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FROM

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REPORT OF CASES

DETERMINED IN THE

SUPREME COURT OF THE PHILIPPINES

SECOND DIVISION

[G.R. No. 166579. February 18, 2010]

JORDAN CHAN PAZ, *petitioner, vs.* **JEANICE PAVON PAZ,** *respondent.*

SYLLABUS

1. CIVIL LAW; FAMILY CODE; VOID MARRIAGES; NULLITY OF MARRIAGE ON THE GROUND OF PSYCHOLOGICAL INCAPACITY; PSYCHOLOGICAL INCAPACITY; CHARACTERISTICS. — Jeanice's petition for declaration of nullity of marriage is anchored on Article 36 of the Family Code x x x. In *Santos v. Court of Appeals*, the Court first declared that psychological incapacity must be characterized by (a) gravity; (b) judicial antecedence; and (c) incurability. It must be confined "to the most serious cases of personality disorders clearly demonstrative of an utter insensitivity or inability to give meaning and significance to the marriage." In *Dimayuga-Laurena v. Court of Appeals*, the Court explained: "(a) Gravity – It must be grave and serious such that the party would be incapable of carrying out the ordinary duties required in a marriage; (b) Judicial Antecedence – It must be rooted in the history of the party antedating the marriage, although the overt manifestations may emerge only after the marriage; and (c) Incurability – It must be incurable, or even if it were otherwise, the cure would be beyond the means of the party involved."

2. ID.; ID.; ID.; ID.; ID.; MUST BE PROVED THROUGH INDEPENDENT EVIDENCE ADDUCED BY THE PERSON ALLEGING THE DISORDER. — Although there is no requirement that a party to be declared psychologically incapacitated should be personally examined by a physician or a psychologist, there is nevertheless a need to prove the psychological incapacity through independent evidence adduced by the person alleging said disorder. Correspondingly, the presentation of expert proof presupposes a thorough and in-depth assessment of the parties by the psychologist or expert, for a conclusive diagnosis of a grave, severe and incurable presence of psychological incapacity.

3. ID.; ID.; ID.; ID.; ID.; IRRECONCILABLE DIFFERENCES AND CONFLICTING PERSONALITIES, NOT A CASE OF. — What the law requires to render a marriage void on the ground of psychological incapacity is downright incapacity, not refusal or neglect or difficulty, much less ill will. The mere showing of "irreconcilable differences" and "conflicting personalities" does not constitute psychological incapacity. In *Perez-Ferraris v. Ferraris*, we said: "As all people may have certain quirks and idiosyncrasies, or isolated characteristics associated with certain personality disorders, there is hardly a doubt that the intendment of the law has been to confine the meaning of "psychological incapacity" to the most serious cases of personality disorders clearly demonstrative of an utter insensitivity or inability to give meaning and significance to marriage."

APPEARANCES OF COUNSEL

Morales Rojas & Risos-Vidal for petitioner.
Rodrigo D. Sta. Ana for respondent.

D E C I S I O N

CARPIO, *J.*:

The Case

This is a petition for review[1] of the 9 August 2004[2] and 26 November 2004[3] Resolutions of the Court of Appeals in CA-G.R. CV No. 80473. In its 9 August 2004 Resolution, the Court of Appeals dismissed petitioner Jordan Chan Paz's (Jordan) appeal of the 13 May 2003 Decision[4] of the Regional Trial Court of Pasig City, Branch 69 (trial court), which granted respondent Jeanice Pavon Paz's (Jeanice) petition for declaration of nullity of marriage. In its 26 November 2004 Resolution, the Court of Appeals denied Jordan's motion for reconsideration.

The Facts

Jordan and Jeanice met sometime in November 1996. Jeanice was only 19 years old while Jordan was 27 years old. In January 1997, they became a couple and, on 10 May 1997, they were formally engaged. They had their civil wedding on 3 July 1997, and their church wedding on 21 September 1997. They have one son, Evan Gaubert, who was born on 12 February 1998. After a big fight, Jeanice left their conjugal home on 23 February 1999.

On 15 September 1999, Jeanice filed a petition for declaration of nullity of marriage against Jordan. Jeanice alleged that Jordan was psychologically incapable of assuming the essential obligations of marriage. According to Jeanice, Jordan's psychological incapacity was manifested by his uncontrollable tendency to be self-preoccupied and self-indulgent, as well as his predisposition

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

[2] *Rollo*, pp. 35-38. Penned by Associate Justice Danilo B. Pine, with Associate Justices Jose L. Sabio, Jr. and Noel G. Tijam, concurring.

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

[4] *Id.* at 103-114. Penned by Judge Lorifel Lacap Pahimna.

to become violent and abusive whenever his whims and caprices were not satisfied.

Jeanice alleged that Jordan had a tendency to lie about his whereabouts and had the habit of hanging out and spending a great deal of time with his friends. Since Jordan worked in their family business, Jordan would allegedly just stay home, tinker with the Play Station, and ask Jeanice to lie to his brothers about his whereabouts. Jeanice further alleged that Jordan was heavily dependent on and attached to his mother. After giving birth to their son, Jeanice noticed that Jordan resented their son and spent more time with his friends rather than help her take care of their son. Jordan also demanded from his mother a steady supply of milk and diapers for their son.

At the early stage of their marriage, Jeanice said they had petty fights but that the quarrels turned for the worse and Jordan became increasingly violent toward her. At one point, Jordan threatened to hurt her with a pair of scissors. Jeanice also alleged that on 22 February 1999, Jordan subjected her to verbal lashing and insults and threatened to hit her with a golf club. Jeanice added that Jordan has not provided any financial support or visited their son since she left their conjugal home.

Psychologist Cristina R. Gates (Gates) testified that Jordan was afflicted with "Borderline Personality Disorder as manifested in his impulsive behavior, delinquency and instability."[5] Gates concluded that Jordan's psychological maladies antedate their marriage and are rooted in his family background. Gates added that with no indication of reformation, Jordan's personality disorder appears to be grave and incorrigible.

Jordan denied Jeanice's allegations. Jordan asserted that Jeanice exaggerated her statements against him. Jordan said that Jeanice has her own personal insecurities and that her actions showed her lack of maturity, childishness and emotional inability to cope with the struggles and challenges of maintaining a married life.

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[5] Records, p. 123.

Jordan also objected to the psychological report offered by Jeanice. Jordan pointed out that he was not subjected to any interview or psychological tests by Gates. Jordan argued that Gates' conclusions were mere speculations, conjectures and suppositions from the information supplied by Jeanice. Jordan alleged that it was patently one-sided and is not admissible in evidence as it was based on hearsay statements of Jeanice which were obviously self-serving. Jordan said he wants Jeanice back and prayed for the dismissal of the petition.

The Ruling of the Trial Court

On 13 May 2003, the trial court granted Jeanice's petition. The trial court declared that Jordan's psychological incapacity, which was specifically identified as "Borderline Personality Disorder," deprived him of the capacity to fully understand his responsibilities under the marital bond. The trial court found that Jordan was psychologically incapacitated to comply with the essential obligations of marriage, particularly Articles 68[6] and 70[7] of the Family Code. The trial court also declared that Jordan's psychological incapacity, being rooted in his family background, antedates the marriage and that without any sign of reformation, found the same to be grave and incurable.

The dispositve portion of the trial court's 13 May 2003 Decision reads:

IN VIEW OF THE FOREGOING, judgment is hereby rendered declaring the marriage between petitioner Jeanice Pavon Paz and

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[6] Article 68 of the Family Code provides:

ART. 68. The husband and wife are obligated to live together, observe mutual love, respect and fidelity, and render mutual help and support.

[7] Article 70 of the Family Code provides:

ART. 70. The spouses are jointly responsible for the support of the family. The expenses for such support and other conjugal obligations shall be paid from the community property and, in the absence thereof, from the income or fruits of their separate properties. In case of insufficiency or absence of said income or fruits, such obligation shall be satisfied from their separate properties.

respondent Jordan Chan Paz celebrated on July 3, 1997 and September 21, 1997 as null and void *ab initio* on the ground of psychological incapacity on the part of respondent pursuant to Article 36 of the Family Code with all the effects provided by law. The couple's absolute community of properties [sic] shall be dissolved in the manner herein provided. And the custody over Evan shall remain with the petitioner, without regard to visitation rights of the respondent as the father of the child. Furthermore, the parties are jointly responsible for the support of their minor child Evan Guabert Pavon Paz.

Let copies of this decision be furnished the Local Civil Registrars of Quezon City and Pasig City respectively as well as the National Statistics Office (NSO, CRP, Legal Department) EDSA, Quezon City.

SO ORDERED.[8]

On 6 June 2003, Jordan filed a Notice of Appeal.[9] The trial court promptly approved Jordan's appeal.

On 10 February 2004, Jeanice filed a Motion to Dismiss Appeal with the Court of Appeals.[10] In her motion, Jeanice sought the immediate dismissal of Jordan's appeal on the ground that Jordan failed to comply with Section 20 of A.M. No. 02-11-10-SC[11] which provides:

Sec. 20. *Appeal.*

(1) *Pre-condition.* No appeal from the decision shall be allowed unless the appellant has filed a motion for reconsideration or new trial within fifteen days from notice of judgment.

On 9 August 2004, the Court of Appeals dismissed Jordan's appeal. According to the Court of Appeals, the rules state in mandatory and categorical terms that the filing of a motion for reconsideration or new trial is a pre-condition before an appeal

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[8] *Rollo*, pp. 103-114.

[9] *Id.* at 115.

[10] *Id.* at 117-121.

[11] Rule on Declaration of Absolute Nullity of Void Marriages and Annulment of Voidable Marriages which took effect on 15 March 2003.

from the decision is allowed. The Court of Appeals added that when the law is clear and unambiguous, it admits no room for interpretation but merely for application.

Jordan filed a motion for reconsideration. In its 26 November 2004 Resolution, the Court of Appeals dismissed the motion.

Hence, this petition.

In a minute Resolution dated 22 June 2005, we denied Jordan's petition for failure to sufficiently show that the Court of Appeals committed any reversible error in the challenged resolutions as to warrant the exercise by this Court of its discretionary appellate jurisdiction.[12]

On 18 August 2005, Jordan filed a motion for reconsideration. While Jordan admits that he failed to file a motion for reconsideration of the trial court's 13 May 2003 Decision, Jordan submits that Section 20 of A.M. No. 02-11-10-SC should not have been strictly applied against him because it took effect only on 15 March 2003, or less than two months prior to the rendition of the trial court's 13 May 2003 Decision. Moreover, Jordan enjoins the Court to decide the case on the merits so as to preserve the sanctity of marriage as enshrined in the Constitution.

Jeanice also filed an Opposition to the Motion for Reconsideration on 1 September 2005.[13]

In a minute Resolution dated 19 September 2005, we granted Jordan's motion for reconsideration and reinstated the petition.[14]

Jeanice filed a motion for reconsideration. In a minute Resolution dated 5 June 2006, we denied Jeanice's motion for reconsideration for lack of merit.[15]

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[12] *Rollo*, p. 171.

[13] In a minute Resolution dated 9 November 2005, the Court resolved to "note without action" Jeanice's Opposition to the Motion for Reconsideration.

[14] *Rollo*, p. 182.

[15] *Id.* at 317.

On 7 August 2006, Jeanice filed a second motion for reconsideration.

In a minute Resolution dated 20 September 2006, we denied Jeanice's second motion for reconsideration for lack of merit and reminded Jeanice that a second motion for reconsideration is a prohibited pleading.[16]

The Issue

The only issue left to be resolved is whether Jordan is psychologically incapacitated to comply with the essential marital obligations.

The Ruling of this Court

The petition has merit.

Jeanice Failed to Prove Jordan's Psychological Incapacity

Jeanice's petition for declaration of nullity of marriage is anchored on Article 36 of the Family Code which provides:

> A marriage contracted by any party who, at the time of the celebration, was psychologically incapacitated to comply with the essential marital obligations of marriage, shall likewise be void even if such incapacity becomes manifest only after its solemnization.

In *Santos v. Court of Appeals*,[17] the Court first declared that psychological incapacity must be characterized by (a) gravity; (b) judicial antecedence; and (c) incurability. It must be confined "to the most serious cases of personality disorders clearly demonstrative of an utter insensitivity or inability to give meaning and significance to the marriage."[18]

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[16] *Id.* at 330. See Section 2, Rule 52 in relation to Section 4, Rule 56 of the 1997 Rules of Civil Procedure, as amended.

[17] 310 Phil. 21 (1995).

[18] *Id.* at 40.

