracting parties, the literal meaning of its stipulation shall prevail.[16] In fine, the CBA must be strictly adhered to and respected if its ends have to be achieved, being the law between the parties. In *Faculty Association of Mapua Institute of Technology (FAMIT) v. Court of Appeals,*[17] this Court held that the CBA during its lifetime binds all the parties. The provisions of the CBA must be respected since its terms and conditions constitute the law between the parties. The parties cannot be allowed to change the terms they agreed upon on the ground that the same are not favorable to them.

As correctly found by the CA:

The words of the CBA were unequivocal when it provided that "The company shall schedule the vacation leave of employees during the year taking into consideration the request of preference of the

[15] *Bautista v. Court of Appeals,* 379 Phil. 386, 399 (2000), citing 17A Am. Jur. 2D 348-349.

[16] *RFM Corporation-Flour Division and SFI Feeds Division v. Kasapian ng Manggagawang Pinagkaisa-RFM (KAMPI-NAFLU-KMU) and Sandigan at Ugnayan ng Manggagawang Pinagkaisa-SFI (SUMAPI-NAFLU-KMU)* G.R. No. 162324, February 4, 2009, 578 SCRA 37.

[17] G.R. No. 164060, June 15, 2007, 524 SCRA 709, 716.

employees." The word *shall* in this instance connotes an imperative command, there being nothing to show a different intention. The only concession given under the subject clause was that the company should take into consideration the preferences of the employees in scheduling the vacations; but certainly, the concession never diminished the positive right of management to schedule the vacation leaves in accordance with what had been agreed and stipulated upon in the CBA.

There is, thus, no basis for the Voluntary Arbitrator to interpret the subject provision relating to the schedule of vacation leaves as being subject to the discretion of the union members. There is simply nothing in the CBA which grants the union members this right.

It must be noted the grant to management of the right to schedule vacation leaves is not without good reason. Indeed, if union members were given the unilateral discretion to schedule their vacation leaves, the same may result in significantly crippling the number of key employees of the petitioner manning the toll ways on holidays and other peak seasons, where union members may wittingly or unwittingly choose to have a vacation. Put another way, the grant to management of the right to schedule vacation leaves ensures that there would always be enough people manning and servicing the toll ways, which in turn assures the public plying the same orderly and efficient toll way service.

Indeed, the multitude or scarcity of personnel manning the tollways should not rest upon the option of the employees, as the public using the skyway system should be assured of its safety, security and convenience.

Although the preferred vacation leave schedule of petitioner's members should be given priority, they cannot demand, as a matter of right, that their request be automatically granted by the respondent. If the petitioners were given the exclusive right to schedule their vacation leave then said right should have been incorporated in the CBA. In the absence of such right and in view of the mandatory provision in the CBA giving respondent the right to schedule the vacation leave of its employees, compliance therewith is mandated by law.

In the grant of vacation leave privileges to an employee, the employer is given the leeway to impose conditions on the

entitlement to and commutation of the same, as the grant of vacation leave is not a standard of law, but a prerogative of management.[18] It is a mere concession or act of grace of the employer and not a matter of right on the part of the employee.[19] Thus, it is well within the power and authority of an employer to impose certain conditions, as it deems fit, on the grant of vacation leaves, such as having the option to schedule the same.

Along that line, since the grant of vacation leave is a prerogative of the employer, the latter can compel its employees to exhaust all their vacation leave credits. Of course, any vacation leave credits left unscheduled by the employer, or any scheduled vacation leave that was not enjoyed by the employee upon the employer's directive, due to exigencies of the service, must be converted to cash, as provided in the CBA. However, it is incorrect to award payment of the cash equivalent of vacation leaves that were already used and enjoyed by the employees. By directing the conversion to cash of all utilized and paid vacation leaves, the voluntary arbitrator has licensed unjust enrichment in favor of the petitioner and caused undue financial burden on the respondent. Evidently, the Court cannot tolerate this.

It would seem that petitioner's goal in relentlessly arguing that its members preferred vacation leave schedule should be given preference is not allowed to them to avail themselves of their respective vacation leave credits at all but, instead, to convert these into cash.

In *Cuajo v. Chua Lo Tan*,[20] We said that the purpose of a vacation leave is to afford a laborer a chance to get a much-needed rest to replenish his worn-out energy and acquire a new vitality to enable him to efficiently perform his duties, and not merely to give him additional salary and bounty.

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[18] *Sobrepeña, Jr. v. Court of Appeals*, 345 Phil. 714, 728 (1997).

[19] *Virginia A. Sugue and the Heirs of Renato S. Valderrama v. Triumph International (Phils.), Inc.*, G.R. No. 164804, January 30, 2009; *Triumph International (Phils.), Inc., v. Virginia A. Sugue and the Heirs of Renato S. Valderrama*, G.R. No. 164784, January 30, 2009, 577 SCRA 339.

[20] G.R. No. L-16298, September 29, 1962, 6 SCRA 136, 138.

This purpose is manifest in the Memorandum dated January 9, 2004[21] addressed to all TMSD Personnel which provides that:

SCHEDULED VACATION LEAVE WITH PAY

The 17 days (15 days SVL plus 2-Day-Off) scheduled vacation leave (SVL) with pay for the year 2004 had been published for everyone to take a vacation with pay which will be **our opportunity to enjoy quality time with our families and perform our other activities requiring our personal attention and supervision**.(Emphasis ours.)

Accordingly, the vacation leave privilege was not intended to serve as additional salary, but as a non-monetary benefit. To give the employees the option not to consume it with the aim of converting it to cash at the end of the year would defeat the very purpose of vacation leave.

Petitioner's contention that labor contracts should be construed in favor of the laborer is without basis and, therefore, inapplicable to the present case. This rule of construction does not benefit petitioners because, as stated, there is here no room for interpretation. Since the CBA is clear and unambiguous, its terms should be implemented as they are written.

This brings Us to the issue of who is accountable for the in-service training of the security guards. On this point, We find the petition meritorious.

Although it is a rule that a contract freely entered into between the parties should be respected, since a contract is the law between the parties, there are, however, certain exceptions to the rule, specifically Article 1306 of the Civil Code, which provides:

The contracting parties may establish such stipulations, clauses, terms and conditions as they may deem convenient, provided they are not contrary to law, morals, good customs, public order, or public policy.

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[21] *Supra* note 1, at 76-77.

Moreover, the relations between capital and labor are not merely contractual. "They are so impressed with public interest that labor contracts must yield to the common good x x x."[22] The supremacy of the law over contracts is explained by the fact that labor contracts are not ordinary contracts; they are imbued with public interest and therefore are subject to the police power of the state.[23] However, it should not be taken to mean that provisions agreed upon in the CBA are absolutely beyond the ambit of judicial review and nullification. If the provisions in the CBA run contrary to law, public morals, or public policy, such provisions may very well be voided.

In the present case, Article XXI, Section 6 of the CBA provides that "*All expenses of security guards in securing /renewing their licenses shall be for their personal account*." A reading of the provision would reveal that it encompasses all possible expenses a security guard would pay or incur in order to secure or renew his license. In-service training is a requirement for the renewal of a security guard's license.[24] Hence, following the aforementioned CBA provision, the expenses for the same must be on the personal account of the employee. However, the 1994 Revised Rules and Regulations Implementing Republic Act No. 5487 provides the following:

> Section 17. Responsibility for Training and Progressive Development. It is the primary responsibility of all operators private security agency and company security forces to maintain and upgrade the standards of efficiency, discipline, performance and competence of their personnel. To attain this end, each duly licensed private security agency and company security force shall establish a staff position for training and appoint a training officer whose primary

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[22] Article 1700, New Civil Code.

[23] *Villa v. National Labor Relations Commission*, G.R. No. 117043, January 14, 1998, 284 SCRA 105, 127,128.

[24] Revised Rules and Regulations Implementing Republic Act No. 5487, Rule X, Section 12(b). The certificate of in-service training issued by company security force/private security agency shall be a pre-requisite for the renewal of license to exercise profession.

functions are to determine the training needs of the agency/guards in relation to the needs of the client/ market/ industry, and to supervise and conduct appropriate training requirements. All private security personnel shall be re-trained at least once very two years.

Section 12. In service training. — a. To maintain and/or upgrade the standard of efficiency, discipline and competence of security guards and detectives, company security force and private security agencies upon prior authority shall conduct-in-service training at least two (2) weeks duration for their organic members by increments of at least two percent (2%) of their total strength. ***Where the quality of training is better served by centralization, the CSFD Directors may activate a training staff from local talents to assist. The cost of training shall be pro-rated among the participating agencies/ private companies***. All security officer must undergo in-service training at least once every two (2) years preferably two months before his or her birth month.

Since it is the primary responsibility of operators of company security forces to maintain and upgrade the standards of efficiency, discipline, performance and competence of their personnel, it follows that the expenses to be incurred therein shall be for the personal account of the company. Further, the intent of the law to impose upon the employer the obligation to pay for the cost of its employees' training is manifested in the aforementioned law's provision that *Where the quality of training is better served by centralization, the CFSD Directors may activate a training staff from local talents to assist. The cost of training shall be pro-rated among the participating agencies/private companies.* It can be gleaned from the said provision that cost of training shall be pro-rated among participating agencies and companies if the training is best served by centralization. The law mandates pro-rating of expenses because it would be impracticable and unfair to impose the burden of expenses suffered by all participants on only one participating agency or company. Thus, it follows that if there is no centralization, there can be no pro-rating, and the company that has its own security forces shall shoulder the entire cost for such training. If the intent of the law were to impose upon individual employees the cost of

training, the provision on the pro-rating of expenses would not have found print in the law.

Further, petitioner alleged that prior to the inking of the CBA, it was the respondent company providing for the in-service training of the guards.[25] Respondent never controverted the said allegation and is thus deemed to have admitted the same.[26] Implicit from respondent's actuations was its acknowledgment of its legally mandated responsibility to shoulder the expenses for in-service training.

WHEREFORE, the petition is *PARTIALLY GRANTED.* The Decision and Resolution of the Court of Appeals, dated October 4, 2005 and January 23, 2006, respectively, in CA-G.R. SP. No. 87069 is *MODIFIED.* The cost of in-service training of the respondent company's security guards shall be at the expense of the respondent company. This case is remanded to the voluntary arbitrator for the computation of the expenses incurred by the security guards for their in-service training, and respondent company is directed to reimburse its security guards for the expenses incurred.

SO ORDERED.

Corona (Chairperson), Velasco, Jr., Nachura, and *Mendoza, JJ.,* concur.

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[25] Petition for Review, *supra* note 1, at 21; Petitioner's Memorandum, *id*. at 220; Petitioner's Motion for Reconsideration with the CA, CA records, p. 181.

[26] Sec. 32, Rule 130 of the Rules of Court — Admission by silence. — An act or declaration made in the presence and within the hearing or observation of a party who does or says nothing when the act or declaration is such as naturally to call for action or comment if not true, and when proper and possible for him to do so, may be given in evidence against him.

THIRD DIVISION

[G.R. No. 173165. February 17, 2010]

ATTY. LUCKY M. DAMASEN, *petitioner, vs.* **OSCAR G. TUMAMAO,** *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; LOCAL GOVERNMENT CODE; ELECTIVE OFFICIALS; VACANCIES AND SUCCESSION; PERMANENT VACANCIES IN THE SANGGUNIAN; RULE OF SUCCESSION; CONDITIONS FOR APPLICABILITY THEREOF. — It is undisputed that the law applicable to herein petition is Sec. 45(b) of RA 7160, which provides for the rule on succession in cases of permanent vacancies in the Sanggunian x x x. [T]he law provides for conditions for the rule of succession to apply: First, the appointee shall come from the same political party as that of the Sanggunian member who caused the vacancy. Second, the appointee must have a nomination and a Certificate of Membership from the highest official of the political party concerned.

2. ID.; ELECTION LAWS; POLITICAL PARTIES; DISCRETION OF ACCEPTING MEMBERS TO A POLITICAL PARTY IS A RIGHT AND A PRIVILEGE, A PURELY INTERNAL MATTER, WHICH THE COURT CANNOT MEDDLE IN; CASE AT BAR. — Like the CA, this Court has no reason to doubt the veracity of the letter coming from the LDP leadership. Quite clearly, from the tenor of the letter, it appears that the membership of Damasen still had to be approved by the LDP National Council. Thus, notwithstanding Damasen's procurement of a Certificate of Membership from LDP Provincial Chairman Balauag, to this Court's mind, the same merely started the process of his membership in the LDP, and it did not mean automatic membership thereto. While it may be argued that Damasen was already a member upon receipt of a Certificate of Membership from LDP Provincial Chairman Balauag, this Court cannot impose such view on the LDP. If the LDP leadership says that the membership of Damasen still had to be endorsed to the National Council for approval, then this Court cannot question such

requirement in the absence of evidence to the contrary. It is well settled that the discretion of accepting members to a political party is a right and a privilege, a purely internal matter, which this Court cannot meddle in.

3. ID.; ADMINISTRATIVE LAW; LOCAL GOVERNMENT CODE; ELECTIVE OFFICIALS; VACANCIES AND SUCCESSION; PERMANENT VACANCIES IN THE SANGGUNIAN; RULE OF SUCCESSION; RATIONALE. — In resolving the petition at bar, this Court is guided by *Navarro v. Court of Appeals (Navarro)*, where this Court explained the reason behind the rule of succession under Sec. 45 (b) of RA 7160, to wit: "**The reason behind the right given to a political party to nominate a replacement where a permanent vacancy occurs in the Sanggunian is to maintain the party representation as willed by the people in the election**." x x x Since the permanent vacancy in the Sanggunian occurred because of the elevation of LDP member Alonzo to vice-mayor, it follows that the person to succeed her should also belong to the LDP so as to preserve party representation. Thus, this Court cannot countenance Damasen's insistence in clinging to an appointment when he is in fact not a *bona fide* member of the LDP. While the revocation of the nomination given to Damasen came after the fact of his appointment, this Court cannot rule in his favor, because the very first requirement of Sec. 45 (b) is that the appointee must come from the political party as that of the Sanggunian member who caused the vacancy. To stress, Damasen is not a *bona fide* member of the LDP.

APPEARANCES OF COUNSEL

Lucky M. Damasen for and in his behalf.
Earnest A. Soberano for respondent.

D E C I S I O N

PERALTA, *J.*:

Before this Court is a Petition for Review on *Certiorari*,[1] under Rule 45 of the 1997 Rules of Civil Procedure, assailing

[1] *Rollo*, pp. 3-34.

the June 14, 2006 Decision[2] of the Court of Appeals (CA) in CA-G.R. SP No. 90882.

The facts of the case are as follows:

On December 2, 2004, Nelia Tumamao, the Vice-Mayor of San Isidro, Isabela, died.[3] As a result, a permanent vacancy was created in the Office of the Vice-Mayor.

Pursuant to Sec. 44 of Republic Act (RA) No. 7160,[4] Ligaya C. Alonzo (Alonzo) was elevated to the position of Vice-Mayor,

[2] Penned by Associate Justice Renato C. Dacudao with Associate Justices Hakim S. Abdulwahid and Monina Arevalo Zeñarosa, concurring, *id.* at 39-52.

[3] *Rollo*, p. 40.

[4] Otherwise known as the Local Government Code of 1991. Section 44 provides:

Section 44. *Permanent Vacancies in the Offices of the Governor, Vice-Governor, Mayor, and Vice-Mayor.* — If a permanent vacancy occurs in the office of the governor or mayor, the vice-governor or vice-mayor concerned shall become the governor or mayor. If a permanent vacancy occurs in the offices of the governor, vice-governor, mayor, or vice-mayor, the highest ranking *sanggunian* member or, in case of his permanent inability, the second highest ranking *sanggunian* member, shall become the governor, vice-governor, mayor or vice-mayor, as the case may be. Subsequent vacancies in the said office shall be filled automatically by the other *sanggunian* members according to their ranking as defined herein.

(a) If a permanent vacancy occurs in the office of the *punong barangay*, the highest ranking *sanggunian barangay* member or, in case of his permanent inability, the second highest ranking *sanggunian* member, shall become the *punong barangay*.

(b) A tie between or among the highest ranking *sanggunian* members shall be resolved by the drawing of lots.

(c) The successors as defined herein shall serve only the unexpired terms of their predecessors.

For purposes of this Chapter, a permanent vacancy arises when an elective local official fills a higher vacant office, refuses to assume office, fails to qualify, dies, is removed from office, voluntarily resigns, or is otherwise permanently incapacitated to discharge the functions of his office.

For purposes of succession as provided in the Chapter, ranking in the *sanggunian* shall be determined on the basis of the proportion of votes

she being the highest-ranking member of the Sangguniang Bayan, that is, the one who garnered the highest number of votes for that office.[5] As a result, a permanent vacancy was created in the Sangguniang Bayan.

To fill up the ensuing vacancy in the Sangguniang Bayan, San Isidro Mayor Abraham T. Lim (Mayor Lim) recommended to Governor Maria Gracia Cielo M. Padaca (Governor Padaca), the appointment of respondent Oscar G. Tumamao (Tumamao), a member of the Laban ng Demokratikong Pilipino (LDP), the same political party to which Alonzo belonged.[6]

On April 15, 2005, Tumamao took his oath as a member of the Sangguninang Bayan before Mayor Lim.[7]

On April 26, 2005 and May 3, 2006, Tumamao attended the regular sessions of the Sangguniang Bayan.[8]

On May 5, 2005, petitioner Atty. Lucky Damasen (Damasen) became a member of the LDP after taking his oath of affiliation before the LDP Provincial Chairman, Ms. Ana Benita Balauag (Provincial Chairman Balauag).[9] On even date, Damasen was able to secure from LDP Provincial Chairman Balauag a letter of nomination addressed to Governor Padaca for his appointment to the Sangguniang Bayan.[10]

On May 12, 2005, Damasen was appointed as Sangguniang Bayan member by Governor Padaca.[11]

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obtained by each winning candidate to the total number of registered voters in each district in the immediately preceding local election.

5 *Rollo,* p. 40.

6 *Id.*

7 *Rollo,* p. 40.

8 *Id.*

9 *Id.* at 41.

10 *Id.*

11 *Id.*

On May 16, 2005, Damasen took his oath as member of the Sangguniang Bayan before Governor Padaca.[12]

On May 17, 2005, Damasen attended the Sangguniang Bayan session, but with Tumamao present thereat, the former was not duly recognized.[13] Hence, in the afternoon of the same day, Damasen filed with the Regional Trial Court of Santiago City (RTC) a Petition for *Quo Warranto* with Prayer for the Issuance of a Writ of Preliminary Injunction,[14] seeking to be declared the rightful member of the Sangguniang Bayan, claiming that he had been nominated by LDP Provincial Chairman Balauag and had been appointed thereto by Governor Padaca.[15] The case was docketed as Special Civil Action Case No. 0234.

The RTC issued a Temporary Restraining Order effective for 72 hours. Thereafter, the RTC issued an order extending the Temporary Restraining order to 17 days.

Later, in the hearing to determine the propriety of issuing a Writ of Preliminary Injunction, Damasen testified that he is a member of the LDP and was nominated to the position in question by LDP Provincial Chairman Balauag; that pursuant thereto, he was appointed by Governor Padaca as a member of the Sangguniang Bayan, and that he later took his oath before her; but that during session of the Sangguniang Bayan on May 12, 2005, he was not recognized by a majority of its members.[16]

For his part, Tumamao called to the witness stand his counsel Atty. Ernest Soberano (Soberano), who identified a letter dated June 14, 2005, signed by LDP Provincial Chairman Balauag, which states that the latter was revoking her nomination of Damasen, and that she was confirming Tumamao's nomination made by Mayor Lim.[17] Later, Tumamao presented Provincial

[12] *Id.*

[13] *Id.*

[14] RTC records, pp. 1-14.

[15] *Rollo*, p. 41.

[16] Records, pp. 104-108.

[17] TSN, June 15, 2005.

Chairman Balauag who affirmed the contents of her letter revoking the nomination of Damasen.[18]

On August 4, 2005, the RTC rendered a Decision[19] ruling in favor of Damasen, the dispositive portion of which reads:

> WHEREFORE, after careful evaluation of the evidence presented, the Court resolves the petition declaring petitioner, Atty. Lucky M. Damasen as the rightful person to have the right to occupy and exercise the functions of Sangguniang Bayan member of San Isidro, Isabela, enjoining, excluding respondent Oscar G. Tumamao from occupying and exercising the function of Sangguniang Bayan member of San Isidro, Isabela, from usurping and unlawfully holding or exercising said office. After determining that herein petitioner is the rightful person to occupy and exercise the functions of Sangguniang Bayan member of San Isidro, Isabela, it follows that he is entitled to the salaries, benefits and other emoluments appurtenant to the position. He is also entitled to recover his costs.
>
> SO ORDERED.[20]

The RTC based its decision on Sec. 45 (b) of RA 7160,[21] which provides for the rule on succession in cases of permanent vacancies in the Sangguninan. The RTC ruled that the evidence submitted by Damasen proved that the requirements to be able

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[18] TSN, July 12, 2006.

[19] *Rollo*, pp. 53-60.

[20] *Id.*

[21] Otherwise known as the Local Government Code of 1991.

> **Section 45.** *Permanent Vacancies in the Sanggunian.* —
>
> (a) Permanent vacancies in the *sanggunian* where automatic succession provided above do not apply shall be filled by appointment in the following manner:
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> (1) The President, through the Executive Secretary, in the case of the *sangguniang panlalawigan* and the *sangguniang panlungsod* of highly urbanized cities and independent component cities;
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> (2) The governor, in the case of the *sangguniang panlungsod* of component cities and the *sangguniang bayan*;
>
> (3) The city or municipal mayor, in the case of *sangguniang barangay*, upon recommendation of the *sangguniang barangay* concerned.

to qualify for the position was fully complied with.[22] Moreover, the RTC held that the revocation of the political nomination issued by LDP Provincial Chairman Balauag was done after Governor Padaca had acted on it and had issued the appointment of Damasen.[23] Hence, the RTC declared that it could no longer undo what Governor Padaca had done, absent any showing of grave abuse of discretion.[24]

Tumamao appealed the RTC Decision to the CA. On June 14, 2006, the CA rendered a Decision reversing the appealed Decision, the dispositive portion of which reads:

> UPON THE VIEW WE TAKE OF THIS CASE, THUS, the judgment appealed from must be, as it hereby is, VACATED and SET ASIDE. The *Quo Warranto* case is hereby DISMISSED for lack of merit. Without special pronouncement as to costs.
>
> SO ORDERED.[25]

The CA held that Damasen was not entitled to assume the vacant position in the Sangguniang Bayan, thus:

> While Atty. Damasen might have been appointed by Governor Padaca, this appointment must fly in the face of the categorical and unbending *sine qua non* requirements of the statute.

(b) Except for the sangguniang barangay, only the nominee of the political party under which the sanggunian member concerned had been elected and whose elevation to the position next higher in rank created the last vacancy in the sanggunian shall be appointed in the manner hereinabove provided. The appointee shall come from the same political party as that of the sanggunian member who caused the vacancy and shall serve the unexpired term of the vacant office. In the appointment herein mentioned, a nomination and a certificate of membership of the appointee from the highest official of the political party concerned are conditions *sine qua non*, and any appointment without such nomination and certification shall be null and *void ab initio* and shall be a ground for administrative action against the official responsible therefore.

[22] *Rollo*, p. 58.

[23] *Id.*

[24] *Id.* at 60.

[25] *Rollo*, pp. 51-52.

Indeed, Atty. Damasen was nominated simply by Ms. Balauag, the Provincial Chairman of the LDP, who obviously is not the highest official of this political party. It cannot escape notice that the quoted provision particularizes: "highest official of the political party concerned" without any additional qualifying or restrictive words.

According credence to the June 16, 2005 letter of the LDP Deputy Secretary Counsel Demaree Raval, (and we have no reason not to), it should be easy enough to see that Atty. Damasen also was not a member of the LDP, as his application for membership therein was not endorsed to the LDP's National Council for approval.

More importantly, Atty. Damasen's aforesaid nomination was eventually withdrawn, cancelled or revoked by Ms. Balauag, who declared that she was misled into accepting him as member of the LDP (owing to the fact that Atty. Damasen was affiliated with the Lakas CMD-Party and under the banner of this party indeed ran for Mayor of San Isidro against the LDP candidate for Mayor), and in nominating him. That much is clear from Ms. Balauag's letter of June 14, 2005 to Governor Padaca, the contents whereof she affirmed in her testimony, as follows: x x x

Oddly enough, Atty. Damasen helped accentuate Ms. Balauag's thesis by admitting that he was previously a member of the Lakas-CMD, and that he did not resign therefrom when he joined the LDP, and moreover, his joining the LDP was not based on party ideals but because he just wanted to.[26]

Damasen did not file a motion for reconsideration of the CA Decision and instead sought direct relief from this Court *via* the present petition for review. In his petition, Damasen raised the following issues for this Court's resolution, to wit:

A.

THE COURT OF APPEALS ERRED IN DISMISSING THE *QUO WARRANTO* ON THE BASIS THAT THE NOMINATION OF THE PETITIONER DID NOT COMPLY WITH THE REQUIREMENTS OF SECTION 45 OF REPUBLIC ACT 7160.

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

B.

THE COURT OF APPEALS ERRED IN ITS DECISION WHEN IT DID NOT RULE ON THE VALIDITY OF THE ASSUMPTION TO OFFICE OF PRIVATE RESPONDENT AS SANGGUNIANG BAYAN.

C.

THE COURT OF APPEALS ERRED IN NOT DISMISSING THE APPEAL FAILED BY THE PRIVATE RESPONDENT THE LATTER HAVING NO AUTHORITY TO QUESTION THE VALIDITY OF THE APPOINTMENT OF PETITIONER.[27]

The petition is not meritorious.

At the outset, this Court shall address a procedural matter raised by Damasen. Damasen argues that Tumamao was not appointed as Sangguniang Bayan and, therefore, the latter has no right to question his appointment by way of appeal.[28] More specifically, Damasen argues in the wise:

> By reason of the appeal, the situation of the parties had been changed since it is now the private respondent who is assailing petitioner's exercise of a public office. Else wise stated, the private respondent is now alleging that the petitioner is a person who usurps, intrudes into, or unlawfully holding the position of Sangguniang Bayan. This being the case, the proper legal remedy should be a separate case of *Quo Warranto* to be filed against petitioner.[29]

Damasen's contention that Tumamao should have filed a separate case of *quo warranto* and not an appeal to the CA does not hold water. The determination of who, between Damasen and Tumamao, is entitled to the contested position is the crux of the controversy in the case at bar. Hence, a separate action would only be tantamount to a multiplicity of suits, which is abhorred by law.

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[27] *Rollo*, 20-21.

[28] *Id.* at 21.

[29] *Id.* at 21-22.

It is undisputed that the law applicable to herein petition is Sec. 45(b) of RA 7160, which provides for the rule on succession in cases of permanent vacancies in the Sanggunian, to wit:

Section 45. *Permanent Vacancies in the Sanggunian.* –

(a) Permanent vacancies in the *sanggunian* where automatic succession provided above do not apply shall be filled by appointment in the following manner:

(1) The President, through the Executive Secretary, in the case of the Sangguniang Panlalawigan and the Sangguniang Panlungsod of highly urbanized cities and independent component cities;

(2) The governor, in the case of the Sangguniang panlungsod of component cities and the Sangguniang Bayan;

(3) The city or municipal mayor, in the case of Sangguniang Barangay, upon recommendation of the Sangguniang Barangay concerned.

(b) Except for the Sangguniang Barangay, only the nominee of the political party under which the sanggunian member concerned had been elected and whose elevation to the position next higher in rank created the last vacancy in the sanggunian shall be appointed in the manner hereinabove provided. **The appointee shall come from the same political party as that of the sanggunian member who caused the vacancy and shall serve the unexpired term of the vacant office**. **In the appointment herein mentioned, a nomination and a certificate of membership of the appointee from the highest official of the political party concerned are conditions *sine qua non***, and any appointment without such nomination and certification shall be null and void *ab initio* and shall be a ground for administrative action against the official responsible therefore.[30]

As can be gleaned from the above provision, the law provides for conditions for the rule of succession to apply: First, the appointee shall come from the same political party as that of the Sanggunian member who caused the vacancy. Second, the appointee must have a nomination and a Certificate of Membership from the highest official of the political party concerned.

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[30] Emphasis supplied.

It is the contention of Damasen that he has complied with the requirements of Sec. 45 (b) of RA 7160. Specifically, Damasen's position is predicated on his submission of the following documents:

1. Oath of Affiliation with the LDP[31] dated May 5, 2005;
2. Certificate of Membership with the LDP[32] dated May 5, 2005;
3. Letter of Nomination made by LDP Provincial Chairman Ana Benita G. Balauag[33] dated May 5, 2005;
4. Letter of Appointment from Governor Padaca[34] dated May 12, 2005;
5. *Panunumpa sa Katungkulan* as Sangguniang Bayan member[35] dated May 16, 2005.

For his part, Tumamao argued that Damasen has not complied with the requirements of the law. Tumamao argued in the main that Damasen is not a bona-fide member of the LDP and that Provincial Chairman Balauag is not the "highest official" of the LDP as contemplated under Sec. 45 (b) of RA 7160.

In order to resolve the brewing dispute on Damasen's membership in the LDP, this Court shall hereunder discuss and scrutinize two documents which are vital for a just resolution of the petition at bar, the first being the June 14, 2005 letter[36] of LDP Provincial Chairman Balauag to Governor Padaca, and the second being the June 16, 2005 letter[37] of Demaree J.B. Raval, the Deputy Secretary Counsel of the LDP also to Governor Padaca.

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[31] *Rollo*, p. 61.

[32] *Id.* at 62.

[33] *Id.* at 63.

[34] *Id.* at 64.

[35] *Rollo*, p. 65.

[36] *Id.* at 145.

[37] *Id.* at 148.

Revocation of the nomination given by the LDP Provincial Chairman

On June 14 2005, LDP Provincial Chairman Balauag sent a letter to Governor Padaca revoking the nomination she issued in favor of Damasen, the text of which in hereunder reproduced in its entirety, to wit:

> This refers to the nomination which I issued in favor of Atty. Lucky M. Damasen to fill in the vacancy in the Sangguniang Bayan of San Isidro, Isabela dated May 5, 2005.
>
> When Judge Jose O. Ramos (Ret.) together with Atty. Damasen came to see me at my residence in Quezon City sometime in the month of May, 2005, to request the nomination of Atty. Damasen, he did not inform me that Atty. Damasen was a candidate for Mayor in the May 2004 elections affiliated with the Lakas Party and who ran against our Party's candidate for Mayor in San Isidro. **I was given the impression that Atty. Damasen was not affiliated with any political party that is why I signed the documents presented to me and endorsed his nomination. However, I later learned that Atty. Damasen was actually a candidate for Mayor and a member of Lakas so that his joining our Party and his nomination as such to the vacant position of Sanggunian member is not accordance with our Party's principles pursuant to Sec. 2, Art. IV of our By-Laws.**
>
> In view of the foregoing, as the Provincial Chairman of LDP-LABAN, I am constrained to withdraw, cancel, and/or revoke the nomination issued to Atty. Lucky M. Damasen dated May 5, 2005 for all legal intents and purposes.[38]

In his defense, Damasen maintains that he did not commit any misrepresentation when he secured his Certificate of Nomination and Membership from LDP Provincial Chairman Balauag. Damasen thus argued in this wise:

> According to ANA BENITA BALAUAG when she testified, she claimed that she did not know that petitioner was a candidate for Mayor during the last Local and National Election. This is absurd

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[38] *Id.* Emphasis supplied.

because Echague, Isabela where ANA BENITA BALAUAG also ran for Mayor is just an adjoining town of San Isidro, Isabela. xxx[39]

In addition, Damasen asseverates that in the Philippines, politicians change their political affiliation more often than not.[40] More importantly, Damasen is of the belief that the subsequent revocation of the nomination after he was already appointed by the Governor has no legal effect, to wit:

> Respondent is of the view that since the nomination of the petitioner dated May 5, 2005 has been cancelled and/or revoked by LDP Isabela Provincial Chairman ANA BENITA BALAUAG on June 14, 2005, petitioner no longer has a right to be a member of the Sangguniang Bayan. This is wrong. The respondent should open its eyes and must come to realize that the revocation and/or cancellation CAME AFTER the petitioner has been APPOINTED. x x x[41]

It is not the province of this Court to decide if in fact LDP Provincial Chairman Balauag knew or should have known that Damasen was a member of the Lakas-CMD party. However, as can be gleaned from the Transcript of Stenographic Notes dated July 12, 2005, LDP Provincial Chairman Balauag repeatedly denied knowing that Damasen ran for Mayor in San Isidro, Isabela.[42] The same notwithstanding, this Court must take into consideration the fact that Damasen was previously a member of the Lakas-CMD party. Likewise, while the revocation of Damasen's nomination came after the fact of his appointment by Governor Padaca, the same should not serve to bar any contest on said appointment as the primordial issue to be

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[39] *Id.* at 28.

[40] *Id.* at 191.

[41] *Id.* at 212.

[42] Q. Now, Madam Witness, you said a while ago that you did not know me having been a candidate for mayor in San Isidro, Isabela?

A. Yes, I didn't , Sir.

Q. You didn't know, Madam Witness?

A. No, I didn't know, Sir. (TSN, July 12, 2005, pp. 40-41).

determined is whether or not Damasen has complied with the requirements of Sec. 45 (b) of RA 7160.

Letter from the LDP that Damasen is not a bona fide member

What is damning to the cause of Damasen, is the letter of Demaree J.B. Raval, the Deputy Secretary Counsel of the LDP, addressed to Governor Padaca wherein it is categorically stated that Damasen is not a bona fide member of the LDP, to wit:

x x x x x x x x x

As regards the claim of Mr. Lucky Magala Damasen, please be informed that pursuant to the LDP Constitution, **Mr. Damasen does not appear in our records as a bona fide member of the LDP**. While it is true that Mr. Damasen may have been issued a Certificate of Membership dated May 5, 2005 by our Provincial Chairman for Isabela, Mrs. Ana Benita G. Balauag, **his membership has not been endorsed (even to date) to the LDP National Council for approval**. Besides, the Certificate of Candidacy of Mr. Damasen for the May 10, 2004 elections shows that he was nominated by the "Lakas-CMD Party".[43]

Like the CA, this Court has no reason to doubt the veracity of the letter coming from the LDP leadership. Quite clearly, from the tenor of the letter, it appears that the membership of Damasen still had to be approved by the LDP National Council. Thus, notwithstanding Damasen's procurement of a Certificate of Membership from LDP Provincial Chairman Balauag, to this Court's mind, the same merely started the process of his membership in the LDP, and it did not mean automatic membership thereto. While it may be argued that Damasen was already a member upon receipt of a Certificate of Membership from LDP Provincial Chairman Balauag, this Court cannot impose such view on the LDP. If the LDP leadership says that the membership of Damasen still had to be endorsed to the National Council for approval, then this Court cannot

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[43] *Rollo*, p. 148, Emphasis supplied.

question such requirement in the absence of evidence to the contrary. It is well settled that the discretion of accepting members to a political party is a right and a privilege, a purely internal matter, which this Court cannot meddle in.

In resolving the petition at bar, this Court is guided by *Navarro v. Court of Appeals*[44] *(Navarro)*, where this Court explained the reason behind the rule of succession under Sec. 45 (b) of RA 7160, to wit:

> **The reason behind the right given to a political party to nominate a replacement where a permanent vacancy occurs in the *Sanggunian* is to maintain the party representation as willed by the people in the election**.
>
> With the elevation of petitioner Tamayo, who belonged to REFORMA-LM, to the position of Vice-Mayor, a vacancy occurred in the Sanggunian that should be filled up with someone belonging to the political party of petitioner Tamayo. Otherwise, REFORMA-LM's representation in the Sanggunian would be diminished. Xxx. **As earlier pointed out, the reason behind Par. (b), Sec. 45 of the Local Government Code is the maintenance of party representation in the Sanggunian in accordance with the will of the electorate.**[45]

Since the permanent vacancy in the Sanggunian occurred because of the elevation of LDP member Alonzo to vice-mayor, it follows that the person to succeed her should also belong to the LDP so as to preserve party representation. Thus, this Court cannot countenance Damasen's insistence in clinging to an appointment when he is in fact not a *bona fide* member of the LDP. While the revocation of the nomination given to Damasen came after the fact of his appointment, this Court cannot rule in his favor, because the very first requirement of Sec. 45 (b) is that the appointee must come from the political party as that of the Sanggunian member who caused the vacancy. To stress, Damasen is not a *bona fide* member of the LDP.