In *Dimayuga-Laurena v. Court of Appeals*,[19] the Court explained:

(a) Gravity – It must be grave and serious such that the party would be incapable of carrying out the ordinary duties required in a marriage;

(b) Judicial Antecedence – It must be rooted in the history of the party antedating the marriage, although the overt manifestations may emerge only after the marriage; and

(c) Incurability – It must be incurable, or even if it were otherwise, the cure would be beyond the means of the party involved.[20]

In granting Jeanice's petition, the trial court gave credence to the testimony of Gates to support its conclusion that Jordan was psychologically incapacitated to comply with the essential marital obligations. Gates declared that Jordan was suffering from "Borderline Personality Disorder" as manifested by his being a "mama's boy" and that such was "grave and incurable," "rooted in his family background, [and] antedates the marriage."

Although there is no requirement that a party to be declared psychologically incapacitated should be personally examined by a physician or a psychologist, there is nevertheless a need to prove the psychological incapacity through independent evidence adduced by the person alleging said disorder.[21]

Correspondingly, the presentation of expert proof presupposes a thorough and in-depth assessment of the parties by the psychologist or expert, for a conclusive diagnosis of a grave, severe and incurable presence of psychological incapacity.[22]

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[19] G.R. No. 159220, 22 September 2008, 566 SCRA 154.

[20] *Id.* at 162.

[21] *Bier v. Bier*, G.R. No. 173294, 27 February 2008, 547 SCRA 123; *Republic v. Tanyag-San Jose*, G.R. No. 168328, 28 February 2007, 517 SCRA 123.

[22] *Ngo Te v. Yu-Te*, G.R. No. 161793, 13 February 2009, 579 SCRA 193.

In this case, the Court notes that the report and testimony of Gates on Jordan's psychological incapacity were based exclusively on her interviews with Jeanice and the transcript of stenographic notes of Jeanice's testimony before the trial court.[23] Gates only diagnosed Jordan from the statements of Jeanice, whose bias in favor of her cause cannot be doubted. Gates did not actually hear, see and evaluate Jordan. Gates testified:

> Q- As a last question Madam witness. So all in all your conclusions here on page 1 to page 5 of your Report are all based on the statement and perception of the petitioner (Jeanice) on the respondent (Jordan)?
>
> A- Yes Mam.[24]

Consequently, Gates' report and testimony were hearsay evidence since she had no personal knowledge of the alleged facts she was testifying on.[25] Gates' testimony should have thus been dismissed for being unscientific and unreliable.[26]

Moreover, contrary to the ruling of the trial court, Jordan's alleged psychological incapacity was not shown to be so grave and so permanent as to deprive him of the awareness of the duties and responsibilities of the matrimonial bond. At best, Jeanice's allegations showed that Jordan was irresponsible, insensitive, or emotionally immature. The incidents cited by Jeanice do not show that Jordan suffered from grave psychological maladies that paralyzed Jordan from complying with the essential obligations of marriage.

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[23] TSN, 15 November 2000, pp. 9-11, 21-24.

[24] *Id.* at 52.

[25] *Padilla-Rumbaua v. Rumbaua*, G.R. No. 166738, 14 August 2009; *Bier v. Bier*, *supra* note 21.

[26] *Najera v. Najera*, G.R. No. 164817, 3 July 2009, 591 SCRA 541; *Bier v. Bier*, *supra* note 21.

What the law requires to render a marriage void on the ground of psychological incapacity is downright incapacity, not refusal or neglect or difficulty, much less ill will.[27] The mere showing of "irreconcilable differences" and "conflicting personalities" does not constitute psychological incapacity.[28]

In *Perez-Ferraris v. Ferraris*,[29] we said:

> As all people may have certain quirks and idiosyncrasies, or isolated characteristics associated with certain personality disorders, there is hardly a doubt that the intendment of the law has been to confine the meaning of "psychological incapacity" to the most serious cases of personality disorders clearly demonstrative of an utter insensitivity or inability to give meaning and significance to marriage.[30]

Furthermore, Gates did not particularly describe the "pattern of behavior" which showed that Jordan indeed suffers from Borderline Personality Disorder. Gates also failed to explain how such a personality disorder made Jordan psychologically incapacitated to perform his obligations as a husband.

Likewise, Jeanice was not able to establish with certainty that Jordan's alleged psychological incapacity was medically or clinically permanent or incurable. Gates' testimony on the matter was vague and inconclusive. Gates testified:

> Q - Now is this disorder curable?
>
> A - If it's continuing to the present therefore its persevererative behavior. Then the possibility of countering the same might be nil.[31]

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[27] *Republic v. Court of Appeals*, G.R. No. 108763, 13 February 1997, 268 SCRA 198.

[28] *Id*.

[29] G.R. No. 162368, 17 July 2006, 495 SCRA 396.

[30] *Id.* at 401.

[31] TSN, 15 November 2000, p. 18.

Gates did not adequately explain how she came to the conclusion that Jordan's condition was incurable.

In sum, the totality of the evidence presented by Jeanice failed to show that Jordan was psychologically incapacitated to comply with the essential marital obligations and that such incapacity was grave, incurable, and existing at the time of the solemnization of their marriage.

In *Republic v. Cabantug-Baguio*,[32] we said:

> The Constitution sets out a policy of protecting and strengthening the family as the basic social institution and marriage as the foundation of the family. Marriage, as an inviolable institution protected by the State, cannot be dissolved at the whim of the parties. In petitions for the declaration of nullity of marriage, the burden of proof to show the nullity of marriage lies on the plaintiff. Any doubt should be resolved in favor of the existence and continuation of the marriage and against its dissolution and nullity.[33]

WHEREFORE, we *GRANT* the petition. We *SET ASIDE* the 9 August 2004 and 26 November 2004 Resolutions of the Court of Appeals. We *REVERSE* the 13 May 2003 Decision of the Regional Trial Court of Pasig, Branch 69. The marriage of Jeanice Pavon Paz to Jordan Chan Paz subsists and remains valid.

SO ORDERED.

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

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[32] G.R. No. 171042, 30 June 2008, 556 SCRA 711.

[33] *Id.* at 727.

FIRST DIVISION

[G.R. No. 174237. February 18, 2010]

TERESITA L. ARAOS, CORAZON L. BALAGBIS, ROBERTO B. BAUTISTA, MARITA S. BELTRAN, RAUL A. CASIANO, HIDELZA B. CASTILLO, ELEONORA CINCO, MAY CATHERINE C. CIRIACO, ERLINDA G. DEL ROSARIO, AMELITA C. DELA TORRE, ALMA R. FAUSTO, ANTONETTE L. FERNANDEZ, CORITA M. GADUANG, VIRGINIA E. GALLARDE, MA. LUZ C. GENEROSO, MA. TERESA C. IGNACIO, EDDIE A. JARA, JOSIE MAGANA, ANTONIO G. MARALIT, NANCIANCINO L. MONREAL, MARIBEL D. ORTIZ, ALAN GENE O. PADILLA, JESUS C. PAJARILLO, MIGUEL E. ROCA JR., EDGAR M. SANDALO, AGNES E. SAN JOSE, EVELYN P. SAAYON, JUDY FRANCES A. SEE, MARIO R. SIBUCAO, CARMEN O. SORIANO, and ARNOLD A. TOLENTINO, *petitioners, vs.* **HON. LEA REGALA, Presiding Judge, RTC, Branch 226, Quezon City and SOCIAL SECURITY SYSTEM (SSS),** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; SPECIAL CIVIL ACTIONS; *MANDAMUS*; WHEN ISSUED. — For *mandamus* to issue, it is essential that the person petitioning for it has a clear legal right to the claim sought. It will not issue to enforce a right, or to compel compliance with a duty, which is questionable or over which a substantial doubt exists. Thus, unless the right to the relief sought is unclouded, it will be denied.

2. POLITICAL LAW; ADMINISTRATIVE LAW; CIVIL SERVICE LAW; CAREER EXECUTIVE SERVICE OFFICERS; ONE-STEP SALARY ADJUSTMENT; RATIONALE; CONDITION FOR

ENTITLEMENT, NOT COMPLIED WITH IN CASE AT BAR. — The Court gathers that the intention of the law is to maintain, under the Modified Ranking Structure and Salary Schedule in the CES, the distinction between CESOs and non-CESOs established by Section 3 of Presidential Decree No. 847. The maintenance of the distinct status given to CESOs who, prior to the issuance of CSC Resolution No. 94-5840 on October 21, 1994, were already receiving at least the second step of the salary grade of their rank due to longevity or merit is the rationale behind the one-step salary increment granted by Resolution No. 129. Without the increment, a CESO who, due to longevity or merit, is already receiving the second step of the salary grade of his rank as of the effectivity of CSC Resolution No. 94-5840, would be no different from a similarly situated non-CESO within the same salary grade. Thus, even if the one-step salary increment granted by CESB Circular No. 12 were not covered by the suspension of the grant in Memorandum Order No. 20, petitioners must nevertheless satisfy the conditions established by CESB Circular No. 12 to entitle them to the one-step salary increment. Petitioners must thus establish that when they were appointed or promoted to CESO ranks in 1999, they were already receiving the second step of the salary grade of their ranks. Petitioners failed to do so, however.

3. **ID.; ID.; ID.; ID.; CAREER EXECUTIVE SERVICE BOARD CIRCULAR NO. 12; UNENFORCEABLE FOR NOT BEING FILED WITH THE OFFICE OF THE NATIONAL REGISTER; CASE AT BAR.** — CESB Circular No. 12 is unenforceable. Per the certification issued by the Office of the National Register (ONAR) of the University of the Philippines Law Center dated March 30, 2004, the CESB failed to file three copies of CESB Circular No. 12 with the ONAR. Sections 3 and 4 of Chapter 2, Book VII of Executive Order No. 292, otherwise known as the *Administrative Code of 1987*, provide: "Sec. 3. *Filing*. – (1) Every agency shall file with the University of the Philippines Law Center three (3) certified copies of every rule adopted by it. Rules in force on the date of effectivity of this Code which are not filed within three (3) months from that date shall not thereafter be the basis of sanction against any party or persons. x x x x Sec. 4. *Effectivity*. – In addition to other rule-making requirements provided by law not inconsistent with this Book, each rule shall become effective fifteen (15) days from the date of filing as above provided unless a different date is fixed by

law, or specified in the rule in cases of imminent danger to public health, safety and welfare, the existence of which must be expressed in a statement accompanying the rule. The agency shall take appropriate measures to make emergency rules known to persons who may be affected by them." As CESB Circular No. 12 has not been filed with the ONAR, it has yet to take effect. It is, therefore, unenforceable.

APPEARANCES OF COUNSEL

Magcalas Ipac Encarnacion Macapagal & Diaz for petitioners.

The Solicitor General for respondents.

D E C I S I O N

CARPIO MORALES, *J.*:

On December 16, 1975, **Presidential Decree No. 847**, "ADOPTING A COMPENSATION SCHEME FOR THE CAREER EXECUTIVE SERVICE AND RELATED MATTERS," was issued, its provision pertinent to the case at bar reads:

SECTION 3. As a general rule, the salaries of **Career Executive Service Officers** shall start at Grade 2 of the corresponding rank in this Compensation Scheme and those of incumbents of and new appointees to Career Executive Service positions who are **not Career Executive Service Officers** shall start at Grade 1 of the corresponding rank: Provided, That in the case of said incumbents who are not members of the Career Executive Service, subsequent salary increases and/or rank promotions may be granted only after satisfactory completion of the Career Executive Service Development Program and compliance with such requirements as the Board shall set: Provided, further, That nothing herein stated shall reduce any salary received by any incumbent of any Career Executive Service position as a consequence of the implementation of the herein Compensation Scheme, except that the salary of his successor shall be in conformity with this Scheme. (emphasis and underscoring supplied)

On July 3, 1991, the Office of the President issued Memorandum Order No. 372, "MODIFYING THE RANKING STRUCTURE AND SALARY SCHEDULE IN THE CAREER EXECUTIVE SERVICE (CES)," the relevant sections of which provide:

SECTION 1. The ranking structure and salary schedule in the Career Executive Service (CES) are hereby modified to read as follows:

CES Rank	Salary Grade
CESO I	SG 30
CESO II	SG 29
CESO III	SG 28
CESO IV	SG 27
CESO V	SG 26
CESO VI	SG 25

SECTION 2. The Career Executive Service Board shall establish the mechanics for the classification of members of the CES in accordance with the above ranking structure and shall issue the corresponding rules and regulations.

SECTION 3. All issuances, rules and regulations or parts thereof inconsistent with the provisions of this Memorandum Order are hereby repealed. (underscoring supplied)

On October 21, 1994, the Civil Service Commission (CSC) issued **Resolution No. 94-5840** providing that a Career Executive Service Officer (CESO) is entitled to the second step of the salary grade of his rank.[1]

The Career Executive Service Board (CESB) later issued, on April 12, 1996, Resolution No. 129 stating that:

x x x Career Executive Service Officers (CESOs), who were **already receiving at least the second step of the salary grades of their ranks** due to merit or longevity prior to the issuance of CSC Resolution No. 5840, otherwise known as "Rules on Compensation in the CES including those of Graduates of NDCP and CESDP," are **entitled** to a **one-step adjustment** as provided for in the Paragraph 3.1.4 of subject

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[1] Records, p. 412.

Resolution, the spirit of which is to set apart the CESOs and non-CESOs;

x x x [E]ntitlement is made retroactive to November 1994, the effectivity date of Resolution No. 5840.[2] (emphasis and underscoring supplied)

Still later, the CESB issued, on May 29, 1996, Circular No. 12 laying down guidelines on the grant of a one-step adjustment in the salary of CESOs. The applicable provisions of the Circular state:

x x x [A] CESO whose salary at the time of the issuance of CSC Resolution No. 94-5840 is **already on the second or higher step of the salary grade of his rank** by virtue of step increments earlier granted based either on merit or length of service, shall be entitled to a one-step adjustment in the salary grade of his rank effective 26 November 1994; provided that where the rank of a CESO has a salary grade lower than that of the CES position to which he is assigned/appointed to, the one-step salary adjustment shall be based on the salary grade of the higher position; provided, finally, that where the salary of the CESO is already at the eighth step of the salary grade of his rank or position, this one-step entitlement shall no longer apply;

This benefit shall likewise apply to those appointed to the CES ranks *after* the issuance of the said CSC resolution who are already receiving the second or higher step of the salary grades of their ranks subject to the conditions set forth herein;

Career Executive Service Officers (CESOs) are officials who have CES eligibility and have been duly appointed by the president to ranks in the CES;

This Circular shall take effect immediately.[3] (italics and underscoring supplied)

Republic Act (RA) No. 8282, otherwise known as the Social Security Act of 1997, was then enacted, Section 3(c)[4] of which

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[2] *Id.* at 420.

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

[4] It reads:

> (c) The Commission, upon the recommendation of the SSS President, shall appoint an actuary, and such other personnel

exempted respondent Social Security System (SSS) from the application of RA No. 6758, "THE COMPENSATION AND POSITION CLASSIFICATION ACT OF 1989" or the Salary Standardization Law. The Social Security Commission (SSC) thus issued, on July 24, 1997, Resolution No. 523 prescribing the new SSS Salary Structure and Benefits Package.

In 1999, petitioners-SSS employees were appointed and/or promoted to CESO ranks.

On June 20, 2001, the SSC approved Resolution No. 483 appropriating funds for the grant of a one-step salary increment to nine SSS CESOs. Shortly thereafter, however, or on June 25, 2001, the Office of the President issued Memorandum Order No. 20, which reads in relevant part:

> x x x I, Gloria Macapagal-Arroyo, President of the Republic of the Philippines xxx do hereby order and direct all heads of GOCCs, GFIs and subsidiaries exempt from or not following the SSL to
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> SECTION 1. Immediately **suspend the grant of any salary increases and new or increased benefits** such as, but not limited to, allowances; incentives; reimbursement of expenses; intelligence, confidential or discretionary funds; extraordinary expenses, and such other benefits not in accordance with those granted under SSL. **This suspension shall cover senior officer level positions**, including Members of the Board of Directors or Trustees.
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as may be deemed necessary, fix their reasonable compensation, allowances and other benefits, prescribe their duties and establish such methods and procedures as may be necessary to insure the efficient, honest and economical administration of the provisions and purposes of this Act: Provided, however, That the personnel of the SSS below the rank of Vice-President shall be appointed by the SSS President: Provided, further, That the personnel appointed by the SSS President, except those below the rank of assistant manager, shall be subject to confirmation by the Commission: Provided, further, That the personnel of the SSS shall be selected only from civil service eligibles and be subject to civil service rules and regulations: Provided, finally, That the SSS shall be exempt from the provisions of Republic Act No. 6758 and Republic Act No. 7430.

SECTION 3. Any increase in salary or compensation of GOCCs/ GFIs that are not in accordance with the SSL shall be **subject to the approval of the President**. (emphasis and underscoring supplied)

The corporate auditor of the Commission on Audit thus advised the President of the SSS, by Memorandum dated June 29, 2001, against the implementation of a one-step salary increment for SSS CESOs in view of Memorandum Order No. 20 of the President. The Office of the Government Corporate Counsel (OGCC) likewise issued, on August 13, 2001, an opinion, that unless approved by the Office of the President, a one-step salary increment for SSS CESOs may not be implemented.[5]

Acting under the OGCC's advice, the SSS recommended, on April 9, 2002, to the Office of the President the approval of a one-step salary adjustment for SSS CESOs. On even date, the Department of Budget and Management, to which the Office of the President referred the SSS recommendation, declared:

The CES Charter under Presidential Decree No. 1 provides the grant of attractive and better compensation and benefits to CESOs to reward and motivate them in their pursuit of personal and career excellence. Along this line, CSC Resolution No. 94-5840 provides higher salary through an automatic step adjustment as reward and to set them apart from other government executives through pay.

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. . . [T]he CES pay under CSC Resolution No. 94-5840 is based on SSL. The S[alary] G[rade] equivalence for each CESO rank and the automatic 2nd step adjustment are all based on the salary schedule and position classification and compensation system prescribed under SSL. Since SSS is exempt from the SSL, **we believe that CSC Resolution No. 94-5840 does *not* apply to SSS and other SSL**-exempt agencies, but only to agencies following the SSL.[6] (emphasis, italics and underscoring supplied)

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[5] *Vide rollo,* pp. 199-201.

[6] *Rollo*, pp. 205-206.

Petitioners, however, made repeated requests to the SSS management for the release of the one-step salary adjustment, but to no avail, drawing them to file, on January 9, 2004, a petition[7] for *mandamus* before the Regional Trial Court (RTC) of Quezon City, praying that the SSS be ordered to implement the one-step salary increment due them by virtue of their CESO rank.

By Decision of August 30, 2004,[8] Branch 226 of the Quezon City RTC dismissed the petition. The Court of Appeals, by Decision of December 29, 2005,[9] affirmed the dismissal, hence, the present Petition for Review on *Certiorari*.[10]

The petition is bereft of merit.

For *mandamus* to issue, it is essential that the person petitioning for it has a clear legal right to the claim sought.[11] It will not issue to enforce a right, or to compel compliance with a duty, which is questionable or over which a substantial doubt exists.[12] Thus, unless the right to the relief sought is unclouded, it will be denied.

The Court gathers that the intention of the law is to maintain, under the Modified Ranking Structure and Salary Schedule in the CES, the distinction between CESOs and non-CESOs established by Section 3 of Presidential Decree No. 847.

The maintenance of the distinct status given to CESOs who, prior to the issuance of CSC Resolution No. 94-5840 on October 21, 1994, were already receiving at least the second step of

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[7] Records, pp. 1-10.

[8] *Id.* at 560-581.

[9] Decision penned by then Court of Appeals Associate Justice Ruben T. Reyes, with the concurrence of Associate Justices Rebecca de Guia-Salvador and Aurora Santiago-Lagman. CA *rollo*, pp. 115-127.

[10] *Rollo*, pp. 10-27.

[11] *BPI Family Savings Bank, Inc. v. Manikan*, G.R. No. 148789, January 16, 2003, 395 SCRA, 373, 275.

[12] *Ibid.*

the salary grade of their rank due to longevity or merit is the rationale behind the one-step salary increment granted by Resolution No. 129.[13]

Without the increment, a CESO who, due to longevity or merit, is already receiving the second step of the salary grade of his rank as of the effectivity of CSC Resolution No. 94-5840, would be no different from a similarly situated non-CESO within the same salary grade. Thus, even if the one-step salary increment granted by CESB Circular No. 12 were not covered by the suspension of the grant in Memorandum Order No. 20, petitioners must nevertheless satisfy the conditions established by CESB Circular No. 12 to entitle them to the one-step salary increment.

Petitioners must thus establish that when they were appointed or promoted to CESO ranks in 1999, they were already receiving the second step of the salary grade of their ranks. Petitioners failed to do so, however.

Besides, as the SSS points out,[14] CESB Circular No. 12 is unenforceable. Per the certification issued by the Office of the National Register (ONAR) of the University of the Philippines Law Center dated March 30, 2004,[15] the CESB failed to file three copies of CESB Circular No. 12 with the ONAR. Sections 3 and 4 of Chapter 2, Book VII of Executive Order No. 292, otherwise known as the *Administrative Code of 1987*, provide:

> Sec. 3. *Filing*. – (1) Every agency shall file with the University of the Philippines Law Center three (3) certified copies of every rule adopted by it. Rules in force on the date of effectivity of this Code which are not filed within three (3) months from that date shall not thereafter be the basis of sanction against any party or persons.
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[13] *Vide* records, p. 420.

[14] *Rollo*, pp. 170-173.

[15] Records, p. 197.

Sec. 4. *Effectivity.* – In addition to other rule-making requirements provided by law not inconsistent with this Book, each rule shall become effective fifteen (15) days from the date of filing as above provided unless a different date is fixed by law, or specified in the rule in cases of imminent danger to public health, safety and welfare, the existence of which must be expressed in a statement accompanying the rule. The agency shall take appropriate measures to make emergency rules known to persons who may be affected by them. (underscoring supplied)

As CESB Circular No. 12 has not been filed with the ONAR, it has yet to take effect. It is, therefore, unenforceable.[16]

WHEREFORE, the petition is *DENIED.*

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 180123. February 18, 2010]

KULAS IDEAS & CREATIONS, GIL FRANCIS MANINGO and MA. RACHEL MANINGO, *petitioners, vs.* **JULIET ALCOSEBA and FLORDELINDA ARAO-ARAO,** *respondents.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; TERMINATION OF EMPLOYMENT; JUST CAUSES; GROSS HABITUAL NEGLECT OF DUTIES AND FRAUD; SUBSTANTIAL EVIDENCE, NECESSARY FOR AN EMPLOYER TO EFFECTUATE DISMISSAL. —Article 282 (b)

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[16] *Vide GMA Network, Inc. v. Movie Television Review and Classification Board,* G.R. No. 148579, February 5, 2007, 514 SCRA 191, 196.

and (c) of the Labor Code provide that an employer may terminate an employee for "gross and habitual neglect by the employee of his duties" and for "fraud." In both instances, substantial evidence is necessary for an employer to effectuate any dismissal. Uncorroborated assertions and accusations by the employer do not suffice, otherwise the constitutional guaranty of security of tenure of the employee would be jeopardized.

2. ID.; ID.; ID.; ID.; HABITUAL NEGLECT OF DUTIES; NEGLIGENCE MUST NOT ONLY BE GROSS BUT ALSO HABITUAL. — Article 282 (b) imposes a stringent condition before an employer may terminate an employment due to gross and habitual neglect by the employee of his duties. To sustain a termination of employment based on this provision of law, the negligence must not only be gross but also habitual.

3. ID.; ID.; ID.; ID.; FRAUD; NOT DULY ESTABLISHED IN CASE AT BAR. — Petitioners maintain in another vein that respondents were dismissed on the ground of fraud under Article 282 (c), relying heavily on the stock inventory and sales reports to buttress it. But therein lies a marked paucity of proof-nexus to respondents' culpability behind the discrepancy in the inventory. The discrepancy, even if true, cannot just be attributed to respondents on the basis of their having access to the boutique's merchandise. The undue haste in suspending respondents, even before a full and complete stock inventory and investigation on the sales discrepancy was yet to be undertaken, betrays petitioners' predisposition to hold respondents guilty. Petitioners' position aside, there was no finding that respondents embezzled the sales proceeds. After all, respondents were neither cashiers nor clerks tasked with handling the daily sales proceeds of the outlet.

4. ID.; ID.; ID.; TERMINATION OF EMPLOYEES BASED ON JUST CAUSES; REQUISITES. — In cases of termination of employees based on just causes, the law mandates the following requisites: **"(i) A written notice served on the employee specifying the ground or grounds for termination, and giving said employee reasonable opportunity within which to explain his side**. (ii) **A hearing or conference during which the employee concerned, with the assistance of counsel if he so desires, is given opportunity to respond to the charge, present his evidence or**

rebut the evidence presented against him. (iii) A written notice of termination served on the employee, indicating that upon due consideration of all the circumstances, grounds have been established to justify his termination."