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[44] G.R. No. 141307, March 28, 2001, 672 SCRA 355.

[45] *Id.* at. 678.

In addition, appointing Damasen would not serve the will of the electorate. He himself admits that he was previously a member of the Lakas-CMD, and that he ran for the position of Mayor under the said party on the May 2004 Elections. Likewise, he did not resign from the said party when he joined the LDP, and even admitted that his joining the LDP was not because of party ideals, but because he just wanted to.[46] How can the will of the electorate be best served, given the foregoing admissions of Damasen? If this Court were to grant herein petition, it would effectively diminish the party representation of the LDP in the Sanggunian, as Damasen would still be considered a member of the Lakas-CMD, not having resigned therefrom, a scenario that defeats the purpose of the law, and that ultimately runs contrary the ratio of *Navarro*.

Lastly, the records of the case reveal that Tumamao has the nomination[47] of Senator Edgardo J. Angara, the Party Chairman and, therefore, the highest official of the LDP. In addition, he is a member in good standing of the LDP.[48] Thus, given the foregoing, it is this Court's view that Tumamao has complied with the requirements of law.

WHEREFORE, premises considered, the petition is *DENIED.* The June 14, 2006 Decision of the Court of Appeals in CA-G.R. SP No. 90882, is *AFFIRMED.*

SO ORDERED.

Corona (Chairperson), Velasco, Jr., Nachura, and *Mendoza, JJ.,* concur.

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[46] *Rollo*, p. 50.

[47] *Id.* at 144.

[48] *See* Nomination Letter dated June 21, 2005, *id.*

THIRD DIVISION

[G.R. No. 173289. February 17, 2010]

ELAND PHILIPPINES, INC., *petitioner, vs.* **AZUCENA GARCIA, ELINO FAJARDO, and HEIR OF TIBURCIO MALABANAN named TERESA MALABANAN,** *respondents.*

SYLLABUS

1. POLITICAL LAW; CONSTITUTIONAL LAW; CONSTITUTION; BILL OF RIGHTS; DUE PROCESS; ESSENCE IS FOUND IN THE REASONABLE OPPORTUNITY TO BE HEARD AND SUBMIT ONE'S EVIDENCE IN SUPPORT OF HIS DEFENSE; CASE AT BAR. — Petitioner contended that the ten-day notice rule was violated, because the copy of the motion for summary judgment was served only on August 20, 1999 or on the same day it was set for hearing. It also added that even if the petitioner received a copy of the motion only on August 20, 1999, there was no hearing conducted on that date because the trial court issued an order giving petitioner 10 days within which to file its comment or opposition. The above specific contention, however, is misguided. The CA was correct in its observation that there was substantial compliance with due process. The CA ruled, as the records show, that the ten-day notice rule was substantially complied with because when the respondents filed the motion for summary judgment on August 9, 1999, they furnished petitioner with a copy thereof on the same day as shown in the registry receipt and that the motion was set for hearing on August 20, 1999, or 10 days from the date of the filing thereof. Due process, a constitutional precept, does not, therefore, always and in all situations a trial-type proceeding. The essence of due process is found in the reasonable opportunity to be heard and submit one's evidence in support of his defense. What the law prohibits is not merely the absence of previous notice, but the absence thereof *and* the lack of opportunity to be heard.

2. REMEDIAL LAW; CIVIL PROCEDURE; SUMMARY JUDGMENT; ANY ACTION CAN BE THE SUBJECT OF A SUMMARY

JUDGMENT; EXCEPTION. — This Court has already ruled that any action can be the subject of a summary judgment with the sole exception of actions for annulment of marriage or declaration of its nullity or for legal separation.

3. ID.; ID.; ID.; WHEN PROPER. — A summary judgment is permitted only if there is no genuine issue as to any material fact and a moving party is entitled to a judgment as a matter of law. A summary judgment is proper if, while the pleadings on their face appear to raise issues, the affidavits, depositions, and admissions presented by the moving party show that such issues are not genuine. It must be remembered that the **non-existence of a genuine issue** is the determining factor in granting a motion for summary judgment, and the **movant has the burden** of proving such nonexistence. x x x Trial courts have limited authority to render summary judgments and may do so only when there is clearly no genuine issue as to any material fact.

4. ID.; ID.; ID.; CANNOT TAKE THE PLACE OF TRIAL WHEN THE FACTS AS PLEADED BY THE PARTIES ARE DISPUTED OR CONTESTED; GENUINE ISSUE, DEFINED. — [T]he facts pleaded by the respondents in their motion for summary judgment have been duly disputed and contested by petitioner, raising genuine issues that must be resolved only after a full-blown trial. When the facts as pleaded by the parties are disputed or contested, proceedings for summary judgment cannot take the place of trial. In the present case, the petitioner was able to point out the genuine issues. A "genuine issue" is an issue of fact that requires the presentation of evidence as distinguished from a sham, fictitious, contrived or false claim.

5. CIVIL LAW; PROPERTY; OWNERSHIP; QUIETING OF TITLE; PURPOSE; REQUISITES. — This Court's ruling in *Calacala, et al. v. Republic, et al.* is instructive on this matter, thus: "To begin with, it bears emphasis that an action for quieting of title is essentially a common law remedy grounded on equity. As we held in *Baricuatro, Jr. vs. CA*: Regarding the nature of the action filed before the trial court, quieting of title is a common law remedy for the removal of any cloud upon or doubt or uncertainty with respect to title to real property. Originating in equity jurisprudence, its purpose is to secure

'x x x an adjudication that a claim of title to or an interest in property, adverse to that of the complainant, is invalid, so that the complainant and those claiming under him may be forever afterward free from any danger of hostile claim.' In an action for quieting of title, the competent court is tasked to determine the respective rights of the complainant and other claimants, 'x x x not only to place things in their proper place, to make the one who has no rights to said immovable respect and not disturb the other, but also for the benefit of both, so that he who has the right would see every cloud of doubt over the property dissipated, and he could afterwards without fear introduce the improvements he may desire, to use, and even to abuse the property as he deems best x x x.' Under Article 476 of the New Civil Code, the remedy may be availed of only when, by reason of any instrument, record, claim, encumbrance or proceeding, which appears valid but is, in fact, invalid, ineffective, voidable, or unenforceable, a cloud is thereby cast on the complainant's title to real property or any interest therein. x x x In turn, Article 477 of the same Code identifies the party who may bring an action to quiet title x x x. It can thus be seen that for an action for quieting of title to prosper, the plaintiff must first have a legal, or, at least, an equitable title on the real property subject of the action and that the alleged cloud on his title must be shown to be in fact invalid. So it is that in *Robles, et al. vs. CA*, we ruled: It is essential for the plaintiff or complainant to have a legal title or an equitable title to or interest in the real property which is the subject matter of the action. Also, the deed, claim, encumbrance or proceeding that is being alleged as a cloud on plaintiff's title must be shown to be in fact invalid or inoperative despite its *prima facie* appearance of validity or legal efficacy. Verily, for an action to quiet title to prosper, two (2) indispensable requisites must concur, namely: (**1) the plaintiff or complainant has a legal or an equitable title to or interest in the real property subject of the action; and (2) the deed, claim, encumbrance, or proceeding claimed to be casting cloud on his title must be shown to be in fact invalid or inoperative despite its *prima facie* appearance of validity or legal efficacy."**

6. ID.; LAND TITLES AND DEEDS; PROPERTY REGISTRATION DECREE (P.D. NO. 1529); DECREE OF REGISTRATION; REVIEW THEREOF, WHEN ALLOWED. — Under Sec. 32 of P.D. No. 1529 or the Property Registration Decree: x x x "**Upon**

> **the expiration of said period of one year, the decree of registration and the certificate of title issued shall become incontrovertible."** x x x Courts may reopen proceedings already closed by final decision or decree when an application for review is filed by the party aggrieved within one year from the issuance of the decree of registration. However, the basis of the aggrieved party must be anchored solely on actual fraud.

APPEARANCES OF COUNSEL

Ocampo & Ocampo for petitioner.
Leachon Leachon and Perez Law Firm for respondents.

D E C I S I O N

PERALTA, *J.*:

This is a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court, seeking to reverse and set aside the decision[1] dated February 28, 2006 of the Court of Appeals (CA) in CA-G.R. CV No. 67417, which dismissed the appeal of petitioner Eland Philippines, Inc. and affirmed the Resolution dated November 3, 1999 of Branch 18, Regional Trial Court (RTC) of Tagaytay City.

The facts of the case, as shown in the records, are the following:

Respondents Azucena Garcia, Elino Fajardo, and Teresa Malabanan, the heir of Tiburcio Malabanan, filed a Complaint[2] dated March 2, 1998 for Quieting of Title with Writ of Preliminary Injunction with the RTC, Branch XVIII, Tagaytay City against petitioner Eland Philippines, Inc. Respondents claimed that they are the owners, in fee simple title, of a parcel of land identified

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[1] Penned by Associate Justice Hakim S. Abdulwahid, with Associate Justices Remedios A. Salazar-Fernando and Estela M. Perlas-Bernabe, concurring; *rollo*, pp. 77-92.

[2] Records, p. 1.

as Lot 9250 Cad-355, Tagaytay Cadastre, Plan Ap-04-008367, situated in *Barangay* Iruhin, Tagaytay City, containing an area of Two Hundred Forty-Four Thousand One Hundred Twelve (244,112) square meters, by occupation and possession under the provisions of Sec. 48 (b)[3] of the Public Land Law or Commonwealth Act No. 141, as amended.

For having been in continuous, public, and adverse possession as owners of the said lot for at least thirty years, respondents stated that they were not aware of any person or entity who had a legal or equitable interest or claim on the same lot until the time they were requesting that the lot be declared for tax purposes. They found out that the lot was the subject of a land registration proceeding that had already been decided by the same court[4] where their complaint was filed. They also found out that Decree No. N-217313, LRC Record No. N-62686, was already issued on August 20, 1997 to the petitioner pursuant to the Decision dated June 7, 1994 of the same court. They averred that they were not notified of the said land registration case; thus, they claimed the presence of misrepresentation amounting to actual or extrinsic fraud. Thus, they argued that they were also entitled to a writ of preliminary injunction in order to restrain or enjoin petitioner, its privies, agents,

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[3] Sec. 48. The following described-citizens of the Philippines, occupying lands of the public domain or claiming to own any such lands or an interest therein, but whose titles have not been perfected or completed, may apply to the Court of First Instance of the province where the land is located for confirmation of their claims and the issuance of a certificate of title thereafter, under the Land Registration Act, to wit:

x x x x x x x x x

(b) Those who by themselves or through their predecessors-in-interest have been in open, continuous, exclusive, and notorious possession and occupation of agricultural lands of the public domain, under a bona fide claim of acquisition or ownership, for at least thirty years immediately preceding the filing of the application for confirmation of title, except when prevented by war or *force majeure*. Those shall be conclusively presumed to have performed all the conditions essential to a government grant and shall be entitled to a certificate of title under the provisions of this Chapter.

[4] Land Registration Case No. TG-423.

representatives, and all other persons acting on its behalf, to refrain from committing acts of dispossession on the subject lot.

Summons, together with a copy of the complaint, were served on the petitioner on April 7, 1998. On April 29, 1998, petitioner filed an Entry of Appearance with Motion for Extension of Time,[5] which the trial court granted[6] for a period of ten (10) days within which to file a responsive pleading. Petitioner filed a Second Motion for Extension of Time to File Answer[7] dated April 29, 1998, which the trial court likewise granted.[8]

Thereafter, petitioner filed a Motion to Dismiss[9] dated May 9, 1998, stating that the pleading asserting the claim of respondents stated no cause of action, and that the latter were not entitled to the issuance of a writ of preliminary injunction, setting the same for hearing on May 21, 1998. On the date of the hearing, the trial court issued an Order,[10] which granted the respondents ten (10) days from that day to file a comment, and set the date of the hearing on July 23, 1998. Respondents filed a Motion to Admit Comment/Opposition to Defendant Eland,[11] together with the corresponding Comment/Opposition[12] dated June 8, 1998.

On the scheduled hearing of September 23, 1998, the trial court issued an Order,[13] considering the Motion to Dismiss submitted for resolution due to the non-appearance of the parties and their respective counsels. The said motion was eventually denied by the trial court in an Order[14] dated September 25,

[5] *Supra* note 2 at 51.

[6] *Id.* at 57.

[7] *Id.* at 68.

[8] *Id.* at 71.

[9] *Id.* at 58.

[10] *Id.* at 67.

[11] *Id.* at 97.

[12] *Id.* at 99.

[13] *Id.* at 146.

[14] *Id.* at 147.

1998, ruling that the allegations in the complaint established a cause of action and enjoined petitioner Eland to file its answer to the complaint within ten (10) days from receipt of the same. Petitioner then filed two Motions for Extension to File an Answer.[15]

Petitioner, on November 9, 1998, filed a Motion for Reconsideration[16] of the trial court's Order dated September 25, 1998, denying the former's Motion to Dismiss. Again, petitioner filed a Motion for Final Extension of Time to File Answer[17] dated November 6, 1998. Respondents filed their Comment/Opposition to Motion for Reconsideration dated November 24, 1998. Subsequently, the trial court denied petitioner's motion for reconsideration in an Order[18] dated January 11, 1999.

Meanwhile, respondents filed a Motion to Declare Defendant Eland in Default[19] dated November 17, 1998. On December 4, 1998 Petitioner Eland filed its Comment (on Plaintiff's Motion to Declare Defendant Eland in Default)[20] dated December 2, 1998, while respondents filed a Reply to Comment (on Plaintiff's Motion to Declare Defendant Eland in Default)[21] dated December 29, 1998. Thereafter, the trial court issued an Order[22] dated January 11, 1999 declaring the petitioner in default and allowed the respondents to present evidence *ex parte*. Petitioner filed a Motion for Reconsideration (of the Order dated 11 January 1999)[23] dated February 5, 1999 on the trial court's denial of its motion to dismiss

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[15] Motion for Extension to File Answer dated October 16, 1998 and Second Motion for Extension to File Answer dated October 28, 1998.

[16] *Supra* note 2 at 165.

[17] *Id.* at 168.

[18] *Id.* at 214.

[19] *Id.* at 173.

[20] *Id.* at 209.

[21] *Id.* at 204.

[22] *Id.* at 214.

[23] *Id.* at 224.

and in declaring it in default. The trial court in an Order[24] dated March 18, 1999, denied the former and granted the latter. In the same Order, the trial court admitted petitioner's Answer *Ad Cautelam*.

Earlier, petitioner filed its Answer *Ad Cautelam* (With Compulsory Counterclaim)[25] dated November 12, 1998. Respondents countered by filing a Motion to Expunge Eland's Answer from the Records[26] dated December 2, 1998. Petitioner filed its Opposition (to Plaintiff's Motion to Expunge Eland's Answer from the Records)[27] dated December 21, 1998, as well as a Comment (on Plaintiff's Motion to Expunge Eland's Answer from the Records)[28] dated January 26, 1999.

Consequently, respondents filed a Motion to Set Presentation of Evidence *Ex Parte*[29] dated January 18, 1999, which was granted in an Order[30] dated January 22, 1999.

On January 28, 1999, respondents presented their evidence before the Clerk of Court of the trial court which ended on February 3, 1999; and, on February 10, 1999, respondents filed their Formal Offer of Evidence.[31] However, petitioner filed an Urgent Motion to Suspend Plaintiff's *Ex Parte* Presentation of Evidence[32] dated February 8, 1999. In that regard, the trial court issued an Order[33] dated February 11, 1999 directing the Clerk of Court to suspend the proceedings.

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[24] *Id.* at 305.

[25] *Id.* at 177.

[26] *Id.* at 197.

[27] *Id.* at 200.

[28] *Id.* at 221.

[29] *Id.* at 218.

[30] *Id.* at 220.

[31] *Id.* at 239.

[32] *Id.* at 235.

[33] *Id.* at 248.

On May 14, 1999, respondents filed a Motion for Clarification[34] as to whether or not the evidence presented *ex parte* was nullified by the admission of petitioner's Answer *Ad Cautelam.* Petitioner filed its Comment[35] dated May 13, 1999 on the said motion for clarification.

A pre-trial conference was scheduled on May 27, 1999, wherein the parties submitted their pre-trial briefs.[36] However, petitioner filed a Motion to Suspend Proceedings[37] dated May 24, 1999 on the ground that the same petitioner had filed a petition for *certiorari* with the CA, asking for the nullification of the Order dated March 18, 1999 of the trial court and for the affirmation of its earlier Order denying petitioner's Motion to Dismiss. The petition for *certiorari* was subsequently denied; and a copy of the Resolution[38] dated June 14, 1999 was received by the trial court. Hence, in an Order[39] dated July 7, 1999, the trial court ruled that the reception of evidence already presented by the respondents before the Clerk of Court remained as part of the records of the case, and that the petitioner had the right to cross-examine the witness and to comment on the documentary exhibits already presented. Consequently, petitioner filed a Motion for Reconsideration[40] dated July 19, 1999, but it was denied by the trial court in an Omnibus Order[41] dated September 14, 1999.

Eventually, respondents filed a Motion for Summary Judgment[42] dated August 5, 1999, while petitioner filed its

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[34] *Id.* at 376.

[35] *Id.* at 379.

[36] *Id.* at 370 for the respondents, p. 394 for petitioner.

[37] *Id.* at 398.

[38] *Id.* at 486.

[39] *Id.* at 491.

[40] *Id.* at 492.

[41] *Id.* at 520.

[42] *Id.* at 506.

Opposition[43] to the Motion dated August 31, 1999. In its Resolution[44] dated November 3, 1999, the trial court found favor on the respondents. The dispositive portion of the Resolution reads:

> WHEREFORE, premises considered, the motion for summary judgment is hereby GRANTED and it is hereby adjudged that:
>
> 1. Plaintiffs are the absolute owners and rightful possessors of Lot 9250, CAD-355, Tagaytay Cadastre, subject to the rights of occupancy of the farm workers on the one-third area thereof;
>
> 2. The Judgment dated June 7, 1994 in Land Registration Case No. TG-423 is set aside and the Decree No. N-217313, LRC Record No. N-62686 dated August 20, 1997 is null and void;
>
> 3. The Original Transfer Certificate of Title is ordered to be canceled, as well as tax declaration covering Lot 9250, Cad-355.
>
> SO ORDERED.

Petitioner appealed the Resolution of the trial court with the CA, which dismissed it in a Decision dated February 28, 2006, which reads:

> WHEREFORE, for lack of merit, the appeal is DISMISSED. The assailed Resolution dated November 3, 1999, of the RTC, Branch 18, Tagaytay City, in Civil Case No. TG-1784, is AFFIRMED. No pronouncement as to cost.
>
> SO ORDERED.

Hence, the present petition.

The grounds relied upon by the petitioner are the following:

> 5.1 THE COURT OF APPEALS ACTED IN A MANNER NOT IN ACCORD WITH LAW AND WITH THE APPLICABLE DECISIONS OF THIS HONORABLE COURT WHEN IT RULED THAT RESPONDENTS' MOTION FOR SUMMARY JUDGMENT DATED AUGUST 05, 1999 DID NOT VIOLATE THE TEN (10)-DAY NOTICE RULE UNDER SECTION 3, RULE 35 OF THE 1997 RULES OF CIVIL PROCEDURE.

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[43] *Id.* at 513.

[44] *Id.* at 522.

5.2 THE COURT OF APPEALS ACTED IN A MANNER NOT IN ACCORD WITH LAW AND WITH THE APPLICABLE DECISIONS OF THIS HONORABLE COURT WHEN IT RULED THAT A MOTION FOR SUMMARY JUDGMENT IS PROPER IN AN ACTION FOR QUIETING OF TITLE.

5.3 THE COURT OF APPEALS ACTED IN A MANNER NOT IN ACCORD WITH LAW AND WITH THE APPLICABLE DECISIONS OF THIS HONORABLE COURT WHEN IT RULED THAT THERE ARE NO GENUINE FACTUAL AND TRIABLE ISSUES IN CIVIL CASE NO. TG-1784.

5.4 THE COURT OF APPEALS ACTED IN A MANNER NOT IN ACCORD WITH LAW AND WITH THE APPLICABLE DECISIONS OF THIS HONORABLE COURT WHEN IT UPHELD THE RESOLUTION DATED NOVEMBER 03, 1999 OF THE COURT *A QUO*, BASED ON TESTIMONIES OF RESPONDENTS' WITNESSES TAKEN WITHOUT GRANTING HEREIN PETITIONER THE RIGHT TO CROSS-EXAMINE AND UPON DOCUMENTARY EXHIBITS PRESENTED BUT NOT ADMITTED AS EVIDENCE.

5.5 THE COURT OF APPEALS ACTED IN A MANNER NOT IN ACCORD WITH LAW AND WITH THE APPLICABLE DECISIONS OF THIS HONORABLE COURT WHEN IT UPHELD THE RESOLUTION DATED NOVEMBER 03, 1999 OF THE COURT *A QUO* BASED ON FALSIFIED "EVIDENCE."

5.6 THE COURT OF APPEALS ACTED IN A MANNER NOT IN ACCORD WITH LAW AND WITH THE APPLICABLE DECISIONS OF THIS HONORABLE COURT WHEN IT FAILED TO RULE THAT THE COURT *A QUO* PATENTLY DEPRIVED PETITIONER OF ITS RIGHT TO DUE PROCESS IN RENDERING ITS SUMMARY JUDGMENT.

5.7 THE COURT OF APPEALS ACTED IN A MANNER NOT IN ACCORD WITH LAW AND WITH THE APPLICABLE DECISIONS OF THIS HONORABLE COURT WHEN IT HELD THAT THE COURT *A QUO* HAS JURISDICTION TO CANCEL PETITIONER'S ORIGINAL CERTIFICATE OF TITLE (OCT) NO. 0-660 IN AN ACTION TO QUIET TITLE.

According to the petitioner, a motion for summary judgment must be served at least ten (10) days before the date set for hearing thereof, and that a hearing must be held to hear the parties on the propriety of a summary judgment, per Sec. 3 of

Rule 35 of the Revised Rules of Court, which was not observed because the petitioner received a copy of the respondents' motion for summary judgment only on August 20, 1999, or the very same day that the motion was set for hearing. Petitioner further claims that the trial court never conducted any hearing on the motion for summary judgment.

Petitioner also argued that a summary judgment is only available to a claimant seeking to recover upon a claim, counterclaim or cross-claim or to obtain a declaratory relief, and does not include cases for quieting of title. Furthermore, petitioner also averred that a summary judgment has no place in a case where genuine factual and triable issues exist, like in the present case. It added that the genuine and triable issues were all raised in its Answer *Ad Cautelam*.

Another ground relied upon by petitioner is its failure to cross-examine the witnesses for the respondents without fault on its part. It also stated that the trial court did not issue any order admitting in evidence the documentary exhibits presented by the respondents. Hence, according to the petitioner, the trial court gravely erred in relying upon the testimonies of the witnesses for the respondents, without having the latter cross-examined; and upon the documentary exhibits presented but not admitted as evidence.

Petitioner further claimed that the trial court based its Resolution dated November 3, 1999 on falsified evidence.

Lastly, petitioner raised the issue that by rendering summary judgment, the trial court deprived the former of its right to due process.

Respondents, in their Comment[45] dated October 16, 2006, countered the first issue raised by the petitioner, stating that their filing of the motion for summary judgment fourteen (14) days before the requested hearing of the same motion was in compliance with Sec. 3, Rule 35 of the Rules of Court.

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[45] *Rollo,* p. 469.

As to the second and third issues, respondents argued that petitioner had a constricted perception of the coverage of the Rules of Summary Judgment, and that the latter's citation of cases decided by this Court showed the diverse causes of action that could be the subject matters of summary judgment. Respondents also posited that petitioner's statements in its Answer *Ad Cautelam*, although denominated as Specific Denial, were really general denials that did not comply with the provisions of Section 10, Rule 8 of the Rules of Court.

Anent the fourth and fifth issues, respondents claimed that despite the opportunity, or the right allowed in the Order dated July 17, 1999 of the trial court, for the petitioner to cross-examine respondents' witnesses and to comment on the documentary evidence presented *ex parte* after the default order against the same petitioner, the latter evasively moved to set aside respondents' evidence in order to suspend further proceedings that were intended to abort the pre-trial conference. They added that petitioner neglected to avail itself of, or to comply with, the prescription of the rules found in Rule 35 of the Rules of Court by opting not to avail itself of the hearing of its opposition to the summary judgment after receiving the Order dated August 20, 1999; by failing to serve opposing affidavit, deposition or admission in the records; and by not objecting to the decretal portion of the said Order dated August 20, 1999, which stated that the motion for summary judgment has been submitted for resolution without further argument. With regard to the contention of the petitioner that the trial court wrongly appreciated falsified evidence, respondents asserted that petitioner's counsel failed to study carefully the records of the proceedings for the presentation of the evidence *ex parte* to be able to know that it was not only a single-day proceeding, and that more than one witness had been presented. They further averred that the trial court did not only rely on the photographs of the houses of the occupants of the property in question.

Finally, as to the sixth and seventh issues, respondents asseverated that their complaint alleged joint causes of action for quieting of title under Art. 476 of the New Civil Code and for the review of the decree of registration pursuant to Sec. 32

of the Property Registration Decree or P.D. No. 1529, because they are complimentary with each other.

The petition is impressed with merit.

The basic contention that must be resolved by this Court is the propriety of the summary judgment in this particular case of quieting of title.

Rule 35 of the 1997 Rules of Civil Procedure provides:

> SEC. 1. *Summary judgment for claimant*. — A party seeking to recover upon a claim, counterclaim, or cross-claim or to obtain a declaratory relief may, at any time after the pleading in answer thereto has been served, move with supporting affidavits for a summary judgment in his favor upon all or any part thereof.
>
> SEC. 3. *Motion and proceedings thereon*. —The motion shall be served at least ten (10) days before the time specified for the hearing. The adverse party prior to the day of hearing may serve opposing affidavits. After the hearing, the judgment sought shall be rendered forthwith if the pleading, depositions, and admissions on file together with the affidavits, show that, except as to the amount of damages, there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.[46]

In the present case, it was the respondents who moved for a summary judgment.

Petitioner contended that the ten-day notice rule was violated, because the copy of the motion for summary judgment was served only on August 20, 1999 or on the same day it was set for hearing. It also added that even if the petitioner received a copy of the motion only on August 20, 1999, there was no hearing conducted on that date because the trial court issued an order giving petitioner 10 days within which to file its comment or opposition.

The above specific contention, however, is misguided. The CA was correct in its observation that there was substantial compliance with due process. The CA ruled, as the records

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[46] Now Secs.1 and 3, Rule 35, 1997 Rules of Civil Procedure.

show, that the ten-day notice rule was substantially complied with because when the respondents filed the motion for summary judgment on August 9, 1999, they furnished petitioner with a copy thereof on the same day as shown in the registry receipt and that the motion was set for hearing on August 20, 1999, or 10 days from the date of the filing thereof.

Due process, a constitutional precept, does not, therefore, always and in all situations a trial-type proceeding. The essence of due process is found in the reasonable opportunity to be heard and submit one's evidence in support of his defense. What the law prohibits is not merely the absence of previous notice, but the absence thereof *and* the lack of opportunity to be heard.[47]

Petitioner further argues that summary judgment is not proper in an action for quieting of title. This particular argument, however, is misplaced. This Court has already ruled that any action can be the subject of a summary judgment with the sole exception of actions for annulment of marriage or declaration of its nullity or for legal separation.[48]

Proceeding to the main issue, this Court finds that the grant of summary judgment was not proper. A summary judgment is permitted only if there is no genuine issue as to any material fact and a moving party is entitled to a judgment as a matter of law. A summary judgment is proper if, while the pleadings on their face appear to raise issues, the affidavits, depositions, and admissions presented by the moving party show that such issues are not genuine.[49]

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[47] *Mutuc v. Court of Appeals*, G.R. No. L-48108, September 26, 1990, 190 SCRA 43.

[48] See *Carlos v. Sandoval, et al.*, G. R. No. 179922, December 16, 2008, 574 SCRA 116, citing *Republic v. Sandiganbayan*, G.R. No. 152154, November 18, 2003, 416 SCRA 133, citing Family Code, Arts. 48 & 60, and *Roque v. Encarnacion*, 96 Phil. 643 (1954).

[49] *Mariano Nocom v. Oscar Camerino, et al*., G. R. No. 182984, February 10, 2009, 578 SCRA 390, citing *Ong v. Roban Lending Corporation*, G.R. No. 172592, July 9, 2008, 557 SCRA 516.

It must be remembered that the **non-existence of a genuine issue** is the determining factor in granting a motion for summary judgment, and the **movant has the burden** of proving such nonexistence. The trial court found no genuine issue as to any material fact that would necessitate conducting a full-blown trial. However, a careful study of the case shows otherwise.

In their motion for summary judgment, the respondents failed to clearly demonstrate the absence of any genuine issue of fact. They merely reiterated their averments in the complaint for quieting of title and opposed some issues raised by the petitioner in its Answer *Ad Cautelam*, to wit:

> Nonetheless, going by the records of the admitted and uncontroverted facts and facts established there is no more litigious or genuine issue of basic fact to be the subject of further trial on the merits.
>
> The first defense as to the identity of the subject property, the issue has already become nil because of not only the lack of seriousness in the allegations but also because the identity of the subject parcel of land Lot 9250 was proven by the approved plan Ap-04-008367 that was already presented and offered in evidence as Exhibit "B" for the plaintiffs.
>
> The second defense that plaintiffs' claim of the property is barred by prior judgment rule is unavailing considering that the vital documentary evidence they presented in Land Registration Case No. TG-423 before this Honorable Court the markings and descriptions of such documents are stated in the Judgment quoted as follows:
>
> (1) Tax Declaration No. 015224-A (Exhibit "Q"; x x x.
> (2) Tax Declaration No. 05019-B (Exhibit "R"; x x x.
> (3) Tax Declaration No. 01926-B (Exhibit "S"; x x x.
> (4) Tax Declaration No. GR-007-0007 (Exhibit "T" x x x.
>
> are the very documentary evidence adopted and relied upon by the plaintiffs in seeking the review and nullity of the Decree No. 217313 issued on August 20, 1997 under LRC Record No. N-62686 pursuant to the Judgment dated June 7, 1994 rendered by this Honorable Court penned by the acting presiding Judge Eleuterio F. Guerrero in said Land Registration Case No. TG-423.

On the other hand, as to the gravamen of the claims in the complaint, the plaintiffs have presented clear and convincing evidence as the well-nigh or almost incontrovertible evidence of a registerable title to the subject land in the proceedings conducted on the reception of evidence *ex-parte* for the plaintiffs establishing in detail the specifications of continuous, open, exclusive possession as aspects of acquisitive prescription as confirmed in the affidavit herein attached as Annex "A";

In ruling that there was indeed no genuine issue involved, the trial court merely stated that:

This Court, going by the records, observed keenly that plaintiffs' **cause of action** for quieting of title on the disputed parcel of land is based on the alleged **fraud in the substitution** of their landholdings of Lot 9250, Cad 355, Tagaytay Cadastre containing only an area of 244,112 square meters with Lot 9121, Cad 335, Tagaytay Cadastre, containing only an area of 19,356 square meters. While defendant Eland in its answer practically and mainly interposed the defenses of: (a) the parcel of land being claimed by the plaintiffs is not the parcel of land subject matter of Land Registration Case No. TG-423; (b) the claim of the plaintiffs is barred by prior judgment of this Court in said Land Registration Case; and (c) plaintiffs' complaint is barred by the Statute of Limitation since Original Certificate of Title No. 0-660 has become incontrovertible.

Cross-reference of the above-cited Land Registration Case No. TG-423 that was decided previously by this Court with the case at bench was imperatively made by this Court. Being minded that the Court has and can take judicial notice of the said land registration case, this Court observed that there is no genuine issue of fact to be tried on the merits. Firstly, because the supposed identity crisis of the controverted parcel of land covered by the Land Registration Case No. TG-423 with the subject parcel of land is established by Plan Ap-04-006275 (Exhibit "N") LRC Case No. 423 and by Plan A04 008367 (Exhibit "B" of the plaintiffs) and the Technical Description of Lot 9250, Cad 355 (Exhibit "B-1" of the plaintiffs). Secondly, the prior judgment rule cannot be availed of by defendant Eland since not only intrinsic fraud but extrinsic fraud were alleged in and established by the records. (*Heirs of Manuel Roxas v. Court of Appeals*, G. R. No. 118436, pro. March 21, 1997). Thirdly, it is incontrovertible that the complaint in this case seeking to review the judgment and annul the decree was filed on March 5, 1998 or

within one (1) year from August 20, 1997 or the date of issuance of Decree No. 217313, LRC Record No. N-62686, hence, the Original Certificate of Title No. 0-660 issued to defendant Eland has not attained incontrovertibility. (*Heirs of Manuel Roxas v. Court of Appeals*, G.R. No. 118436, prom. March 21, 1997).

Notwithstanding, the **issue of possession is a question of fact by the interaction of the basic pleadings**, the observation of this Court is that the plaintiffs were able to prove by the well-nigh incontrovertible evidence, the aspects of possession in accordance with Section 48 (b) of Commonwealth Act 141, as amended, as hereinafter illustrated.

The CA, in affirming the above Resolution of the trial court, propounded thus:

The contention of defendant-appellant is untenable. Summary judgment is not only limited to solving actions involving money claims. Under Rule 35 of the 1997 Rules of Court, except as to the amount of damages, when there is no genuine issue as to any material fact and the moving party is entitled to a judgment as a matter of law, summary judgment may be allowed. The term "genuine issue" has been defined as an issue of fact which calls for the presentation of evidence as distinguished from an issue which is sham, fictitious, contrived, set up in bad faith and patently unsubstantial so as not to constitute a genuine issue for trial.

Thus, under the aforecited rule, summary judgment is appropriate when there are no genuine issues of fact, which call for the presentation of evidence in a full-blown trial. Thus, even if on their face the pleadings appear to raise issues, but when the affidavits, depositions and admissions show that such issues are not genuine, then summary judgment as prescribed by the rules must ensue as a matter of law.

It should be stressed that the court *a quo* which rendered the assailed resolution in Civil Case No. TG-1784 was the very court that decided the LRC Case No. TG-423. Such being the case, the court *a quo* was privy to all relevant facts and rulings pertaining to LRC Case No. TG-423 which it considered and applied to this case. Thus, where all the facts are within the judicial knowledge of the court, summary judgment may be granted as a matter of right.

On the contrary, in petitioner's Answer *Ad Cautelam*, genuine, factual and triable issues were raised, aside from specifically denying all the allegations in the complaint, thus:

2. SPECIFIC DENIALS

2.1 Answering defendant specifically denies the allegations contained in paragraphs 1 and 3 of the Complaint insofar as it alleges the personal circumstances of the plaintiff and one A. F. Development Corporation for lack of knowledge or information sufficient to form a belief as to the truth thereof.

2.2 Answering defendant specifically denies the allegations contained in paragraphs 4, 5, 6 and 7 of the Complaint for lack of knowledge or information sufficient to form a belief as to the truth of said allegations. And if the property referred to in said paragraphs is that parcel of land which was the subject matter of Land Registration Case No. TG-423 which was previously decided by this Honorable Court with finality, said allegations are likewise specifically denied for the obvious reason that the said property had already been adjudged with finality by no less than this Honorable Court as absolutely owned by herein answering defendant as will be further discussed hereunder.

2.3 Answering defendant specifically denies the allegations contained in paragraph 8 of the Complaint insofar as it alleged that "(u)pon exercise of further circumspection, counsel for the plaintiffs once followed-up in writing the 1994 request of the plaintiffs to have the subject parcel of land be declared for taxation purposes" and insofar as it is made to appear that parcel of land being claimed by the plaintiffs is the same parcel of land subject matter of Land Registration Case No. TG-423 for lack of knowledge or information sufficient to form a belief as to the truth thereof and for the reason that the names of the herein plaintiffs were never mentioned during the entire proceedings in said land registration case and by reason of the Affirmative Allegations contained hereunder.

2.4 Answering defendant specifically denies the allegations contained in paragraphs 9, 10, 10 (a), 10 (b), 10 (c), 10 (d), 10 (e), 10 (f), 10 (g), 10 (h), and 11 for the reason that there is no showing that the parcel of land being claimed by the plaintiff is the same parcel of land which was the subject matter of Land Registration Case No. TG- 423, and in the remote possibility that the parcel of land being claimed by the plaintiffs is the same as that parcel of land subject of Land Registration Case No. TG-423, the allegations

contained in said paragraphs are still specifically denied for the reason that no less than the Honorable Court had decided with finality that the parcel of land is absolutely owned by herein defendant to the exclusion of all other persons as attested to by the subsequent issuance of an Original Certificate of Title in favor of answering defendant and for reasons stated in the Affirmative Allegations.

2.5 Answering defendant specifically denies the allegations contained in paragraph 12 of the Complaint for the obvious reason that it was the plaintiffs who appear to have been sleeping on their rights considering that up to the present they still do not have any certificate of title covering the parcel of land they are claiming in the instant case, while on the part of herein defendant, no less than the Honorable Court had adjudged with finality that the parcel of land subject matter of Land Registration Case No. TG-423 is absolutely owned by herein defendant.

2.6 Answering defendant specifically denies the allegations contained in paragraph 13 of the complaint for the reason that defendant has never ladgrabbed (sic) any parcel of land belonging to others, much less from the plaintiffs, and further, answering defendant specifically denies the allegations therein that plaintiffs engaged the services of a lawyer for a fee for lack of knowledge r (sic) information sufficient to form a belief as to the truth thereof.

2.7 Answering defendant specifically denies the allegations contained in paragraphs 14, 15, 16, 17 and 18 of the Complaint for lack of knowledge or information sufficient to form a belief as the truth thereof.

2.8 Answering defendant specifically denies the allegations contained in paragraphs IV (a) to IV (c) for the reason that, as above-stated, if the parcel of land being claimed by the plaintiffs is the same as that parcel of land subject matter of Land Registration Case No. TG-423, this Honorable Court had already decided with finality that said parcel of land is absolutely owned by herein answering defendant and additionally, for those reasons stated in defendant's Motion to Dismiss.

2.9 Answering defendant specifically denies the allegations contained in paragraph IV (d) of the Complaint for lack of knowledge or information sufficient to form a belief as to the truth thereof.

Special and affirmative defenses were also raised in the same Answer *Ad Cautelam*, to wit:

x x x x x x x x x

4.1 The pleading asserting the claim of the plaintiff states no cause of action as asserted in the Motion To Dismiss filed by herein answering defendant and for the reason that there is no evidence whatsoever showing or attesting to the fact that the parcel of land being claimed by the plaintiffs in the Complaint is the same parcel of land which was the subject matter of Land Registration Case No. TG-423.

4.2 The complaint was barred by the prior judgment rendered by this Honorable in Land Registration Case No. TG-423.

4.3 The complaint is barred by the Statute of Limitation in that OCT No. 0-660 had become incontrovertible by virtue of the Torrens System of Registration; and to allow plaintiffs to question the validity of answering defendant's title through the instant complaint would be a collateral of OCT No. 0-660 which is not permissible under the law.

4.4 Plaintiffs are barred by their own acts and/or omission from filing the present complaint under the principles of estoppel and laches.

4.5 Plaintiffs does not to the Court with clean hands as they appear to be well aware of the proceedings in said Land Registration Case No. TG- 423 and inspite of such knowledge, plaintiffs never bothered to present their alleged claims in the proceedings.

4.6 Answering defendant has always acted with justice, given everyone his due, and observed honesty and good faith in his dealings.

Clearly, the facts pleaded by the respondents in their motion for summary judgment have been duly disputed and contested by petitioner, raising genuine issues that must be resolved only after a full-blown trial. When the facts as pleaded by the parties are disputed or contested, proceedings for summary judgment cannot take the place of trial.[50] In the present case, the petitioner was able to point out the genuine issues. A "genuine issue" is

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[50] *National Power Corporation v. Loro, et al*., G. R. No. 175176, October 17, 2008, 569 SCRA 648, citing *Rivera v. Solidbank Corporation*, G.R. No. 163269, April 19, 2006, 487 SCRA 512, 535.

an issue of fact that requires the presentation of evidence as distinguished from a sham, fictitious, contrived or false claim.[51]

It is of utmost importance to remember that petitioner is already the registered owner (Original Certificate of Title [OCT] No. 0-660 issued by the Register of Deeds) of the parcel of land in question, pursuant to a decree of registration (Decree No. N-217313, LRC Record No. 62686) based on the ruling of the same court that granted the summary judgment for the quieting of title.

Incidentally, the findings of the trial court contained in the disputed summary judgment were obtained through judicial notice of the facts and rulings pertaining to that earlier case (LRC Case No. TG-423) wherein the same trial court ruled in favor of the petitioner. It is, therefore, disorienting that the same trial court reversed its earlier ruling, which categorically stated that:

> x x x There is overwhelming evidence or proof on record that the vendors listed in Exhibit "HH", with submarkings, are the previous owners of the parcel of land mentioned in the same deed of sale and aside form the tax declarations covering the same property (Exhibits "Q" to "T", inclusive), the uncontroverted testimony of Atty. Ruben Roxas establishes beyond any shadow of doubt that applicant's (referring to herein defendant-appellant) sellers/ predecessors-in-interest are the grandchildren, great grandchildren and great great grandchildren of the spouses Lucio Petate and Maria Pobleta Petate, the former owners of the same property, whose ownership is further bolstered by tax receipts showing payments of realty taxes (Exhibits "U" to "GG", inclusive, with submarkings).
>
> x x x x x x x x x
>
> On the basis of the foregoing facts and circumstances, and considering that applicant is a domestic corporation not otherwise disqualified from owning real properties in the Philippines, this Court finds that applicant has satisfied all the conditions/requirements essential to the grant of its application pursuant to the provisions of the Land Registration Law, as amended, inspite of the opposition filed by the Heirs of the late Doroteo Miranda. Hence, the grant of applicant's petition appears to be inevitable.

[51] *Id.*

WHEREFORE, this Court hereby approves the instant petition for land registration and, thus, places under the operation of Act 141, Act 496 and/or P.D. 1529, otherwise known as the Property Registration Law, the land described in Plan Ap-04-006275 and containing an area of Two Hundred Forty-Two Thousand Seven Hundred Ninety-Four (242,794) square meters, as supported by its technical description now forming part of the record of this case, in addition to other proofs adduced in the name of the applicant, ELAND PHILIPPINES, INC., with principal office at No. 43 E. Rodriguez Ave. (España Extension), Quezon City, Metro Manila.

Once this decision becomes final and executory, the corresponding decree of registration shall forthwith issue.

SO ORDERED.

By granting the summary judgment, the trial court has in effect annulled its former ruling based on a claim of possession and ownership of the same land for more than thirty years without the benefit of a full-blown trial. The fact that the respondents seek to nullify the original certificate of title issued to the petitioner on the claim that the former were in possession of the same land for a number of years, is already a clear *indicium* that a genuine issue of a material fact exists. This, together with the failure of the respondents to show that there were no genuine issues involved, should have been enough for the trial court to give the motion for summary judgment, filed by respondents, scant consideration. Trial courts have limited authority to render summary judgments and may do so only when there is clearly no genuine issue as to any material fact.[52]

Based on the foregoing, this Court deems it necessary to delve briefly on the nature of the action of quieting of title as

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[52] *Concrete Aggregates Corp. v. CA, et al.*, G. R. No. 117574, January 2, 1997, 266 SCRA 88, citing *Archipelago Builders v. Intermediate Appellate Court*, G.R. No. 75282, February 19, 1991, 194 SCRA 207, 212, citing *Auman v. Estenzo.*, No. L- 40500, 27 February 1976, 69 SCRA 524; *Loreno v. Estenzo*, No. L-43306, 29 October 1976, 73 SCRA 630; *Viajar v. Estenzo*, No. L- 45321, 30 April 1979, 89 SCRA 684.

applied in this case. This Court's ruling in *Calacala, et al. v. Republic, et al.*[53] is instructive on this matter, thus:

To begin with, it bears emphasis that an action for quieting of title is essentially a common law remedy grounded on equity. As we held in *Baricuatro, Jr. vs. CA*:[54]

> Regarding the nature of the action filed before the trial court, quieting of title is a common law remedy for the removal of any cloud upon or doubt or uncertainty with respect to title to real property. Originating in equity jurisprudence, its purpose is to secure 'x x x an adjudication that a claim of title to or an interest in property, adverse to that of the complainant, is invalid, so that the complainant and those claiming under him may be forever afterward free from any danger of hostile claim.' In an action for quieting of title, the competent court is tasked to determine the respective rights of the complainant and other claimants, 'x x x not only to place things in their proper place, to make the one who has no rights to said immovable respect and not disturb the other, but also for the benefit of both, so that he who has the right would see every cloud of doubt over the property dissipated, and he could afterwards without fear introduce the improvements he may desire, to use, and even to abuse the property as he deems best xxx'.

Under Article 476 of the New Civil Code, the remedy may be availed of only when, by reason of any instrument, record, claim, encumbrance or proceeding, which appears valid but is, in fact, invalid, ineffective, voidable, or unenforceable, a cloud is thereby cast on the complainant's title to real property or any interest therein. The codal provision reads:

> Article 476. Whenever there is a cloud on title to real property or any interest therein, by reason of any instrument, record, claim, encumbrance or proceeding which is apparently valid or effective but is in truth and in fact invalid, ineffective, voidable, or unenforceable, and may be prejudicial to said title, an action may be brought to remove such cloud or to quiet the title.

An action may also be brought to prevent a cloud from being cast upon title to real property or any interest therein.

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[53] G. R. No. 154415, July 28, 2005, 464 SCRA 438.

[54] 382 Phil. 15, 25 (2000).

In turn, Article 477 of the same Code identifies the party who may bring an action to quiet title, thus:

> Article 477. The plaintiff must have legal or equitable title to, or interest in the real property which is the subject-matter of the action. He need not be in possession of said property.

It can thus be seen that for an action for quieting of title to prosper, the plaintiff must first have a legal, or, at least, an equitable title on the real property subject of the action and that the alleged cloud on his title must be shown to be in fact invalid. So it is that in *Robles, et al. vs. CA*,[55] we ruled:

> It is essential for the plaintiff or complainant to have a legal title or an equitable title to or interest in the real property which is the subject matter of the action. Also, the deed, claim, encumbrance or proceeding that is being alleged as a cloud on plaintiff's title must be shown to be in fact invalid or inoperative despite its *prima facie* appearance of validity or legal efficacy.

Verily, for an action to quiet title to prosper, two (2) indispensable requisites must concur, namely: (**1) the plaintiff or complainant has a legal or an equitable title to or interest in the real property subject of the action; and (2) the deed, claim, encumbrance, or proceeding claimed to be casting cloud on his title must be shown to be in fact invalid or inoperative despite its *prima facie* appearance of validity or legal efficacy.**

Respondents, in their Complaint, claim that they have become the owners in fee-simple title of the subject land by occupation and possession under the provisions of Sec. 48 (b) of the Public Land Law or Commonwealth Act No. 141, as amended. Thus, it appears that the first requisite has been satisfied. Anent the second requisite, respondents enumerated several facts that would tend to prove the invalidity of the claim of the petitioner. All of these claims, which would correspond to the two requisites for the quieting of title, are factual; and, as discussed earlier, the petitioner interposed its objections and duly disputed the said claims, thus, presenting genuine issues that can only be resolved through a full-blown trial.

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[55] 384 Phil. 635, 647 (2000).

Anent the propriety of the filing of an action for the quieting of title, the indefeasibility and incontrovertibility of the decree of registration come into question. Under Sec. 32 of P.D. No. 1529 or the Property Registration Decree:

> Section 32. Review of decree of registration; Innocent purchaser for value. The decree of registration shall not be reopened or revised by reason of absence, minority, or other disability of any person adversely affected thereby, nor by any proceeding in any court for reversing judgments, subject, however, to the right of any person, including the government and the branches thereof, deprived of land or of any estate or interest therein by such adjudication or confirmation of title obtained by actual fraud, to file in the proper Court of First Instance a petition for reopening and review of the decree of registration not later than one year from and after the date of the entry of such decree of registration, but in no case shall such petition be entertained by the court where an innocent purchaser for value has acquired the land or an interest therein, whose rights may be prejudiced. Whenever the phrase "innocent purchaser for value" or an equivalent phrase occurs in this Decree, it shall be deemed to include an innocent lessee, mortgagee, or other encumbrancer for value.
>
> **Upon the expiration of said period of one year, the decree of registration and the certificate of title issued shall become incontrovertible.** Any person aggrieved by such decree of registration in any case may pursue his remedy by action for damages against the applicant or any other persons responsible for the fraud.

As borne out by the records and undisputed by the parties, OCT No. 0-660 of petitioner was issued on August 29, 1997 pursuant to a Decree issued on August 20, 1997, while the complaint for the quieting of title in Civil Case No. TG-1784 was filed and docketed on March 5, 1998; hence, applying the above provisions, it would seem that the period of one (1) year from the issuance of the decree of registration has not elapsed for the review thereof. However, a closer examination of the above provisions would clearly indicate that the action filed, which was for quieting of title, was not the proper remedy.

Courts may reopen proceedings already closed by final decision or decree when an application for review is filed by the party aggrieved within one year from the issuance of the decree of

registration.[56] However, the basis of the aggrieved party must be anchored solely on actual fraud. Shedding light on the matter is a discussion presented in one of the recognized textbooks on property registration,[57] citing decisions of this Court, thus:

> The right of a person deprived of land or of any estate or interest therein by adjudication or confirmation of title obtained by actual fraud is recognized by law as a valid and legal basis for reopening and revising a decree of registration.[58] **One of the remedies available to him is a petition for review**. To avail of a petition for review, the following requisites must be satisfied:
>
> (a) The petitioner must have an estate or interest in the land;
>
> (b) He must show actual fraud in the procurement of the decree of registration;
>
> (c) The petition must be filed within one year from the issuance of the decree by the Land Registration Authority; and
>
> (d) The property has not yet passed to an innocent purchaser for value.[59]
>
> A mere claim of ownership is not sufficient to avoid a certificate of title obtained under the Torrens system. **An important feature of a certificate of title is its finality.** The proceedings whereby such a title is obtained are directed against all persons, known or unknown, whether actually served with notice or not, and includes all who have an interest in the land. If they do not appear and oppose the registration of their own estate or interest in the property in the name of another, judgment is rendered against them by default, and, in the absence of fraud, such judgment is conclusive. If an interest in the land will not by itself operate to vacate a decree of registration, *a fortiori*, fraud is not alone sufficient to do so.[60]

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[56] *Lopez v. Padilla*, G. R. No. L-27559, May 18, 1972, 45 SCRA 44.

[57] Justice Agcaoili (ed.), *Property Registration Decree and Related Laws (Land Titles and Deeds*), 297-298 (2006).

[58] *Serna v. CA*, G. R. No. 124605, June 18, 1999, 308 SCRA 527.

[59] *Walstrom v. Mapa*, G. R. No. 38387, January 29, 1990, 181 SCRA 431; *Cruz v. Navarro*, G. R. No. L-27644, November 29, 1973, 54 SCRA 109; *Libudan v. Palma Gil*, G. R. No. L-21164, May 17, 1972, 45 SCRA 17.

[60] 26 Phil. 581 (1914).

As further pointed out in the same book,[61] the petition for review must be filed within one year from entry of the decree of registration. As written:

As long as a final decree has not been entered by the Land Registration Authority and period of one year has not elapsed from the date of entry of such decree, the title is not finally adjudicated and the decision in the registration case continues to be under the control and sound discretion of the registration court.[62] After the lapse of said period, the decree becomes incontrovertible and no longer subject to reopening or review.

Section 32 provides that a petition for review of the decree of registration may be filed "not later than one year from and after the date of entry of such decree of registration." Giving this provision a literal interpretation, it may at first blush seem that the petition for review cannot be presented until the final decree has been entered. However, it has been ruled that **the petition may be filed at any time after the rendition of the court's decision and before the expiration of one year from the entry of the final decree of registration** for, as noted in *Rivera v. Moran*,[63] there can be no possible reason requiring the complaining party to wait until the final decree is entered before urging his claim for fraud.

The one-year period stated in Sec. 32 within which a petition to re-open and review the decree of registration refers to the decree of registration described in Section 31, which decree is prepared and issued by the Land Registration Administrator.[64]

The provision of Section 31 that every decree of registration shall bind the land, quiet title thereto, and be conclusive upon and against all persons, including the national government, and Sec. 32 that the decree shall not be reopened or revised by reason of absence, minority or other disability or by any proceeding in court, save only in cases of actual fraud and then only for one year from the entry of the decree, must be understood as referring to final and unappealable decrees of registration. A decision or, as it is sometimes called after entry,

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[61] *Supra* note 57 at 302-304.

[62] *Gomez v. CA*, G. R. No. 77770, December 15, 1988, 168 SCRA 491.

[63] 48 Phil. 836 (1926).

[64] *Ramos v. Rodriguez*, G.R. No. 94033, May 29, 1995, 244 SCRA 418.

a decree of a registration court, does not become final and unappealable until fifteen days after the interested parties have been notified of its entry, and during that period may be set aside by the trial judge on motion for new trial, upon any of the grounds stated in the Rules of Court.[65] An appeal from the decision of the trial court prevents the judgment from becoming final until that decree is affirmed by the judgment of the appellate court.[66]

A petition for review under Section 32 is a remedy separate and distinct from a motion for new trial and the right to the remedy is not affected by the denial of such a motion irrespective of the grounds upon which it may have been presented. Thus, where petitioners acquired their interest in the land before any final decree had been entered, the litigation was therefore in effect still pending and, in these circumstances, they can hardly be considered innocent purchasers in good faith.[67]

Where the petition for review of a decree of registration is filed within the one-year period from entry of the decree, it is error for the court to deny the petition without hearing the evidence in support of the allegation of actual and extrinsic fraud upon which the petition is predicated. The petitioner should be afforded an opportunity to prove such allegation.[68]

In the present case, the one-year period before the Torrens title becomes indefeasible and incontrovertible has not yet expired; thus, a review of the decree of registration would have been the appropriate remedy.

Based on the above disquisitions, the other issues raised by the petitioner are necessarily rendered inconsequential.

WHEREFORE, the petition for review on *certiorari* of petitioner Eland Philippines, Inc. is hereby *GRANTED*, and the decision dated February 28, 2006 of the Court of Appeals (CA) in CA-G.R. CV No. 67417, which dismissed the appeal of

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[65] *Roman Catholic Archbishop of Manila v. Sunico*, 36 Phil. 279 (1917).

[66] *Supra* note at 60.

[67] *Rivera v. Moran*, 48 Phil. 863 (1926).

[68] *Republic v. Sioson*, G. R. No. L-13687, November 29, 1963, 9 SCRA 533.

petitioner Eland Philippines, Inc. and affirmed the resolutions dated November 3, 1999 of Branch 18, RTC of Tagaytay City, is hereby *REVERSED* and *SET ASIDE*. Consequently, the resolution dated November 3, 1999 of Branch 18, RTC of Tagaytay City in Civil Case No. TG-1784 are hereby declared *NULL* and *VOID*.

SO ORDERED.

Corona (Chairperson), Carpio,[*] *Nachura,* and *Mendoza, JJ.*, concur.

THIRD DIVISION

[G.R. No. 174570. February 17, 2010]

ROMER SY TAN, *petitioner, vs.* **SY TIONG GUE, FELICIDAD CHAN SY, SY CHIM, SY TIONG SAN, SY YU BUN, SY YU SHIONG, SY YU SAN and BRYAN SY LIM,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; SEARCH AND SEIZURE; SEARCH WARRANT; DEFINED. — A search warrant is an order in writing issued in the name of the People of the Philippines, signed by a judge and directed to a peace officer, commanding him to search for personal property described therein and to bring it before the court. The issuance of a search warrant is governed by Rule 126 of the Rules of Court x x x .

2. ID.; ID.; ID.; ID.; VALID SEARCH WARRANT, REQUISITES. — [T]he validity of the issuance of a search warrant rests upon the following factors: (1) it must be issued upon probable cause;

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[*] Designated to sit as an additional Member, in lieu of Justice Presbitero J. Velasco, Jr., per Raffle dated February 10, 2010.

(2) the probable cause must be determined by the judge himself and not by the applicant or any other person; (3) in the determination of probable cause, the judge must examine, under oath or affirmation, the complainant and such witnesses as the latter may produce; and (4) the warrant issued must particularly describe the place to be searched and persons or things to be seized.

3. ID.; ID.; ID.; ID.; ID.; PROBABLE CAUSE; EXPLAINED. — Jurisprudence dictates that probable cause, as a condition for the issuance of a search warrant, is such reasons supported by facts and circumstances as will warrant a cautious man to believe that his action and the means taken in prosecuting it are legally just and proper. Probable cause requires facts and circumstances that would lead a reasonably prudent man to believe that an offense has been committed and that the objects sought in connection with that offense are in the place to be searched. In *Microsoft Corporation v. Maxicorp, Inc.*, this Court stressed that: "The determination of probable cause does not call for the application of rules and standards of proof that a judgment of conviction requires after trial on the merits. As implied by the words themselves, 'probable cause' is concerned with probability, not absolute or even moral certainty. The prosecution need not present at this stage reasonable doubt. The standards of judgment are those of a reasonably prudent man, not the exacting calibrations of a judge after a full-blown trial."

4. ID.; ID.; ID.; ID.; ISSUANCE THEREOF IS EXCLUSIVELY VESTED IN THE TRIAL JUDGES IN THE EXERCISE OF THEIR JUDICIAL FUNCTIONS. — The power to issue search warrants is exclusively vested in the trial judges in the exercise of their judicial functions. A finding of probable cause, which would merit the issuance of a search warrant, needs only to rest on evidence showing that, more likely than not, a crime has been committed and that it was committed by the accused. The determination of whether probable cause exists as to justify the issuance of a search warrant is best left to the sound discretion of a judge.

5. ID.; SPECIAL CIVIL ACTIONS; *CERTIORARI*; INTENDED FOR THE CORRECTION OF ERRORS OF JURISDICTION ONLY, OR GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION. — A Petition for *Certiorari* under Rule 65 of the Rules of Court is intended for

the correction of errors of jurisdiction only, or grave abuse of discretion amounting to lack or excess of jurisdiction. Its principal office is only to keep the inferior court within the parameters of its jurisdiction, or to prevent it from committing such grave abuse of discretion amounting to lack or excess of jurisdiction. This Court finds nothing irregular, much less, grave abuse of discretion, committed by the RTC judge in issuing the subject search warrants. The RTC judge complied with all the procedural and substantive requirements for the issuance of a search warrant. This Court is, therefore, bound by the RTC judge's finding of probable cause for issuing Search Warrant Nos. 03-3611 and 03-3612.

APPEARANCES OF COUNSEL

E.L. Gayo & Associates for petitioner.
Poblador Bautista & Reyes for respondents.

D E C I S I O N

PERALTA, *J.*:

This is a Petition for Review on *Certiorari* seeking to annul and set aside the Decision[1] dated December 29, 2005 of the Court of Appeals (CA) in CA-G.R. SP No. 81389 and the Resolution[2] dated August 18, 2006 denying petitioner's Motion for Reconsideration.

The antecedents are as follows:

On January 11, 2006, an Information[3] for the crime of Robbery was filed against respondents Sy Tiong Gue, Felicidad Chan Sy, Sy Chim, Sy Tiong Yan, Sy Yu Bun, Sy Yu Siong, Sy Yu San, Bryan Sy Lim, Sy Yu Hui-Pabilona, Police Officer 1 (PO1) Mamerto J. Madronio, and PO1 Marvin Sumang for the alleged taking of ₱6,500,000.00 cash, 286 postdated checks, five boxes

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[1] Penned by Associate Justice Amelita G. Tolentino, with Associate Justices Portia Aliño Hormachuelos and Santiago Javier Ranada, concurring, *rollo*, pp. 35-50.

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

[3] *Id.* at 73-74.

of Hennessy Cognac, a television set, a computer set, and other documents from the Guan Yiak Hardware, committed as follows:

> That on or about April 15, 2003, in the city of Manila, Philippines, the said accused, conspiring and confederating together and helping one another, did then and there willfully, unlawfully and feloniously with intent of gain and by means of violence against or intimidation of persons and force upon things, to wit: by forcibly entering the Office of Guan Yiak Hardware located at 453-455 Tomas Pinpin Street, Binondo, Manila, while being armed with guns, and thereafter, take rob and carry away cash in the amount of ₱6,500,000.00 from the vault; 286 postdated checks with total face value of ₱4,325,642.00 issued by several customers payable to Guan Yiak Hardware, Five (5) boxes of Hennessy XO Cognac valued at ₱240,000.00 more or less; a television set valued at ₱20,000.00 more or less; Computer set valued at ₱50,000.00 more or less and other papers/documents or all valued at ₱11,135,642.00 more or less belonging to **SY SIY HO AND SONS, INC. (Guan Yiak Hardware) represented by Romer S. Tan**, to the damage and prejudice of the aforesaid owner in the total amount of ₱11,135,642.00 more or less, Philippine Currency.
>
> Contrary to law.[4]

Consequently, on April 22, 2003, Police Inspector (P/Insp.) Edgar A. Reyes filed two separate applications for the issuance of a search warrant before the Regional Trial Court (RTC), Manila. The applications were later docketed as Search Warrant Case Nos. 03-3611 and 03-3612 and raffled off to Branch 7, RTC, Manila.

In the said applications, P/Insp. Reyes alleged that he had personal knowledge that respondent Felicidad Chan Sy had in her possession five boxes of Hennessy XO, as well as 286 company checks taken from Guan Yiak Hardware. He prayed that the court issue a search warrant authorizing him or any other agent of the law to take possession of the subject property and bring them before the court.

In support of the applications, P/Insp. Reyes submitted the sworn statements of petitioner Romer Sy Tan[5] and witnesses

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[4] *Id.* at 75.

[5] *Id.* at 89.

Maricho Sabelita[6] and Anicita Almedilla.[7] On April 22, 2003, presiding Judge Enrico A. Lanzanas posed searching questions to the applicant and his witnesses to determine if probable cause existed to justify the issuance of the search warrants.

Thereafter, or on April 22, 2003, Judge Lanzanas issued Search Warrant Nos. 03-3611[8] and 03-3612,[9] directing any peace officer to make an immediate search of the 8th floor, 524 T. Pinpin, Binondo, Manila for five boxes of Hennessy XO; and the 7th floor, 524 T. Pinpin, Binondo, Manila for various checks payable to the Guan Yiak Hardware, respectively; and, if found, to take possession thereof and bring the same before the court.

The warrants were later served in the afternoon of April 22, 2003. Under Search Warrant No. 03-3611, three boxes containing twelve Hennessy XOs and one box containing seven Hennessy XOs, were seized. However, the enforcement of Search Warrant No. 03-3612 yielded negative results.

On May 21, 2003, respondents filed a Motion to Quash Search Warrants,[10] which petitioner opposed.[11]

On September 1, 2003, the RTC issued an Order[12] denying the motion. Respondents filed a Motion for Reconsideration,[13] but it was denied in the Order[14] dated October 28, 2003.

Aggrieved, respondents filed a Petition for *Certiorari*[15] under Rule 65 of the Rules of Court before the CA arguing that:

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6 *Id.* at 90.

7 *Id.* at 91.

8 *Id.* at 95.

9 *Id.* at 96.

10 *Id.* at 97-103.

11 *Id.* at 114-119.

12 *Id.* at 129-132.

13 *Id.* at 133-144.

14 *Id.* at 158.

15 CA *rollo*, pp. 2-31.

I.

The respondent judge committed grave abuse of discretion amounting to lack or excess of jurisdiction when he refused to quash the subject search warrants, notwithstanding the manifest absence of probable cause.

II.

There is no appeal, nor any other plain, speedy, and adequate remedy in the ordinary course of law from the assailed Orders.[16]

On December 29, 2005, the CA rendered the assailed Decision, the decretal portion of which reads:

WHEREFORE, premises considered, the petition is GRANTED. The assailed orders of the respondent court in *Search Warrant Case Nos. 03-3611 and 03-3612* are REVERSED and SET ASIDE. Accordingly, the Motion to Quash *Search Warrant Case Nos. 03-3611 and 03-3612* is GRANTED.

SO ORDERED.[17]

The CA opined that quashing the search warrants for lack of personal knowledge was unwarranted. It added that the description of the items to be seized complied with the requirement of particularity. Moreover, the CA found the inquiries made by the judge to be sufficiently probing. However, the CA agreed with the respondents and concluded that there was no probable cause for the issuance of the subject search warrants; thus, respondents' motion to quash should have been granted by the RTC.

Petitioner filed a motion for reconsideration, but it was denied in the assailed Resolution dated August 18, 2006.

Hence, the petition assigning the following errors:

A

THE HONORABLE COURT OF APPEALS COMMITTED ERROR OF LAW AND ERROR OF JURISDICTION IN SETTING ASIDE THE

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

[17] *Rollo*, at 50.

SEARCH WARRANTS ISSUED BY HONORABLE EXECUTIVE JUDGE ENRICO A. LANZANAS OF RTC 7, MANILA.

B

THE HONORABLE COURT OF APPEALS COMMITTED ERROR OF LAW AND ERROR OF JURISDICTION IN GRANTING THE PETITION FOR *CERTIORARI* FILED WITH IT BY THE RESPONDENTS, DESPITE LACK OF SHOWING THAT HONORABLE EXECUTIVE JUDGE ENRICO A. LANZANAS OF RTC 7, MANILA, COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN ISSUING ITS ORDERS *(ANNEXES "L" AND "P")* DENYING RESPONDENTS' MOTION TO QUASH SEARCH WARRANTS AND MOTION FOR RECONSIDERATION.

Petitioner argues that there was substantial basis for the findings of facts and circumstances, which led the issuing court to determine and conclude that the offense of robbery had been committed by the respondents. Petitioner insists that there was probable cause, which justified the issuing judge to issue the questioned search warrants. Petitioner maintains that the RTC issued the search warrants after determining the existence of probable cause based on the *Sinumpaang Salaysay* of the affiants and the testimonies given by them during the hearing of the applications for search warrant.

On their part, respondents maintain that the CA's finding that there was no probable cause for the issuance of the search warrants was in accordance with the facts and the law. Respondents contend that the CA correctly appreciated the numerous statements and admissions of petitioner and his witnesses, all of which, taken together, clearly negate any finding of probable cause for the issuance of the subject search warrants.

The sole issue to be determined in the instant action is whether or not there was probable cause warranting the issuance by RTC of the subject search warrants. We answer in the affirmative.

A search warrant is an order in writing issued in the name of the People of the Philippines, signed by a judge and directed

to a peace officer, commanding him to search for personal property described therein and to bring it before the court.[18] The issuance of a search warrant is governed by Rule 126 of the Rules of Court, the relevant sections of which provide:

Section 4. *Requisites for issuing search warrant*. — A search warrant shall not issue except upon probable cause in connection with one specific offense to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched and the things to be seized which may be anywhere in the Philippines.

Section 5. *Examination of complainant; record*. — The judge must, before issuing the warrant, personally examine in the form of searching questions and answers, in writing and under oath, the complainant and the witnesses he may produce on facts personally known to them and attach to the record their sworn statements together with the affidavits submitted.

Section 6. *Issuance and form of search warrant*. — If the judge is satisfied of the existence of facts upon which the application is based or that there is probable cause to believe that they exist, he shall issue the warrant, which must be substantially in the form prescribed by these Rules.

Therefore, the validity of the issuance of a search warrant rests upon the following factors: (1) it must be issued upon probable cause; (2) the probable cause must be determined by the judge himself and not by the applicant or any other person; (3) in the determination of probable cause, the judge must examine, under oath or affirmation, the complainant and such witnesses as the latter may produce; and (4) the warrant issued must particularly describe the place to be searched and persons or things to be seized.[19]

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[18] Rules of Court, Rule 126, Section 1.

[19] *Hon Ne Chan v. Honda Motor Co., Ltd.*, G.R. No. 172775, December 19, 2007, 541 SCRA 249, 258; *Republic v. Sandiganbayan*, G.R. Nos. 112708-09, March 29, 1996, 255 SCRA 438, 481-482.

In the case at bar, the CA concluded that the RTC did not comply with any of the requisites required for the issuance of the subject search warrants. The CA ratiocinated that although the RTC judge personally determined if probable cause existed by examining the witnesses through searching questions, and although the search warrants sufficiently described the place to be searched and things to be seized, there was no probable cause warranting the issuance of the subject search warrants. We do not agree.

Jurisprudence dictates that probable cause, as a condition for the issuance of a search warrant, is such reasons supported by facts and circumstances as will warrant a cautious man to believe that his action and the means taken in prosecuting it are legally just and proper. Probable cause requires facts and circumstances that would lead a reasonably prudent man to believe that an offense has been committed and that the objects sought in connection with that offense are in the place to be searched.[20] In *Microsoft Corporation v. Maxicorp, Inc.*,[21] this Court stressed that:

> The determination of probable cause does not call for the application of rules and standards of proof that a judgment of conviction requires after trial on the merits. As implied by the words themselves, "probable cause" is concerned with probability, not absolute or even moral certainty. The prosecution need not present at this stage reasonable doubt. The standards of judgment are those of a reasonably prudent man, not the exacting calibrations of a judge after a full-blown trial.

Applying these set standards, this Court finds that there was no grave abuse of discretion on the part of the RTC judge in issuing the subject search warrants.

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[20] *Coca-Cola Bottlers, Phils., Inc. (CCBPI) v. Gomez*, G.R. No. 154491, November 14, 2008, 571 SCRA 18, 32; see also *Santos v. Pryce Gases, Inc.*, G.R. No. 165122, November 23, 2007, 538 SCRA 474, 484; *Hon Ne Chan v. Honda Motor Co., Ltd., id.* at 259-260; *La Chemise Lacoste, S. A. v. Judge Fernandez*, G.R. Nos. 63796-97, May 21, 1984, 129 SCRA 373.

[21] G.R. No. 140946, September 13, 2004, 438 SCRA 224, 236.

A perusal of the *Sinumpaang Salaysay*[22] and the Transcript of Stenographic Notes[23] reveals that Judge Lanzanas, through searching and probing questions, was satisfied that there were good reasons to believe that respondents, accompanied by five maids, took five boxes of Hennessy XO owned by the Guan Yiak Hardware and brought them to the 8th floor of 524 T. Pinpin St., Binondo, Manila; and that a person named "Yubol" took various checks from the company's vault, which was later brought to the 7th floor of 524 T. Pinpin St., Binondo, Manila. When they entered the premises, Felicidad Chan Sy was accompanied by two policemen, which stunned Romer Sy Tan, so that he was not able to do anything in the face of the calculated and concerted actions of his grandmother, Felicidad Chan Sy, and her seven companions. Based on the foregoing circumstances, Romer Sy Tan believed that the crime of robbery was committed by the respondents.[24]

The power to issue search warrants is exclusively vested in the trial judges in the exercise of their judicial functions.[25] A finding of probable cause, which would merit the issuance of a search warrant, needs only to rest on evidence showing that, more likely than not, a crime has been committed and that it was committed by the accused.[26] The determination of whether probable cause exists as to justify the issuance of a search warrant is best left to the sound discretion of a judge.[27] Apparent in the case at bar and as aptly found by the RTC judge, there was probable cause justifying the issuance of the search warrants.

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[22] CA *rollo*, pp. 58-60.

[23] *Id.* at 62-108.

[24] *Rollo*, p. 130.