5. ID.; ID.; ID.; ID.; ID.; FIRST NOTICE; NATURE. — [A] first notice informing and bearing on the charge must be sent to the employee. *Maquiling v. Philippine Tuberculosis Society, Inc.*, emphasizes that the first notice must inform outright the employee that an investigation will be conducted on the charges specified in such notice which, if proven, will result in the employee's dismissal. "**This notice will afford the employee an opportunity to avail all defenses and exhaust all remedies to refute the allegations hurled against him for what is at stake is his very life and limb his employment. Otherwise, the employee may just disregard the notice as a warning without any disastrous consequence to be anticipated. Absent such statement, the first notice falls short of the requirement of due process.** One's work is everything, thus, it is not too exacting to impose this strict requirement on the part of the employer before the dismissal process be validly effected. This is in consonance with the rule that all doubts in the implementation and interpretation of the provisions of the Labor Code, including its implementing rules and regulations, shall be resolved in favor of labor."

6. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; THE SUPREME COURT HAS AUTHORITY AND DISCRETION TO REVIEW MATTERS NOT ASSIGNED AS ERRORS ON APPEAL; CONDITIONS; CASE AT BAR. — While as a general rule, a party who has not appealed is not entitled to any affirmative relief other than the one granted in the decision of the court below, the Court is imbued with sufficient authority and discretion to review matters not otherwise assigned as errors on appeal, if it finds that their consideration is necessary in arriving at a complete and just resolution of the case or to serve the interests of justice or to avoid dispensing piecemeal justice. The present case does not fall into any of the exceptions.

APPEARANCES OF COUNSEL

Almirante Almirante and Echavez Law Office for petitioners.
Arguedo Duran & Associates Law Office for respondents.

D E C I S I O N

CARPIO MORALES, *J.*:

In 1996, respondents Juliet Alcoseba (Juliet) and Flordelinda Arao-arao (Flordelinda) were employed as sales attendants of herein petitioner KULAS Ideas & Creations (KULAS), a gift boutique owned by petitioners Gil Francis Maningo and Ma. Rachel Maningo.

As part of their duties and responsibilities, Juliet and Flordelinda were tasked to sell KULAS's products, prepare weekly sales reports and assist the clerk in the monthly inventory of saleable goods.[1]

In February 2000, the Department of Labor and Employment (DOLE) inspected the outlet of KULAS in Ayala Center in Cebu where Juliet and Flordelinda were assigned and found that it violated several labor standards laws.[2] The DOLE later sent KULAS a Notice of Summary Investigation dated September 11, 2000 directing it to pay the salary differential of its employees from January to August 2000 amounting to ₱173,003.28.[3]

KULAS subsequently directed Juliet and Flordelinda, by Memorandum of November 23, 2000,[4] to explain and/or investigate an alleged inventory discrepancy which entailed the amount of ₱48,179.30. And it thereafter suspended Juliet and Flordelinda for seven days, by Memorandum of November 29, 2000,[5] starting December 1, 2000 for gross negligence of duties and responsibilities.

Both Juliet and Flordelinda thus filed a complaint for illegal suspension and withholding of salaries before the National Labor Relations Commission (NLRC) Regional Arbitration Branch

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[1] Records, p. 68.

[2] *Id.* at 370-372.

[3] *Id.* at 369.

[4] *Id.* at 39.

[5] *Id.* at 40.

No. VII on December 5, 2000.[6]

By Reconciliation Report of December 7, 2000[7] sent to Juliet and Flordelinda, KULAS advised them that discrepancies in its inventory were noted and that

> Both of [them] were assigned at the Ayala Boutique to diligently monitor all stocks and to report any stock discrepancy to the office, if there were any, so that the proper action may be taken, [but] [t]here never was any report made regarding stock shortage.

KULAS accordingly directed them to explain the discrepancies.

After serving their suspension, Juliet and Flordelinda, by letter of December 11, 2000,[8] inquired with KULAS the status of their employment since they were told not to report for work until they were able to explain the discrepancies.

By Memorandum of December 13, 2000,[9] Kulas soon advised Juliet and Flordelinda as follows, quoted *verbatim*:

> Upon further investigation, the following were noted:
>
> 1. The Dec. 31, 1999 inventory reconciliation report reflected an overage of 3 pcs. Or an equivalent of ₱808.00 which was duly acknowledged by J. Alcoseba.
> 2. A memo was issued last Feb. 2000 requesting both of you & Hermie Nemenzo to conduct a physical inventory. Based on your inventory, a reconciliation report was printed out and reflected an overage of 14 pcs.
> 3. Based on the Feb. 2000 report, the Delivery Receipts, Sales & pull-out were posted until Nov. 23, 2000. The final print out reflects a shortage of 959 pcs. Or ₱185,544.50,

and advised them that:

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

[7] *Id.* at 41.

[8] *Id.* at 42.

[9] *Id.* at 43.

Based on the said report you are given 3 days to settle in full the said shortage. After which, these matters will be forwarded to the lawyer for the proper filing of criminal charges. (emphasis and underscoring supplied)

Finally, KULAS, by separate Memorandum also dated December 13, 2000,[10] required Juliet and Flordelinda to explain within 48 hours why they should not be terminated for "gross neglect of duties and responsibilities resulting to huge economic loss incurred by the company" and "dishonesty."

Answering the charges, Juliet and Flordelinda, by Memorandum of December 14, 2000,[11] asserted that they were not responsible for the losses, thus:

1. We were never given a copy of the actual stocks-on-hand when we started working in [KULAS] Boutique that we signed and acknowledged.
2. We cannot be blamed for the said discrepancies that was [*sic*] pre-existing from the previous sales clerks assigned at [KULAS] Boutique and carried over to the current inventory.
3. We were never dishonest as sales clerk[s]. All sales have been reported properly and accordingly. (underscoring supplied)

It appears that KULAS did not reply to the query of Juliet and Flordelinda about the status of their employment.

On December 19, 2000, KULAS charged Juliet and Flordelinda before the Cebu City Prosecutor's Office[12] for estafa. The complaint was later dismissed.[13]

Juliet and Flordelinda (hereafter respondents) thereupon *amended* to illegal dismissal[14] their complaint against KULAS

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[10] *Id.* at 44.

[11] *Id.* at 45.

[12] *Id.* at 128-131.

[13] *Id.* at 373; per Resolution of February15, 2001.

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

and its owner-co-petitioners Gil Francis Maningo and Ma. Rachel Maningo at the NLRC.

In their Position Paper, respondents asserted that petitioners suspected them to have instigated the DOLE inspection on account of which they terminated their services.[15]

Finding for petitioners, **Labor Arbiter** Violeta Ortiz-Bantug, by Decision of September 26, 2001,[16] ruling that there was no illegal dismissal, disposed:

> WHEREFORE, premises considered, judgment is hereby rendered declaring that there was **no illegal dismissal**. Necessarily[,] all the claims of complainants relative thereto must fail. However, respondents[-herein petitioners] are hereby ordered to **pay** complainants the amount of EIGHTEEN THOUSAND FIFTY-THREE PESOS and 75/100 in the concept of **salary differentials, 13th month pay and attorney's fees**.
>
> The other claims are dismissed for lack of sufficient basis.
>
> SO ORDERED.[17] (emphasis and underscoring supplied)

On appeal, **the NLRC,** by Decision of April 19, 2004,[18] likewise held that there was no illegal dismissal. It, however, *set aside* the monetary award for lack of jurisdiction.[19]

On herein respondents' motion for reconsideration, the NLRC, by Resolution of September 3, 2004,[20] "partially reconsidered" its Decision by holding that respondents were illegally dismissed. Thus it disposed:

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[15] *Id.* at 27.

[16] *Id.* at 313-334.

[17] *Id.* at 333.

[18] *Id.* at 436-443. Penned by Presiding Commissioner Gerardo C. Nograles with Commissioners Edgardo M. Enerlan and Oscar S. Uy concurring.

[19] *Id.* at 442.

[20] *Id.* at 485-489.

WHEREFORE, we partially RECONSIDER in that [respondents] were considered illegally dismissed but as discussed, they are entitled to **separation pay** in the amount of ₱20,800.00 each but **without backwages**. Also, we grant them **attorney's fees** of ten percent (10%) of the above award, or the amount of ₱4,160.00.

Our questioned ruling on the money claims is RETAINED.

SO ORDERED. (emphasis and underscoring supplied)

Petitioners and respondents both moved for reconsideration of the NLRC September 3, 2004 Resolution. By Resolution of March 18, 2005,[21] the NLRC denied respondents' *second* motion for reconsideration for being a prohibited pleading but granted petitioners' motion for reconsideration. It accordingly reinstated its April 19, 2004 Decision which, it bears recalling, held that there was no illegal dismissal and set aside "the monetary award for lack of jurisdiction."

Respondents, via *certiorari*, elevated the case to the **Court of Appeals** which, by Decision of March 21, 2007,[22] reversed and set aside the NLRC Decision of April 19, 2004 and Resolution of March 18, 2005.

In reversing the NLRC ruling, the Court of Appeals observed:

. . . [I]t is evident that private respondents[-**herein petitioners] did not comply with the last two procedural requirements provided by law**. Specifically, the employer did **not conduct a hearing** or conference to afford the petitioners an opportunity to present evidence on their behalf, and it likewise did **not send a written notice of termination** to them. Their failure to promptly submit their written answer on the charge of gross neglect of duty at most gave the company the right to declare them to have waived the filing thereof, but their right to a hearing and to a written notice of termination persisted and should still be complied with. Thus, it is clear that petitioners were not given a real opportunity under the circumstances to answer the charges hurled against them. Their termination was quick,

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[21] *Id.* at 592-593.

[22] *Rollo*, pp. 35-44. Penned by Associate Justice Agustin S. Dizon with Associate Justices Arsenio J. Magpale and Francisco P. Acosta concurring.

swift and sudden. This conclusion is bolstered by the fact that they were not allowed to report back to work after the last day of their suspension on December 7, 2000. In the language of the law, they were constructively terminated from employment… (emphasis and underscoring supplied)

Thus the appellate court disposed:

WHEREFORE, in view of the foregoing, the assailed Decision and Resolution of the National Labor Relations Commission, Fourth Division, Cebu City, dated April 19, 2004 and March 18, 2005 respectively are ***REVERSED and SET ASIDE***. A new Decision is entered ***ORDERING*** private respondents to pay petitioners Juliet Alcoseba and Flordelinda Arao-arao separation pay equivalent to one (1) month pay for every year of service plus full backwages from the date of their illegal termination on December 8, 2000 up to the finality of this judgment without any deduction or qualification.[23]

By Resolution of September 14, 2007, the appellate court denied petitioners' motion for reconsideration,[24] hence, the present petition for review questioning the appellate court's

[I]

… REVERSING [OF] THE COMMON FINDINGS OF FACT OF BOTH THE LABOR ARBITER AND THE NATIONAL LABOR RELATIONS COMMISSION ON THE EXISTENCE OF INVENTORIES OF STOCKS AND THE OBSERVANCE OF DUE PROCESS IS IN ACCORD WITH LAW AND APPLICABLE DECISIONS OF THIS …COURT.

[II]

… FINDING … THAT THERE [WAS] NO SUBSTANTIAL EVIDENCE OF MISAPPROPRIATION OF COMPANY FUNDS TO JUSTIFY DISMISSAL OF RESPONDENTS FINDS SUPPORT IN APPLICABLE LAW AND JURISPRUDENCE AND THE EVIDENCE ON RECORD.

[III]

… DISMISSING OUTRIGHT [OF] THE MOTION FOR RECONSIDERATION FILED BY PETITIONERS … [25]

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[23] CA *rollo*, p. 578.

[24] *Rollo*, pp. 46-47.

[25] *Id.* at 17-18.

Petitioners chiefly assert that the appellate court should have deferred to the findings of the Labor Arbiter and the NLRC that respondents misappropriated company merchandise to warrant their dismissal from employment, and that respondents were afforded due process when they were given an opportunity to explain the stock inventory discrepancy.[26]

Respondents, on the other hand, counter that the present petition is without merit as the termination of their services was devoid of any just cause, it being an offshoot of petitioners' suspicion that they (respondents) instigated the DOLE to inspect petitioners' premises.[27]

Respondents take this opportunity to ask for the modification of the appellate court's ruling to include the payment of salary differential, unpaid salaries, moral and exemplary damages and attorney's fees in their favor.[28]

The petition fails.

Article 282 (b) and (c)[29] of the Labor Code provide that an employer may terminate an employee for "gross and habitual neglect by the employee of his duties" and for "fraud." In both instances, substantial evidence is necessary for an employer to effectuate any dismissal. Uncorroborated assertions and accusations by the employer do not suffice, otherwise the

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[26] *Id.* at 18-28.

[27] *Id.* at 61-62.