[25] *Skechers, U.S.A., Inc. v. Inter Pacific Industrial Trading Corp.*, G.R. No. 164321, November 30, 2006, 509 SCRA 395, 407, citing *Manly Sportwear Manufacturing, Inc. v. Dadodette Enterprises*, G.R. No. 165306, September 20, 2005, 470 SCRA 384, 389, citing Section 2, Article III, 1987 Constitution.

[26] *Santos v. Pryce Gases, Inc.*, *supra* note 20.

[27] *Busilac Builders, Inc. v. Aguilar*, A.M. No. RTJ-03-1809, October 17, 2006, 504 SCRA 585, 603.

This was established by the *Sinumpaang Salaysay* and the testimonies, consisting of no less than 37 pages, given by witnesses who had personal knowledge of facts indicating that the crime of robbery had been committed and that the objects sought in connection with the offense were in the place sought to be searched. The facts narrated by the witnesses while under oath, when they were asked by the examining judge, were sufficient justification for the issuance of the subject search warrants.

A Petition for *Certiorari* under Rule 65 of the Rules of Court is intended for the correction of errors of jurisdiction only, or grave abuse of discretion amounting to lack or excess of jurisdiction. Its principal office is only to keep the inferior court within the parameters of its jurisdiction, or to prevent it from committing such grave abuse of discretion amounting to lack or excess of jurisdiction.[28] This Court finds nothing irregular, much less, grave abuse of discretion, committed by the RTC judge in issuing the subject search warrants. The RTC judge complied with all the procedural and substantive requirements for the issuance of a search warrant. This Court is, therefore, bound by the RTC judge's finding of probable cause for issuing Search Warrant Nos. 03-3611 and 03-3612.

It is to be noted, however, that while this Court affirms the sufficiency of probable cause in the issuance of the search warrants in connection with the crime of robbery allegedly committed by the respondents, the guilt of the accused still remains to be determined in the appropriate criminal action against them, not in the present case which is limited only to the propriety of the issuance of the subject search warrants by the RTC.

WHEREFORE, premises considered, the petition is *GRANTED*. The Decision and Resolution dated December 29, 2005 and August 18, 2006, respectively, of the Court of Appeals in CA-G.R. SP No. 81389 are *REVERSED* and *SET ASIDE*. The Orders of the RTC dated September 1, 2003 and

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[28] *People v. Court of Appeals*, 468 Phil. 1, 10 (2004).

October 28, 2003 are *REINSTATED*. The validity of Search Warrant Nos. 03-3611 and 03-3612 is *SUSTAINED*.

SO ORDERED.

Corona (Chairperson), Velasco, Jr., Nachura, and *Mendoza, JJ.,* concur.

EN BANC

[G.R. No. 176707. February 17, 2010]

ARLIN B. OBIASCA,[1] *petitioner, vs.* **JEANE O. BASALLOTE,** *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; EXECUTIVE ORDER NO. 292 (ADMINISTRATIVE CODE OF 1987); OMNIBUS RULES; CIVIL SERVICE COMMISSION (CSC); PETITION FOR RECONSIDERATION OF THE CSC DECISION OR RESOLUTION, PREREQUISITE FOR FILING A PETITION FOR REVIEW IN THE COURT OF APPEALS; NON-COMPLIANCE WITH THE RULE, EFFECT. — Sections 16 and 18, Rule VI of the Omnibus Rules provide the proper remedy to assail a CSC decision or resolution: "Section 16. x x x **The decision of the [CSC] is final and executory if no petition for reconsideration is filed within fifteen days from receipt thereof**. x x x Section 18. **Failure to file a** protest, appeal, **petition for reconsideration or petition for review within the prescribed period shall be deemed a waiver of such right**

[1] Based on documents submitted by petitioner himself, his full name is Arlin Balane Obiasca. However, he also refers to himself in the records as "Arlin O. Obiasca".

and shall render the subject action/decision final and executory." In this case, petitioner did not file a petition for reconsideration of the CSC resolution dated November 29, 2005 before filing a petition for review in the CA. Such fatal procedural lapse on petitioner's part allowed the CSC resolution dated November 29, 2005 to become final and executory. Hence, for all intents and purposes, the CSC resolution dated November 29, 2005 has become immutable and can no longer be amended or modified. **A final and definitive judgment can no longer be changed, revised, amended or reversed**. Thus, in praying for the reversal of the assailed Court of Appeals decision which affirmed the final and executory CSC resolution dated November 29, 2005, petitioner would want the Court to reverse a final and executory judgment and disregard the doctrine of immutability of final judgments.

2. ID.; ID.; ID.; ID.; ID.; ID.; APPLIES TO CSC DECISIONS INVOLVING ITS ADMINISTRATIVE FUNCTION. — [A] dissatisfied employee of the civil service is not preempted from availing of remedies other than those provided in Section 18 of the Omnibus Rules. This is precisely the purpose of Rule 43 of the Rules of Court, which provides for the filing of a petition for review as a remedy to challenge the decisions of the CSC. While Section 18 of the Omnibus Rules does not supplant the mode of appeal under Rule 43, we cannot disregard Section 16 of the Omnibus Rules, which requires that a petition for reconsideration should be filed, otherwise, the CSC decision will become final and executory, *viz.*: **"The decision of the [CSC] is final and executory if no petition for reconsideration is filed within fifteen days from receipt thereof."** Note that the foregoing provision is a specific remedy as against CSC decisions involving its **administrative** function, that is, on matters involving "appointments, whether original or promotional, to positions in the civil service," as opposed to its quasi-judicial function where it adjudicates the rights of persons before it, in accordance with the standards laid down by the law.

3. ID.; ID.; DOCTRINE OF EXHAUSTION OF ADMINISTRATIVE REMEDIES; EXPLAINED. — The doctrine of exhaustion of administrative remedies requires that, for reasons of law, comity and convenience, where the enabling statute indicates a procedure for administrative review and provides a system

of administrative appeal or reconsideration, the courts will not entertain a case unless the available administrative remedies have been resorted to and the appropriate authorities have been given an opportunity to act and correct the errors committed in the administrative forum. In *Orosa v. Roa*, the Court ruled that if an appeal or remedy obtains or is available within the administrative machinery, this should be resorted to before resort can be made to the courts. While the doctrine of exhaustion of administrative remedies is subject to certain exceptions, these are not present in this case.

4. ID.; ID.; EXECUTIVE ORDER NO. 292 (ADMINISTRATIVE CODE OF 1987); CIVIL SERVICE COMMISSION (CSC); APPOINTMENTS; REQUIREMENT OF SUBMISSION OF APPOINTMENT TO THE CSC WITHIN THIRTY DAYS, AMENDED BY DELETION. — It is incorrect to interpret Section 9(h) of Presidential Decree (PD) 807 as requiring that an appointment must be submitted by the appointing authority to the CSC within 30 days from issuance, otherwise, the appointment would become ineffective. Such interpretation fails to appreciate the relevant part of Section 9(h) which states that "**an appointment shall take effect immediately upon issue by the appointing authority if the appointee assumes his duties immediately and shall remain effective until it is disapproved by the [CSC]**." This provision is reinforced by Section 1, Rule IV of the Revised Omnibus Rules on Appointments and Other Personnel Actions x x x. More importantly, Section 12, Book V of EO 292 amended Section 9(h) of PD 807 by deleting the requirement that all appointments subject to CSC approval be submitted to it within 30 days. x x x As a rule, an amendment by the deletion of certain words or phrases indicates an intention to change its meaning. It is presumed that the deletion would not have been made had there been no intention to effect a change in the meaning of the law or rule. The word, phrase or sentence excised should accordingly be considered **inoperative**.

5. ID.; ID.; PRESIDENTIAL DECREE NO. 807 (THE CIVIL SERVICE LAW) AND EXECUTIVE ORDER NO. 292 (THE ADMINISTRATIVE CODE OF 1987); INCONSISTENCY IN REQUIRING CSC ACTION ON APPOINTMENTS TO THE CIVIL SERVICE, ELUCIDATED. — PD 807 and EO 292 are not inconsistent insofar as they require CSC action on

appointments to the civil service. This is evident from the recognition accorded by EO 292, specifically under Section 12 (14) and (15) thereof, to the involvement of the CSC in all personnel actions and programs of the government. However, while a restrictive period of 30 days within which appointments must be submitted to the CSC is imposed under the last sentence of Section 9(h) of PD 807, none was adopted by Section 12 (14) and (15) of EO 292. Rather, provisions subsequent to Section 12 merely state that the CSC (and its liaison staff in various departments and agencies) shall **periodically** monitor, inspect and audit personnel actions. Moreover, under Section 9(h) of PD 807, appointments not submitted within 30 days to the CSC become ineffective, no such specific adverse effect is contemplated under Section 12 (14) and (15) of EO 292. Certainly, the two provisions are materially inconsistent with each other. And to insist on reconciling them by restoring the restrictive period and punitive effect of Section 9(h) of PD 807, which EO 292 deliberately discarded, would be to rewrite the law by mere judicial interpretation.

6. ID.; ID.; EXECUTIVE ORDER NO. 292 (ADMINISTRATIVE CODE OF 1987); CIVIL SERVICE COMMISSION (CSC); APPOINTMENTS; BECOME EFFECTIVE UPON ISSUANCE BY THE APPOINTING AUTHORITY AND REMAIN EFFECTIVE UNTIL DISAPPROVED BY THE CSC; CASE AT BAR. — [R]espondent's appointment became effective upon its issuance by the appointing authority and it remained effective until disapproved by the CSC (if at all it ever was). Disregarding this rule and putting undue importance on the provision requiring the submission of the appointment to the CSC within 30 days will reward wrongdoing in the appointment process of public officials and employees. It will open the door for scheming officials to block the completion and implementation of an appointment and render it ineffective by the simple expedient of not submitting the appointment paper to the CSC. As indubitably shown in this case, even respondent's vigilance could not guard against the malice and grave abuse of discretion of her superiors.

7. ID.; ID.; ID.; ID.; ID.; REQUIREMENT OF SUBMISSION OF APPOINTMENT TO THE CIVIL SERVICE COMMISSION; PURPOSE. — There is no dispute that the approval of the CSC is a legal requirement to complete the appointment. Under

settled jurisprudence, the appointee acquires a vested legal right to the position or office pursuant to this completed appointment. Respondent's appointment was in fact already approved by the CSC with finality. The purpose of the requirement to submit the appointment to the CSC is for the latter to approve or disapprove such appointment depending on whether the appointee possesses the appropriate eligibility or required qualifications and whether the laws and rules pertinent to the process of appointment have been followed. With this in mind, respondent's appointment should all the more be deemed valid.

8. ID.; ID.; ID.; ID.; ID.; ID.; NON-COMPLIANCE THEREWITH WITHOUT THE APPOINTEE'S NEGLIGENCE WILL NOT PREJUDICE HIM. — Under Article 1186 of the Civil Code, "[t]he condition shall be deemed fulfilled when the obligor voluntarily prevents its fulfillment." Applying this to the appointment process in the civil service, unless the appointee himself is negligent in following up the submission of his appointment to the CSC for approval, he should not be prejudiced by any willful act done in bad faith by the appointing authority to prevent the timely submission of his appointment to the CSC. While it may be argued that the submission of respondent's appointment to the CSC within 30 days was one of the conditions for the approval of respondent's appointment, however, deliberately and with bad faith, the officials responsible for the submission of respondent's appointment to the CSC prevented the fulfillment of the said condition. Thus, the said condition should be deemed fulfilled.

9. ID.; ID.; ID.; ID.; ID.; APPOINTMENT ISSUED WITHOUT COMPLYING WITH PERTINENT CIVIL SERVICE COMMISSION RULES, WHEN VALID. — The Court has already had the occasion to rule that an appointment remains valid in certain instances despite non-compliance of the proper officials with the pertinent CSC rules. x x x The relevance of *Joson* and *Chavez* to this case cannot be simply glossed over. While the agencies concerned in those cases were accredited agencies of the CSC which could take final action on the appointments, that is not the case here. Thus, any such differentiation is unnecessary. It did not even factor in the Court's disposition of the issue in *Joson* and *Chavez*. What is crucial is that, in those cases, the Court upheld the appointment

despite the non-compliance with a CSC rule because (1) there were valid justifications for the lapse; (2) the non-compliance was beyond the control of the appointee and (3) the appointee was not negligent. All these reasons are present in this case, thus, there is no basis in saying that the afore-cited cases are not applicable here. Similar things merit similar treatment.

10. ID.; ID.; ID.; ID.; ID.; THE CIVIL SERVICE COMMISSION HAS THE POWER TO WITHDRAW OR REVOKE AN APPOINTMENT INITIALLY APPROVED. — [I]n appointing petitioner, the appointing authority effectively revoked the previous appointment of respondent and usurped the power of the CSC to withdraw or revoke an appointment that had already been accepted by the appointee. It is the CSC, not the appointing authority, which has this power. This is clearly provided in Section 9, Rule V of the Omnibus Rules: "Section 9. **An appointment accepted by the appointee cannot be withdrawn or revoked by the appointing authority and shall remain in force and effect until disapproved by the [CSC]**. x x x" Thus, the Court ruled in *De Rama v. Court of Appeals* that it is the CSC which is authorized to recall an appointment initially approved when such appointment and approval are proven to be in disregard of applicable provisions of the civil service law and regulations.

11. ID.; ID.; ID.; ID.; ID.; APPOINTING AUTHORITY, NOT AUTHORIZED TO REVOKE EARLIER APPOINTMENTS; RATIONALE. — The power to revoke an earlier appointment through the appointment of another may not be conceded to the appointing authority. Such position is not only contrary to Section 9, Rule V and Section 1, Rule IV of the Omnibus Rules. It is also a dangerous reading of the law because it unduly expands the discretion given to the appointing authority and removes the checks and balances that will rein in any abuse that may take place. The Court cannot countenance such erroneous and perilous interpretation of the law. Accordingly, petitioner's subsequent appointment was void. There can be no appointment to a non-vacant position. The incumbent must first be legally removed, or her appointment validly terminated, before another can be appointed to succeed her.

BERSAMIN, *J., dissenting opinion:*

1. POLITICAL LAW; ADMINISTRATIVE LAW; EXECUTIVE ORDER NO. 292 (THE REVISED ADMINISTRATIVE CODE); CIVIL SERVICE COMMISSION (CSC); PETITION FOR RECONSIDERATION OF THE CSC DECISION OR RESOLUTION, NOT A PREREQUISITE TO THE FILING OF PETITION FOR REVIEW UNDER RULE 43 OF THE RULES OF COURT. — [A] dissatisfied employee may avail himself of remedies not limited to the *petition for reconsideration*. In fact, Section 18 of the Omnibus Rules of the CSC expressly recognizes *other* remedies available to the affected employee to prevent the disputed "action/decision" from becoming final and executory, thus: "Section 18. Failure to file a protest, appeal, petition for reconsideration or petition for review within the prescribed period shall be deemed a waiver of such right and shall render the subject action/decision final and executory." Moreover, such *petition for reconsideration* was not a prerequisite to the filing of a petition for review under Rule 43 of the *Rules of Court*. It was enough that the petition for review was filed "within fifteen (15) days from notice of the award, judgment, final order or resolution, or from the date of its last publication, if publication is required by law for its effectivity, or of the denial of petitioner's motion for new trial or reconsideration duly filed in accordance with the governing law of the court or agency *a quo*."

2. ID.; ID.; ID.; ID.; ID.; A CSC RULE INTENDED TO RENDER A DECISION FINAL AND EXECUTORY IF NO PETITION FOR RECONSIDERATION IS FIRST FILED CANNOT PREVAIL OVER RULE 43 OF THE RULES OF COURT. — [A] rule of the CSC that might have intended to render a decision final and executory if no *petition for reconsideration* is first brought against the decision or resolution will not stand and prevail over the Rule 43 of the *Rules of Court*, which clearly authorizes appeals from the "awards, judgments, final orders or resolutions of, or authorized by any quasi-judicial agency in the exercise of its quasi-judicial functions." Rule 43, being issued by the Supreme Court under its rule-making authority in Section 5(5) of Article VIII of the *Constitution*, has the force and effect of law, and repeals or supersedes any law or enactment on the

manner and method of appealing the decisions and orders of the specific quasi-judicial bodies.

3. ID.; ID.; PRESIDENTIAL DECREE NO. 807 (THE CIVIL SERVICE DECREE OF THE PHILIPPINES); CSC; APPOINTMENTS; MUST BE SUBMITTED WITHIN THE REQUIRED PERIOD TO THE CSC. – The CSC, being the central personnel agency of the Government, is charged with the duty of determining questions on the qualifications of merit and fitness of the persons appointed to the Civil Service. An appointment to a civil service position, to be fully effective, must comply with all the legal requirements. Section 9 of Presidential Decree (P.D.) No. 807 (*Civil Service Decree of the Philippines*) relevantly provides: "Section 9. *Powers and Functions of the Commission*. — The Commission shall administer the Civil Service and shall have the following powers and functions: x x x (h) **Approve all appointments, whether original or promotional, to positions in the civil service x x x. All appointments requiring the approval of the Commission as herein provided, shall be submitted to it by the appointing authority within thirty days from issuance, otherwise, the appointment becomes ineffective thirty days thereafter**. x x x" Thus, the appointment must be submitted *within the required period* to the CSC, which shall then ascertain, in the main, whether the proposed appointee is qualified to hold the position and whether the rules pertinent to the process of appointment were observed.

4. ID.; ID.; EXECUTIVE ORDER NO. 292 (THE REVISED ADMINISTRATIVE CODE); CSC; APPOINTMENTS; SUBMISSION OF APPOINTMENT WITHIN THIRTY DAYS FROM DATE OF ISSUE, REQUIRED. — The new provision in Section 12(14) of E.O. 292 – "Take appropriate action on all appointments and other personnel matters in the Civil Service including extension of Service beyond retirement age" – is a legal provision altogether different from Section 9 (h) of P.D. 807. The former is too broad in scope, for, certainly, the CSC is not to be limited to merely approving and disapproving appointments. Even with E.O. 292's repealing clause ("All laws, decrees, orders, rules and regulations, or portions thereof, inconsistent with this Code are hereby repealed or modified accordingly"), the requirement of submission of appointments *within 30 days* expressly stated in the latter is not inconsistent

with the authority of the CSC to take appropriate action on all appointments and other personnel matters. The Court cannot interpret E.O. 292 as having entirely dispensed with the submission requirement in order to make an appointment effective. To hold otherwise is to deprive the CSC of the opportunity to determine whether or not an appointee is qualified for the position to which he is appointed, which certainly weakens the mandate of the CSC as the central personnel agency of the Government and negates the constitutional objective of establishing a career service steeped in professionalism, integrity, and accountability. In fact, despite the issuance of E.O. 292, the CSC itself has continued to require the submission of appointments *within 30 days* from the dates of their issuance. There is no better proof of this than the Omnibus Rules Implementing Book V of E.O. 292, whose Rule V provides: "Section 11. **An appointment not submitted to the Commission within 30 days from the date of issuance which shall be the date appearing on the face of the appointment shall be ineffective**."

5. ID.; ID.; ID.; ID.; ID.; ID.; SUBMISSION REQUIREMENT, RENDERS THE APPOINTMENT EFFECTIVE. — Its mere issuance does not render an appointment to the Civil Service complete and effective. Under the Omnibus Rules Implementing Book V of E.O. 292, an appointment not submitted to the CSC *within 30 days* from the date of its issuance shall be ineffective. Compliance with this statutory directive is essential in order to make an appointment to a civil service position fully effective. Without the favorable certification or approval of the CSC, where such approval is required, no title to the office can yet be deemed permanently vested in the appointee; hence, the appointment can still be recalled or withdrawn by the appointing authority. **Otherwise put, the appointing officer *and* the CSC, acting together, though not concurrently but consecutively, make an appointment complete. It is from the moment that an appointee assumes a position in the Civil Service under a completed appointment that he acquires a legal, not merely equitable, right that is protected not only by statute, but also by the *Constitution*. Said right cannot then be taken away from him, either by revocation of the appointment or by removal, except for cause and with previous notice and hearing.**

6. ID.; ID.; ID.; ID.; ID.; ID.; FAILURE TO SUBMIT THE APPOINTMENT, REGARDLESS OF THE REASON FOR NON-SUBMISSION, RENDERS THE APPOINTMENT INEFFECTIVE. — [T]he Court has made clear in *Favis v. Rupisan* that the failure of the responsible official to submit for approval an employee's appointment did not negate x x x [the submission] requirement x x x. Accordingly, that the respondent's appointment was not submitted to the CSC because of Diaz's unjustified refusal to sign it on the fallacious ground that the respondent's PDF had not been duly signed by Gonzales was no reason to validate the respondent's appointment, or to grant her any right to the position or to the guarantees provided by law. x x x [I]n declaring an appointment as ineffective for failure to submit it to the CSC for approval within the prescribed period, the Court need not distinguish between deliberate or malicious acts and mere tolerance, acquiescence or mistake of the officials that lead to the non-submission of the appointment to the CSC. The mere failure to submit the appointment, *regardless of the reason for non-submission*, renders the appointment ineffective.

7. ID.; ID.; ID.; ID.; ID.; REVOCATION OF; CASE AT BAR. — When the petitioner was appointed as Administrative Officer II on 25 August 2003, the respondent's incomplete appointment was effectively revoked. The majority's argument, that it is the CSC, not the appointing authority, that can revoke the respondent's appointment, because the respondent had meanwhile accepted her appointment, citing Section 9, Rule V of the Omnibus Rules and *De Rama v. Court of Appeals*, is unacceptable to me. In my view, *De Rama v. Court of Appeals* actually bolsters the conclusion that the petitioner's appointment effectively revoked that of the respondent. x x x As interpreted in *De Rama*, the prohibition against the revocation of an appointment under Section 9 presupposes that the appointment was already initially approved by the CSC itself. It is not disputed that the respondent's appointment was never submitted to the CSC; hence, there was never any chance for the CSC to initially approve her appointment, prior to the petitioner's appointment.

8. ID.; ID.; ID.; ID.; ID.; ESSENTIALLY A DISCRETIONARY ACT. — The rule has always been that an appointment is essentially a discretionary act, performed by an officer in whom it is vested according to his best judgment, the only condition being that

the appointee should possess all the qualifications required therefor. In the absence of any showing that the respondent is not qualified for the position of Administrative Officer II, the Court will not interfere with the prerogative of the appointing officer in this case.

APPEARANCES OF COUNSEL

Adenn L. Sigua for petitioner.
Ramiro B. Borres, Jr. for respondent.

D E C I S I O N

CORONA, *J.*:

When the law is clear, there is no other recourse but to apply it regardless of its perceived harshness. *Dura lex sed lex*. Nonetheless, the law should never be applied or interpreted to oppress one in order to favor another. As a court of law and of justice, this Court has the duty to adjudicate conflicting claims based not only on the cold provision of the law but also according to the higher principles of right and justice.

The facts of this case are undisputed.

On May 26, 2003, City Schools Division Superintendent Nelly B. Beloso appointed respondent Jeane O. Basallote to the position of Administrative Officer II, Item No. OSEC-DECSB-ADO2-390030-1998, of the Department of Education (DepEd), Tabaco National High School in Albay.[2]

Subsequently, in a letter dated June 4, 2003,[3] the new City Schools Division Superintendent, Ma. Amy O. Oyardo, advised School Principal Dr. Leticia B. Gonzales that the papers of the applicants for the position of Administrative Officer II of the school, including those of respondent, were being returned and

[2] *Rollo*, p. 70.

[3] *Id.*, p. 72.

that a school ranking should be accomplished and submitted to her office for review. In addition, Gonzales was advised that only qualified applicants should be endorsed.

Respondent assumed the office of Administrative Officer II on June 19, 2003. Thereafter, however, she received a letter from Ma. Teresa U. Diaz, Human Resource Management Officer I of the City Schools Division of Tabaco City, Albay, informing her that her appointment could not be forwarded to the Civil Service Commission (CSC) because of her failure to submit the position description form (PDF) duly signed by Gonzales.

Respondent tried to obtain Gozales' signature but the latter refused despite repeated requests. When respondent informed Oyardo of the situation, she was instead advised to return to her former teaching position of Teacher I. Respondent followed the advice.

Meanwhile, on August 25, 2003, Oyardo appointed petitioner Arlin B. Obiasca to the same position of Administrative Officer II. The appointment was sent to and was properly attested by the CSC.[4] Upon learning this, respondent filed a complaint with the Office of the Deputy Ombudsman for Luzon against Oyardo, Gonzales and Diaz.

In its decision, the Ombudsman found Oyardo and Gonzales administratively liable for withholding information from respondent on the status of her appointment, and suspended them from the service for three months. Diaz was absolved of any wrongdoing.[5]

Respondent also filed a protest with CSC Regional Office V. But the protest was dismissed on the ground that it should first be submitted to the Grievance Committee of the DepEd for appropriate action.[6]

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[4] *Id.*, p. 74.

[5] *Id.*, pp. 164-173 (Decision dated 19 July 2004 in Case No. OMB-L-A-03-0875-H).

[6] *Id.*, pp. 85-86.

On motion for reconsideration, the protest was reinstated but was eventually dismissed for lack of merit.[7] Respondent appealed the dismissal of her protest to the CSC Regional Office which, however, dismissed the appeal for failure to show that her appointment had been received and attested by the CSC.[8]

Respondent elevated the matter to the CSC. In its November 29, 2005 resolution, the CSC granted the appeal, approved respondent's appointment and recalled the approval of petitioner's appointment.[9]

Aggrieved, petitioner filed a petition for *certiorari* in the Court of Appeals (CA) claiming that the CSC acted without factual and legal bases in recalling his appointment. He also prayed for the issuance of a temporary restraining order and a writ of preliminary injunction.

In its September 26, 2006 decision,[10] the CA denied the petition and upheld respondent's appointment which was deemed effective immediately upon its issuance by the appointing authority on May 26, 2003. This was because respondent had accepted the appointment upon her assumption of the duties and responsibilities of the position.

The CA found that respondent possessed all the qualifications and none of the disqualifications for the position of Administrative Officer II; that due to the respondent's valid appointment, no other appointment to the same position could be made without the position being first vacated; that the petitioner's appointment to the position was thus void; and that, contrary to the argument of petitioner that he had been deprived of his right to due process when he was not allowed to participate in the proceedings in the CSC, it was petitioner who failed to exercise his right by

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[7] *Id.*, p. 87.

[8] *Id.*, pp. 95-100.

[9] *Id.*, pp. 116-128.

[10] *Id.*, pp. 28-44. Penned by Associate Justice Mariano C. Del Castillo (now a member of this Court) and concurred in by Associate Justices Conrado M. Vasquez, Jr. (retired) and Santiago Javier Ranada (retired) of the Second Division of the Court of Appeals.

failing to submit a single pleading despite being furnished with copies of the pleadings in the proceedings in the CSC.

The CA opined that Diaz unreasonably refused to affix her signature on respondent's PDF and to submit respondent's appointment to the CSC on the ground of non-submission of respondent's PDF. The CA ruled that the PDF was not even required to be submitted and forwarded to the CSC.

Petitioner filed a motion for reconsideration but his motion was denied on February 8, 2007.[11]

Hence, this petition.[12]

Petitioner maintains that respondent was not validly appointed to the position of Administrative Officer II because her appointment was never attested by the CSC. According to petitioner, without the CSC attestation, respondent's appointment as Administrative Officer II was never completed and never vested her a permanent title. As such, respondent's appointment could still be recalled or withdrawn by the appointing authority. Petitioner further argues that, under the Omnibus Rules Implementing Book V of Executive Order (EO) No. 292,[13] every appointment is required to be submitted to the CSC within 30 days from the date of issuance; otherwise, the appointment becomes ineffective.[14] Thus, respondent's appointment issued on May 23, 2003 should have been transmitted to the CSC not later than June 22, 2003 for proper attestation. However, because respondent's appointment was not sent to the CSC within the proper period, her appointment ceased to be effective and the position of Administrative Officer II was already vacant when petitioner was appointed to it.

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[11] *Id.*, p. 56.

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

[13] Administrative Code of 1987.

[14] Sec. 11 of the Omnibus Rules reads:

Sec. 11. An appointment not submitted to the Commission within thirty (30) days from the date of issuance which shall be the date appearing to the face of the appointment, shall be ineffective. x x x

In her comment,[15] respondent points out that her appointment was wrongfully not submitted by the proper persons to the CSC for attestation. The reason given by Oyardo for the non-submission of respondent's appointment papers to the CSC — the alleged failure of respondent to have her PDF duly signed by Gonzales — was not a valid reason because the PDF was not even required for the attestation of respondent's appointment by the CSC.

After due consideration of the respective arguments of the parties, we deny the petition.

The law on the matter is clear. The problem is petitioner's insistence that the law be applied in a manner that is unjust and unreasonable.

Petitioner relies on an overly restrictive reading of Section 9(h) of PD 807[16] which states, in part, that an appointment must be submitted by the appointing authority to the CSC within 30 days from issuance, otherwise, the appointment becomes ineffective:

> Sec. 9. Powers and Functions of the Commission. — The [CSC] shall administer the Civil Service and shall have the following powers and functions:
>
> x x x x x x x x x
>
> (h) Approve all appointments, whether original or promotional, to positions in the civil service, except those of presidential appointees, members of the Armed Forces of the Philippines, police forces, firemen and jailguards, and disapprove those where the appointees do not possess the appropriate eligibility or required qualifications. An appointment shall take effect immediately upon issue by the appointing authority if the appointee assumes his duties immediately and shall remain effective until it is disapproved by the [CSC], if this should take place, without prejudice to the liability of the appointing authority for appointments issued in violation of existing laws or rules: Provided, finally, That the [CSC] shall keep a record of appointments of all officers and employees in the civil service. **All appointments requiring the approval of the [CSC]**

[15] *Rollo,* pp. 150-160.

[16] The Civil Service Law.

as herein provided, shall be submitted to it by the appointing authority within thirty days from issuance, otherwise the appointment becomes ineffective thirty days thereafter. (Emphasis supplied)

This provision is implemented in Section 11, Rule V of the Omnibus Rules Implementing Book V of EO 292 (Omnibus Rules):

Section 11. An appointment not submitted to the [CSC] within thirty (30) days from the date of issuance which shall be the date appearing on the fact of the appointment, shall be ineffective. x x x

Based on the foregoing provisions, petitioner argues that respondent's appointment became effective on the day of her appointment but it subsequently ceased to be so when the appointing authority did not submit her appointment to the CSC for attestation within 30 days.

Petitioner is wrong.

The real issue in this case is whether the deliberate failure of the appointing authority (or other responsible officials) to submit respondent's appointment paper to the CSC within 30 days from its issuance made her appointment ineffective and incomplete. Substantial reasons dictate that it did not.

Before discussing this issue, however, it must be brought to mind that CSC resolution dated November 29, 2005 recalling petitioner's appointment and approving that of respondent has long become final and executory.

REMEDY TO ASSAIL CSC DECISION OR RESOLUTION

Sections 16 and 18, Rule VI of the Omnibus Rules provide the proper remedy to assail a CSC decision or resolution:

Section 16. An employee who is still not satisfied with the decision of the [Merit System Protection Board] may appeal to the [CSC] within fifteen days from receipt of the decision.

The decision of the [CSC] is final and executory if no petition for reconsideration is filed within fifteen days from receipt thereof.

xxx xxx xxx

Section 18. **Failure to file a** protest, appeal, **petition for reconsideration or petition for review within the prescribed period shall be deemed a waiver of such right and shall render the subject action/decision final and executory**. (Emphasis supplied)

In this case, petitioner did not file a petition for reconsideration of the CSC resolution dated November 29, 2005 before filing a petition for review in the CA. Such fatal procedural lapse on petitioner's part allowed the CSC resolution dated November 29, 2005 to become final and executory.[17] Hence, for all intents and purposes, the CSC resolution dated November 29, 2005 has become immutable and can no longer be amended or modified.[18] **A final and definitive judgment can no longer be changed, revised, amended or reversed**.[19] Thus, in praying for the reversal of the assailed Court of Appeals decision which affirmed the final and executory CSC resolution dated November 29, 2005, petitioner would want the Court to reverse a final and executory judgment and disregard the doctrine of immutability of final judgments.

True, a dissatisfied employee of the civil service is not preempted from availing of remedies other than those provided in Section 18 of the Omnibus Rules. This is precisely the purpose of Rule 43 of the Rules of Court, which provides for the filing of a petition for review as a remedy to challenge the decisions of the CSC.

While Section 18 of the Omnibus Rules does not supplant the mode of appeal under Rule 43, we cannot disregard Section 16 of the Omnibus Rules, which requires that a petition for

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[17] *Ignacio v. Civil Service Commission*, G.R. No. 163573, 27 July 2005, 464 SCRA 220, 226-227.

[18] *Department of Education v. Cuanan*, G.R. No. 169013, 16 December 2008, 574 SCRA 41, 50.

[19] *Bongcac v. Sandiganbayan*, G.R. Nos. 156687-88, 21 May 2009.

reconsideration should be filed, otherwise, the CSC decision will become final and executory, *viz.*:

The decision of the [CSC] is final and executory if no petition for reconsideration is filed within fifteen days from receipt thereof.

Note that the foregoing provision is a specific remedy as against CSC decisions involving its **administrative** function, that is, on matters involving "appointments, whether original or promotional, to positions in the civil service,"[20] as opposed to its quasi-judicial function where it adjudicates the rights of persons before it, in accordance with the standards laid down by the law.[21]

The doctrine of exhaustion of administrative remedies requires that, for reasons of law, comity and convenience, where the enabling statute indicates a procedure for administrative review and provides a system of administrative appeal or reconsideration, the courts will not entertain a case unless the available administrative remedies have been resorted to and the appropriate authorities have been given an opportunity to act and correct the errors committed in the administrative forum.[22] In *Orosa v. Roa*,[23] the Court ruled that if an appeal or remedy obtains or is available within the administrative machinery, this should be resorted to before resort can be made to the courts.[24] While the doctrine of exhaustion of administrative remedies is subject to certain exceptions,[25] these are not present in this case.

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[20] Section 9 (h), Civil Service Law.

[21] *Abella, Jr. v. Civil Service Commission*, G.R. No. 152574, 17 November 2004, 442 SCRA 507, 529.

[22] *Hon. Carale v. Hon. Abarintos*, G.R. No. 120704, 3 March 1997, 336 Phil. 126, 135-136.

[23] G.R. No. 140423, 14 July 2006, 495 SCRA 22.

[24] *Id.*, p. 28.

[25] The exceptions to the doctrine of exhaustion of administrative remedies are: (1) when there is a violation of due process; (2) when the issue involved is purely a legal question; (3) when the administrative action is patently illegal amounting to lack or excess of jurisdiction; (4) when there is estoppel

Thus, absent any definitive ruling that the second paragraph of Section 16 is not mandatory and the filing of a petition for reconsideration may be dispensed with, then the Court must adhere to the dictates of Section 16 of the Omnibus Rules.

Moreover, even in its substantive aspect, the petition is bereft of merit.

SECTION 9(H) OF PD 807 ALREADY AMENDED BY SECTION 12 BOOK V OF EO 292

It is incorrect to interpret Section 9(h) of Presidential Decree (PD) 807 as requiring that an appointment must be submitted by the appointing authority to the CSC within 30 days from issuance, otherwise, the appointment would become ineffective. Such interpretation fails to appreciate the relevant part of Section 9(h) which states that "**an appointment shall take effect immediately upon issue by the appointing authority if the appointee assumes his duties immediately and shall remain effective until it is disapproved by the [CSC]**." This provision is reinforced by Section 1, Rule IV of the Revised Omnibus Rules on Appointments and Other Personnel Actions, which reads:

Section 1. **An appointment issued in accordance with pertinent laws and rules shall take effect immediately upon its issuance by the appointing authority**, and if the appointee has assumed the duties of the position, he shall be entitled to receive his salary at

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on the part of the administrative agency concerned; (5) when there is irreparable injury; (6) when the respondent is a department secretary whose acts as an *alter ego* of the President bears the implied and assumed approval of the latter; (7) when to require exhaustion of administrative remedies would be unreasonable; (8) when it would amount to a nullification of a claim; (9) when the subject matter is a private land in land case proceedings; (10) when the rule does not provide a plain, speedy and adequate remedy, and (11) when there are circumstances indicating the urgency of judicial intervention, and unreasonable delay would greatly prejudice the complainant; (12) where no administrative review is provided by law; (13) where the rule of qualified political agency applies and (14) where the issue of non-exhaustion of administrative remedies has been rendered moot. (*Province of Zamboanga del Norte v. Court of Appeals*, G.R. No. 109853, 11 October 2000, 396 Phil. 709)

once without awaiting the approval of his appointment by the Commission. **The appointment shall remain effective until disapproved by the Commission**. x x x (Emphasis supplied)

More importantly, Section 12, Book V of EO 292 amended Section 9(h) of PD 807 by deleting the requirement that all appointments subject to CSC approval be submitted to it within 30 days. Section 12 of EO 292 provides:

Sec. 12. Powers and Functions. — The Commission shall have the following powers and functions:

x x x x x x x x x

(14) Take appropriate action on all appointments and other personnel matters in the Civil Service, including extension of Service beyond retirement age;

(15) Inspect and audit the personnel actions and programs of the departments, agencies, bureaus, offices, local government units and other instrumentalities of the government including government – owned or controlled corporations; conduct periodic review of the decisions and actions of offices or officials to whom authority has been delegated by the Commission as well as the conduct of the officials and the employees in these offices and apply appropriate sanctions whenever necessary.

As a rule, an amendment by the deletion of certain words or phrases indicates an intention to change its meaning.[26] It is presumed that the deletion would not have been made had there been no intention to effect a change in the meaning of the law or rule.[27] The word, phrase or sentence excised should accordingly be considered **inoperative**.[28]

The dissent refuses to recognize the amendment of Section 9(h) of PD 807 by EO 292 but rather finds the requirement of

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[26] *Laguna Metts Corporation v. Caalam*, G.R. No. 185220, 27 July 2009.

[27] *Id*.

[28] In *Neal v. State of Delaware*, 103 U.S. 370 (1880), the U.S. Supreme Court held that the omission of the word "white" in the 15th Amendment on suffrage rendered inoperative provisions in existing constitutions of states reserving the right of suffrage and to jury selection to "whites."

submission of appointments within 30 days not inconsistent with the authority of the CSC to take appropriate action on all appointments and other personnel matters. However, the intention to **amend by deletion** is unmistakable not only in the operational meaning of EO 292 but in its legislative history as well.

PD 807 and EO 292 are not inconsistent insofar as they require CSC action on appointments to the civil service. This is evident from the recognition accorded by EO 292, specifically under Section 12 (14) and (15) thereof, to the involvement of the CSC in all personnel actions and programs of the government. However, while a restrictive period of 30 days within which appointments must be submitted to the CSC is imposed under the last sentence of Section 9(h) of PD 807, none was adopted by Section 12 (14) and (15) of EO 292. Rather, provisions subsequent to Section 12 merely state that the CSC (and its liaison staff in various departments and agencies) shall **periodically** monitor, inspect and audit personnel actions.[29] Moreover, under Section 9(h) of PD 807, appointments not submitted within 30 days to the CSC become ineffective, no such specific adverse effect is contemplated under Section 12 (14) and (15) of EO 292. Certainly, the two provisions are materially inconsistent with each other. And to insist on reconciling them by restoring the restrictive period and punitive effect of Section 9(h) of PD 807, which EO 292 deliberately discarded, would be to rewrite the law by mere judicial interpretation.[30]

Not even the historical development of civil service laws can justify the retention of such restrictive provisions. Public Law No. 5,[31] the law formally establishing a civil service system, merely directed that all heads of offices notify the Philippine Civil Service Board "in writing without delay of all appointments x x x made in the classified service."[32] The Revised Administrative

[29] Sections 18 and 20, in relation to Sections 15 and 26, EO 292.

[30] See *Chevron Philippines, Inc. v. CIR*, G.R. No. 178759, August 11, 2008, 561 SCRA 710.

[31] An Act for the Establishment and Maintenance of an Efficient and Honest Civil Service in the Philippine Islands, effective September 26, 1900.

[32] Act No. 2711, effective March 10, 1917.

Code of 1917 was even less stringent as approval by the Director of the Civil Service of appointments of temporary and emergency employees was required only when practicable. Finally, Republic Act (RA) 2260[33] imposed no period within which appointments were attested to by local government treasurers to whom the CSC delegated its authority to act on personnel actions but provided that if within 180 days after receipt of said appointments, the CSC shall not have made any correction or revision, then such appointments shall be deemed to have been properly made. Consequently, it was only under PD 807 that submission of appointments for approval by the CSC was subjected to a 30-day period. That, however, has been lifted and abandoned by EO 292.

There being no requirement in EO 292 that appointments should be submitted to the CSC for attestation within 30 days from issuance, it is doubtful by what authority the CSC imposed such condition under Section 11, Rule V of the Omnibus Rules. It certainly cannot restore what EO 292 itself already and deliberately removed. At the very least, that requirement cannot be used as basis to unjustly prejudice respondent.

Under the facts obtaining in this case, respondent promptly assumed her duties as Administrative Officer II when her appointment was issued by the appointing authority. Thus, her appointment took effect immediately and remained effective until disapproved by the CSC.[34] Respondent's appointment was never disapproved by the CSC. In fact, the CSC was deprived of the opportunity to act promptly as it was wrongly prevented from doing so. More importantly, **the CSC subsequently**

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[33] An Act to Amend and Revise the Laws Relative to Philippine Civil Service, June 19, 1959.

[34] This is echoed in Section 10 of the Omnibus Rules:

Section 10. An appointment issued in accordance with pertinent laws or rules **shall take effect immediately upon its issuance by the appointing authority**, and if the appointee has assumed the duties of the position, he shall be entitled to receive his salary at once without awaiting the approval of his appointment by the [CSC]. **The appointment shall remain effective until disapproved by the [CSC].** In no case shall an appointment take effect earlier than the date of its issuance. (Emphasis supplied)

approved respondent's appointment and recalled that of petitioner, which recall has already become final and immutable.

Second, it is undisputed that respondent's appointment was not submitted to the CSC, not through her own fault but because of Human Resource Management Officer I Ma. Teresa U. Diaz's unjustified refusal to sign it on the feigned and fallacious ground that respondent's position description form had not been duly signed by School Principal Dr. Leticia B. Gonzales.[35] Indeed, the CSC even sanctioned Diaz for her failure to act in the required manner.[36] Similarly, the Ombudsman found both City Schools Division Superintendent Ma. Amy O. Oyardo and Gonzales administratively liable and suspended them for three months for willfully withholding information from respondent on the status of her appointment.

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All along, [respondent] was made to believe that her appointment was in order. During the same period, respondent Gonzales, with respondent Oyardo's knowledge, indifferently allowed [respondent] to plea for the signing of her [position description form], when they could have easily apprised [respondent] about the revocation/withdrawal of her appointment. Worse, when [respondent] informed Oyardo on 25 June 2003 about her assumption of office as [Administrative Officer II], the latter directed [respondent] to go back to her post as Teacher I on the ground that [respondent] had not been issued an attested appointment as [Administrative Officer II], even when [Oyardo] knew very well that [respondent's] appointment could not be processed with the CSC because of her order to re-evaluate the applicants. This act by [Oyardo] is a mockery of the trust reposed upon her by [respondent], who, then in the state of quandary, specifically sought [Oyardo's] advice on what to do with her appointment, in the belief that her superior could enlighten her on the matter.

It was only on 02 July 2003 when [Gonzales], in her letter, first made reference to a re-ranking of the applicants when [respondent] learned about the recall by [Oyardo] of her appointment. At that

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[35] *Id.*, p. 9.

[36] CA decision, p. 8.

time, the thirty-day period within which to submit her appointment to the CSC has lapsed. [Oyardo's] and Gonzales' act of withholding information about the real status of [respondent's] appointment unjustly deprived her of pursuing whatever legal remedies available to her at that time to protect her interest.[37]

Considering these willful and deliberate acts of the co-conspirators Diaz, Oyardo and Gonzales that caused undue prejudice to respondent, the Court cannot look the other way and make respondent suffer the malicious consequences of Gonzales's and Oyardo's malfeasance. Otherwise, the Court would be recognizing a result that is unconscionable and unjust by effectively validating the following inequities: respondent, who was vigilantly following up her appointment paper, was left to hang and dry; to add insult to injury, not long after Oyardo advised her to return to her teaching position, she (Oyardo) appointed petitioner in respondent's stead.

The obvious misgiving that comes to mind is why Gonzales and Oyardo were able to promptly process petitioner's appointment and transmit the same to the CSC for attestation when they could not do so for respondent. There is no doubt that office politics was moving behind the scenes.

In effect, Gonzales' and Oyardo's scheming and plotting unduly deprived respondent of the professional advancement she deserved. While public office is not property to which one may acquire a vested right, it is nevertheless a protected right.[38]

It cannot be overemphasized that respondent's appointment became effective upon its issuance by the appointing authority and it remained effective until disapproved by the CSC (if at all it ever was). Disregarding this rule and putting undue importance on the provision requiring the submission of the appointment to the CSC within 30 days will reward wrongdoing in the appointment process of public officials and employees.

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[37] The Ombudsman's findings as quoted in the CA decision, pp. 13-14.

[38] *Bince, Jr. v. Commission on Elections*, G.R. No. 106271, 9 February 1993, 218 SCRA 782, 792, cited in *Abella, Jr. v. Civil Service Commission*, G.R. No. 152574, 17 November 2004, 442 SCRA 507, 520.

It will open the door for scheming officials to block the completion and implementation of an appointment and render it ineffective by the simple expedient of not submitting the appointment paper to the CSC. As indubitably shown in this case, even respondent's vigilance could not guard against the malice and grave abuse of discretion of her superiors.

There is no dispute that the approval of the CSC is a legal requirement to complete the appointment. Under settled jurisprudence, the appointee acquires a vested legal right to the position or office pursuant to this completed appointment.[39] Respondent's appointment was in fact already approved by the CSC with finality.

The purpose of the requirement to submit the appointment to the CSC is for the latter to approve or disapprove such appointment depending on whether the appointee possesses the appropriate eligibility or required qualifications and whether the laws and rules pertinent to the process of appointment have been followed.[40] With this in mind, respondent's appointment should all the more be deemed valid.

Respondent's papers were in order. What was sought from her (the position description form duly signed by Gonzales) was not even a prerequisite before her appointment papers could be forwarded to the CSC. More significantly, respondent was qualified for the position. Thus, as stated by the CA:

> The evidence also reveals compliance with the procedures that should be observed in the selection process for the vacant position of Administrative Officer II and the issuance of the appointment to the respondent: the vacancy for the said position was published on February 28, 2003; the Personnel Selection Board of Dep-Ed Division of Tabaco City conducted a screening of the applicants, which included the respondent and the petitioner; the respondent's qualifications met the minimum qualifications for the position of Administrative

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[39] *De Rama v. Court of Appeals*, G.R. No. 131136, 28 February 2001, 353 SCRA 94, 106.

[40] *Tomali v. Civil Service Commission*, G.R. No. 110598, 1 December 1994, 238 SCRA 572, 575.

Officer II provided by the CSC. She therefore qualified for permanent appointment.[41]

There is no doubt that, had the appointing authority only submitted respondent's appointment to the CSC within the said 30 days from its issuance, the CSC would (and could) have approved it. In fact, when the CSC was later apprised of respondent's prior appointment when she protested petitioner's subsequent appointment, it was respondent's appointment which the CSC approved. Petitioner's appointment was recalled. These points were never rebutted as petitioner gave undue emphasis to the non-attestation by the CSC of respondent's appointment, without any regard for the fact that the CSC actually approved respondent's appointment.

Third, the Court is urged to overlook the injustice done to respondent by citing *Favis v. Rupisan*[42] and *Tomali v. Civil Service Commission*.[43]

However, reliance on *Favis* is misplaced. In *Favis*, the issue pertains to the necessity of the CSC approval, not the submission of the appointment to the CSC within 30 days from issuance. Moreover, unlike *Favis* where there was an apparent lack of effort to procure the approval of the CSC, respondent in this case was resolute in following up her appointment papers. Thus, despite Favis' having assumed the responsibilities of PVTA Assistant General Manager for almost two years, the Court affirmed her removal, ruling that:

> The tolerance, acquiescence or mistake of the proper officials, resulting in the non-observance of the pertinent rules on the matter does not render the legal requirement, **on the necessity of approval by the Commissioner of Civil Service of appointments**, ineffective and unenforceable.[44] (Emphasis supplied)

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[41] CA decision, pp. 8-9.

[42] G.R. No. L-22823, 19 May 1966, 17 SCRA 190.

[43] *Supra* note 40.

[44] *Supra* note 42, p. 196.

Taken in its entirety, this case shows that the lack of CSC approval was not due to any negligence on respondent's part. Neither was it due to the "tolerance, acquiescence or mistake of the proper officials." Rather, the underhanded machinations of Gonzales and Oyardo, as well as the gullibility of Diaz, were the major reasons why respondent's appointment was not even forwarded to the CSC.

Tomali, likewise, is not applicable. The facts are completely different. In *Tomali*, petitioner Tomali's appointment was not approved by the CSC due to the belated transmittal thereof to the latter. The Court, citing *Favis*, ruled that the appointee's failure to secure the CSC's approval within the 30-day period rendered her appointment ineffective. It quoted the Merit Systems Protection Board's finding that "there is no showing that the non-submission was motivated by bad faith, spite, malice or at least attributed to the fault of the newly installed [Office of Muslim Affairs] Executive Director." The Court observed:

> Petitioner herself would not appear to be all that blameless. She assumed the position four months after her appointment was issued or months after that appointment had already lapsed or had become ineffective by operation of law. Petitioner's appointment was issued on 01 July 1990, but it was only on 31 May 1991 that it was submitted to the CSC, a fact which she knew, should have known or should have at least verified considering the relatively long interval of time between the date of her appointment and the date of her assumption to office.[45]

The Court also found that "[t]here (was) nothing on record to convince us that the new OMA Director (had) unjustly favored private respondent nor (had) exercised his power of appointment in an arbitrary, whimsical or despotic manner."[46]

The peculiar circumstances in *Tomali* are definitely not present here. As a matter of fact, the situation was exactly the opposite. As we have repeatedly stressed, respondent was not remiss

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[45] *Supra* note 40, p. 577.

[46] *Id.*, p. 578.

in zealously following up the status of her appointment. It cannot be reasonably claimed that the failure to submit respondent's appointment to the CSC was due to her own fault. The culpability lay in the manner the appointing officials exercised their power with arbitrariness, whim and despotism. The whole scheme was intended to favor another applicant.

Therefore, the lack of CSC approval in *Favis* and *Tomali* should be taken only in that light and not overly stretched to cover any and all similar cases involving the 30-day rule. Certainly, the CSC approval cannot be done away with. However, an innocent appointee like the respondent should not be penalized if her papers (which were in the custody and control of others who, it turned out, were all scheming against her) did not reach the CSC on time. After all, her appointment was subsequently approved by the CSC anyway.

Under Article 1186 of the Civil Code, "[t]he condition shall be deemed fulfilled when the obligor voluntarily prevents its fulfillment." Applying this to the appointment process in the civil service, unless the appointee himself is negligent in following up the submission of his appointment to the CSC for approval, he should not be prejudiced by any willful act done in bad faith by the appointing authority to prevent the timely submission of his appointment to the CSC. While it may be argued that the submission of respondent's appointment to the CSC within 30 days was one of the conditions for the approval of respondent's appointment, however, deliberately and with bad faith, the officials responsible for the submission of respondent's appointment to the CSC prevented the fulfillment of the said condition. Thus, the said condition should be deemed fulfilled.

The Court has already had the occasion to rule that an appointment remains valid in certain instances despite non-compliance of the proper officials with the pertinent CSC rules. In *Civil Service Commission v. Joson, Jr.*,[47] the CSC challenged the validity of the appointment of Ong on the ground that, among others, it was not reported in the July 1995 Report of

[47] G.R. No. 154674, 27 May 2004, 429 SCRA 773.

Personnel Action (ROPA), thus making such appointment ineffective. The subject rule provided that an "appointment issued within the month but not listed in the ROPA for the said month shall become ineffective thirty days from issuance." Rejecting the CSC's contention, the Court held that there was a legitimate justification for such delayed observance of the rule:

> We find the respondent's justification for the failure of the POEA to include Ong's appointment in its ROPA for July 1995 as required by CSC Memorandum Circular No. 27, Series of 1994 to be in order. The records show that the [Philippine Overseas Employment Administration (POEA)] did not include the contractual appointment of Ong in its July ROPA because its request for exemption from the educational requisite for confidential staff members provided in [Memorandum Circular] No. 38 had yet been resolved by the CSC. The resolution of the petitioner granting such request was received only in November, 1995. The POEA, thereafter, reported the appointment in its November, 1995 ROPA.[48]

The Court reached the same conclusion in the recent case of *Chavez v. Ronidel*[49] where there was a similar inaction from the responsible officials which resulted in non-compliance with the requirement:

> Lastly, we agree with the appellate court that respondent's appointment could not be invalidated solely because of [Presidential Commission for the Urban Poor's (PCUP's)] failure to submit two copies of the ROPA as required by CSC Resolution No. 97368.
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> We quote with approval the appellate court's ratiocination in this wise:
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> To our minds, however, **the invalidation of the [respondent's] appointment based on this sole technical ground is unwarranted, if not harsh and arbitrary, considering the factual milieu of this case**. For one, **it is not the [respondent's] duty to comply**

[48] *Id.*, p. 786.

[49] G.R. No. 180941, 11 June 2009.

with the requirement of the submission of the ROPA and the certified true copies of her appointment to [the Civil Service Commission Field Office or] CSCFO within the period stated in the aforequoted CSC Resolution. The said resolution categorically provides that it is the PCUP, and not the appointee as in the case of the [respondent] here, which is required to comply with the said reportorial requirements.

Moreover, it bears pointing out that only a few days after the [petitioner] assumed his new post as PCUP Chairman, he directed the PCUP to hold the processing of [respondent's] appointment papers in abeyance, until such time that an assessment thereto is officially released from his office. Unfortunately, up to this very day, the [respondent] is still defending her right to enjoy her promotional appointment as DMO V. **Naturally, her appointment failed to comply with the PCUP's reportorial requirements** under CSC Resolution No. 97-3685 **precisely because of the [petitioner's] inaction to the same**.

We believe that the factual circumstances of this case calls for the application of equity. **To our minds, the invalidation of the [respondent's] appointment due to a procedural lapse which is undoubtedly beyond her control, and certainly not of her own making but that of the [petitioner], justifies the relaxation of the provisions** of CSC Board Resolution No. 97-3685, pars. 6,7 and 8. Hence, her appointment must be upheld based on equitable considerations, and that the non-submission of the ROPA and the certified true copies of her appointment to the CSCFO within the period stated in the aforequoted CSC Resolution should not work to her damage and prejudice. Besides, **the [respondent] could not at all be faulted for negligence as she exerted all the necessary vigilance** and efforts to reap the blessings of a work promotion. Thus, **We cannot simply ignore her plight**. She has fought hard enough to claim what is rightfully hers and, as a matter of simple justice, good conscience, and equity, We should not allow Ourselves to prolong her agony.

All told, We hold that the [respondent's] appointment is valid, notwithstanding the aforecited procedural lapse on the part of PCUP which obviously was the own making of herein [petitioner]. (Emphasis supplied)

Respondent deserves the same sympathy from the Court because there was also a telling reason behind the non-submission of her appointment paper within the 30-day period.

The relevance of *Joson* and *Chavez* to this case cannot be simply glossed over. While the agencies concerned in those cases were accredited agencies of the CSC which could take final action on the appointments, that is not the case here. Thus, any such differentiation is unnecessary. It did not even factor in the Court's disposition of the issue in *Joson* and *Chavez*. What is crucial is that, in those cases, the Court upheld the appointment despite the non-compliance with a CSC rule because (1) there were valid justifications for the lapse; (2) the non-compliance was beyond the control of the appointee and (3) the appointee was not negligent. All these reasons are present in this case, thus, there is no basis in saying that the afore-cited cases are not applicable here. Similar things merit similar treatment.

Fourth, in appointing petitioner, the appointing authority effectively revoked the previous appointment of respondent and usurped the power of the CSC to withdraw or revoke an appointment that had already been accepted by the appointee. It is the CSC, not the appointing authority, which has this power.[50] This is clearly provided in Section 9, Rule V of the Omnibus Rules:

> Section 9. **An appointment accepted by the appointee cannot be withdrawn or revoked by the appointing authority and shall remain in force and effect until disapproved by the [CSC]**. xxx (Emphasis supplied)

Thus, the Court ruled in *De Rama v. Court of Appeals*[51] that it is the CSC which is authorized to recall an appointment initially approved when such appointment and approval are proven to be in disregard of applicable provisions of the civil service law and regulations.

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[50] *Supra* note 39, p. 107.

[51] *Id*.

Petitioner seeks to inflexibly impose the condition of submission of the appointment to the CSC by the appointing authority within 30 days from issuance, that is, regardless of the negligence/diligence of the appointee and the bad faith/good faith of the appointing authority to ensure compliance with the condition. **However, such stance would place the appointee at the mercy and whim of the appointing authority even after a valid appointment has been made.** For although the appointing authority may not recall an appointment accepted by the appointee, he or she can still achieve the same result through underhanded machinations that impedes or prevents the transmittal of the appointment to the CSC. In other words, the insistence on a strict application of the condition regarding the submission of the appointment to the CSC within 30 days, would give the appointing authority the power to do indirectly what he or she cannot do directly. An administrative rule that is of doubtful basis will not only produce unjust consequences but also corrupt the appointment process. Obviously, such undesirable end result could not have been the intention of the law.

The power to revoke an earlier appointment through the appointment of another may not be conceded to the appointing authority. Such position is not only contrary to Section 9, Rule V and Section 1, Rule IV of the Omnibus Rules. It is also a dangerous reading of the law because it unduly expands the discretion given to the appointing authority and removes the checks and balances that will rein in any abuse that may take place. The Court cannot countenance such erroneous and perilous interpretation of the law.

Accordingly, petitioner's subsequent appointment was void. There can be no appointment to a non-vacant position. The incumbent must first be legally removed, or her appointment validly terminated, before another can be appointed to succeed her.[52]

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[52] *Aquino v. Civil Service Commission*, G.R. No. 92403, 22 April 1992, 208 SCRA 240, 250.

In sum, the appointment of petitioner was inconsistent with the law and well-established jurisprudence. It not only disregarded the doctrine of immutability of final judgments but also unduly concentrated on a narrow portion of the provision of law, overlooking the greater part of the provision and other related rules and using a legal doctrine rigidly and out of context. Its effect was to perpetuate an injustice.

WHEREFORE, the petition is hereby *DENIED*.

Costs against petitioner.

SO ORDERED.

Puno, C.J., Carpio, Carpio Morales, Nachura, Leonardo-de Castro, Brion, Abad, Villarama, Jr., Perez, and *Mendoza, JJ.,* concur.

Velasco, Jr. and *Peralta, JJ.*, join the dissent of *J*. Bersamin.

Bersamin, J., see dissent.

Del Castillo, J., no part.

DISSENTING OPINION

BERSAMIN, *J.*:

I respectfully register my dissent to the learned and comprehensive majority opinion ably written by an esteemed colleague, Justice Renato C. Corona, dismissing the petition that would treat the appointment of the respondent as ineffective on the ground that the appointment did not carry the attestation by the Civil Service Commission (CSC).

As I write, I find myself in the same situation of Justice Joseph Story of the United States Supreme Court nearly 200 years ago, when dissenting from his colleagues on an important case became unavoidable for him. He said then:

> It is a matter of regret that in this conclusion I have the misfortune to differ from a majority of the court, for whose superior learning and ability I entertain the most entire respect. But I hold it an

indispensable duty not to surrender my own judgment, because a great weight of opinion is against me – a weight which no one can feel more sensibly than myself. Had this been an ordinary case I should have contented myself with silence; but believing that no more important or interesting question ever came before a prize tribunal, and that the national rights suspended on it are of infinite moment to the maritime world, I have thought it not unfit to pronounce my own opinion.[1]

I write this dissent, therefore, in the awareness that I had taken an individual oath that imposed on me the duty that I cannot justly satisfy "by an automatic acceptance of the views of others which have neither convinced, nor created a reasonable doubt in, [my] mind."[2]

Antecedents

For purpose of this dissent, the background of this controversy is as follows.

On 26 May 2003, respondent Jeanne O. Basallote was appointed to the position of Administrative Officer II, Item No. OSEC-DECSB-ADO2-390030-1998 of the Department of Education (DepEd), Tabaco National High School in Albay Province by City Schools Division Superintendent Nelly B. Beloso.[3]

In a letter dated 4 June 2003,[4] the new City Schools Division Superintendent, Ma. Amy O. Oyardo (Oyardo), advised School Principal Dr. Leticia B. Gonzales (Gonzales) that the papers of the applicants for the position of Administrative Officer II of the school, including those of the respondent, were being returned; and that a school ranking should be accomplished and submitted to her office for review. In addition, Gonzales was advised that only qualified applicants should be indorsed.

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[1] *The Nereide*, 9 Cranch 388, 455 (1815).

[2] Justice Sutherland, in *West Coast Hotel Co. v. Parrish*, 300 US 379, 401-402 (1937).

[3] *Rollo*, p. 70.

[4] *Id.*, p. 72.

The respondent assumed as Administrative Officer II on 19 June 2003. Thereafter, however, she received a letter from Ma. Teresa U. Diaz (Diaz), Human Resource Management Officer I, City Schools Division of Tabaco City, Albay, informing her that her appointment could not be forwarded to the CSC because of her failure to submit the position description form (PDF) duly signed by Gonzales.

The respondent sought to obtain Gonzales' signature, but the latter refused to sign despite repeated requests. When the respondent informed Oyardo of the situation, she was instead advised to return to her former teaching position of Teacher I. The respondent followed the advice.

In the meanwhile, on 25 August 2003, Oyardo appointed petitioner Arlin O. Obiasca to the position of Administrative Officer II. The appointment was sent to and was properly attested by the CSC.[5]

The respondent filed a complaint with the Office of the Deputy Ombudsman for Luzon against Oyardo, Gonzales, and Diaz.

In its decision, the Ombudsman found Oyardo and Gonzales administratively liable for withholding information from the respondent on the status of her appointment, and suspended them from the service for three months; but Diaz was absolved of any wrongdoing.[6]

The respondent also filed a protest with the CSC Regional Office V, docketed as Adm. Case No. ND-ARU 04-290. The protest was dismissed on the ground that it should first be submitted to the Grievance Committee of the DepEd for appropriate action. [7]

On *motion for reconsideration*, the protest was reinstated, but it was eventually dismissed for lack of merit.[8] The respondent

[5] *Id.*, at 74.

[6] *Id.* at pp. 164- 173 (Decision dated 19 July 2004 in Case No. OMB-L-A-03-0875-H).

[7] *Id.*, at pp. 85-86.

[8] *Id.*, at 87.

appealed the dismissal of her protest to the CSC Regional Office, which dismissed the appeal for failure to show that her appointment had been received and attested to by the CSC.[9]

The respondent elevated the matter to the CSC, which granted the appeal by its 29 November 2005 resolution, approving the respondent's appointment and recalling its approval of the petitioner's appointment.[10]

Aggrieved, the petitioner filed a petition for *certiorari* in the Court of Appeals (CA), claiming that the CSC thereby acted without factual and legal bases in recalling his appointment, and praying for the issuance of a temporary restraining order and a writ of preliminary injunction.

Ruling of the CA

In its 26 September 2006 decision,[11] the CA denied the petition for *certiorari*, and upheld the respondent's appointment effective immediately upon its issuance by the appointing authority on 26 May 2003, considering that the respondent had accepted the appointment upon her assumption of the duties and responsibilities of the position.

The CA found that the respondent possessed all the qualifications and none of the disqualifications for the position of Administrative Officer II; that due to the respondent's valid appointment, no other appointment to the same position could be made without the position being first vacated; that the petitioner's appointment to the position was thus void; and that contrary to the argument of the petitioner that he had been deprived of his right to due process by not having been allowed to participate in the proceedings in the CSC, it was the petitioner who had himself failed to exercise his right by failing to submit a single pleading despite being furnished with copies of the pleadings in the proceedings in the CSC.

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[9] *Id.*, at pp. 95-100.

[10] *Id.*, at pp. 116-128.

[11] *Id.*, at pp. 28-44.

The CA opined that Diaz had unreasonably refused to affix her signature on the respondent's PDF and to submit the respondent's appointment to the CSC on the ground of non-submission of the respondent's PDF, because the PDF had not been required to be submitted and forwarded to the CSC.

The petitioner filed a *motion for reconsideration*, but his motion was denied on 8 February 2007.[12]

Hence, this appeal by petition for review on *certiorari.*

Issues

The petitioner maintains that the respondent was not validly appointed to the position of Administrative Officer II, because her appointment was never attested by the CSC; that without the attestation, the respondent's appointment as Administrative Officer II was not completed and did not vest a permanent title upon the respondent; that for that reason, the appointment might still be recalled or withdrawn by the appointing authority; that under the Omnibus Rules Implementing Book V of Executive Order (EO) No. 292 (*Administrative Code of* 1987), every appointment is required to be submitted to the CSC within 30 days from the date of issuance; otherwise, the appointment becomes ineffective;[13] that the respondent's appointment issued on 23 May 2003 should have been transmitted to the CSC not later than 22 June 2003 for proper attestation; and that because the respondent's appointment had not been sent to the CSC within the proper period, her appointment ceased to be effective and the position of Administrative Officer II was already vacant when the petitioner was appointed to it.

In her comment,[14] the respondent, though admitting that her appointment was not submitted to the CSC for attestation, points

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[12] *Id.* at 56.

[13] Sec. 11. of the Omnibus Rules reads:

Sec. 11. An appointment not submitted to the Commission within thirty (30) days from the date of issuance which shall be the date appearing to the face of the appointment, shall be ineffective.xxx

[14] *Rollo,* pp. 150-160.

out that the reason given by Oyardo for the non-submission of her appointment papers to the CSC – the failure of the respondent to have her PDF duly signed by Gonzales – was not valid because the PDF was not even a requisite for the submission of her appointment for attestation by the CSC.

Recommendation

The petition for review should be *granted*, because its denial tends to negate the authority of the CSC, the central personnel agency of the Government,[15] to scrutinize and approve appointments to the Civil Service.

I

The majority point out that CSC Resolution dated 29 November 2005 (recalling the petitioner's appointment and approving that of the respondent) became final and executory by virtue of the petitioner's failure to file a *petition for reconsideration* against said resolution before filing the petition for review in the CA, citing Section 16[16] and Section18 of the Omnibus Rules of the CSC as basis.

I cannot agree to the majority's position.

To begin with, a dissatisfied employee may avail himself of remedies not limited to the *petition for reconsideration*. In fact, Section 18 of the Omnibus Rules of the CSC expressly recognizes *other* remedies available to the affected employee to prevent the disputed "action/decision" from becoming final and executory, thus:

> Section 18. Failure to file a protest, appeal, petition for reconsideration or petition for review within the prescribed period shall be deemed a waiver of such right and shall render the subject action/decision final and executory.

[15] Article IX, B, Section 3, Constitution.

[16] Section 16. An employee who is still not satisfied with the decision of the Board may appeal to the Commission within 15 days from receipt of the decision.

The decision of the Commission is final and executory if no petition for reconsideration is filed within 15 days from receipt thereof.

Moreover, such *petition for reconsideration* was not a prerequisite to the filing of a petition for review under Rule 43 of the *Rules of Court*. It was enough that the petition for review was filed "within fifteen (15) days from notice of the award, judgment, final order or resolution, or from the date of its last publication, if publication is required by law for its effectivity, or of the denial of petitioner's motion for new trial or reconsideration duly filed in accordance with the governing law of the court or agency *a quo*."[17]

In this regard, the petitioner's petition for review was timely filed. After receiving on 30 January 2006 a copy of the 29 November 2005 resolution, he filed a *motion for extension of time to file petition* on 14 February 2006, which the CA granted on 20 February 2006. The petition for review was eventually filed on 1 March 2006, which was within the period granted by the CA.

And, lastly, a rule of the CSC that might have intended to render a decision final and executory if no *petition for reconsideration* is first brought against the decision or resolution will not stand and prevail over the Rule 43 of the *Rules of Court*, which clearly authorizes appeals from the "awards, judgments, final orders or resolutions of, or authorized by any quasi-judicial agency in the exercise of its quasi-judicial functions."[18] Rule 43, being issued by the Supreme Court under

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[17] Section 4. *Period of appeal*. — The appeal shall be taken within fifteen (15) days from notice of the award, judgment, final order or resolution, or from the date of its last publication, if publication is required by law for its effectivity, or of the denial of petitioner's motion for new trial or reconsideration duly filed in accordance with the governing law of the court or agency *a quo*. Only one (1) motion for reconsideration shall be allowed. Upon proper motion and the payment of the full amount of the docket fee before the expiration of the reglementary period, the Court of Appeals may grant an additional period of fifteen (15) days only within which to file the petition for review. No further extension shall be granted except for the most compelling reason and in no case to exceed fifteen (15) days. (n)

[18] Section 1. *Scope*. — **This Rule shall apply to appeals from judgments or final orders of the Court of Tax Appeals and from awards, judgments, final orders or resolutions of or authorized by any quasi-judicial agency**

its rule-making authority in Section 5(5) of Article VIII of the *Constitution,* has the force and effect of law,[19] and repeals or supersedes any law or enactment on the manner and method of appealing the decisions and orders of the specific quasi-judicial bodies.[20]

II

The CSC, being the central personnel agency of the Government, is charged with the duty of determining questions on the qualifications of merit and fitness of the persons appointed to the Civil Service. An appointment to a civil service position, to be fully effective, must comply with all the legal requirements.[21]

Section 9 of Presidential Decree (P.D.) No. 807 (*Civil Service Decree of the Philippines*)[22] relevantly provides:

Section 9. *Powers and Functions of the Commission*. – The Commission shall administer the Civil Service and shall have the following powers and functions:

x x x x x x x x x

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in the exercise of its quasi-judicial functions. Among these agencies are the **Civil Service Commission**, Central Board of Assessment Appeals, Securities and Exchange Commission, Office of the President, Land Registration Authority, Social Security Commission, Civil Aeronautics Board, Bureau of Patents, Trademarks and Technology Transfer, National Electrification Administration, Energy Regulatory Board, National Telecommunications Commission, Department of Agrarian Reform under Republic Act No. 6657, Government Service Insurance System, Employees Compensation Commission, Agricultural Inventions Board, Insurance Commission, Philippine Atomic Energy Commission, Board of Investments, Construction Industry Arbitration Commission, and voluntary arbitrators authorized by law. (n)

[19] *Inciong v. de Guia,* AM R-249-RTJ, 17 September 1984, 154 SCRA 93; *Sare v. Aseron*, L-22380, April 15, 1967, 20 SCRA 1027; *Pascual v. Commissioner of Customs*, G.R. No. L-11219, 25 April 1962, 4 SCRA 1020.

[20] *First Lepanto Ceramics, Inc. v. Court of Appeals*, G.R. No. 110571, 10 March 1994, 231 SCRA 30, 38-40.

[21] *Civil Service Commission v. Tinaya,* G.R. No. 154898, 16 February 2005, 451 SCRA 560, 566.

[22] Promulgated on 6 October 1975.