[28] *Id.* at 62-64.

[29] Article 282. An employer may terminate an employment for any of the following causes:

a. Serious misconduct or willful disobedience by the employee of the lawful orders of his employer or representative in connection with his work;

b. Gross and habitual neglect by the employee of his duties;

c. Fraud or willful breach by the employee of the trust reposed in him by his employer or duly authorized representative;

constitutional guaranty of security of tenure of the employee[30] would be jeopardized.

Article 282 (b) imposes a stringent condition before an employer may terminate an employment due to gross and habitual neglect by the employee of his duties. To sustain a termination of employment based on this provision of law, the negligence must not only be gross but also habitual.[31]

Petitioners assert that respondents failed to regularly undertake a monthly physical inventory of the outlet's merchandise. The assertion fails to persuade. For the most part, inventory preparation and reporting did not fall on respondents' shoulders since they were to "assist the [stock] clerk" only.

The Court notes that after the December 31, 1999 inventory reconciliation, petitioners undertook only two inventories in February and November 2000. That there was no regular monthly inventory is evident from the fact that the only basis for the November inventory was the February inventory, as reflected in its Memorandum of December 13, 2000.

As did the appellate court, the Court notes that petitioners were themselves remiss in conducting a regular monthly stock inventory. Thus the appellate court noted.

A careful examination of the inventory sheets relied upon by [petitioners] readily shows the number of items or merchandise sold for a given period, the price per unit sold and the total amount of purchase for that given period. Notably absent is the list of merchandise received for sale and display by the sales clerks for a given period, or the stocks on hand, in order to coincide with the actual items sold as shown on the inventory sheet. Certainly,

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d. Commission of a crime or offense by the employee against the person of the employer or any immediate member of his family or his duly authorized representatives; and

e. Other causes analogous to the foregoing.

[30] *Northwest Tourism Corp. v. Court of Appeals*, G.R. No. 150591, June 27, 2005, 461 SCRA 298.

[31] *Phil. Aeolus Automotive United Corp. v. National Labor Relations Commission*, 387 Phil. 250, 263 (2000).

[petitioners] cannot continue raising a finger and insist that the sales proceeds were misappropriated when they could not show proof of the stocks on hand in the first place. To reiterate, it must not be an ordinary list of the stocks on hand, but must contain a certification from the sales clerks that they indeed received such items for sale and display at the boutique branch where they were assigned. **Worth mentioning at this point is the allegation of the [respondents] that upon their assumption at the Ayala Center branch, the management did not conduct an actual inventory as well as a proper turnover of stocks. This must therefore explain the lapse in the sales inventory conducted by [petitioners]. Verily, [petitioners] are guilty of contributory negligence for failure to conduct a proper turnover of stocks in the boutique upon [respondents'] assumption therein**.[32] (emphasis and underscoring supplied)

Petitioners maintain in another vein that respondents were dismissed on the ground of fraud under Article 282 (c), relying heavily on the stock inventory and sales reports[33] to buttress it. But therein lies a marked paucity of proof-nexus to respondents' culpability behind the discrepancy in the inventory. The discrepancy, even if true, cannot just be attributed to respondents on the basis of their having access to the boutique's merchandise.

The undue haste in suspending respondents, even before a full and complete stock inventory and investigation on the sales discrepancy was yet to be undertaken, betrays petitioners' predisposition to hold respondents guilty.

Petitioners' position aside, there was no finding that respondents embezzled the sales proceeds. After all, respondents were neither cashiers nor clerks tasked with handling the daily sales proceeds of the outlet.

Finally, as did the appellate court, the Court finds that petitioners failed to comply with the procedural requirements for a valid dismissal.

In cases of termination of employees based on just causes, the law mandates the following requisites:

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

[33] Records, pp. 94-126.

(i) A written notice served on the employee specifying the ground or grounds for termination, and giving said employee reasonable opportunity within which to explain his side.

(ii) **A hearing or conference during which the employee concerned, with the assistance of counsel if he so desires, is given opportunity to respond to the charge, present his evidence or rebut the evidence presented against him.**

(iii) A written notice of termination served on the employee, indicating that upon due consideration of all the circumstances, grounds have been established to justify his termination.[34] (emphasis supplied)

Thus a first notice informing and bearing on the charge must be sent to the employee. *Maquiling v. Philippine Tuberculosis Society, Inc.*,[35] emphasizes that the first notice must inform outright the employee that an investigation will be conducted on the charges specified in such notice which, if proven, will result in the employee's dismissal.

This notice will afford the employee an opportunity to avail all defenses and exhaust all remedies to refute the allegations hurled against him for what is at stake is his very life and limb his employment. Otherwise, the employee may just disregard the notice as a warning without any disastrous consequence to be anticipated. Absent such statement, the first notice falls short of the requirement of due process. One's work is everything, thus, it is not too exacting to impose this strict requirement on the part of the employer before the dismissal process be validly effected. This is in consonance with the rule that all doubts in the implementation and interpretation of the provisions of the Labor Code, including its implementing rules and regulations, shall be resolved in favor of labor.

In the present case, the only time petitioners apprised respondents of gross neglect of duties and dishonesty as grounds for the termination of the services was by Memorandum of December 13, 2000.

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[34] Section 2(d), Rule I of Book VI of the Omnibus Rules Implementing the Labor Code.

[35] G.R. No. 143384, February 4, 2005, 450 SCRA 465.

The memorandum did not inform outright respondents that an investigation would be conducted on the charges particularized therein which, if proven, would result to their dismissal. It likewise did not contain a plain statement of the particular charges of malfeasance or misfeasance.

Even petitioners' earlier memoranda,[36] in which they required respondents to explain and to themselves investigate the alleged stock discrepancies as well as to restitute the monetary equivalent thereof, did not clearly intimate that respondents could be terminated from employment if their explanations were found unsatisfactory. In fine, intention to dismiss respondents can not be inferred from the general tenor of these memoranda.

Petitioners contend, however, that respondents were not actually dismissed from the service, which explains why there was no subsequent notice of dismissal; that they were still in the process of complying with the legal requirements of effecting termination; and that respondents forestalled their actions when they amended their complaints to illegal dismissal.

Petitioners' contentions are tenuous. If indeed petitioners still considered respondents to be their employees, why was there no instruction from them for respondents to report for work immediately after serving their seven-day suspension. For, if there was – and respondents failed to heed it, petitioners would certainly have faulted them for abandonment of work. The fact was, respondents even wrote the management that their suspension had ended and inquired on their employment status as they were barred from the work premises, but, as earlier stated, they received no reply. Respondents' claim of having been barred from the work premises merely merited a self-serving denial from petitioners.

More. Instead of formally notifying respondents that they were terminating their employment as a result of the investigation, petitioners filed a criminal complaint for estafa against them on December 19, 2000. That accounts why respondents had

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[36] *Supra* notes 4, 7 and 9.

to amend their complaint at the NLRC on December 26, 2000 after realizing that they were no longer in the employ of petitioners.

Respondents' supplication for payment of salary differential, unpaid salaries,[37] moral and exemplary damages and attorney's fees must, however, be denied.

While as a general rule, a party who has not appealed is not entitled to any affirmative relief other than the one granted in the decision of the court below, the Court is imbued with sufficient authority and discretion to review matters not otherwise assigned as errors on appeal, if it finds that their consideration is necessary in arriving at a complete and just resolution of the case[38] [39]or to serve the interests of justice or to avoid dispensing piecemeal justice. The present case does not fall into any of the exceptions.

It bears noting that the DOLE had already assumed jurisdiction over the claims of underpayment of salaries of respondents while respondents' claim for nonpayment of salaries for the period of November 13-30, 2000 had already been paid.[40]

As for respondents' prayer for the award to them of damages and attorney's fees, no proof thereof is extant. As has been repeatedly stressed, broad allegations, bereft of proof, cannot sustain the award of moral and exemplary damages, as well as attorney's fees.[41]

WHEREFORE, the present petition for review is *DENIED*.

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[37] *Vide*: records, p. 32. Respondents' Position Paper claims unpaid salary for the period of November 13-30, 2000.

[38] *Heirs of Ramon Durano, Sr. v. Uy*, G.R. No. 136456, October 24, 2000, 344 SCRA 238.

[39] *Servicewide Specialists, Inc. v. Court of Appeals*, G.R. No. 117728, June 26, 1996, 257 SCRA 643, 653; *Korean Airlines Co., Ltd. v. Court of Appeals*, G.R. No. 114061, August 3, 1994, 234 SCRA 717, 725.

[40] Records, p. 790.

[41] *Mora v. Avesco Marketing Corp.*, G.R. No. 177414, November 14, 2008, 571 SCRA 226, 228.

Let the records of this case be *REMANDED* to the Labor Arbiter for proper computation of respondent's backwages and seaparation pay.

Cost against petitioners.

SO ORDERED.

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

EN BANC

[G.R. No. 183871. February 18, 2010]

LOURDES D. RUBRICO, JEAN RUBRICO APRUEBO, and MARY JOY RUBRICO CARBONEL, *petitioners, vs.* **GLORIA MACAPAGAL-ARROYO, GEN. HERMOGENES ESPERON, P/DIR. GEN. AVELINO RAZON, MAJ. DARWIN SY a.k.a. DARWIN REYES, JIMMY SANTANA, RUBEN ALFARO, CAPT. ANGELO CUARESMA, a certain JONATHAN, P/SUPT. EDGAR B. ROQUERO, ARSENIO C. GOMEZ, and OFFICE OF THE OMBUDSMAN,** *respondents.*

SYLLABUS

1. POLITICAL LAW; CONSTITUTIONAL LAW; EXECUTIVE DEPARTMENT; PRESIDENTIAL IMMUNITY FROM SUIT; RATIONALE; DISMISSAL OF PETITION AGAINST THE PRESIDENT, PROPER.— Petitioners first take issue on the President's purported lack of immunity from suit during her term of office. The 1987 Constitution, so they claim, has removed such immunity heretofore enjoyed by the chief executive under the 1935 and 1973 Constitutions. Petitioners are mistaken. The

presidential immunity from suit remains preserved under our system of government, albeit not expressly reserved in the present constitution. Addressing a concern of his co-members in the 1986 Constitutional Commission on the absence of an express provision on the matter, Fr. Joaquin Bernas, S.J. observed that it was already understood in jurisprudence that the President may not be sued during his or her tenure. The Court subsequently made it abundantly clear in *David v. Macapagal-Arroyo*, a case likewise resolved under the umbrella of the 1987 Constitution, that indeed the President enjoys immunity during her incumbency, and why this must be so: Settled is the doctrine that the President, during his tenure of office or actual incumbency, may not be sued in any civil or criminal case, and there is no need to provide for it in the Constitution or law. It will degrade the dignity of the high office of the President, the Head of State, if he can be dragged into court litigations while serving as such. Furthermore, it is important that he be freed from any form of harassment, hindrance or distraction to enable him to fully attend to the performance of his official duties and functions. Unlike the legislative and judicial branch, only one constitutes the executive branch and anything which impairs his usefulness in the discharge of the many great and important duties imposed upon him by the Constitution necessarily impairs the operation of the Government. x x x And lest it be overlooked, the petition is simply bereft of any allegation as to what specific presidential act or omission violated or threatened to violate petitioners' protected rights.

2. ID.; PUBLIC INTERNATIONAL LAW; COMMAND RESPONSIBILITY; DEFINED.— The evolution of the command responsibility doctrine finds its context in the development of laws of war and armed combats. According to Fr. Bernas, "command responsibility," in its simplest terms, means the "responsibility of commanders for crimes committed by subordinate members of the armed forces or other persons subject to their control in international wars or domestic conflict." In this sense, command responsibility is properly a form of criminal complicity. The Hague Conventions of 1907 adopted the doctrine of command responsibility, foreshadowing the present-day precept of holding a superior accountable for the atrocities committed by his subordinates should he be

remiss in his duty of control over them. As then formulated, command responsibility is "**an omission mode of individual criminal liability**," whereby the superior is made responsible for **crimes committed** by his subordinates for failing to prevent or punish the perpetrators (as opposed to crimes he ordered).

3. ID.; ID.; ID.; APPLICABILITY THEREOF TO *AMPARO* PROCEEDINGS; NATURE AND ROLE OF THE WRIT OF *AMPARO*.— It may plausibly be contended that command responsibility, as legal basis to hold military/police commanders liable for extra-legal killings, enforced disappearances, or threats, may be made applicable to this jurisdiction on the theory that the command responsibility doctrine now constitutes a principle of international law or customary international law in accordance with the incorporation clause of the Constitution. Still, it would be inappropriate to apply to these proceedings the doctrine of command responsibility, as the CA seemed to have done, as a form of criminal complicity through omission, for individual respondents' criminal liability, if there be any, is beyond the reach of *amparo*. In other words, the Court does not rule in such proceedings on any issue of criminal culpability, even if incidentally a crime or an infraction of an administrative rule may have been committed. As the Court stressed in *Secretary of National Defense v. Manalo* (*Manalo*), the writ of *amparo* was conceived to provide expeditious and effective procedural relief against violations or threats of violation of the basic rights to life, liberty, and security of persons; the corresponding *amparo* suit, however, "is not an action to determine criminal guilt requiring proof beyond reasonable doubt x x x or administrative liability requiring substantial evidence that will require full and exhaustive proceedings." Of the same tenor, and by way of expounding on the nature and role of *amparo*, is what the Court said in *Razon v. Tagitis*: It does not determine guilt nor pinpoint criminal culpability for the disappearance [threats thereof or extra-judicial killings]; it determines *responsibility*, or at least *accountability*, for the enforced disappearance [threats thereof or extra-judicial killings] for purposes of imposing the appropriate remedies to address the disappearance [or extra-judicial killings]. x x x As the law now stands, extra-judicial killings and enforced disappearances in this jurisdiction are not crimes penalized separately from the component criminal acts undertaken to carry out these killings

and enforced disappearances and are now penalized under the Revised Penal Code and special laws. The simple reason is that the Legislature has not spoken on the matter; the determination of what acts are criminal x x x are matters of substantive law that only the Legislature has the power to enact. x x x If command responsibility were to be invoked and applied to these proceedings, it should, at most, be only to determine the author who, at the first instance, is accountable for, and has the duty to address, the disappearance and harassments complained of, so as to enable the Court to devise remedial measures that may be appropriate under the premises to protect rights covered by the writ of *amparo*. As intimated earlier, however, the determination should not be pursued to fix criminal liability on respondents preparatory to criminal prosecution, or as a prelude to administrative disciplinary proceedings under existing administrative issuances, if there be any.

4. REMEDIAL LAW; EVIDENCE; SUBSTANTIAL EVIDENCE REQUIRED UNDER THE *AMPARO* RULE; NOT ESTABLISHED IN CASE AT BAR.— Sec. 17, as complemented by Sec. 18 of the *Amparo* Rule, expressly prescribes the minimum evidentiary substantiation requirement and norm to support a cause of action under the Rule, thus: Sec. 17. *Burden of Proof and Standard of Diligence Required*.—The parties shall **establish their claims** by **substantial evidence**. x x x Sec. 18. *Judgment.*—x x x 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**. Substantial evidence is more than a mere imputation of wrongdoing or violation that would warrant a finding of liability against the person charged; it is more than a scintilla of evidence. It means such amount of relevant evidence which a reasonable mind might accept as adequate to support a conclusion, even if other equally reasonable minds might opine otherwise. Per the CA's evaluation of their evidence, consisting of the testimonies and affidavits of the three Rubrico women and five other individuals, petitioners have not satisfactorily hurdled the evidentiary bar required of and assigned to them under the *Amparo* Rule. In a very real sense, the burden of evidence never even shifted to answering respondents. The Court finds no compelling reason to disturb the appellate court's determination of the answering

respondents' role in the alleged enforced disappearance of petitioner Lourdes and the threats to her family's security.

5. POLITICAL LAW; CONSTITUTIONAL LAW; BILL OF RIGHTS; RIGHT TO SECURITY; BREACHED BY THE SUPERFICIAL AND ONE-SIDED INVESTIGATION BY THE MILITARY OR THE POLICE OF REPORTED CASES UNDER THEIR JURISDICTION; INVESTIGATION, NATURE AND IMPORTANCE; CASE AT BAR.— As regards P/Supt. Romero and P/Insp. Gomez, the Court is more than satisfied that they have no direct or indirect hand in the alleged enforced disappearance of Lourdes and the threats against her daughters. As police officers, though, theirs was the duty to thoroughly investigate the abduction of Lourdes, a duty that would include looking into the cause, manner, and like details of the disappearance; identifying witnesses and obtaining statements from them; and following evidentiary leads, such as the Toyota Revo vehicle with plate number XRR 428, and securing and preserving evidence related to the abduction and the threats that may aid in the prosecution of the person/s responsible. As we said in *Manalo*, the right to security, as a guarantee of protection by the government, is breached by the superficial and one-sided—hence, ineffective—investigation by the military or the police of reported cases under their jurisdiction. As found by the CA, the local police stations concerned, including P/Supt. Roquero and P/Insp. Gomez, did conduct a preliminary fact-finding on petitioners' complaint. They could not, however, make any headway, owing to what was perceived to be the refusal of Lourdes, her family, and her witnesses to cooperate. Petitioners' counsel, Atty. Rex J.M.A. Fernandez, provided a plausible explanation for his clients and their witnesses' attitude, **"[They] do not trust the government agencies to protect them."** The difficulty arising from a situation where the party whose complicity in extra-judicial killing or enforced disappearance, as the case may be, is alleged to be the same party who investigates it is understandable, though. The seeming reluctance on the part of the Rubricos or their witnesses to cooperate ought not to pose a hindrance to the police in pursuing, on its own initiative, the investigation in question to its natural end. To repeat what the Court said in *Manalo*, the right to security of persons is a guarantee of the protection of one's right by the government. And this protection includes

conducting effective investigations of extra-legal killings, enforced disappearances, or threats of the same kind. The nature and importance of an investigation are captured in the *Velasquez Rodriguez* case, in which the Inter-American Court of Human Rights pronounced: [The duty to investigate] must be undertaken in a serious manner and not as a mere formality preordained to be ineffective. An investigation must have an objective and be assumed by the State as its own legal duty, **not a step taken by private interests that depends upon the initiative of the victim** or his family or upon offer of proof, without an effective search for the truth by the government.

6. REMEDIAL LAW; CIVIL PROCEDURE; ACTIONS; CAUSE OF ACTION; ULTIMATE FACTS AS WOULD LINK THE OMBUDSMAN IN ANY MANNER TO THE VIOLATION OR THREAT OF VIOLATION OF PETITIONER'S RIGHTS TO LIFE, LIBERTY, OR PERSONAL SECURITY, NOT ALLEGED.— xxx [T]here appears to be no basis for petitioners' allegations about the OMB failing to act on their complaint against those who allegedly abducted and illegally detained Lourdes. Contrary to petitioners' contention, the OMB has taken the necessary appropriate action on said complaint. As culled from the affidavit of the Deputy Overall Ombudsman and the joint affidavits of the designated investigators, all dated November 7, 2007, the OMB had, on the basis of said complaint, commenced criminal and administrative proceedings, docketed as OMB-P-C-07-0602-E and OMB-P-A 07-567-E, respectively, against Cuaresma, Alfaro, Santana, Jonathan, and Sy/Reyes. The requisite orders for the submission of counter-affidavits and verified position papers had been sent out. The privilege of the writ of *amparo*, to reiterate, is a remedy available to victims of extra-judicial killings and enforced disappearances or threats of similar nature, regardless of whether the perpetrator of the unlawful act or omission is a public official or employee or a private individual. At this juncture, it bears to state that petitioners have not provided the CA with the correct addresses of respondents Cuaresma, Alfaro, Santana, Jonathan, and Sy/Reyes. The mailed envelopes containing the petition for a writ of *amparo* individually addressed to each of them have all been returned unopened. And petitioners' motion interposed before the appellate court for notice or service via publication has not been accompanied by supporting affidavits as required by

the Rules of Court. Accordingly, the appealed CA partial judgment—disposing of the underlying petition for a writ of *amparo* without (1) pronouncement as to the accountability, or lack of it, of the four non-answering respondents or (2) outright dismissal of the same petition as to them—hews to the prescription of Sec. 20 of the *Amparo* Rule on archiving and reviving cases. Parenthetically, petitioners have also not furnished this Court with sufficient data as to where the aforenamed respondents may be served a copy of their petition for review. Apart from the foregoing considerations, the petition did not allege ultimate facts as would link the OMB in any manner to the violation or threat of violation of the petitioners' rights to life, liberty, or personal security.

7. POLITICAL LAW; CONSTITUTIONAL LAW; BILL OF RIGHTS; PRIVILEGE OF THE WRIT OF *AMPARO*; *AMPARO* RELIEFS GRANTED BY THE APPELLATE COURT IN CASE AT BAR.— xxx [T]he Court distinctly notes that the appealed decision veritably extended the privilege of the writ of *amparo* to petitioners when it granted what to us are *amparo* reliefs. Consider: the appellate court decreed, and rightly so, that the police and the military take specific measures for the protection of petitioners' right or threatened right to liberty or security. The protection came in the form of directives specifically to Gen. Esperon and P/Dir. Gen. Razon, requiring each of them (1) to ensure that the investigations already commenced by the AFP and PNP units, respectively, under them on the complaints of Lourdes and her daughters are being pursued with urgency to bring to justice the perpetrators of the acts complained of; and (2) to submit to the CA, copy furnished the petitioners, a regular report on the progress and status of the investigations. The directives obviously go to Gen. Esperon in his capacity as head of the AFP and, in a sense, chief guarantor of order and security in the country. On the other hand, P/Dir. Gen. Razon is called upon to perform a duty pertaining to the PNP, a crime-preventing, investigatory, and arresting institution.

8. REMEDIAL LAW; ACTIONS; *AMPARO* RULE; APPLICATION OF SECTIONS 22 AND 23 THEREOF TO CASE AT BAR.— xxx [T]wo postulates and their implications need highlighting for a proper disposition of this case. *First*, a criminal complaint for kidnapping and, alternatively, for arbitrary detention rooted

in the same acts and incidents leading to the filing of the subject *amparo* petition has been instituted with the OMB, docketed as OMB-P-C-O7-0602-E. The usual initial steps to determine the existence of a *prima facie* case against the five (5) impleaded individuals suspected to be actually involved in the detention of Lourdes have been set in motion. It must be pointed out, though, that the filing of the OMB complaint came before the effectivity of the *Amparo* Rule on October 24, 2007. *Second*, Sec. 22 of the *Amparo* Rule proscribes the filing of an *amparo* petition should a criminal action have, in the meanwhile, been commenced. The succeeding Sec. 23, on the other hand, provides that when the criminal suit is filed subsequent to a petition for *amparo*, the petition shall be **consolidated** with the criminal action where the *Amparo* Rule shall nonetheless govern the disposition of the relief under the Rule. Under the terms of said Sec. 22, the present petition ought to have been dismissed at the outset. But as things stand, the outright dismissal of the petition by force of that section is no longer technically feasible in light of the interplay of the following factual mix: (1) the Court has, pursuant to Sec. 6 of the Rule, already issued *ex parte* the writ of *amparo*; (2) the CA, after a summary hearing, has dismissed the petition, but not on the basis of Sec. 22; and (3) the complaint in OMB-P-C-O7-0602-E named as respondents only those believed to be the actual abductors of Lourdes, while the instant petition impleaded, in addition, those tasked to investigate the kidnapping and detention incidents and their superiors at the top. Yet, the acts and/or omissions subject of the criminal complaint and the *amparo* petition are so linked as to call for the consolidation of both proceedings to obviate the mischief inherent in a multiplicity-of-suits situation. Given the above perspective and to fully apply the beneficial nature of the writ of *amparo* as an inexpensive and effective tool to protect certain rights violated or threatened to be violated, the Court hereby adjusts to a degree the literal application of Secs. 22 and 23 of the *Amparo* Rule to fittingly address the situation obtaining under the premises. Towards this end, two things are at once indicated: (1) the consolidation of the probe and fact-finding aspects of the instant petition with the investigation of the criminal complaint before the OMB; and (2) the incorporation in the same criminal complaint of the allegations in this petition bearing on the threats to the right to security. Withal, the OMB should be furnished

copies of the investigation reports to aid that body in its own investigation and eventual resolution of OMB-P-C-O7-0602-E. Then, too, the OMB shall be given easy access to all pertinent documents and evidence, if any, adduced before the CA. Necessarily, Lourdes, as complainant in OMB-P-C-O7-0602-E, should be allowed, if so minded, to amend her basic criminal complaint if the consolidation of cases is to be fully effective.

CARPIO MORALES, *J., separate opinion:*

1. POLITICAL LAW; CONSTITUTIONAL LAW; ARTICLE II, SECTION 2 OF THE 1987 CONSTITUTION; IMPLICATION.— Under Article II, Section 2 of the Constitution, the Philippines adopts the generally accepted principles of international law as part of the law of the land. Based on the clarification provided by then Commissioner Adolfo Azcuna, now a retired member of this Court, during the deliberations of the Constitutional Commission, the import of this provision is that the incorporated law would have the force of a statute.