> **(h) Approve all appointments, whether original or promotional, to positions in the civil service,** except those of presidential appointees, members of the Armed Forces of the Philippines, police forces, firemen, and jailguards, and disapprove those where the appointees do not possess the appropriate eligibility or required qualifications. An appointment shall take effect immediately upon issue by the appointing authority if the appointee assumes his duties immediately and shall remain effective until it is disapproved by the Commission, if this should take place, without prejudice to the liability of the appointing authority for appointments issued in violation of existing laws or rules: Provided, finally, That the Commission shall keep a record of appointments of all officers and employees in the civil service. **All appointments requiring the approval of the Commission as herein provided, shall be submitted to it by the appointing authority within thirty days from issuance, otherwise, the appointment becomes ineffective thirty days thereafter**.
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> x x x x x x x x x

Thus, the appointment must be submitted *within the required period* to the CSC, which shall then ascertain, in the main, whether the proposed appointee is qualified to hold the position and whether the rules pertinent to the process of appointment were observed.[23]

However, the majority contend that Section 12, Book V of E. O. 292 (*The Revised Administrative Code*) already amended Section 9 (h) of P.D. 807 by deleting the requirement that appointments subject to CSC approval be submitted to CSC *within* 30 days. Citing Section 12(14) and (15) of E.O. 292,[24] the majority state that the amendatory law completely deleted not just a word or two, but the entire last sentence of the provision.

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[23] *Abella, Jr. v. Civil Service Commission*, G.R. No. 152574, 17 November 2004, 442 SCRA 507, 515.

[24] Section 12. *Powers and Functions*. – The Commission shall have the following powers and functions:

x x x x x x x x x

(14) Take appropriate action on all appointments and other personnel matters in the Civil Service including extension of Service beyond retirement age.

I find the contention not well-taken.

The new provision in Section 12(14) of E.O. 292 – "Take appropriate action on all appointments and other personnel matters in the Civil Service including extension of Service beyond retirement age" – is a legal provision altogether different from Section 9 (h) of P.D. 807. The former is too broad in scope, for, certainly, the CSC is not to be limited to merely approving and disapproving appointments. Even with E.O. 292's repealing clause ("All laws, decrees, orders, rules and regulations, or portions thereof, inconsistent with this Code are hereby repealed or modified accordingly"), the requirement of submission of appointments *within 30 days* expressly stated in the latter is not inconsistent with the authority of the CSC to take appropriate action on all appointments and other personnel matters.

The Court cannot interpret E.O. 292 as having entirely dispensed with the submission requirement in order to make an appointment effective. To hold otherwise is to deprive the CSC of the opportunity to determine whether or not an appointee is qualified for the position to which he is appointed, which certainly weakens the mandate of the CSC as the central personnel agency of the Government and negates the constitutional objective of establishing a career service steeped in professionalism, integrity, and accountability.

In fact, despite the issuance of E.O. 292, the CSC itself has continued to require the submission of appointments *within 30 days* from the dates of their issuance. There is no better proof of this than the Omnibus Rules Implementing Book V of E.O. 292, whose Rule V provides:

Section 11. **An appointment not submitted to the Commission within 30 days from the date of issuance which shall be the date appearing on the face of the appointment shall be ineffective**.

(15) Inspect and audit the personnel actions and programs of the departments, agencies, bureaus, offices, local government including government-owned or controlled corporations; conduct periodic review of the decisions and actions of offices or officials to whom authority has been delegated by the Commission as well as the conduct of the officials and the employees in these offices and apply appropriate sanctions whenever necessary.

The appointing authority shall be liable for the salaries of the appointee whose appointment became ineffective. The appointing authority shall likewise be liable for the payment of the salary of the appointee if the appointment is disapproved because the appointing authority has issued it in violation of existing laws or rules, making the appointment unlawful.

III

The CA ruled that the respondent's appointment became effective from the moment of its issuance on 26 May 2006; that she had in effect accepted her appointment upon her assumption of the duties and responsibilities of the position; and that the appointment could no longer be withdrawn or revoked without cause and due process.

I insist that the CA thereby erred.

Its mere issuance does not render an appointment to the Civil Service complete and effective. Under the Omnibus Rules Implementing Book V of E.O. 292, an appointment not submitted to the CSC *within 30 days* from the date of its issuance shall be ineffective. Compliance with this statutory directive is essential in order to make an appointment to a civil service position fully effective. Without the favorable certification or approval of the CSC, where such approval is required, no title to the office can yet be deemed permanently vested in the appointee; hence, the appointment can still be recalled or withdrawn by the appointing authority.[25]

Otherwise put, the appointing officer *and* the CSC, acting together, though not concurrently but consecutively, make an appointment complete.[26] It is from the moment that an appointee assumes a position in the Civil Service under a completed appointment that he acquires a legal, not merely equitable, right that is protected not only by statute, but

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[25] *Tomali v. Civil Service Commission*, G.R. No. 110598, 1 December 1994, 238 SCRA 572, 576.

[26] *Abella, Jr. v. Civil Service Commission, supra*, at note 20, p. 516, citing *Aquino v. Civil Service Commission*, 208 SCRA 240.

also by the *Constitution*. Said right cannot then be taken away from him, either by revocation of the appointment or by removal, except for cause and with previous notice and hearing.[27]

Herein, there is no dispute that the respondent's appointment as Administrative Officer II on 26 May 2006 was never attested by the CSC. Thus, her appointment was not completed, and she did not acquire any vested right to the position.

IV

The majority opine that the Court should not look the other way and allow the respondent to suffer the consequences of the willful and deliberate acts of Diaz, Oyardo and Gonzales who conspired not to submit the respondent's appointment to the CSC.

I cannot subscribe to the majority's opinion.

This dissent never intends to appear as condoning the willful and deliberate acts of Diaz, Oyardo and Gonzales *vis-à-vis* the respondent's appointment. All that I want to put across is that the Court should simply implement the clear and unambiguous provisions of the applicable law.

The appropriate disciplining authorities had already held Diaz, Oyardo and Gonzales to account for their misdeed, with Diaz being sanctioned by the CSC, and Oyardo and Gonzales being held liable by the Ombudsman. There the issue of their misdeed should end. Indeed, the Court has made clear in *Favis v. Rupisan*[28] that the failure of the responsible official to submit for approval an employee's appointment did not negate such requirement, thus:

xxx. The tolerance, acquiescence or mistake of the proper officials, resulting in the non-observance of the pertinent rules on the matter does not render the legal requirement, on the necessity of approval of the Commissioner of Civil Service of appointments, ineffective

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[27] *Mitra v. Subido*, No. L-21691, 15 September 1967, 21 SCRA 127, 142.

[28] No. L-22823, 19 May 1966, 17 SCRA 190, 196.

and unenforceable. In the circumstances, for the duration of his occupancy of the position in question, the petitioner may be considered merely as a *de facto* officer, and may consequently be removed from office even without cause.

Accordingly, that the respondent's appointment was not submitted to the CSC because of Diaz's unjustified refusal to sign it on the fallacious ground that the respondent's PDF had not been duly signed by Gonzales was no reason to validate the respondent's appointment, or to grant her any right to the position or to the guarantees provided by law.

Still, the majority consider as misplaced the petitioner's reliance on *Favis* and *Tomali v. Civil Service Commission*,[29] because, *one*, the issue in *Favis* related to the necessity for the CSC approval, not to the submission of the appointment within the 30-day period; and, *two*, the facts in *Tomali* were different from those herein.

I cannot join the majority's rejection of the applicability of *Favis* and *Tomali v. Civil Service Commission* to this case. On the contrary, I urge that the Court take such case law as authoritative.

Favis, being of 1966 vintage, does not mention the 30-day submission period because the case was decided under the *old* Civil Service Law, which then required merely the submission of the appointment, *without* any prescribed period. The 30-day submission period was introduced by P.D. 807 only in 1975. *Favis* is authoritative and instructive nonetheless, because it establishes the rule that *the approval of the CSC is necessary to render an appointment effective*. With the introduction by P.D. 807 of the 30-day period within which to submit an appointment for the CSC's approval, it should follow that an appointment not submitted within the period does not, and cannot, be approved.

Tomali states the prevailing rule that compliance with the legal requirement for an appointment to a civil service position

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[29] *Supra*, at note 22.

is essential in order to make the appointment fully effective. *Tomali* was decided in 1994, when P.D. 807 and E.O. 202 were already in force. Although the petitioner in *Tomali* did not follow up on the status of her appointment, there was a finding that the appointing authority did not unjustly favor the respondent, thereby justifying the Court's declaration that the non-submission of the appointment rendered the appointment ineffective.

Nothing in *Tomali* even remotely implies that the bad faith on the part of the appointing authority, causing the delay or the non-submission of the appointment paper to the CSC, is sufficient excuse to do away with the 30-day period for the submission. The Court's statement in *Tomali* that "(t)here is nothing on record to convince us that the new OMA Director has unjustly favored private respondent nor has exercised his power of appointment in an arbitrary, whimsical or despotic manner"[30] is merely part of the finding that there was no grave abuse of discretion committed by the public respondents. *Tomali* was, after all, a special civil action for *certiorari*, which necessarily called for a determination of whether the respondent had committed grave abuse of discretion.

Verily, in declaring an appointment as ineffective for failure to submit it to the CSC for approval within the prescribed period, the Court need not distinguish between deliberate or malicious acts and mere tolerance, acquiescence or mistake of the officials that lead to the non-submission of the appointment to the CSC. The mere failure to submit the appointment, *regardless of the reason for non-submission*, renders the appointment ineffective.

The majority argue that the submission of the appointment beyond the prescribed period is not an impediment to its validity. They cite *Civil Service Commission v. Joson*[31] and *Chavez v. Ronidel*,[32] in which the Court has ruled that an appointment

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[30] *Supra*, at note 25.

[31] G.R. No. 154674, 27 May 2004, 429 SCRA 773.

[32] G.R. No. 180941, 11 June 2009.

remains valid despite the non-compliance of the proper officials with the pertinent CSC rules.

In *Civil Service Commission v. Joson* and *Chavez v. Ronidel*, the inaction of certain officials led to the non-compliance with the CSC requirement that appointments should be included in the monthly report of personnel action (ROPA), which must be submitted in turn to the CSC. The Court held that legitimate justifications excused the delayed observance of or the non-compliance with the requirement. It should be noted, however, that the agencies concerned[33] were *accredited agencies* of the CSC; *that is*, they could take final action on the appointments without first submitting the appointments to the CSC for approval.[34] Accredited agencies are required only to submit a report on appointments issued (RAI), together with the photocopies of appointments issued during the month, within 15 days of the succeeding month. The accredited agencies involved in *Civil Service Commission v. Joson* and *Chavez v. Ronidel* could take, and, in fact, took, final action on the appointments. The submission of the ROPA was a mere ministerial duty, because the CSC's approval was no longer needed for such appointments. Hence, the leniency extended by the Court to the appointees whose names were not timely included in the ROPA should not be applied to instances where the submission of the appointment is necessary to complete an appointment, like herein.

V

When the petitioner was appointed as Administrative Officer II on 25 August 2003, the respondent's incomplete appointment was effectively revoked.

The majority's argument, that it is the CSC, not the appointing authority, that can revoke the respondent's appointment, because

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[33] Philippine Overseas Employment Administration (POEA) in *Civil Service Commission v. Joson*, and the Presidential Commission for the Urban Poor (PCUP) in *Chavez v. Ronidel*.

[34] http://www.csc.gov.ph/cscweb/acc_prog.html, last visited 9 November 2009.

the respondent had meanwhile accepted her appointment, citing Section 9, Rule V of the Omnibus Rules[35] and *De Rama v. Court of Appeals*,[36] is unacceptable to me.

In my view, *De Rama v. Court of Appeals* actually bolsters the conclusion that the petitioner's appointment effectively revoked that of the respondent. Indeed, *De Rama* states:

> Rule V, Section 9 of the Omnibus Implementing Regulations of the Revised Administrative Code specifically provides that "an appointment accepted by the appointee cannot be withdrawn or revoked by the appointing authority and shall remain in force and in effect until disapproved by the Commission." Thus, it is **the CSC that is authorized to recall an appointment initially approved**, but only when such appointment and approval are proven to be in disregard of applicable provisions of the civil service law and regulations.[37]

As interpreted in *De Rama*, the prohibition against the revocation of an appointment under Section 9 presupposes that the appointment was already initially approved by the CSC itself. It is not disputed that the respondent's appointment was never submitted to the CSC; hence, there was never any chance for the CSC to initially approve her appointment, prior to the petitioner's appointment.

The rule has always been that an appointment is essentially a discretionary act, performed by an officer in whom it is vested according to his best judgment, the only condition being that the appointee should possess all the qualifications required therefor. In the absence of any showing that the respondent is not qualified for the position of Administrative Officer II, the Court will not interfere with the prerogative of the appointing officer in this case.

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[35] Section 9. An appointment accepted by the appointee cannot be withdrawn or revoked by the appointing authority and shall remain in force and effect until disapproved by the Commission.xxx

[36] G.R. No. 131136, 28 February 2001, 353 SCRA 94.

[37] *Supra*, at page 107.

ACCORDINGLY, I vote to grant the petition for review on *certiorari*.

The decision and resolution of the Court of Appeals dated 26 September 2006 and 8 February 2007, respectively, should be reversed and set aside. The protest against the petitioner, Adm. Case No. ND-ARU 290, should be dismissed.

EN BANC

[G.R. No. 181809. February 17, 2010]

ROSE MARIE D. DOROMAL, *petitioner, vs.* **HERNAN G. BIRON and COMMISSION ON ELECTIONS,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; GRAVE ABUSE OF DISCRETION; COMMITTED IN CASE AT BAR. — An act done contrary to the Constitution, the law or jurisprudence; or executed whimsically, capriciously or arbitrarily out of malice, ill will or personal bias constitutes grave abuse of discretion. In the instant case, we find that the COMELEC gravely abused its discretion amounting to lack or excess of jurisdiction in ordering the exclusion of the subject returns. The ruling contravenes clear legal provisions as well as long standing jurisprudence on the admissibility of the certificate of votes and the appreciation of election returns. Lamentably, the refusal of the COMELEC to heed this Court's repeated pronouncements has again led to the disenfranchisement of voters in this case. The writ, therefore, lies to correct this grossly abusive exercise of discretion.

2. POLITICAL LAW; ELECTION LAWS; REPUBLIC ACT NO. 6646 (THE ELECTORAL REFORMS LAW OF 1987); CERTIFICATE OF VOTES; WHEN ADMITTED AS EVIDENCE OF TAMPERING. — The certificate of votes, which contains the number of votes obtained by each candidate, is issued by the BEI upon the request of a duly accredited watcher pursuant to Section 16 of RA 6646. x x x While the above-quoted provision authorizes the COMELEC to make use of the certificate of votes to prove tampering, alteration, falsification or any anomaly committed in the election returns, this presupposes that the certificate of votes was accomplished in accordance with Section 16 x x x. Thus, in *Patoray v. Commission on Elections*, we ruled that the certificate of votes is inadmissible to prove tampering because it was signed only by the chairperson of the BEI, whereas Section 16 required that the same be signed and thumbmarked by each member of the BEI which issued the certificate. Similarly, in *Recabo, Jr. v. Commission of Elections*, we rejected the certificate of votes because it did not state (1) the number of votes obtained in words, (2) the number of the precinct, (3) the total number of voters who voted in the precinct, and (4) the time of issuance. Further, the certificate was merely certified true and correct by an acting election officer. x x x Moreover, before the certificate of votes may be admitted as evidence of tampering, Section 17 requires that the certificate be duly authenticated by testimonial or documentary evidence presented to the board of canvassers by at least two members of the board of election inspectors who issued the certificate.

3. ID.; ID.; ID.; ID.; AUTHENTICATION BY AT LEAST TWO MEMBERS OF THE BOARD OF ELECTION INSPECTORS WHO ISSUED THE SAME, REQUIRED; RATIONALE. — By requiring that the certificate of votes be duly authenticated by at least two members of the BEI who issued the same, the law seeks to safeguard the integrity of the certificate from the time it is issued by the BEI to the watcher after the counting of votes at the precinct level up to the time that it is presented to the board of canvassers to prove tampering. The legislature may have reasonably foreseen that the certificate may be easily altered while in the hands of the watcher in order to orchestrate a sham pre-proclamation controversy. To counterbalance this possibility, the law imposes the condition that the certificate, aside from complying

with Section 16, must be subsequently authenticated at the time of its presentment to the board of canvassers in the event that it shall be used to prove tampering. This way the COMELEC may be assured that the certificate of votes issued by the BEI to the watcher of a protesting candidate contains the same entries as the one thereafter presented before the MBC to prove tampering. The procedure is consistent with the overall policy of the law to place a premium on an election return, which appears regular on its face, by imposing stringent requirements before the certificate of votes may be used to controvert the election return's authenticity and operate as an exception to the general rule that in a pre-proclamation controversy, the inquiry is limited to the four corners of the election return.

4. ID.; ID.; OMNIBUS ELECTION CODE; ELECTION RETURNS; EXCLUSION THEREOF ON THE GROUND OF TAMPERING MUST BE APPROACHED WITH EXTREME CAUTION AND ONLY UPON CONVINCING PROOF. — In the absence of clearly convincing evidence, the validity of election returns must be upheld. A conclusion that an election return is obviously manufactured or false and consequently should be disregarded in the canvass must be approached with extreme caution and only upon the most convincing proof. Corrolarily, any plausible explanation, one which is acceptable to a reasonable man in the light of experience and of the probabilities of the situation, should suffice to avoid outright nullification, which results in disenfranchisement of those who exercised their right of suffrage.

5. ID.; ID.; ID.; CANVASS AND PROCLAMATION; DISCREPANCIES IN ELECTION RETURNS; REMEDY; CASE AT BAR. — In *Patoray*, we ordered the COMELEC to proceed in accordance with Section 236 of the OEC after it was determined that there was a discrepancy between the *taras vis-à-vis* the written figures and words in the election return. With the x x x finding that there are minor discrepancies in the other authentic copies of the subject returns, specifically Copies 4 and 5, the proper procedure then is not to exclude the said returns but to follow Section 236 x x x. The COMELEC should, thus, order the canvass of the election returns from Precinct Nos. 107A, 114A, 6A/6B, 55A, 67A/67B, 116A/116B, 130A and 42A/ 43A. After canvassing, it should determine

whether the total number of missing *taras* will affect the result of the elections. If it will not affect the result, the COMELEC should proclaim as winner the vice mayoralty candidate with the highest number of votes. On the other hand, if the total number of missing *taras* will affect the results of the election, the COMELEC, after due notice to all candidates concerned, should proceed summarily to determine whether the integrity of the ballot boxes (where the election returns with missing *tara/s* were tallied) have been preserved. Once satisfied therewith, the COMELEC should order the opening of the ballot boxes to recount the votes cast in the polling place solely for the purpose of determining the true result of the count of votes of the candidates concerned. However, if the integrity of the ballots has been violated, the COMELEC need not recount the ballots but should seal the ballot box and order its safekeeping in accordance with Section 237 of the OEC x x x .

6. ID.; ID.; ID.; ID.; WHEN ELECTION RETURNS APPEAR TO BE TAMPERED WITH; REMEDY; CASE AT BAR. — Had there been sufficient evidence of tampering in this case, it would still be highly improper for the COMELEC to outrightly exclude the subject election returns. In such a case, the COMELEC should proceed in accordance with Section 235 of the OEC which is similar to Section 236 in that the COMELEC is authorized to open the ballot box as a measure of last resort. This has been our consistent ruling as early as in the 1995 case of *Patoray* followed by *Lee v. Commission on Elections*, *Balindong v. Commission on Elections*, *Dagloc v. Commission on Elections*, and *Cambe v. Commission on Elections*. It is quite disquieting, therefore, that despite these repeated pronouncements, the COMELEC persists in summarily excluding the election returns without undertaking the requisite steps to determine the true will of the electorate as provided in the pertinent provisions of the OEC. The paramount consideration has always been to protect the sanctity of the ballot; not to haphazardly disenfranchise voters, especially where, as here, the election is closely contested. The COMELEC's constitutional duty is to give effect to the will of the electorate; not to becloud their choice by defying the methods in the OEC designed to ascertain as far as practicable the true will of the sovereign people. Verily, the strength and stability of our democracy depends to a large extent on the faith and confidence of our people in the integrity of the electoral process where they

participate as a particle of democracy. That is the polestar that should have guided the COMELEC's actions in this case.

APPEARANCES OF COUNSEL

Rodrigo Berenguer & Guno for petitioner.
The Solicitor General for public respondent.
Jose M. Jose for private respondent.

D E C I S I O N

DEL CASTILLO, *J.*:

We reiterate settled rulings on the appreciation of election returns in this case, to wit, (1) before a certificate of votes may be used to prove tampering, alteration, falsification or any other anomaly committed in the election returns, it must comply with Sections 16 and 17 of Republic Act (RA) No. 6646,[1] (2) the exclusion of election returns on the ground of tampering must be approached with extreme caution and must be based on clear and convincing evidence, and (3) in case of discrepancy in the other authentic copies of an election return, the procedure in Section 236 of the Omnibus Election Code[2] (OEC) should be followed. For failure to comply with these rules and principles, we hold that the Commission on Elections (COMELEC) acted with grave abuse of discretion amounting to lack or excess of jurisdiction and accordingly order it to rectify the unjustified disenfranchisement of voters in this case.

This Petition for *Certiorari* under Rules 64 and 65 of the Rules of Court seeks to annul and set aside the COMELEC *En Banc's* February 1, 2008 Resolution.[3] The COMELEC *En*

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[1] An Act Introducing Additional Reforms in the Electoral System and For Other Purposes. Effective: January 5, 1988.

[2] *Batas Pambansa Blg.* 881, effective: December 3, 1985.

[3] *Rollo*, pp. 68-72. The Resolution was adopted by Acting Chairman Resurreccion Z. Borra, Commissioners Florentino A. Tuason, Jr., Romeo A.

Banc affirmed its Second Division's September 12, 2007 Resolution[4] in SPC No. 07-147 which ordered the exclusion of 11 election returns in the canvassing of votes for the position of vice mayor in the Municipality of Dumangas, Iloilo.

Factual Antecedents

Petitioner Rose Marie D. Doromal (Doromal) and private respondent Hernan G. Biron (Biron) were the vice mayoralty candidates for the Municipality of Dumangas, Iloilo in the May 14, 2007 elections. During the canvassing of votes, Biron orally objected to the inclusion of 25[5] election returns. Biron anchored his objections to the inclusion of the 21 returns on the alleged missing *taras*[6] in Copy 4 of the contested returns, which he obtained as the standard bearer of LAKAS-CMD, the recognized

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Brawner, Nicodemo T. Ferrer and Moslemen T. Macarambon. Commissioner Rene V. Sarmiento dissented.

[4] *Id.* at 33-42; penned by Commissioner Nicodemo T. Ferrer. Presiding Commissioner Florentino A. Tuason, Jr. concurred in a separate opinion. Commissioner Rene V. Sarmiento dissented.

[5] These were the election returns from Precinct Nos. 204-A, 207-A, 202-A, 107-A, 169-A. 114-A, 20-A, 130-A, 174-A/174-B, 6-A/6-B, 55-A, 162-A/163-A, 67-A/67-B, 90-A/90-B, 21-A/21-B, 7-A/7-B, 208-A/208-B, 173-A/173-B, 116-A/116-B, 59-A/60-A, 42-A/43-A, 192-A, 112-A/112-B, and 30-A/30-B.

[6] The term *tara* refers to the lines representing one vote in the counting of votes at the precinct level as provided in Section 210 of the OEC, *viz*:

Sec. 210. *Manner of counting votes* – x x x

Each vote shall be recorded by a vertical line, except every fifth vote which shall be recorded by a diagonal line crossing the previous four vertical lines. x x x

In *Patoray v. Commission on Elections*, [319 Phil. 564, 569 (1995)], we used the term *taras* thus:

We hold that the COMELEC's Second Division correctly ordered the exclusion of Election Return No. 661290 (Precinct No. 16), it appearing that it contained a discrepancy between the "***taras***" and the written figures. In addition, however, the COMELEC's Second Division should have ordered a recount of the ballots or used the Certificate of Votes cast in the precinct in question to determine the votes for each of the parties in this case. (Emphasis supplied)

dominant majority party in said elections.[7] As regards the remaining four contested returns, Biron opposed their inclusion allegedly because there was a discrepancy between the number of votes stated in the said returns and those stated in the certificate of votes issued by the Board of Election Inspectors (BEI). In view thereof, the Municipal Board of Canvassers (MBC) deferred the canvassing of the said returns. Thereafter, Biron filed his written objections and supporting evidence.

On May 18, 2007, the MBC denied[8] the petitions for exclusion. It found that there was no tampering on the number of *taras* for Doromal in the copy of the election return for the MBC. It also held that the copy of the election return of the MBC

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[7] There were seven (7) copies of the election returns prepared by the BEI. These were distributed in accordance with Section 1 of RA 8173:

SECTION 1. Section 27 of Republic Act No. 7166, as amended by Republic Act No. 8045, is hereby further amended to read as follows:

SEC. 27. *Number of Copies of Election Returns and their Distribution.* — The Board of Election Inspectors shall prepare in handwriting the election returns in their respective polling places, in the number of copies herein provided and in the form to be prescribed and provided by the Commission.

The copies of the election returns shall be distributed as follows: x x x

(b) In the election of local officials:

(1) The first copy shall be delivered to the city or municipal board of canvassers;

(2) The second copy, to the Commission;

(3) The third copy, to the provincial board of canvassers;

(4) The fourth copy, to the dominant majority party as determined by the Commission in accordance with law;

(5) The fifth copy, to the dominant minority party as determined by the Commission in accordance with law;

(6) The sixth copy, to a citizens' arm authorized by the Commission to conduct an unofficial count:

Provided, however, That the accreditation of the citizens' arm shall be subject to the provisions of Section 52(k) of Batas Pambansa Blg. 881; and

(7) The seventh copy shall be deposited inside the compartment of the ballot box for valid ballots.

[8] Records, vol. I, pp. 180-208.

was complete with no material defect and duly signed and thumbmarked by the BEIs.[9]

Aggrieved, Biron appealed to the COMELEC. The case was docketed as SPC No. 07-147[10] and raffled to the Second Division. Pending the resolution of the appeal, the proclamation of the winning vice mayoralty candidate was ordered suspended.

Ruling of the COMELEC Second Division

On September 12, 2007, the COMELEC Second Division, voting 2-1, issued a Resolution partially granting Biron's appeal. It ordered the exclusion of only 11 contested election returns while at the same time ordered the inclusion of the remaining 14 election returns in the canvassing of votes, *viz*:

> WHEREFORE, foregoing premises considered, the instant appeal is PARTIALLY GRANTED. The election returns in Precinct Nos. 17A/18A, 20A, 21A/21B, 30A/31A, 59A/60A, 122A/122B, 162A/163A, 169A, 173A/173B, 174A/174B, 192A, 202A, 204A and 207A, are hereby ordered INCLUDED in the canvass of returns for the vice-mayoralty position in Dumangas, Iloilo. The Municipal Board of Canvassers of Dumangas, Iloilo is hereby ordered to RECONVENE and PROCEED with the canvass of the said election returns and PROCLAIM the candidate who garners the most number of votes.
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> The election returns in Precinct Nos. 107-A, 114-A, 6A/6B, 55-A, 67A/67B, 116A/116B, 130A, 42A/43A, 90A/90B, 7A/7B and 208A/208B are hereby ordered EXCLUDED in the canvass of returns by the Municipal Board of Canvassers of Dumangas, Iloilo.
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> SO ORDERED.[11]

The COMELEC Second Division ordered the exclusion of the 11 election returns (subject returns) because the same were allegedly tampered or falsified. It held that eight of the 11 subject returns showed that the *taras* were either closed on the

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[9] *Id.*

[10] Entitled "In the Matter of the Appeal from the Rulings of the Board of Canvassers of Dumangas, Iloilo, In BOC Case Nos. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24 and 25."

[11] *Rollo*, p. 42.

third or fourth vote, instead of on the fifth vote, resulting in a discrepancy between the number of *taras vis-à-vis* the written figures and words in the said returns. With regard to the remaining three returns, the Second Division noted a glaring dissimilarity between the votes stated in the said returns and those stated in the certificate of votes. Further, it lent credence to the affidavits of Biron's poll watchers stating that numerous irregularities attended the tallying of the votes at the precinct level. According to the Second Division, these irregularities pointed to a scheme to increase the votes of Doromal, thus, necessitating the exclusion of the subject returns.

Commissioner Rene V. Sarmiento (Commissioner Sarmiento) registered a dissent. He reasoned that the missing *taras* did not, by themselves, conclusively establish that the subject returns were altered or tampered. Also, the affidavits of Biron's poll watchers should not have been given weight for being self-serving. In his view, the proper recourse was not to exclude the subject returns but to order the correction of manifest errors so that the number of votes in figures and words would conform to the number of *taras* in the subject returns.

Thus, on September 24, 2007, the MBC reconvened and proceeded to canvass the abovementioned 14 returns. As a result, Biron emerged as the winning candidate with 12,497 votes while Doromal received 12,319 votes, or a winning margin of 178 votes. On even date, Biron was proclaimed as the duly elected vice mayor of the Municipality of Dumangas, Iloilo.

Ruling of the COMELEC En Banc

On February 1, 2008, the COMELEC *En Banc* affirmed the ruling of the Second Division. It held that the Second Division properly appreciated the affidavits of Biron's poll watchers given the serious allegations of irregularities that attended the tallying of votes; that the use of the certificate of votes to establish tampering in the subject returns was proper in a pre-proclamation controversy; and that an examination of the records of this case supported the Second Division's findings that the subject returns were tampered or falsified.

Commissioner Sarmiento maintained his previous dissent that the exclusion of the subject returns was improper. He further noted that in case correction of manifest errors was not viable, votes may be recounted pursuant to Section 236 of the OEC.

Issues

The issues raised by petitioner may be summarized as follows:

1. The COMELEC gravely abused its discretion when it failed to compare the contested returns with the other authentic copies thereof before ruling that there was tampering or falsification of the said returns.
2. The COMELEC gravely abused its discretion when it used the certificate of votes to exclude the three contested election returns considering that it cannot go beyond the face of the returns in establishing that there was tampering or falsification and considering further that said certificates did not comply with Section 17 of RA 6646.
3. The COMELEC gravely abused its discretion when it gave credence to the self-serving affidavits of private respondent's poll watchers.
4. The COMELEC gravely abused its discretion when it ordered the exclusion of the subject returns because, in case of falsification or tampering, the procedure under Sections 235 and 236 of the OEC should have been followed in order not to disenfranchise the voters.[12]

Petitioner's Arguments

Doromal advances several possible reasons for the missing *taras* in Copy 4 (*i.e.*, copy of the dominant majority party) of the subject returns, to wit, (1) the pressure exerted by the poll clerk in accomplishing duplicate originals of the subject returns was not sufficient as to leave its mark on the succeeding pages, (2) the carbon paper had poor quality, (3) the election return papers were misaligned relative to the carbon paper, or (4) the

[12] *Id.* at 258-262.

erasures were deliberately made by Biron on Copy 4 to pave the way for the subject pre-proclamation controversy.

Further, while the instant petition was pending resolution before this Court, Doromal requested the COMELEC to open the ballot boxes where the COMELEC's copy of the subject returns (*i.e.*, Copy 3) was safekept. On April 21, 2008, the COMELEC granted the request and ordered the opening of the ballot boxes. It thereafter allowed Doromal to photocopy Copy 3 of the subject returns found therein. On June 17, 2008, petitioner filed a Motion for Leave to File Manifestation[13] with attached Manifestation[14] before this Court summarizing her observations with respect to Copy 3 of the subject returns. She noted that some of the missing *taras* in Copy 4 were not found in Copy 3. With respect to the missing *taras* in Copy 3 just as in Copy 4, petitioner reiterated that the cause thereof was the insufficient pressure exerted by the poll clerk in accomplishing the election returns or the misalignment of the election return copies while the duplicate originals were being accomplished using carbon paper. Thus, there was no basis for the COMELEC to rule that the subject returns were falsified or tampered.

Petitioner also claims that the COMELEC never compared Copy 4 of the subject returns with the other authentic copies of the said returns as required under Section 235 of the OEC. Assuming that the COMELEC made such comparison with the other authentic copies, this was not done in the presence of petitioner in violation of her due process rights.

Anent the exclusion of the three subject returns, petitioner asserts that the COMELEC erred in using the certificate of votes to establish falsification or tampering because the COMELEC cannot go beyond the face of the returns in a pre-proclamation controversy. Assuming *arguendo* that the COMELEC may use the certificate of votes, the requirement set by Section 17

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[13] *Id.* at 127-129.

[14] *Id.* at 130-183.

of RA 6646 was not complied with. Thus, the certificate of votes is inadmissible in evidence.

Petitioner faults the COMELEC for relying on the affidavits of private respondent's poll watchers in concluding that irregularities attended the preparation of the subject returns. Evidently, these affidavits are self-serving and of no probative value.

Lastly, petitioner argues that assuming that the subject returns were falsified or tampered, the proper recourse would be to follow the procedure outlined in Sections 235 and 236 of the OEC and not to summarily exclude said returns. Under the aforesaid provisions, the COMELEC should have authorized the opening of the ballot boxes and thereafter ordered the BEI to recount the votes of the candidates affected and prepare a new return which shall then be used by the MBOC as the basis of the new canvass.

Private Respondent's Arguments

Private respondent contends that the points raised by petitioner are factual in nature, thus, not proper in a petition for *certiorari* under Rule 65 which is limited to questions of jurisdiction. He claims that the findings of the COMELEC with respect to the falsification and tampering of the subject returns must be accorded respect and even finality by this Court. Biron also points out that in making such a finding, the COMELEC Second Division compared the subject returns with the other authentic copies thereof which was affirmed by the COMELEC *En Banc* after the latter made its own independent examination of the records of this case.

Biron also claims that there was no denial of due process. Since a pre-proclamation controversy is summary in nature, Biron posits that the COMELEC properly appreciated the evidence in this case consisting of the pleadings and documentary evidence of the respective parties without the need of holding a formal or trial-type hearing.

He also avers that the COMELEC properly gave credence to the affidavits of his poll watchers. He emphasizes that the

subject returns appear to be tampered and falsified on their face so that the affidavits were merely used to buttress or substantiate the cause of these irregularities.

Finally, Biron claims that the procedure under Sections 235 and 236 of the OEC is not applicable to this case because the same refers to the board of canvassers and not the COMELEC. Also, these provisions do not allow the COMELEC to *motu proprio* order the opening of the ballot boxes.

Our Ruling

The petition is meritorious.

An act done contrary to the Constitution, the law or jurisprudence; or executed whimsically, capriciously or arbitrarily out of malice, ill will or personal bias constitutes grave abuse of discretion.[15] In the instant case, we find that the COMELEC gravely abused its discretion amounting to lack or excess of jurisdiction in ordering the exclusion of the subject returns. The ruling contravenes clear legal provisions as well as long standing jurisprudence on the admissibility of the certificate of votes and the appreciation of election returns. Lamentably, the refusal of the COMELEC to heed this Court's repeated pronouncements has again led to the disenfranchisement of voters in this case. The writ, therefore, lies to correct this grossly abusive exercise of discretion.

The certificates of votes are inadmissible to prove tampering, alteration or falsification for failure to comply with Sections 16 and 17 of RA 6646.

In excluding three of the 11 subject returns, specifically, those coming from Precinct Nos. 90A/90B, 7A/7B and 208A, the COMELEC relied on the alleged glaring dissimilarity between the votes stated in the said returns and those stated in the

[15] *Information Technology Foundation of the Philippines v. Commission on Elections*, 464 Phil. 173, 190 (2004).

certificates of votes. Hence, it concluded that the subject returns were falsified and thereafter ordered their exclusion.

The certificate of votes, which contains the number of votes obtained by each candidate, is issued by the BEI upon the request of a duly accredited watcher pursuant to Section 16 of RA 6646. Relative to its evidentiary value, Section 17 of said law provides –

> Sec. 17. *Certificate of Votes as Evidence*. —The provisions of Sections 235 and 236 of Batas Pambansa Blg. 881 notwithstanding, the certificate of votes shall be admissible in evidence to prove tampering, alteration, falsification or any anomaly committed in the election returns concerned, when duly authenticated by testimonial or documentary evidence presented to the board of canvassers by at least two members of the board of election inspectors who issued the certificate: *Provided*, That failure to present any certificate of votes shall not be a bar to the presentation of other evidence to impugn the authenticity of the election returns.

While the above-quoted provision authorizes the COMELEC to make use of the certificate of votes to prove tampering, alteration, falsification or any anomaly committed in the election returns, this presupposes that the certificate of votes was accomplished in accordance with Section 16, *viz*:

> Sec. 16. *Certificates of Votes*. — After the counting of the votes cast in the precinct and announcement of the results of the election, and before leaving the polling place, the board of election inspectors shall issue a certificate of votes upon request of the duly accredited watchers. The certificate shall contain **the number of votes obtained by each candidate written in words and figures, the number of the precinct, the name of the city or municipality and province, the total number of voters who voted in the precinct and the date and time issued, and shall be signed and thumbmarked by each member of the board**. (Emphasis supplied)

Thus, in *Patoray v. Commission on Elections*,[16] we ruled that the certificate of votes is inadmissible to prove tampering because it was signed only by the chairperson of the BEI, whereas Section 16 required that the same be signed and thumbmarked by each

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[16] *Supra* note 6 at 568-569.

member of the BEI which issued the certificate.[17] Similarly, in *Recabo, Jr. v. Commission of Elections*,[18] we rejected the certificate of votes because it did not state (1) the number of votes obtained in words, (2) the number of the precinct, (3) the total number of voters who voted in the precinct, and (4) the time of issuance. Further, the certificate was merely certified true and correct by an acting election officer.[19]

In the instant case, the certificates of votes from Precinct Nos. 90A/90B[20] and 7A/7B[21] are defective, for they do not contain (1) the thumbmarks of the members of the BEI, (2) the total number of voters who voted in the precinct, and (3) the time of the issuance of the certificates. Likewise, the certificate of votes from Precinct 208A[22] is defective because it does not contain (1) the names, signatures and thumbmarks of the members of the BEI, (2) the total number of voters who voted in the precinct, and (3) the time of the issuance of the certificate. Aida Pineda, private respondent's poll watcher in said precinct, claims that she prepared a certificate of votes reflective of the true tally in the election return, but the members of the BEI refused to affix their signatures thereto. Even if we were to concede that the BEI members unjustifiedly refused to sign, this would not validate the said certificate. Private respondent's remedy was to compel the BEI to issue the certificate of votes under pain of prosecution for an election offense.[23] At any rate, we cannot admit the defective certificate because, by Pineda's

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[17] *Id.* at 571.

[18] 368 Phil. 277, 290 (1999).

[19] *Id.*

[20] Records, vol. I, p. 64.

[21] *Id.* at 68.

[22] *Id.* at 70.

[23] The unjustified refusal of the BEI to issue a certificate of votes is an election offense under Section 27(c) of RA 6646:

Sec. 27. *Election Offenses*. — In addition to the prohibited acts and election offenses enumerated in Sections 261 and 262 of Batas Pambansa Blg. 881, as amended, the following shall be guilty of an election offense: x x x

own admission, she was the one who prepared the entries in the said certificate and not the BEI as required by Section 16 of RA 6646, thus raising grave doubts as to its accuracy.[24]

Moreover, before the certificate of votes may be admitted as evidence of tampering, Section 17 requires that the certificate be duly authenticated by testimonial or documentary evidence presented to the board of canvassers by at least two members of the board of election inspectors who issued the certificate.

(c) Any member of the board of election inspectors who refuses to issue to duly accredited watchers the certificate of votes provided in Section 16 hereof.

[24] Pineda stated in her affidavit, thus:

That after the counting of votes, I, Aida Pineda personally indicated with my handwriting the votes of candidates for the position of, among others, Vice-Mayor and made the members of the Board of Election Inspectors (BEI) sign the same. The votes are as follows:

c. Vice-Mayor

1. Hernan Biron, Jr.	thirty one	31
2. Rose Doromal	one hundred eight	108

Attached is a copy of the Certificate of Votes that I (Aida Pineda) personally prepared for clustered precinct 208A as Annex "A" and made an integral part of our affidavit.

That I, Aida Pineda, presented the Certificate of Votes that I prepared to the Chairman of BEI, Matias Eugenio Piosca but he refused to sign the said Certificate despite my insistence that he is obliged to do so under the law.

That we were surprised when we learned that the votes for Vice-Mayor Candidate Rose Doromal increased to 118 from 108 votes or was padded with ten votes in the Election Return prepared by member of BEI Darwin B. Lico.

That before I presented the Certificate of Votes (Annex "A") to the Chairman of the BEI, Matias Eugenio Piosca I, Aida Pineda double-checked the Certificate of Votes that I prepared and I determined that the votes especially for Vice-Mayor Candidate Rose Doromal was accurate at 108 votes.

That despite my presentation of the authority given by the party to get its copy of the Election Returns, the BEI did not give me the copy of the Election Returns intended for the Dominant Majority Party. (COMELEC records, vol. I, p. 299)

This requirement originated from Section 11[25] of House Bill (HB) No. 805 and was later consolidated, with minor revisions, in Section 17[26] of HB 4046 – the precursor of RA 6646. During the period of interpellations, Representative Zarraga proposed that the aforesaid authentication requirement be dispensed with, *viz*:

MR. ZARRAGA. [I]n connection with Sections 16 and 17, on House Bill No. 4046, only insofar as it concerns the admissibility in evidence of the certificate of votes.

MR. PALACOL. Yes, Mr. Speaker.

MR. ZARRAGA. Under Section 17, the certificate of votes shall be admissible in evidence only when duly authenticated by testimonial or documentary evidence presented to the Board of Canvassers by at least two members of the Board of Election Inspectors who issued the certificate.

The presentation of the certificate of votes is, of course, during the proceedings. And said proceedings may be one, two or three months, probably even more, after the voting has taken place.

And under Section 16, will the certificate of votes be signed and thumbmarked by each member of the Board of Inspectors?

MR. PALACOL. Yes, Mr. Speaker.

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[25] Section 16. *Certificates of Votes*. — After the counting of the votes cast in the precinct and announcement of the results of the election, and before leaving the polling place, the board of election inspectors shall issue a certificate of votes upon request of the duly accredited watchers. The certificate shall contain the number of votes obtained by each candidate written in words and figures, the number of the precinct, the name of the city or municipality and province, the total number of voters who voted in the precinct and the date and time issued, and shall be signed and thumbmarked by each member of the board. The certificate shall be accomplished in duplicate with the use of carbon paper. The original copy shall be issued to the watcher and the duplicate shall be kept in the custody of the chairman of the board. Refusal on the part of the board of inspectors to issue such certificate shall constitute an election offense punishable under the Omnibus Election Code.

[26] Section 17 of HB 4046 is of the same wording as Section 17 of RA 6646.

MR. ZARRAGA. This Representation feels that this should be sufficient to consider the certificate of votes as duly authenticated, especially because at that time the members have just prepared said certificate and therefore, **there should be no need to further require two members of the board subsequently because they may no longer be available to authenticate the certificate of votes.**

This Representation would like to inquire from the Gentlemen if the distinguished sponsor will be willing to also amend Section 16 in such a way that the certificate of votes, when already signed and thumbmarked by each member of the board, shall be considered as duly authenticated and admissible in evidence in any subsequent proceedings.

In other words, we should already dispense with requiring two other members at a subsequent time, when they may no longer be present to authenticate a document which, in the first place, has already been signed and thumbmarked by each member of the board in accordance with the proposed Section 16 of House Bill No. 4046.

MR. PALACOL. The Gentlemen [are] assured that we are going to consider all these amendments during the period of amendments. And I always grant that the Gentlemen from Bohol will submit valuable amendments in order to ensure a clean and honest election.

MR. ZARRAGA. Thank you very much, Mr. Speaker. x x x[27] (Emphasis supplied)

It appears, however, that Representative Zarraga's proposal was no longer pursued during the period of amendments as Section 17 of HB 4046 was passed on third reading without any change in its wording as now found in Section 17 of RA 6646. The clear legislative intent was, thus, to impose the additional condition under Section 17 before the certificate of votes may be admitted in evidence to prove tampering.

The rationale of the law is perceptible. By requiring that the certificate of votes be duly authenticated by at least two members of the BEI who issued the same, the law seeks to safeguard the integrity of the certificate from the time it is issued by the BEI

[27] Records, HOUSE 8TH CONGRESS (December 7, 1987).

to the watcher after the counting of votes at the precinct level up to the time that it is presented to the board of canvassers to prove tampering. The legislature may have reasonably foreseen that the certificate may be easily altered while in the hands of the watcher in order to orchestrate a sham pre-proclamation controversy. To counterbalance this possibility, the law imposes the condition that the certificate, aside from complying with Section 16, must be subsequently authenticated at the time of its presentment to the board of canvassers in the event that it shall be used to prove tampering. This way the COMELEC may be assured that the certificate of votes issued by the BEI to the watcher of a protesting candidate contains the same entries as the one thereafter presented before the MBC to prove tampering. The procedure is consistent with the over-all policy of the law to place a premium on an election return, which appears regular on its face, by imposing stringent requirements before the certificate of votes may be used to controvert the election return's authenticity and operate as an exception to the general rule that in a pre-proclamation controversy, the inquiry is limited to the four corners of the election return.

In the instant case, the records indicate that Biron failed to comply with the requirements set by Section 17 with respect to the certificates of votes from Precinct Nos. 208A, 90A/90B and 7A/7B which he submitted in evidence before the MBC. This should have provided an added reason for the COMELEC to refuse the admission of said certificates had the COMELEC carefully examined the certificates of votes appearing in the records of this case.

In sum, the COMELEC gravely abused its discretion in admitting in evidence the aforementioned certificates of votes which did not comply with Sections 16 and 17 of RA 6646. To make matters worse, the COMELEC excluded the subject election returns on the basis of these defective certificates thereby leading to the disenfranchisement of 467 voters as per the records of this case.[28] These votes can materially affect the outcome of the elections considering that private respondent

[28] Records, vol. II, pp. 57, 59-60.

won by only 178 votes. Accordingly, the COMELEC is ordered to include the election returns from Precincts 208A, 90A/90B and 7A/7B in the canvass of the votes in this case.

The affidavits of private respondent's poll watchers are self-serving and grossly inadequate to establish the tampering of the subject returns. Similarly, the one, or, at most, two missing taras in each of the eight subject returns, without more, does not establish tampering.

In excluding eight of the 11 subject returns, specifically, those coming from Precinct Nos. 107A, 114A, 6A/6B, 55A, 67A/ 67B, 116A/116B, 130A and 42A/ 43A, the COMELEC ruled that the said returns were tampered or falsified based on the missing *taras* in the other authentic copies of the said returns, *viz*:

[A]fter a careful inspection of the contested election returns and other authentic copies of the same, this Commission finds sufficient basis for the exclusion of some of these returns for being tampered or falsified. The exclusion of the said returns is based on the following findings:

a. In the election return for Precinct No. 107-A, an examination of the same shows that the tallies or taras for the fourth box or square for Respondent-Appellee Doromal [were] closed on the fourth vote;

b. In the election return for Precinct No. 114-A, an examination of the same shows that the tallies or taras for the twelfth box or square for Respondent-Appellee Doromal [were] closed on the fourth vote;

c. In the election return for Precinct No. 130-A, an examination of the same shows that the tallies or taras for the fifth and seventh boxes or squares for Respondent-Appellee Doromal were closed on the fourth vote;

d. In the election return for clustered Precinct Nos. 6-A and 6-B, an examination of the same shows that the tallies or taras for the seventh box or square for Respondent-Appellee Doromal [were] closed on the fourth vote;

e. In the election return for Precinct No. 55-A, an examination of the same shows that the tallies or taras for the sixth box or square for Respondent-Appellee Doromal [were] closed on the fourth vote;

f. In the election return for clustered Precinct Nos. 67-A and 67-B, an examination of the same shows that the tallies or *taras* for the fifth box or square for Respondent-Appellee Doromal [were] closed on the fourth vote;

g. In the election return for clustered Precinct Nos. 116-A and 116-B, an examination of the same shows that the tallies or taras for the eighteenth and nineteenth boxes or squares for Respondent-Appellee Doromal were closed on the fourth vote;

h. In the election return for clustered Precinct Nos. 42-A and 43-A, an examination of the same shows that the tallies or taras for the twenty-first box or square for Respondent-Appellee Doromal [were] closed on the fourth vote;

Considering that a substantial number of these election returns have the same type of discrepancy, *i.e.*, the taras were not closed on the fifth vote, the said election returns cannot be relied upon to determine the votes in the said precincts. Evidently, the methodical tampering of these returns permanently put in doubt their authenticity as valid bases for the results of the elections. Thus, they should be excluded from the canvass.[29]

The COMELEC also gave credence to the affidavits of private respondent's poll watchers, who stated that numerous irregularities allegedly occurred during the tallying of the votes at the precinct level.

We find the manner in which the COMELEC excluded the subject returns to be fatally flawed. In the absence of clearly convincing evidence, the validity of election returns must be upheld.[30] A conclusion that an election return is obviously manufactured or false and consequently should be disregarded in the canvass must be approached with extreme caution and

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[29] *Rollo*, pp. 36-37.

[30] *Casimiro v. Commission on Elections*, 253 Phil. 461, 471 (1989).

only upon the most convincing proof.[31] Corrolarily, any plausible explanation, one which is acceptable to a reasonable man in the light of experience and of the probabilities of the situation, should suffice to avoid outright nullification, which results in disenfranchisement of those who exercised their right of suffrage.[32] As will be discussed shortly, there is a patent lack of basis for the COMELEC's findings that the subject returns were tampered. In disregard of the principle requiring "extreme caution" before rejecting election returns, the COMELEC proceeded with undue haste in concluding that the subject returns were tampered. This is grave abuse of discretion amounting to lack or excess of jurisdiction.

At the outset, we find that the COMELEC placed undue reliance on the affidavits of Biron's poll watchers to establish the irregularities and fraud allegedly committed during the counting of votes. These affidavits are evidently self-serving. Thus, we have ruled that reliance should not be placed on affidavits of this nature for purposes of setting aside the validity of election returns.[33]

Furthermore, the contents of these affidavits are grossly inadequate to establish tampering. Private respondent's poll watchers, namely, Michelle Duhina and Cirilo Demadante,[34]

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[31] *Aratuc v. Commission on Elections*, 177 Phil. 205, 235 (1979); *Pimentel, Jr. v. Commission on Elections*, 224 Phil. 260, 283 (1985).

[32] *Aratuc v. Commission on Elections, id.*

[33] *Casimiro v. Commission on Elections, supra* note 30.

[34] Duhina and Demadante stated in their joint affidavit, thus:

That before the members of the Board of Election Inspectors (BEI) finished the preparation of the Election Returns on May 14, 2007, there was a brownout in the precinct (Precinct No. 107A) for not less than thirty (30) minutes.

That we cannot clearly see the making of the tallies on the Election Returns for Local positions and only relied on the figures contained in the total number of votes and were surprised when we were shown copies of the Election Returns for our party, LAKAS-CMD with missing tallies in the votes for candidate Rose Marie D. Doromal (less than five lines for one box); records, vol. I, p. 285.

Mary Grace Jiz-Deseo and Lito Duller,[35] Victoria Develos and Joy May De La Gante,[36] Rizal Artoro Deza III and Reno Demonteverde,[37] Cecile Alcanzarin and Horte May

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[35] Jiz-Deseo and Duller stated in their joint affidavit, thus:

That while the BEI was counting the votes, there was a brownout in the precinct (Precinct No. 114A) for not less than thirty (30) minutes.

That after the counting of votes was completed, we were requested to sign and thumb mark the original copy and all the other copies of the Election Returns even before the BEI affixed their signatures and thumb marks. However, since we were already tired and in a hurry to leave, we were not able to check and verify the tallies appearing on the other copies of the Election Returns.

That although we had the necessary authority, the BEI did not give us the copy of the Election Returns intended for the Dominant Majority Party.

That it was only later when we were shown a copy of the Election Returns for the Dominant Majority Party that we noticed that there were missing tallies (less than five lines per box) in the votes for Candidate Rose Marie D. Doromal in said copy; *id.* at 287.

[36] Develos and De La Gante stated in their joint affidavit, thus:

That during the counting of votes [in Precinct No. 130A], the official (brown) tally sheet was not placed on the board for the public to see but was placed on a table.

That the third member of the Board of Election Inspector (BEI) was a municipal employee and not a teacher.

That we did not witness the making of the tallies on the Election Returns for Local Positions and only relied on the figures contained in the total number of votes and we were surprised when we were shown copies of the Election Returns for our party, LAKAS-CMD with missing tallies (less than five lines for one box) in the votes for candidate Rose Marie D. Doromal; *id.* at 288.

[37] Deza III and Demonteverde stated in their joint affidavit, thus:

That during the counting of votes we were assigned to watch the member of the Board of Election Inspectors (BEI) putting the official tallies on the Election Returns for Local Positions.

After the counting of votes was completed, we were requested to sign and thumb mark the original copy and all the other copies of the Election Returns intended for the Dominant Majority Party.

It was only later when we were shown a copy of the Election Returns for the Dominant Majority Party that we noticed that the tallies appearing in said copy the same were different from the tallies in the copy for the Dominant Majority Party were irregularly placed and there were missing tallies (less

Dimzon,[38] Rosie Ventura,[39]and Babylyn Dedoroy and Sarah Dondoy Ano[40] stated, in substance, that: (1) some of them were not so situated in the precinct to see clearly the tallying

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than five lines in the box) for candidate Rose Marie D. Doromal in said copy; *id.* at 290.

[38] Alcanzarin and Dimzon stated in their joint affidavit, thus:

That I, Cecile Alcanzarin was assigned to watch the member of the BEI making the official tallies on the Election Returns for Local Positions. I was positioned in front of that member of the BEI making the official tallies since I was not allowed to position myself at the back of the BEI making it difficult for me to see the tallies on the Election Returns being made by the said members of the BEI.

That I, Cecile Alcanzarin, brought to the BEI's attention a discrepancy between the figures with votes for Vice-Mayoral candidate Hernan Biron, Jr. appearing in the tally sheet and in the Election Returns, which the BEI then corrected.

That after the counting of the votes were completed, the BEI asked us to sign and our thumb marks before the BEI even signed and thumb marked the Election Returns. The BEI also told us that the watchers could already leave the precinct.

That the member of the BEI making the official tallies on the Election Returns was positioned in a poorly lit place making it doubly difficult for me to see the tallies that he was making.

It was only later when we were shown a copy of the Election Returns for the Dominant Majority Party that we noticed that there were missing tallies (less than five lines in the box) for candidate Rose Marie D. Doromal in said copy; *id.* at 291.

[39] Ventura stated in her affidavit, thus:

That during the counting I was assigned to watch the member of the Board of Election Inspector (BEI) writing the official tallies on the Election Returns for the Local Elections. However, I was not able to closely monitor the conduct of the tally and just relied on the total number of votes reflected in the Election Returns without scrutinizing the individual tallies.

That after the counting of votes was complete, the BEI requested the watchers to sign and thumb mark ahead of them.

The BEI did not give the copy of the Election Returns intended for the Dominant Majority Party to the party's authorized representatives.

That it was only later when I was shown a copy of the Election Returns for the Dominant Majority Party that I noticed that there were missing tallies (less than five lines per box) for the candidate Rose Marie D. Doromal; *id.* at 294.

[40] Dedoroy and Ano stated in their joint affidavit thus:

of the votes in the election returns, (2) there was a 30 minute brownout in some of the precincts (*i.e.*, Precinct Nos. 107A and 114A), (3) some of them were asked to affix their signatures and thumb marks ahead of the members of the BEI, (4) some of them were not given Copy 4 of the subject returns after the counting, and (5) they noticed the discrepancy between the *taras* and written figures only later on when they were shown Copy 4 of the election returns.

While these statements suggest that the watchers failed to assert their rights or to perform their duties under the OEC,[41]

That after the counting of votes was completed, we were requested to sign and thumb mark the original copy and all the other copies of the Election Returns. However, we were not able to check and verify the tallies appearing on the copies of the Election Returns.

That it was only later when we were shown a copy of the Election Returns for the Dominant Majority Party that we noticed that there were missing tallies (less than five lines per box) in the votes for Candidate Rose Marie D. Doromal in said copy; *id.* at 302.

[41] Section 179 of the OEC provides:

Section 179. *Rights and duties of watchers*. — Upon entering the polling place, the watchers shall present and deliver to the chairman of the board of election inspectors his appointment, and forthwith, his name shall be recorded in the minutes with a notation under his signature that he is not disqualified under the second paragraph of Section 178. The appointments of the watchers shall bear the personal signature or the facsimile signature of the candidate or the duly authorized representatives of the political party or coalition of political parties who appointed him or of organizations authorized by the Commission under Section 180. The watchers shall have the right to stay in the space reserved for them inside the polling place. They shall have the right to witness and inform themselves of the proceedings of the board of election inspectors, including its proceedings during the registration of voters, to take notes of what they may see or hear, to take photographs of the proceedings and incidents, if any, during the counting of votes, as well as of election returns, tally boards and ballot boxes, to file a protest against any irregularity or violation of law which they believe may have been committed by the board of election inspectors or by any of its members or by any persons, to obtain from the board of election inspectors a certificate as to the filing of such protest and/or of the resolution thereon, to read the ballots after they shall have been read by the chairman, as well as the election returns after they shall have been completed and signed by the members of the board of election inspectors without touching them, but they shall not speak to any member of the board of election inspectors, or to any voter, or among themselves,

we fail to see how they established that the election returns were tampered. On the contrary, these affidavits reveal that the watchers failed to detect any anomaly during the actual tallying of the votes at the precinct level because the missing *taras* were discovered only later on when Copy 4 was shown to them.

Neither can we deduce from the missing *taras* the fraud that allegedly marred the tallying of votes therein. We have examined

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in such a manner as would distract the proceedings, and to be furnished with a certificate of the number of votes in words and figures cast for each candidate, duly signed and thumbmarked by the chairman and all the members of the board of election inspectors. Refusal of the chairman and the members of the board of election inspectors to sign and furnish such certificate shall constitute an election offense and shall be penalized under this Code.

Section 12 of R.A. No. 6646 modified and expanded the rights and duties of the watchers, *viz*:

Sec. 12. *Official Watchers*. — Every registered political party, coalition of political parties, and every candidate shall each be entitled to one watcher in every polling place: Provided, That candidates for members of the *Sangguniang Panlalawigan, Sangguniang Panlungsod* or *Sangguniang Bayan* or for city or municipal councilors belonging to the same slate or ticket shall collectively be entitled only to one watcher.

There shall also be recognized two principal watchers, one representing the ruling coalition and the other the dominant opposition coalition, who shall sit as observers in the proceedings of the board. The principal watcher shall be designated on the basis of the recommendation of the ruling coalition, represented by the political party of the incumbent elected district representative, and of the dominant opposition coalition, represented by the political party which performed best or which polled at least ten percent (10%) of the votes in the last national election.

A duly signed appointment of a watcher shall entitle him to recognition by the board of election inspectors and the exercise of his rights and discharge of his duties as such: Provided, however, That only one watcher of each of those authorized to appoint them can stay at any time inside the polling place.

The watchers shall be permitted full and unimpeded access to the proceedings so that they can read the names of those written on the ballots being counted with unaided natural vision, consistent with good order in the polling place.

In addition to their rights and duties under Section 179 of Batas Pambansa Blg. 881, the two principal watchers representing the ruling coalition and the dominant opposition in a precinct shall, if available, affix their signatures and thumbmarks on the election returns for that precinct. If both or either of

Copy 4 and Copy 5[42] of the subject returns as appearing in the records of this case, and we note that the said returns are regular on their face save for one or, at most, two missing *taras* in each of the eight contested election returns.[43] We find it significant that in some of these returns (*i.e.*, those from Precinct Nos. 114A,[44] 55A[45] and 42A/43A),[46] while one *tara* is indeed missing in Copy 4, no such missing *tara* exists in Copy 5, although the supposed missing *tara* in Copy 4 is located very near the border, if not on the border, of the box in Copy 5 of the election returns. This suggests that in making the duplicate originals, the forms for Copies 2 to 7 of the election returns were not perfectly aligned with Copy 1 (*i.e.*, the MBC's copy), resulting in the misalignment of the *taras* in the carbon copies of the said returns. This may explain why there appears to be a missing *tara* in Copy 4 of these returns. It should also be noted that the number of votes in written figures and words is not disputed as they appear to be uniform in Copies 4 and 5 of the subject returns. The discrepancy is, thus, limited to the number of *taras vis-à-vis* the number of votes in written figures and words. In view

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them is not available, unwilling or should they refuse to do so, any watcher present, preferably with political affiliation or alignment compatible with that of the absent or unwilling watcher, may be required by the board of election inspectors to do so.

[42] Copy 5 (*i.e.*, copy of the dominant minority party) was submitted in evidence by petitioner before the MBC to controvert private respondent's claim that the subject returns were tampered.

[43] As stated earlier, petitioner endeavored to submit Copy 3 of the subject election returns while the instant petition was pending resolution before this Court. However, this Court is not a trier of facts, and we cannot receive such documentary evidence at this late stage in the proceedings. If it were petitioner's intention to show that Copy 3 of the subject returns did not contain missing *taras*, then petitioner should have done so in the proceedings before the COMELEC itself. At any rate, even if we were to assume that the Copy 3 belatedly submitted by petitioners before this Court is authentic, we note that these copies are substantially of the same import as Copy 5 of the subject returns appearing in the records of this case.

[44] Records, vol. I, p. 47 (Copy 4); vol. II p. 49 (Copy 5).

[45] *Id.* at 58 (Copy 4); *id.* at 54 (Copy 5).

[46] *Id.* at 78 (Copy 4); *id.* at 64 (Copy 5).

thereof and in the absence of clear and convincing proof, the evidence on record fails to establish the tampering or falsification of the subject returns. At most, there are minor discrepancies in Copies 4 and 5 of the subject returns consisting of one or two missing *taras*.

In case of discrepancy in the other authentic copies of an election return, the procedure in Section 236 of the Omnibus Election Code should be followed.

In *Patoray,* we ordered the COMELEC to proceed in accordance with Section 236 of the OEC after it was determined that there was a discrepancy between the *taras vis-à-vis* the written figures and words in the election return.[47] With the above finding that there are minor discrepancies in the other authentic copies of the subject returns, specifically Copies 4 and 5, the proper procedure then is not to exclude the said returns but to follow Section 236, *viz*:

> SECTION 236. *Discrepancies in election returns.* — In case it appears to the board of canvassers **that there exists discrepancies in the other authentic copies of the election returns from a polling place** or discrepancies in the votes of any candidate in words and figures in the same return, **and in either case the difference affects the results of the election**, the Commission, upon motion of the board of canvassers or any candidate affected and after due notice to all candidates concerned, shall proceed summarily to determine whether the integrity of the ballot box had been preserved, and once satisfied thereof shall order the opening of the ballot box to recount the votes cast in the polling place solely for the purpose of determining the true result of the count of votes of the candidates concerned. (Emphasis supplied)

The COMELEC should, thus, order the canvass of the election returns from Precinct Nos. 107A, 114A, 6A/6B, 55A, 67A/ 67B, 116A/116B, 130A and 42A/ 43A. After canvassing, it should determine whether the total number of missing *taras* will affect the result of the elections. If it will not affect the

[47] *Patoray v. Commission on Elections, supra* note 6 at 569.

result, the COMELEC should proclaim as winner the vice mayoralty candidate with the highest number of votes. On the other hand, if the total number of missing *taras* will affect the results of the election, the COMELEC, after due notice to all candidates concerned, should proceed summarily to determine whether the integrity of the ballot boxes (where the election returns with missing *tara/s* were tallied) have been preserved. Once satisfied therewith, the COMELEC should order the opening of the ballot boxes to recount the votes cast in the polling place solely for the purpose of determining the true result of the count of votes of the candidates concerned.[48] However, if the integrity of the ballots has been violated, the COMELEC need not recount the ballots but should seal the ballot box and order its safekeeping in accordance with Section 237 of the OEC, thus:

> Sec. 237. *When integrity of ballots is violated*. — If upon the opening of the ballot box as ordered by the Commission under Sections 234, 235 and 236, hereof, it should appear that there are evidence or signs of replacement, tampering or violation of the integrity of the ballots, the Commission shall not recount the ballots but shall forthwith seal the ballot box and order its safekeeping.

In sum, it was highly irregular for the COMELEC to outrightly exclude the subject returns resulting in the disenfranchisement of some 1,127 voters as per the records of this case.[49] The proper procedure in case of discrepancy in the other authentic copies of the election returns is clearly spelled out in Section 236 of the OEC. For contravening this legal provision, the COMELEC acted with grave abuse of discretion amounting to lack or excess of jurisdiction.

We end with some observations. Had there been sufficient evidence of tampering in this case, it would still be highly improper

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[48] See *Olondriz, Jr. v. Commission on Elections*, 371 Phil. 867, 872 (1999), where we upheld the decision of the COMELEC to open the ballot box pursuant to Section 236 of the OEC. The discrepancy between the written words *vis-à-vis* figures in the contested election return was 10 votes while the winning candidate won by a margin of 2 votes. Thus, it was necessary to open the ballot box to determine the true will of the electorate.

[49] Records, vol. I, pp. 44, 48, 52, 58, 56, 62, 74 and 78.

for the COMELEC to outrightly exclude the subject election returns. In such a case, the COMELEC should proceed in accordance with Section 235[50] of the OEC which is similar to Section 236 in that the COMELEC is authorized to open the ballot box as a measure of last resort. This has been our consistent ruling as early as in the 1995 case of *Patoray* followed by *Lee v. Commission on Elections*,[51] *Balindong v. Commission on Elections*,[52] *Dagloc v. Commission on*

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[50] Section 235. *When election returns appear to be tampered with or falsified.* — If the election returns submitted to the board of canvassers appear to be tampered with, altered or falsified after they have left the hands of the board of election inspectors, or otherwise not authentic, or were prepared by the board of election inspectors under duress, force, intimidation, or prepared by persons other than the member of the board of election inspectors, the board of canvassers shall use the other copies of said election returns and, if necessary, the copy inside the ballot box which upon previous authority given by the Commission may be retrieved in accordance with Section 220 hereof. If the other copies of the returns are likewise tampered with, altered, falsified, not authentic, prepared under duress, force, intimidation, or prepared by persons other than the members of the board of election inspectors, the board of canvassers or any candidate affected shall bring the matter to the attention of the Commission. The Commission shall then, after giving notice to all candidates concerned and after satisfying itself that nothing in the ballot box indicate that its identity and integrity have been violated, order the opening of the ballot box and, likewise after satisfying itself that the integrity of the ballots therein has been duly preserved shall order the board of election inspectors to recount the votes of the candidates affected and prepare a new return which shall then be used by the board of canvassers as basis of the canvass.

[51] 453 Phil. 277, 290 (2003). In *Lee*, we ruled:

The lack of merit of petitioner's arguments notwithstanding, the COMELEC, in ordering the exclusion of the questioned return, **should have determined the integrity of the ballot box,** the ballot-contents of which were tallied and reflected in the return, and if it was intact**, it should have ordered its opening for a recounting of the ballots if their integrity was similarly intact.** (Emphasis supplied)

[52] 459 Phil. 1055, 1070-1071 (2003). In *Balindong*, we stated:

[B]ased on Section 235 of the OEC which this Court elucidated on along with Section 236 in *Patoray v. COMELEC*, in cases where the election returns appear to have been tampered with, altered or falsified, the prescribed modality is for the COMELEC to examine the other copies of the questioned returns and if the other copies are likewise tampered with, altered, falsified, or otherwise spurious, after having given notice to all candidates and satisfied itself that

Elections,[53] and *Cambe v. Commission on Elections*.[54] It is quite disquieting, therefore, that despite these repeated pronouncements, the COMELEC persists in summarily excluding the election returns without undertaking the requisite steps to determine the true will of the electorate as provided in the pertinent provisions of the OEC. The paramount consideration has always been to protect the sanctity of the ballot; not to haphazardly disenfranchise voters, especially where, as here, the election is closely contested. The COMELEC's constitutional duty is to give effect to the will of the electorate; not to becloud their choice by defying the methods in the OEC designed to ascertain as far as practicable the true will of the sovereign

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the integrity of the ballot box and of the ballots therein have been duly preserved, to order a recount of the votes cast, prepare a new return which shall be used by the board of canvassers as basis for the canvass, and direct the proclamation of the winner accordingly.

The COMELEC failed to observe the foregoing procedure. As admitted in its Order dated December 13, 2001, it examined only the election returns used by the MBC, omitting to take a look at the other copies of the questioned returns or ordering a pre-proclamation recount of the votes of the candidates affected. **The failure to take either step renders the poll body's action consisting of the outright exclusion of the return for Precinct 80A and the award of 88 votes in the return for Precinct 47A/48A highly questionable.**

The precipitate exclusion from canvass of the return for Precinct 80A resulted in the unjustified disenfranchisement of the voters thereof. This could have been avoided had the COMELEC availed of the other courses of action mentioned in the law, namely: the examination of the other copies of the return and the recount of the votes by the BEI. (Emphasis supplied)

[53] 463 Phil. 263, 290-291 (2003). In *Dagloc*, we ruled:

Outright exclusion of election returns on the ground that they were fraudulently prepared by some members or non-members of the BEI disenfranchises the voters. Hence, when election returns are found to be spurious or falsified, Section 235 of the Omnibus Election Code provides the procedure which enables the COMELEC to ascertain the will of the electorate.

The COMELEC, therefore, gravely abused its discretion when it excluded outright the subject election returns after finding that they were fraudulent returns. Instead, the COMELEC should have followed the procedure laid down in Section 235 of the Omnibus Election Code: x x x (Emphasis supplied)

[54] G.R. No. 178456, January 30, 2008, 543 SCRA 157, 171-174. In *Cambe*, we reiterated:

people. Verily, the strength and stability of our democracy depends to a large extent on the faith and confidence of our people in the integrity of the electoral process where they participate as a particle of democracy. That is the polestar that should have guided the COMELEC's actions in this case.

WHEREFORE, the petition is *GRANTED*. The COMELEC *En Banc's* February 1, 2008 Resolution is *NULLIFIED*.

The COMELEC is *ORDERED* to raffle SPC No. 07-147 to one of its divisions which is directed to resolve the same with deliberate dispatch in accordance with this Decision by:

(1) Including the election returns from Precinct Nos. 90A/90B, 7A/7B and 208A in the canvassing of votes for the position of vice mayor of the Municipality of Dumangas, Iloilo;

(2) Proceeding in accordance with Section 236 of the Omnibus Election Code, as outlined in this Decision, with respect to the canvassing of the election returns from Precinct Nos. 107A, 114A, 6A/6B, 55A, 67A/67B, 116A/116B, 130A and 42A/43A for the position of vice mayor of the Municipality of Dumangas, Iloilo;

In the instant case, Election Return No. 9601666 cannot be considered as regular or authentic on its face inasmuch as the total votes cast for the vice-mayoralty position, which is 288, exceeded the total number of the voters who actually voted (230) and the total number of registered voters (285). The COMELEC therefore is clothed with ample authority to ascertain under the procedure outlined in the Omnibus Election Code (OEC) the merits of the petition to exclude Election Return No. 9601666.

Sections 235 and 236 of the OEC read: x x x

x x x x x x x x x

In the instant case, the MBC, without complying with Section 235 of the OEC, outrightly excluded Election Return No. 9601666. Worse, the COMELEC found nothing irregular in the procedure taken by the MBC. **The precipitate exclusion from the canvass of the return for Precincts 66A and 68 resulted in the unjustified disenfranchisement of the voters thereof.** (Emphasis supplied)

(3) Proclaiming the winning candidate for the position of vice mayor of the Municipality of Dumangas, Iloilo in the May 14, 2007 elections after the canvassing of the aforementioned election returns.

SO ORDERED.

Puno, C.J., Carpio, Corona, Carpio Morales, Velasco, Jr., Nachura, Leonardo-de Castro, Brion, Peralta, Bersamin, Abad, Villarama, Jr., Perez, and *Mendoza, JJ.*, concur.