2. ID.; PUBLIC INTERNATIONAL LAW; JUDICIAL REASONING HAS BEEN THE BEDROCK OF PHILIPPINE JURISPRUDENCE ON THE DETERMINATION OF GENERALLY ACCEPTED PRINCIPLES OF INTERNATIONAL LAW AND CONSEQUENT APPLICATION OF THE INCORPORATION CLAUSE; ILLUSTRATIVE CASES.— The most authoritative enumeration of the sources of international law, Article 38 of the Statute of the International Court of Justice (ICJ Statute), does not specifically include "generally accepted principles of international law." To be sure, it is not quite the same as the "general principles of law" recognized under Article 38(1)(c) of the ICJ Statute. Renowned publicist Ian Brownlie suggested, however, that "general principles of international law" may refer to rules of customary law, to general principles of law as in Article 38(1)(c), or to logical propositions resulting from judicial reasoning on the basis of existing international law and municipal analogies. Indeed, **judicial reasoning** has been the bedrock of Philippine jurisprudence on the determination of generally accepted principles of international law and consequent application of the incorporation clause. In *Kuroda v. Jalandoni*, the Court held that while the Philippines was not a signatory to the Hague Convention and became a signatory to the Geneva Convention only in 1947, a Philippine Military

Commission had jurisdiction over war crimes committed in violation of the two conventions before 1947. The Court reasoned that the rules and regulations of the Hague and Geneva Conventions formed part of generally accepted principles of international law. *Kuroda* thus recognized that principles of customary international law do not cease to be so, and are in fact reinforced, when codified in multilateral treaties. In *International School Alliance of Educators v. Quisumbing,* the Court invalidated as discriminatory the practice of International School, Inc. of according foreign hires higher salaries than local hires. The Court found that, among other things, there was a general principle against discrimination evidenced by a number of international conventions proscribing it, which had been incorporated as part of national laws through the Constitution. The Court thus subsumes within the rubric of "generally accepted principles of international law" both "international custom" and "general principles of law," two distinct sources of international law recognized by the ICJ Statute.

3. ID.; ID.; COMMAND RESPONSIBILITY; A WIDELY ACCEPTED GENERAL PRINCIPLE OF LAW, IF NOT, ALSO, AN INTERNATIONAL CUSTOM; ELUCIDATED.— Respecting the doctrine of command responsibility, a careful scrutiny of its origin and development shows that it is a widely accepted general principle of law if not, also, an international custom. The doctrine of command responsibility traces its roots to the laws of war and armed combat espoused by ancient civilizations. In a 1439 declaration of Charles VII of Orleans, for instance, he proclaimed in his Ordinances for the Armies: [T]he King orders each captain or lieutenant be held responsible for the abuses, ills, and offences committed by members of his company, and that as soon as he receives any complaint concerning any such misdeed or abuse, he bring the offender to justice so that the said offender be punished in a manner commensurate with his offence, according to these Ordinances. If he fails to do so or covers up the misdeed or delays taking action, or if, because of his negligence or otherwise, the offender escapes and thus evades punishment, the captain shall be deemed responsible for the offence, as if he has committed it x x x . The first treaty codification of the doctrine of command responsibility was in the Hague Convention IV of 1907. A provision therein held belligerent nations responsible for the acts of their armed forces,

prefiguring the modern precept of holding superiors accountable for the crimes of subordinates if they fail in their duties of control, which is anchored firmly in customary international law. The development of the command responsibility doctrine is largely attributable to the cases related to World War II and subsequent events. One prominent case is the *German High Command Case* tried by the Nuremberg Tribunal, wherein German officers were indicted for atrocities allegedly committed in the European war. Among the accused was General Wilhelm Von Leeb, who was charged with implementing Hitler's Commissar and Barbarossa Orders, which respectively directed the murder of Russian political officers and maltreatment of Russian civilians. Rejecting the thesis that a superior is automatically responsible for atrocities perpetrated by his subordinates, the tribunal acquitted Von Leeb. It acknowledged, however, that a superior's *negligence* may provide a proper basis for his accountability even absent direct participation in the commission of the crimes. xxx The post-World War II formulation of the doctrine of command responsibility then came in Protocol I of 1977, Additional Protocol to the Geneva Conventions of 1949, Article 86 of which provides: 1. The High Contracting Parties and the Parties to the conflict shall repress grave breaches, and take measures necessary to suppress all other breaches, of the Conventions or of this Protocol which result from a failure to act when under a duty to do so. 2. The fact that a breach of the Conventions or of this Protocol was committed by a subordinate **does not absolve his superiors** from penal or disciplinary responsibility, as the case may be, if they knew, or had information that should have enabled them to conclude in the circumstances at the time, that he was committing or was going to commit such a breach *and* if they did not take all feasible measures within their power to prevent or repress the breach. The doctrine of command responsibility has since been invariably applied by *ad hoc* tribunals created by the United Nations for the prosecution of international crimes, and it remains codified in the statutes of all major international tribunals. From the foregoing, it is abundantly clear that there is a long-standing adherence by the international community to the doctrine of command responsibility, which makes it a general principle of law recognized by civilized nations. As such, it should be incorporated into Philippine law as a generally accepted principle of international law.

4. ID.; ID.; ID.; THAT PROCEEDINGS UNDER THE RULE ON THE WRIT OF *AMPARO* DO NOT DETERMINE CRIMINAL, CIVIL OR ADMINISTRATIVE LIABILITY SHOULD NOT ABATE THE APPLICABILITY OF THE DOCTRINE OF COMMAND RESPONSIBILITY; ILLUSTRATED.— That proceedings under the Rule on the Writ of *Amparo* do not determine criminal, civil or administrative liability should not abate the applicability of the doctrine of command responsibility. Taking *Secretary of National Defense v. Manalo* and *Razon v. Tagitis* in proper context, they do not preclude the application of the doctrine of command responsibility to *Amparo* cases. *Manalo* was actually emphatic on the importance of the right to security of person and its contemporary signification as a guarantee of protection of one's rights by the government. It further stated that protection includes conducting effective investigations, organization of the government apparatus to extend protection to victims of extralegal killings or enforced disappearances, or threats thereof, and/or their families, and bringing offenders to the bar of justice. *Tagitis*, on the other hand, cannot be more categorical on the application, at least in principle, of the doctrine of command responsibility: Given their mandates, the PNP and PNP-CIDG officials and members were the ones who were remiss in their duties when the government completely failed to exercise the extraordinary diligence that the *Amparo* Rule requires. **We hold these organizations accountable through their incumbent Chiefs who**, under this Decision, **shall carry the personal responsibility of seeing to it that extraordinary diligence**, in the manner the *Amparo* Rule requires, **is applied in addressing the enforced disappearance** of *Tagitis*.

5. ID.; ID.; ID.; REPUBLIC ACT NO. 9851; DOES NOT EMASCULATE THE APPLICABILITY OF THE COMMAND RESPONSIBILITY DOCTRINE TO *AMPARO* CASES.— Neither does Republic Act No. 9851 emasculate the applicability of the command responsibility doctrine to *Amparo* cases. The short title of the law is the "*Philippine Act on Crimes Against International Humanitarian Law, Genocide, and Other Crimes Against Humanity.*" Obviously, it should, as it did, only treat of superior responsibility as a ground for criminal responsibility for the crimes covered. Such limited treatment, however, is merely in keeping with the statute's purpose and not intended to rule out the application of the doctrine of command responsibility to other appropriate cases.

6. ID.; ID.; ID.; THE *PONENCIA'S* HESITANT APPLICATION OF THE DOCTRINE ITSELF IS REPLETE WITH IMPLICATIONS ABHORRENT TO THE RATIONALE BEHIND THE RULE ON THE WRIT OF *AMPARO*.— Indeed, one can imagine the innumerable dangers of insulating high-ranking military and police officers from the coverage of reliefs available under the Rule on the Writ of *Amparo*. The explicit adoption of the doctrine of command responsibility in the present case will only bring *Manalo* and *Tagitis* to their logical conclusion. In fine, I submit that the Court should take this opportunity to state what the law ought to be if it truly wants to make the Writ of *Amparo* an effective remedy for victims of extralegal killings and enforced disappearances or threats thereof. While there is a genuine dearth of evidence to hold respondents Gen. Hermogenes Esperon and P/Dir. Gen. Avelino Razon accountable under the command responsibility doctrine, the *ponencia*'s hesitant application of the doctrine itself is replete with implications abhorrent to the rationale behind the Rule on the Writ of *Amparo*.

BRION, *J.*, *separate opinion:*

1. POLITICAL LAW; PUBLIC INTERNATIONAL LAW; REPUBLIC ACT NO. 9851; EFFECT THEREOF ON THE RULE ON THE WRIT OF *AMPARO*.— For the record, I wish at the outset to draw attention to the recent enactment on **December 11, 2009** of Republic Act No. 9851 (*RA 9851*), otherwise known as *"An Act Defining and Penalizing Crimes Against International Humanitarian Law, Genocide and Other Crimes Against Humanity, Organizing Jurisdiction, Designating Special Courts, and for Related Purposes."* Two aspects relevant to the present case have been touched upon by this law, namely, the definition of enforced or involuntary disappearance, and liability under the doctrine of command responsibility. Under Section 3(g) of the law, "enforced or involuntary disappearance" is now defined as follows: (g) "Enforced or involuntary disappearance of persons" means the arrest, detention, or abduction of persons by, or with the authorization, support or acquiescence of, a State or a political organization followed by a refusal to acknowledge that deprivation of freedom or to give information on the fate or whereabouts of those persons with the intention of removing from the protection of the law for a prolonged period of time. With this law, the Rule on the

Writ of *Amparo* is now a procedural law anchored, not only on the constitutional rights to the rights to life, liberty and security, but on a concrete statutory definition as well of what an "enforced or involuntary disappearance" is. This new law renders academic and brings to a close the search for a definition that we undertook in *Razon v. Tagitis* to look for a firm anchor in applying the Rule on the Writ of *Amparo* procedures.

2. REMEDIAL LAW; CIVIL PROCEDURE; ACTIONS; CAUSE OF ACTION; NOT STATED IN CASE AT BAR; DISMISSAL OF PETITION AGAINST THE PRESIDENT, PROPER.— The *ponencia* correctly ruled that the dismissal of the petition as against the President is proper because of her immunity from suit during her term. The more basic but unstated reason is that the petitioners did not even specifically state the act or omission by which the President violated their right as required by Section 2, Rule 2 of the Rules of Court, and therefore, failed to prove it. Thus, I fully concur with the dismissal the *ponencia* directed.

3. ID.; ID.; ID.; ID.; PETITION STATED NO CAUSE OF ACTION AGAINST THE OMBUDSMAN UNDER THE *AMPARO* RULE; DISMISSAL OF THE CASE AGAINST THE OMBUDSMAN, PROPER.— I likewise agree with the *ponencia's* conclusion that the petition against the Ombudsman should be dismissed for the reason discussed below. The petitioner simply alleged that the Ombudsman *violated her right to speedy disposition of the criminal complaint*, with the passing claim that the delay has placed her life and that of her witnesses in danger. She failed to aver the fact of delay; the dilatory acts of the Ombudsman, if any; and manner and kind of danger the delay caused her. Thus, the petition did not allege anything that would place it within the ambit of the Rule on the Writ of *Amparo* (the *Amparo Rule*) with respect to the Ombudsman; it did not involve any violation by the Ombudsman relating to any disappearance, extrajudicial killing or any violation or threat of violation of the petitioners' constitutional rights to life, liberty or security. For this reason, the petition stated no cause of action against the Ombudsman under the *Amparo* Rule, contrary to Section 2, Rule 2 of the Rules of Court, in relation with Section 5 of the *Amparo* Rule. I thus join the *ponencia* in dismissing the case against the Ombudsman.

4. POLITICAL LAW; PUBLIC INTERNATIONAL LAW; DOCTRINE OF COMMAND RESPONSIBILITY; A SUBSTANTIVE RULE THAT ESTABLISHES CRIMINAL OR ADMINISTRATIVE LIABILITY THAT IS DIFFERENT FROM THE PURPOSE AND APPROACH OF THE *AMPARO* RULE.— xxx [T]he CA effectively ruled that the doctrine of command responsibility applies in an *Amparo* case, but could not be applied in this case for lack of proof that the alleged perpetrators were military or police personnel. The *ponencia* rejects the CA's approach and conclusion and holds that command responsibility is not an appropriate consideration in an *Amparo* proceeding, except for purposes specific and directly relevant to these proceedings. I fully concur with this conclusion. The doctrine of command responsibility is a substantive rule that establishes criminal or administrative liability that is different from the purpose and approach of the *Amparo* Rule. As we have painstakingly explained in *Secretary of Defense v. Manalo* and *Razon v. Tagitis*, the *Amparo* Rule merely provides for a **procedural protective remedy** against violations or threats of violations of the *constitutional* rights to life, liberty and security. It **does not address *criminal, civil or administrative liability*** as these are matters determined from the application of **substantive law**.