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Lack of interest in pursuing case — Complainant's lack of interest in pursuing the case will not exonerate respondent from any administrative case. (Peña, Jr. *vs*. Regalado II, A.M. No. P-10-2772, Feb. 16, 2010) p. 447

AMPARO, WRIT OF

Application — Conduct of proper investigation on the enforced disappearance of the victim using extraordinary diligence is required. (Gen. Razon, Jr. *vs*. Tagitis, G.R. No. 182498, Feb. 16, 2010) p. 581.

— Evidentiary standard required is substantial evidence but flexibility must be observed where appropriate. *(Id.)*

— Failure to establish compliance with the standard of diligence required does not result in the automatic grant of the privilege of the Amparo writ. (Gen. Yano *vs*. Sanchez, G.R. No. 186640, Feb. 11, 2010) p. 262

— Provisional reliefs that the court may grant to protect the witnesses and the rights of all the parties before judicious determination of the petition, enumerated; purpose thereof. *(Id.)*

Requirement for issuance — Burden of proof and standard of diligence required. (Gen. Yano *vs.* Sanchez, G.R. No. 186640, Feb. 11, 2010) p. 262

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Petition for review under Rule 43 of the Rules of Court — The court or the administrative agency that rendered the judgment appealed from is not a party in the appeal. (Office of the Ombudsman *vs.* Sison, G.R. No. 185954, Feb. 16, 2010) p. 598

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Bank Secrecy Act of 1955 (R.A. No. 1405) — What constitutes the subject-matter of litigation to validly claim exclusion from the coverage of the confidentiality rule, explained and applied. (BSB Group, Inc. *vs.* Go, G.R. No. 168644, Feb. 16, 2010) p. 501

BILL OF RIGHTS

Due process — Discipline of members by a political party, not a due process issue. (Atienza, Jr. *vs.* COMELEC, G.R. No. 188920, Feb. 16, 2010) p. 654

— Disregarding a previous finding of lack of probable cause without a hearing is a violation thereof. (Cruz *vs.* Sandiganbayan, G.R. No. 174599, Feb. 12, 2010) p. 398

— Meant to protect ordinary citizens against arbitrary government action, but not from the acts committed by private individuals or entities. (Atienza, Jr. *vs.* COMELEC, G.R. No. 188920, Feb. 16, 2010) p. 654

BUY-BUST OPERATIONS

Prior surveillance — Not necessary where the police operatives are accompanied by their informant during the entrapment. (Aparis *vs.* People, G.R. No. 169195, Feb. 17, 2010) p. 681

CERTIORARI

Petition for — Allegations of fraud and irregularities in the conduct of a plebiscite cannot be the subject of the petition. (Navarro *vs*. Executive Sec. Ermita, G.R. No. 180050, Feb. 10, 2010) p. 23

— Intended for the correction of errors of jurisdiction only, or grave abuse of discretion amounting to lack or excess of jurisdiction. (Sy Tan *vs.* Sy Tiong Gue, G.R. No. 174570, Feb. 17, 2010) p. 764

— The court cannot proceed with a certiorari review in the absence of any allegation of jurisdictional error committed by the COMELEC. (Mayor Varias *vs*. COMELEC, G.R. No. 189078, Feb. 11, 2010) p. 292

CIVIL SERVICE

Appointment — Appointing authority is not authorized to revoke earlier appointments; rationale. (Obiasca *vs*. Basallote, G.R. No. 176707, Feb. 17, 2010) p. 775

— Becomes effective upon issuance by the appointing authority and remains effective until disapproved by the Civil Service Commission. *(Id.)*

— Non-compliance with the submission of requirements without the appointee's negligence will not prejudice him. (Obiasca *vs*. Basallote, G.R. No. 176707, Feb. 17, 2010) p. 775

CIVIL SERVICE COMMISSION

Powers — Civil Service Commission has the power to withdraw or revoke an appointment initially approved. (Obiasca *vs*. Basallote, G.R. No. 176707, Feb. 17, 2010) p. 775

COLLECTIVE BARGAINING AGREEMENT (CBA)

Nature — The agreement may be voided when the provisions therein are contrary to law, public morals or public policy. (PNCC Skyway Traffic Management and Security Division Worker's Organization [PSTMSDWO] *vs*. PNCC Skyway Corp., G.R. No. 171231, Feb. 17, 2010) p. 700

COMMISSION ON ELECTIONS (COMELEC)

Appreciation of ballots — When the COMELEC's reliance on the results of the ballots' revision constitutes grave abuse of discretion. (Mayor Varias *vs.* COMELEC, G.R. No. 189078, Feb. 11, 2010) p. 292

Factual findings of — Finality thereof, upheld. (Mayor Varias *vs*. COMELEC, G.R. No. 189078, Feb. 11, 2010; *Velasco, Jr., J., dissenting opinion*) p. 292

Grave abuse of discretion — When the COMELEC's determination and appreciation of evidence may not constitute grave abuse of discretion. (Mayor Varias *vs*. COMELEC, G.R. No. 189078, Feb. 11, 2010; *Velasco, Jr., J., dissenting opinion*) p. 292

Jurisdiction — COMELEC does not have jurisdiction over a purely membership issue. (Atienza, Jr. *vs*. COMELEC, G.R. No. 188920, Feb. 16, 2010) p. 654

— COMELEC has jurisdiction over an intra-party leadership dispute as an incident of its power to register political parties; rationale. *(Id.)*

Powers — Absent compelling proof to the contrary, the Court accords the COMELEC, which enjoys the presumption of good faith in the performance of its duties, the benefit of the doubt. (Roque, Jr. *vs*. COMELEC, G.R. No. 188456, Feb. 10, 2010) p. 75

— Exclusive supervision and control of the electoral process is lodged with the COMELEC, not on the service provider. *(Id.)*

— In the matter of administration of laws relative to the conduct of elections, the court must not by a preemptive move or any excessive zeal, take away from the COMELEC the initiative that by law pertains to it. *(Id.)*

COMMISSION ON SETTLEMENT OF LAND PROBLEMS (COSLAP)

Jurisdiction — Does not include a dispute between two parties concerning the right of way over private lands. (Machado *vs*. Gatdula, G.R. No. 156287, Feb. 16, 2010) p. 457

— Jurisdiction of the Commission on Settlement of Land Problems (COSLAP) under Executive Order No. 561, explained. *(Id.)*

COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (R.A. NO. 9165)

Buy-bust operation — Prior surveillance not necessary where the police operatives are accompanied by their informant during the entrapment. (Aparis *vs*. People, G.R. No. 169195, Feb. 17, 2010) p. 681

CONTRACTS

Principle of autonomy of contracts — Rule and exceptions. (PNCC Skyway Traffic Management and Security Division Worker's Organization [PSTMSDWO] *vs*. PNCC Skyway Corp., G.R. No. 171231, Feb. 17, 2010) p. 700

COURT PERSONNEL

Contributory negligence — Complainant's failure to follow up the remittance either in writing or through an authorized representative or to continue paying her monthly amortizations pending remittance amounts to contributory negligence. (*Re*: Complaint of Judge Rowena Nieves A. Tan for late remittance by the Supreme Court of her terminal leave pay to GSIS to apply for payment of her salary loan to said agency, A.M. No. 2007-02-SC, Feb. 10, 2010) p. 1

Delay in the deposit of judiciary collections and non-submission of monthly reports — Committed in case at bar; penalty after considering mitigating circumstances. (Report on the Financial Audit conducted on the books of account of the MCTC, Mondragon, San Roque, Northern Samar, A.M. No. P-09-2721, Feb. 16, 2010) p. 425

Dishonesty — Defined. (*Re*: Irregularity in the use of Bundy Clock by Sophia M. Castro, A.M. No. P-10-2763, Feb. 10, 2010) p. 16

— Proper penalty. *(Id.)*

Dishonesty and leaving the court premises without travel order — Proper penalty is suspension. (*Re*: Irregularity in the use of Bundy Clock by Sophia M. Castro, A.M. No. P-10-2763, Feb. 10, 2010) p. 16

Leaving the court premises without travel order — Constitutes a violation of Reasonable Office Rules and Procedures. (*Re*: Irregularity in the use of Bundy Clock by Sophia M. Castro, A.M. No. P-10-2763, Feb. 10, 2010) p. 16

Simple neglect of duty — Failure to discharge primary responsibility of scrutinizing all supporting documents in the journal entry, a case of. (*Re*: Complaint of Judge Rowena Nieves A. Tan for late remittance by the Supreme Court of her terminal leave pay to GSIS to apply for payment of her salary loan to said agency, A.M. No. 2007-02-SC, Feb. 10, 2010) p. 1

— Previous instances where a remittance voucher was erroneously forwarded should have placed subject employee on guard and not merely "assumed" that such "unfamiliar voucher" is a mere duplicate. *(Id.)*

COURTS

Jurisdiction — The determination of the right to be employed again and the existence of a new and separate contract that established that right is within the jurisdiction of the regular courts, not the labor arbiter. (Sorreda *vs*. Cambridge Electronics Corp., G.R. No. 172927, Feb. 11, 2010) p. 149

CRIMES

Complex crime — Concept thereof, explained; formal plurality and material plurality of crimes, distinguished. (Vda. de Carungcong *vs*. People, G.R. No. 181409, Feb. 11, 2010) p. 177

CRIMINAL LIABILITY

Accident — To exempt the accused from criminal liability on ground thereof, the act that causes the injury must be lawful. (People *vs.* Dela Cruz, G.R. No. 187683, Feb. 11, 2010) p. 280

DAMAGES

Actual and compensatory damages — Must be substantiated by documentary evidence. (Philippine Hawk Corp. *vs*. Tan Lee, G.R. No. 166869, Feb. 16, 2010) p. 483

Civil indemnity — Awarded for the death of a husband. (Philippine Hawk Corp. *vs*. Tan Lee, G.R. No. 166869, Feb. 16, 2010) p. 483

Indemnity for loss of earning capacity — Formula for computation. (Philippine Hawk Corp. *vs*. Tan Lee, G.R. No. 166869, Feb. 16, 2010) p. 483

— How proved. *(Id.)*

Moral damages — Award thereof for the death of a husband and for physical injuries sustained by a party, upheld. (Philippine Hawk Corp. *vs.* Tan Lee, G.R. No. 166869, Feb. 16, 2010) p. 483

Temperate damages — Awarded in the absence of proof of actual damages. (Philippine Hawk Corp. *vs*. Tan Lee, G.R. No. 166869, Feb. 16, 2010) p. 483

DANGEROUS DRUGS

Illegal sale of shabu — Elements. (Aparis *vs*. People, G.R. No. 169195, Feb. 17, 2010) p. 681

DENIAL AND FRAME-UP

Defenses of — Viewed by the court with disfavor, as these can easily be concocted. (Aparis *vs*. People, G.R. No. 169195, Feb. 17, 2010) p. 681

DUE PROCESS

Administrative due process — Inapplicable to affairs of political parties. (Atienza, Jr. *vs*. COMELEC, G.R. No. 188920, Feb. 16, 2010) p. 654

Essence of — Essence is found in the reasonable opportunity to be heard and to submit one's evidence in support of his defense. (Eland Phils., Inc. *vs*. Garcia, G.R. No. 173289, Feb. 17, 2010) p. 735

ELECTIONS

Automated election system — A possible breach of a contractual stipulation is not a legal reason to prematurely annul the contract. (Roque, Jr. *vs*. COMELEC, G.R. No. 188456, Feb. 10, 2010) p. 75

— Award of the automation contract to the TIM-Smartmatic joint venture was not tainted with grave abuse of discretion. *(Id.)*

— Subcontracting of a portion of the automation project does not constitute grave abuse of discretion so as to nullify the contract award. *(Id.)*

Certificate of votes — When admitted as evidence of tampering. (Doromal *vs*. Biron, G.R. No. 181809, Feb. 17, 2010) p. 823

Election contests — A clear showing of the protestant's victory and protestee's defeat is an essential requisite in an election contest decision. (Dangan-Corral *vs*. COMELEC, G.R. No. 190156, Feb. 12, 2010) p. 414

— Circumstances showing a pattern of post-election ballot tampering. (Mayor Varias *vs*. COMELEC, G.R. No. 189078, Feb. 11, 2010) p. 292

— Direct proof of ballot tampering is not always required. *(Id.)*

Election contests for barangay offices — The requirement as to the contents of the decision in an election contest is mandatory. (Dangan-Corral *vs*. COMELEC, G.R. No. 190156, Feb. 12, 2010) p. 414

Election returns — Discrepancies in election returns; remedy. (Doromal *vs*. Biron, G.R. No. 181809, Feb. 17, 2010) p. 823

— Exclusion thereof on the ground of tampering must be approached with extreme caution and only upon convincing proof. *(Id.)*

— When election returns appear to be tampered with; remedy. *(Id.)*

Party-list system — A nominee must be a bona fide member of the party or organization which he seeks to represent; interpretation of the meaning thereof lies with the House of Representatives Electoral Tribunal. (Abayon *vs*. HRET, G.R. No. 189466, Feb. 11, 2010) p. 346

— The Comelec's jurisdiction over an election contest relating to the qualifications of the party list nominees ends once the same took their oath and assumed office as members of the House of Representatives. *(Id.)*

— The party-list representatives are elected into office and become members of the House of Representatives, not the party-list organization. *(Id.)*

— Vote cast in a party-list election is a vote for the party's nominees who will sit in the House of Representatives. *(id.)*

Pre-proclamation controversy — Raising the issue of ballot tampering only after the revision of the ballots is not fatal. (Mayor Varias *vs*. COMELEC, G.R. No. 189078, Feb. 11, 2010) p. 292

— The compromised ballots cannot be the valid subjects of revision in an electoral contest. *(Id.)*

EMPLOYEES' COMPENSATION

Compensability — Causal relationship between the illness and the working conditions must be proved by substantial evidence when the sickness is not listed as an occupational disease. (GSIS *vs*. Bernadas, G.R. No. 164731, Feb. 11, 2010) p. 122

— Claimant must prove that the risk of contracting the disease was increased by the working conditions. *(Id.)*

— Conditions for sickness to be compensable. *(Id.)*

EMPLOYMENT, TERMINATION OF

Dismissal of employees — Failure to observe procedural due process does not invalidate the dismissal but makes the employer liable for nominal damages; award of nominal damages, reduced. (Ancheta *vs*. Destiny Financial Plans, Inc., G.R. No. 179702, Feb. 16, 2010) p. 550

— Loss of confidence as a ground for dismissal, explained. *(Id.)*

— Required proof in the dismissal of managerial personnel and rank-and-file employees based on loss of confidence, distinguished. *(Id.)*

Loss of trust and confidence as a ground — To be a ground for dismissal, the law requires only that there be at least some basis to justify the dismissal. (Phil. Journalists, Inc. *vs*. NLRC, G.R. No. 187120, Feb. 16, 2010) p. 614

Management rights — Includes dismissal of managerial employees. (Ancheta *vs*. Destiny Financial Plans, Inc., G.R. No. 179702, Feb. 16, 2010) p. 550

ESTAFA

Commission of — Elements of estafa under Article 315 (3)(a) of the Revised Penal Code. (Vda. de Carungcong *vs*. People, G.R. No. 181409, Feb. 11, 2010) p. 177

ESTAFA THROUGH FALSIFICATION OF PUBLIC DOCUMENTS

Commission of — Crime of falsification was committed prior to the consummation of the crime of estafa; damage to another is caused by the commission of estafa, not by the falsification of the document. (Vda. de Carungcong *vs*. People, G.R. No. 181409, Feb. 11, 2010) p. 177

— Damage or prejudice to the offended party was caused not by the falsification but by the subsequent use of the falsified document. *(Id.)*

ESTOPPEL

Doctrine of — Generally does not confer jurisdiction. (Machado *vs*. Gatdula, G.R. No. 156287, Feb. 16, 2010) p. 457

EVIDENCE

Circumstantial evidence — When not sufficient for conviction. (People *vs*. Poras, G.R. No. 177747, Feb. 16, 2010) p. 526

Documentary and testimonial evidence — When considered incompetent and irrelevant. (BSB Group, Inc. *vs*. Go, G.R. No. 168644, Feb. 16, 2010) p. 501

Handwriting expert — NBI report is not conclusive to indicate ballot tampering. (Mayor Varias *vs*. COMELEC, G.R. No. 189078, Feb. 11, 2010; Velasco, Jr., J., dissenting opinion) p. 292

— NBI report on the possibility of ballot tampering, given weight and credence. *(Id.)*

Motive — Claim of ill motive can be overcome by categorical and convincing testimonies of witnesses if supported by physical evidence. (Aparis *vs*. People, G.R. No. 169195, Feb. 17, 2010) p. 681

Weight and sufficiency — Required degree of evidence in civil cases. (Reyes *vs*. Century Canning Corp., G.R. No. 165377, Feb. 16, 2010) p. 470

EXPROPRIATION

Just compensation — Taking of property without just compensation entitles the owner to damages. (City of Iloilo *vs*. Hon. Contreras-Besana, G.R. No. 168967, Feb. 12, 2010) p. 375

— The reckoning date for the determination of just compensation should be the date of the filing of the complaint. *(Id.)*

— When the owner of the expropriated property slept on his right, he cannot recover possession but he is entitled to just compensation. *(Id.)*

FORCIBLE ENTRY

Prior physical possession — When proven. (Lagazo *vs*. Soriano, G.R. No. 170864, Feb. 16, 2010) p. 518

HOUSE OF REPRESENTATIVES ELECTORAL TRIBUNAL (HRET)

Jurisdiction — HRET has jurisdiction to hear and pass upon the qualifications of the party-list nominees. (Abayon *vs*. HRET, G.R. No. 189466, Feb. 11, 2010) p. 346

INTERVENTION

Motion for intervention — Defined; allowance or disallowance of a motion to intervene is addressed to the sound discretion of the court. (Office of the Ombudsman *vs*. Sison, G.R. No. 185954, Feb. 16, 2010) p. 598

— Not permitted after a decision has already been rendered. *(Id.)*

— Requisites. *(Id.)*

— When allowed. (Phil. Coconut Producers Federation, Inc. [COCOFED] *vs*. Rep. of the Phils., G.R. No. 177857, Feb. 11, 2010) p. 157

JUDGES

Duties — To devise an efficient recording and filing system in his court. (Judge Español *vs*. Judge Toledo-Mupas, A.M. No. MTJ-03-1462, Feb. 11, 2010) p. 110

Gross ignorance of the law — Dismissal from service is proper where a judge was found guilty of several counts of gross ignorance of the law and for committing other serious offenses. (Judge Español *vs*. Judge Toledo-Mupas, A.M. No. MTJ-03-1462, Feb. 11, 2010) p. 110

Gross inefficiency — Failure to act on the motions for execution of decided cases for a considerably long time, a case of. (Judge Español *vs*. Judge Toledo-Mupas, A.M. No. MTJ-03-1462, Feb. 11, 2010) p. 110

— Failure to promptly decide cases, a case of. *(Id.)*

Gross misconduct and conduct prejudicial to the best interest of the service — Failure of the judge to forward to the Office of the Provincial Prosecutor the cases which she dismissed after preliminary investigation, which omission remained uncorrected for several years, a case of. (Judge Español *vs*. Judge Toledo-Mupas, A.M. No. MTJ-03-1462, Feb. 11, 2010) p. 110

Judicial conduct — Tenacious adherence to a wrong procedure made the judge unfit to discharge his judicial office. (Judge Español *vs*. Judge Toledo-Mupas, A.M. No. MTJ-03-1462, Feb. 11, 2010) p. 110

— The magnitude of the transgressions committed by the judge casts a heavy shadow on her moral, intellectual and attitudinal competence and rendered her unfit to perform the functions of a magistrate. *(Id.)*

Undue delay in rendering a decision or order — Classified as a less serious charge. (Request of Judge Batingana, RTC, Br. 6, Mati, Davao Oriental for Extension of Time to Decide Civil Cases Nos. 2063 & 1756, A.M. No. 05-8-463-RTC, Feb. 17, 2010) p. 674

JUDGMENTS

Conclusiveness of judgment — Doctrine, applied. (Cruz vs. Sandiganbayan, G.R. No. 174599, Feb. 12, 2010) p. 398

Summary judgment — Cannot take the place of trial when the facts as pleaded by the parties are disputed or contested. (Eland Phils., Inc. *vs*. Garcia, G.R. No. 173289, Feb. 17, 2010) p. 735

— When proper; exception. *(Id.)*

JUDICIAL DEPARTMENT

Judicial review — Court may declare a law or portions thereof unconstitutional where the petitioner has shown that there is a clear and unequivocal breach of the Constitution, not merely a doubtful or argumentative one; R.A. No. 9355 not violative of the Constitution. (Navarro *vs*.

Executive Sec. Ermita, G.R. No. 180050, Feb. 10, 2010; *Nachura, J., dissenting opinion*) p. 23

— Judicial interference is unnecessary absent a genuine constitutional issue. *(Id.)*

LABOR ARBITER

Jurisdiction — Labor Arbiter takes cognizance of a case and awards damages only when the claim for damages arises out of an employer-employee relationship. (Sorreda *vs.* Cambridge Electronics Corp., G.R. No. 172927, Feb. 11, 2010) p. 149

LABOR RELATIONS

Employment — An absolute and unqualified employment for life in the mold of the employee's concept of perpetual employment is contrary to public policy and good customs; reasons. (Sorreda *vs*. Cambridge Electronics Corp., G.R. No. 172927, Feb. 11, 2010) p. 149

— Forcing the employer to enter into a permanent employment with the employee is contrary to the management's prerogative to choose its employees. *(Id.)*

LAND REGISTRATION

Decree of registration — Review thereof, when allowed. (Eland Phils., Inc. *vs.* Garcia, G.R. No. 173289, Feb. 17, 2010) p. 735

Quieting of title — Requisites. (Eland Phils., Inc. *vs*. Garcia, G.R. No. 173289, Feb. 17, 2010) p. 735

LEGAL FEES

Collection of — When may be waived by the court. (*Re*: Petition for recognition of the exemption of the GSIS from payment of legal fees, A.M. No. 08-2-01-0, Feb. 11, 2010) p. 93

Docket fees — Payment thereof within the prescribed period is mandatory for the perfection of an appeal. (*Re*: Petition for recognition of the exemption of the GSIS from payment of legal fees, A.M. No. 08-2-01-0, Feb. 11, 2010) p. 93

Payment of — Does not take away the capacity of the Government Service Insurance System to sue but it simply operates as a means by which that capacity may be implemented. (*Re*: Petition for recognition of the exemption of the GSIS from payment of legal fees, A.M. No. 08-2-01-0, Feb. 11, 2010) p. 93

— Legislative grant to government-owned or controlled corporations and local government units of exemption from the payment of legal fees impairs the court's guaranteed fiscal autonomy and erodes its independence. (*Re*: Petition for recognition of the exemption of the GSIS from payment of legal fees, A.M. No. 08-2-01-0, Feb. 11, 2010) p. 93

— Rule on legal fees does not create or take away a right but regulates the procedure of exercising a right of action and enforcing a cause of action. *(Id.)*

— Rule on payment of legal fees cannot be validly annulled, changed or modified by Congress. *(Id.)*

LOCAL GOVERNMENT CODE (R.A. NO. 7160)

Creation of province — A province composed of a group of islands is exempt from the contiguity and land area components of the territorial requirement for its creation. (Navarro *vs*. Executive Sec. Ermita, G.R. No. 180050, Feb. 10, 2010; *Nachura, J., dissenting opinion*) p. 23

— Economic viability is the primordial consideration in the Constitution of provinces, not population or territory; rationale. *(Id.)*

— Exemption in paragraph B of Section 461 of the Local Government Code refers to component requirements of contiguity and land area, not merely to contiguity requirement. *(Id.)*

— For as long as there is compliance with the income requirement, the land area and population requirements may be overridden by the established economic viability of the proposed province. *(Id.)*

— Income and territorial requirements complied with in the creation of the province of Dinagat Islands; the contiguity and land area requirements cannot be considered separate and distinct from each other. *(Id.)*

— Provision in the Implementing Rules and Regulations which adds an exemption in the criteria prescribed by the Local Government Code in the creation of a province as regards the land area requirement, declared null and void. *(Id.)*

— Requisites. *(Id.)*

— Territorial contiguity requirement and land area criterion, construed. *(Id.)*

— The province of Dinagat Islands is exempt from complying with the component requirements of contiguity and land area; reason. *(Id.)*

— The provision in Article 9(2) of the Implementing Rules and Regulations exempting a proposed province composed of one or more islands from the land-area requirement cannot be considered an executive construction of the criteria prescribed by the Local Government Code. *(Id.)*

— The provision in Section 2, Article 9 of the Rules and Regulations Implementing the Local Government Code of 1991 stating that "(t)he land area requirement shall not apply where the proposed province is composed of one (1) or more islands," declared null and void. *(Id.)*

Gerrymandering — Defined; creation of the province of Dinagat Islands is not an act of gerrymandering. *(Id.)*

Permanent vacancies in the Sanggunian — Rule of succession; rationale; conditions for applicability thereof. (Atty. Damasen *vs*. Tumamao, G.R. No. 173165, Feb. 17, 2010) p. 719

MOOT AND ACADEMIC CASES

Application — Even in cases where supervening events have made the cases moot, the Supreme Court will not hesitate to resolve the legal, or constitutional issues raised to

formulate controlling principles to guide the bench, the bar, and the public. (Funa *vs*. Exec. Sec. Ermita, G.R. No. 184740, Feb. 11, 2010) p. 218

MORAL DAMAGES

Award of — For the death of a husband and for physical injuries sustained by a party, upheld. (Philippine Hawk Corp. *vs*. Tan Lee, G.R. No. 166869, Feb. 16, 2010) p. 483

MURDER

Commission of — Elements. (People *vs*. Dela Cruz, G.R. No. 188353, Feb. 16, 2010) p. 631

PARRICIDE

Commission of — Elements. (People *vs*. Dela Cruz, G.R. No. 187683, Feb. 11, 2010) p. 280

— Imposable penalty. *(Id.)*

PARTIES TO CIVIL ACTIONS

Indispensable party — The Liberal Party is not an indispensable party in case at bar as no wrong had been imputed to it nor had some affirmative relief been sought from it. (Atienza, Jr. *vs*. COMELEC, G.R. No. 188920, Feb. 16, 2010) p. 654

PERSONS EXEMPT FROM CRIMINAL LIABILITY

Absolutory cause — Article 332 of the Revised Penal Code cannot be availed of when any of the crimes mentioned therein is complexed with another crime. (Vda. de Carungcong *vs*. People, G.R. No. 181409, Feb. 11, 2010) p. 177

— Article 332 of the Revised Penal Code, construed; complex crime of estafa through falsification of public documents is not covered by the waiver. *(Id.)*

— Article 332 of the Revised Penal Code does not apply when the violation of the right to property is achieved through a breach of the public interest in the integrity and presumed authenticity of public documents. *(Id.)*

— Article 332 of the Revised Penal Code limits the responsibility of the offender to civil liability and frees

him from criminal liability by virtue of his relationship to the offended party. *(Id.)*

— Offender is removed from the protective mantle thereof when he resorts to an act that breaches public interest in the integrity of public documents as a means to violate the property rights of a family member. *(Id.)*

— Relationship by affinity created between the surviving spouse and the blood relatives of the deceased spouse survives the death of either party to the marriage; continuing affinity view adopted in our jurisdiction. *(Id.)*

— Terminated affinity view distinguished from continuing affinity view. *(Id.)*

PLEADINGS

Verification — Non-compliance therewith does not necessarily render the petition defective. (PNCC Skyway Traffic Management and Security Division Workers Organization [PSTMSDWO] *vs*. PNCC Skyway Corp., G.R. No. 171231, Feb. 17, 2010) p. 700

POLITICAL PARTIES

Membership — Discretion of accepting members to a political party is a right and a privilege, a purely internal matter, which the court cannot meddle in. (Atty. Damasen *vs*. Tumamao, G.R. No. 173165, Feb. 17, 2010) p. 719

PRESIDENTIAL COMMISSION ON GOOD GOVERNMENT (PCGG)

Jurisdiction — Absent a clear showing of grave abuse of discretion, the decision of the government through the PCGG must be respected. (Phil. Coconut Producers Federation, Inc. [COCOFED] *vs*. Rep. of the Phils., G.R. No. 177857, Feb. 11, 2010) p. 157

— Control over all matters pertaining to the disposition of government property, particularly the sequestered assets under the administration of the PCGG, belongs to the executive branch. *(Id.)*

— Loss of the voting rights does not affect the PCGG's function to recover ill-gotten wealth or prevent dissipation of sequestered assets. *(Id.)*

— Need not obtain the consent or acquiescence of the owner of the sequestered assets with respect to any of its acts intended to preserve the same. *(Id.)*

— PCGG has discretion to decide on where to deposit on escrow the net dividend earnings of and/or redemption proceeds from Series 1 preferred shares of San Miguel Corporation. *(Id.)*

— The court is not empowered to review and go into the wisdom of the policy decision or choices of the PCGG and other executive agencies of the government. *(Id.)*

PROPERTY

Ownership — Actual possessor under claim of ownership enjoys the presumption of ownership. (Palali *vs*. Awisan, G.R. No. 158385, Feb. 12, 2010) p. 357

— One who has no right to the property being transferred, has transferred no better right to his transferees. *(Id.)*

— One who was able to prove actual physical possession coupled with a tax declaration has a better claim or title to the property. *(Id.)*

— Tax declaration without proof of actual possession does not prove ownership. *(Id.)*

PUBLIC OFFICE

Appointment — Distinguished from designation. (Funa *vs*. Exec. Sec. Ermita, G.R. No. 184740, Feb. 11, 2010) p. 218

Dual or multiple offices — A de facto officer need not show that she was elected or appointed in its strict sense, for a showing of a color of right to the office suffices. (Funa *vs*. Exec. Sec. Ermita, G.R. No. 184740, Feb. 11, 2010; Carpio Morales, J., concurring opinion) p. 218

— Civil liberties rule distinguished from public interest center rule; implications thereof. *(Id.)*

— De facto doctrine; explained. *(Id.)*

— Disqualification imposed upon the President and his official family is absolute. *(Id.)*

— Prohibition against holding thereof is not applicable to posts occupied by the executive officials specified therein, without additional compensation in an ex-officio capacity, as provided by law and as required by the primary functions of said office; rationale. *(Id.)*

— Prohibition against holding thereof refers to the holding of office and not to the nature of the appointment or designation; term "to hold an office," construed. *(Id.)*

— Rationale behind the prohibition against holding of multiple positions in the government. *(Id.)*

— Rule of *ipso facto* vacancy of a public office by acceptance of a second public office does not apply where, under applicable law, the holder of the public office is rendered ineligible for a specified time for a second public office. *(Id.)*

QUALIFIED THEFT

Commission of — Difference between cash and check in relation to the offense of estafa by conversion and theft of cash, explained. (BSB Group, Inc. *vs*. Go, G.R. No. 168644, Feb. 16, 2010) p. 501

— The allegation of theft of money necessitates the presentation of evidence that tends to prove the unlawful taking of money belonging to another. *(Id.)*

QUALIFYING CIRCUMSTANCES

Treachery — Elements. (People *vs*. Dela Cruz, G.R. No. 188353, Feb. 16, 2010) p. 631

QUASI-DELICTS

Diligence of a good father of a family — Employer's liability for failure to exercise the diligence of a good father of the family in the selection and supervision of its employees. (Philippine Hawk Corp. *vs*. Tan Lee, G.R. No. 166869, Feb. 16, 2010) p. 483

Foreseeability test — Applied to determine the existence of negligence. (Philippine Hawk Corp. *vs*. Tan Lee, G.R. No. 166869, Feb. 16, 2010) p. 483

RAPE

Commission of — Although alleged to have been drugged, it is unusual for a 13-year old victim not to feel the pain and sensation reasonably expected from insertion of a penis into her vagina. (People *vs*. Poras, G.R. No. 177747, Feb. 16, 2010) p. 526

— The fact that the victim's panty was lowered to her knees makes penile penetration extremely difficult. *(Id.)*

— Vaginal pain is not an element of consummated rape. *(Id.)*

Prosecution of rape cases — Guiding principles. (People *vs*. Mendoza, G.R. No. 188669, Feb. 16, 2010) p. 645

REAL ESTATE MORTGAGE LAW (ACT NO. 3135)

Extrajudicial foreclosure of mortgage — Grant of writ of possession cannot be opposed in an ex parte proceeding; remedy of mortgagors. (Cua Lai Chu *vs*. Judge Laqui, G.R. No. 169190, Feb. 11, 2010) p. 127

— Issuance of writ of possession, not a judgment on the merits. *(Id.)*

— Purchaser acquires an absolute right to the writ of possession when the mortgagor failed to redeem the property within the period prescribed by law. *(Id.)*

— Purchaser's right of possession is not affected by a pending case questioning the validity of the foreclosure proceeding. *(Id.)*

— Question on the validity of extrajudicial foreclosure is not a justification for opposing the issuance of a writ of possession. *(Id.)*

— Writ of possession issues as a matter of course once the requirements are fulfilled. *(Id.)*

Mortgagee bank — Circumstances negating the bank's claim as an innocent mortgagee. (PNB *vs*. Corpuz, G.R. No. 180945, Feb. 12, 2010) p. 410

— Expected to be more cautious in dealing with lands as security for the mortgage before approving loans. *(Id.)*

RECONSTITUTION OF TITLE

Republic Act No. 26 — Reconstitution of title cannot be ordered without proof that such title had once existed. (Rep. of the Phils. vs. Catarroja, G.R. No. 171774, Feb. 12, 2010) p. 389

— What needs to be shown before an order for reconstitution may be issued, discussed. *(Id.)*

SALES

Contract of sale — Absent substantial or material breach, the rescission of contract is not allowed. (Movido *vs*. Pastor, G.R. No. 172279, Feb. 11, 2010) p. 138

— Right to rescind the contract cannot be invoked by one who is guilty of breach thereof. *(Id.)*

— The appellate court's application of a reduced price, in the absence of a survey, constitutes undue infringement on the parties' liberty to contract. *(Id.)*

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Issuance of — Exclusively vested in the trial judges in the exercise of their judicial functions. (Sy Tan *vs*. Sy Tiong Gue, G.R. No. 174570, Feb. 17, 2010) p. 764

— Requisites. *(Id.)*

SETTLEMENT OF ESTATE OF A DECEASED PERSON

Inventory of properties of the decedent — Properties alleged to have been donated by the decedent to any heir should not be excluded therefrom. (Gregorio *vs*. Atty. Madarang, G.R. No. 185226, Feb. 11, 2010) p. 255

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Conduct prejudicial to the best interest of the service — Failure to comply with the proper procedure in enforcing writs of execution, a case of. (Peña, Jr. *vs*. Regalado II, A.M. No. P-10-2772, Feb. 16, 2010) p. 447

Duties — Sheriffs should not retain the money in his possession beyond the day when the payment was made. (Peña, Jr. *vs*. Regalado II, A.M. No. P-10-2772, Feb. 16, 2010) p. 447

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— Intent of the law is determined from the literal language of the law within the law's four corners. *(Id.)*

SUMMARY JUDGMENT

Application — Cannot take the place of trial when the facts as pleaded by the parties are disputed or contested. (Eland Phils., Inc. *vs.* Garcia, G.R. No. 173289, Feb. 17, 2010) p. 735

— When proper; any action can be the subject of a summary judgment; exception. *(Id.)*

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Service of — Absent valid service of summons, the court can still acquire jurisdiction over the person of the defendant

by virtue of the latter's voluntary appearance; exception. (Rapid City Realty and Dev't. Corp. *vs*. Paez-Villa, G.R. No. 184197, Feb. 11, 2010) p. 211

— Concept of conditional appearance, explained. *(Id.)*

— Parties deemed to have acquiesced to the jurisdiction of the court where they failed to allege that their filing of the motion was a special appearance to question the court's jurisdiction over their persons. *(Id.)*

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— Testimonies of the prosecution witnesses did not establish guilt of the accused beyond reasonable doubt; explanation why there was a two-day delay in reporting the rape incident, not shown. (People *vs*. Poras, G.R. No. 177747, Feb. 16, 2010) p. 526

— Testimonies of witnesses need only to corroborate one another on material details surrounding the actual commission of the crime. (Aparis *vs*. People, G.R. No. 169195, Feb. 17, 2010) p. 681

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