5. ID.; ID.; ID.; REPUBLIC ACT NO. 9851; LIABILITY UNDER THE DOCTRINE OF COMMAND RESPONSIBILITY IS NO LONGER SIMPLY ADMINISTRATIVE BUT IS NOW CRIMINAL.— xxx [A] new law – RA 9851 – has recently been passed relating to enforced disappearance and command responsibility. Section 10 of this law explicitly makes superiors *criminally liable* under the doctrine of command responsibility, as follows: *Section 10. Responsibility of Superiors.* – In addition to other grounds of criminal responsibility for crimes defined and penalized under this Act, a superior shall be criminally responsible as a principal for such crimes committed by subordinates under his/her effective command and control, or effective authority and control as the case may be, as a result of his/her failure to properly exercise control over such subordinates, where: (a) That superior either knew or, owing to the circumstances at the time, should have known that the subordinates were committing or about to commit such crimes; (b) That superior, failed to take all necessary and reasonable measures within his/her power to prevent or repress their

commission or to submit the matter to the competent authorities for investigation and prosecution. Thus, liability under the doctrine of command responsibility is no longer simply administrative (based on neglect of duty), but is now criminal. This new development all the more stresses that the doctrine of command responsibility has limited application to the Rule on the Writ of *Amparo* whose concern is the protection of constitutional rights through procedural remedies.

6. ID.; CONSTITUTIONAL LAW; BILL OF RIGHTS; RULE ON THE WRIT OF *AMPARO*; *AMPARO* PROCEEDINGS, ELUCIDATED; RELEVANCE OF THE DOCTRINE OF COMMAND RESPONSIBILITY THERETO.— The factual issue an *Amparo* case directly confronts is whether there has been a disappearance or an extrajudicial killing or threats to the constitutional rights to life, liberty and security. If at all possible, a preliminary determination can be made on who could have perpetrated the acts complained of, but only for the purpose of pointing the way to the remedies that should be undertaken. On the basis of a positive finding, the case proceeds to its main objective of defining and directing the appropriate procedural remedies to address the threat, disappearance or killing. In meeting these issues, the *Amparo* Rule specifies the standard of diligence that responsible public officials carry in the performance of their duties. Expressly, one duty the *Amparo* Rule commands is the investigation of a reported crime that, by law, the police is generally duty bound to address. To the extent of (1) answering the question of whether an enforced disappearance, an extrajudicial killing or threats thereof have taken place and who could have been the perpetrators of these deeds; (2) determining who has the *immediate* duty to address the threat, disappearance, extrajudicial killing or violation of constitutional right; and in (2) determining the remedial measures that need to be undertaken – the doctrine of command responsibility may find some relevance to the present petition. This linkage, however, does not go all the way to a definitive determination of criminal or administrative liability, or non-liability, for the act of a subordinate or for neglect of duty. This question is far from what the CA or this Court can definitively answer in an *Amparo* petition and is certainly an improper one to answer in an *Amparo* proceeding. It has never been the intention of the *Amparo* Rule to determine liability,

whether criminal or administrative; the Court, under the *Amparo* Rule, can only direct that procedural remedies be undertaken for the protection of constitutional rights to life, liberty and security. In *Tagitis,* we pointedly stated that while the Court can preliminarily determine ***responsibility*** in terms of authorship (not liability), this is only "as a measure of the remedies this Court shall craft, among them, the directive to file the appropriate criminal and civil cases against the responsible parties in the proper courts." In doing this, we gave "*responsibility*" a peculiar meaning in an *Amparo* proceeding. (We did the same with the term "*accountability*.") It is only in this same sense that the CA can hold respondents Gen. Esperon and P/Dir. Gen. Razon not liable under the doctrine of command responsibility.

7. ID.; ID.; ID.; ID.; LIABILITY OF RESPONDENTS P/DIR. GEN. RAZON AND GEN. ESPERON IN CASE AT BAR, EXPLAINED.— Subject to the above observations and for the reasons discussed below, I concur in dismissing the petition against the respondents P/Dir. Gen. Razon and Gen. Esperon who were impleaded in their capacities as Philippine National Police (*PNP*) Chief and Armed Forces of the Philippines (*AFP*) Chief of Staff, respectively. As a matter of judicial notice, they are no longer the incumbents of the abovementioned positions and cannot therefore act to address the concerns of a Writ of *Amparo*. **In their places should be the incumbent PNP Chief and AFP Chief of Staff to whom the concerns of and the responsibilities under the petition and the *Amparo* Rule should be addressed.** Unless otherwise directed by the Court, these incumbent officials shall assume direct responsibility for what their respective offices and their subordinate officials should undertake in *Amparo* petitions. This is in line with what we did in *Tagitis* where, as appropriate remedy, we applied the broadest brush by holding the highest PNP officials tasked by law to investigate, to be *accountable* for the conduct of further investigation based on our finding that no extraordinary diligence had been applied to the investigation of the case. Consistent with this position, the petition should likewise be dismissed as against respondents Edgar B. Roquero (*Roquero*) and Arsenio C. Gomez (*Gomez*), except to the extent that Gomez may be charged with harassment and oppression before the Ombudsman as these are substantive liability matters that are not laid to rest under an *Amparo* petition.

8. ID.; ID.; ID.; FULL AND COMPLETE INVESTIGATION WITH THE OBSERVANCE OF EXTRAORDINARY DILIGENCE AND THE RECOMMENDATION FOR THE PROSECUTION OF THE PARTIES WHO APPEAR TO BE RESPONSIBLE FOR VIOLATION OF CONSTITUTIONAL RIGHTS TO LIFE, LIBERTY AND SECURITY, AN ALTERNATIVE WAY TO ACHIEVE THE GOALS THEREOF; BASIS; CASE AT BAR.— xxx I agree with the *ponencia* that further investigation and monitoring should be undertaken. While past investigations may have been conducted, no extraordinary diligence had been applied to critical aspects of the case that are outside the petitioners' capability to act upon and which therefore have not been affected by the petitioners' lack of cooperation, even assuming this to be true. Because of this investigative shortcoming, we do not have sufficient factual findings that would give us the chance to fashion commensurate remedies. Otherwise stated, we cannot rule on the case until a more meaningful investigation using extraordinary diligence is undertaken. The *ponencia* holds that the needed additional actions should be undertaken by the CA. I concur with this ruling as it is legally correct; the CA started the fact-finding on the case and has adequate powers and capability to pursue it. **I wish to reiterate in this Separate Opinion, however, that an alternative way exists that is more direct and more efficient in achieving the goals of the Rule on the *Writ of Amparo* – *i.e.* the full and complete investigation with the observance of extraordinary diligence, and the recommendation for the prosecution of the parties who appear to be responsible for the violation of the constitutional rights to life, liberty and security. This alternative is based on the relevant provisions of the *Amparo* Rule, particularly Sections 20 to 23** xxx Section 22 of the *Amparo* Rule would be the closest provision to apply to the present case since a criminal action has been commenced before the Ombudsman (on April 19, 2007) before the present petition was filed on October 25, 2007. Under Section 22, no petition for the Writ of *Amparo* can technically be filed because of the previous commencement of criminal action before the Ombudsman. In the regular course, the present petition should have been dismissed outright at the first instance. Yet, as the case developed, the Court issued the Writ of *Amparo* and the CA denied the petition on other grounds. As things now stand,

it appears late in the day to dismiss the petition on the basis of Section 22. We should consider, too, that the present petition came under a unique non-repeatable circumstance – the Ombudsman complaint was filed before the *Amparo* Rule took effect; thus, the petitioners did not really have a choice of remedies when they filed the criminal complaint before the Ombudsman. There is likewise the consideration that the Ombudsman complaint was only against the perceived perpetrators of the kidnapping, whereas the present petition impleaded even those who had the duty to investigate or could effectively direct investigation of the case. The kidnapping and the threats that resulted, too, are inextricably linked and should not separately and independently be considered under prevailing procedural rules. **Under the circumstances, I believe that the best approach is to simply avail of the possibilities that the *combined application* of the above-quoted provisions offer, appropriately *modified to fit the current situation***. Thus, this Court can simply consolidate the *investigative and fact-finding* aspects of the present petition with the investigation of the criminal complaint before the Ombudsman, directing in the process that the *threats to the right to security* aired in the present petition be incorporated in the Ombudsman complaint. Necessarily, all the records and evidence so far adduced before the CA should likewise be turned over and be made available to the Ombudsman in its investigation, in accordance with the dispositions made in this Decision. For purposes of its delegated investigative and fact-finding authority, the Ombudsman should be granted the complete investigative power available under the *Amparo* Rule. The petitioners should be allowed, as they see fit, to amend their Ombudsman complaint to give full effect to this consolidation. In the above manner, the Court continues to exercise jurisdiction over the *Amparo* petition and any interim relief issue that may arise, taking into account the Ombudsman's investigative and fact-finding recommendations. The Ombudsman, for its part, shall rule on the complaint before it in accordance with its authority under Republic Act 6770 and its implementing rules

and regulations, and report to the Court its investigative and fact-finding recommendations on the *Amparo* petition within one year from the promulgation of this Decision. The incumbent Chiefs of the AFP and the PNP and their successors shall remain parties to the Ombudsman case and to the present petition in light of and under the terms of the consolidation, and can be directed to act, as the *ponencia* does direct them to act.

APPEARANCES OF COUNSEL

Rex J.M.A. Fernandez for petitioners.
The Solicitor General for respondents.

D E C I S I O N

VELASCO, JR., *J.*:

In this petition for review under Rule 45 of the Rules of Court in relation to Section 19[1] of the Rule on the Writ of *Amparo*[2] (*Amparo* Rule), Lourdes D. Rubrico, Jean Rubrico Apruebo, and Mary Joy Rubrico Carbonel assail and seek to set aside the Decision[3] of the Court of Appeals (CA) dated July 31, 2008 in CA-G.R. SP No. 00003, a petition commenced under the *Amparo* Rule.

The petition for the writ of *amparo* dated October 25, 2007 was originally filed before this Court. After issuing the desired writ and directing the respondents to file a verified written return, the Court referred the petition to the CA for summary hearing and appropriate action. The petition and its attachments contained, in substance, the following allegations:

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[1] SEC. 19. *Appeal*. – Any party may appeal from the final judgment or order to the Supreme Court under Rule 45. The appeal may raise questions of fact or law or both. x x x

[2] A.M. No. 07-9-12-SC.

[3] Penned by Associate Justice Edgardo P. Cruz (now retired) and concurred in by Associate Justices Fernanda Lampas-Peralta and Normandie Pizarro.

1. On April 3, 2007, armed men belonging to the 301st Air Intelligence and Security Squadron (AISS, for short) based in Fernando Air Base in Lipa City abducted Lourdes D. Rubrico (Lourdes), then attending a Lenten *pabasa* in Bagong Bayan, Dasmariñas, Cavite, and brought to, and detained at, the air base without charges. Following a week of relentless interrogation - conducted alternately by hooded individuals - and what amounts to verbal abuse and mental harassment, Lourdes, chair of the *Ugnayan ng Maralita para sa Gawa Adhikan*, was released at Dasmariñas, Cavite, her hometown, but only after being made to sign a statement that she would be a military asset.

After Lourdes' release, the harassment, coming in the form of being tailed on at least two occasions at different places, *i.e.*, Dasmariñas, Cavite and Baclaran in Pasay City, by motorcycle-riding men in bonnets, continued;

2. During the time Lourdes was missing, P/Sr. Insp. Arsenio Gomez (P/Insp. Gomez), then sub-station commander of Bagong Bayan, Dasmariñas, Cavite, kept sending text messages to Lourdes' daughter, Mary Joy R. Carbonel (Mary Joy), bringing her to beaches and asking her questions about *Karapatan*, an alliance of human rights organizations. He, however, failed to make an investigation even after Lourdes' disappearance had been made known to him;

3. A week after Lourdes' release, another daughter, Jean R. Apruebo (Jean), was constrained to leave their house because of the presence of men watching them;

4. Lourdes has filed with the Office of the Ombudsman a criminal complaint for kidnapping and arbitrary detention and administrative complaint for gross abuse of authority and grave misconduct against Capt. Angelo Cuaresma (Cuaresma), Ruben Alfaro (Alfaro), Jimmy Santana (Santana) and a certain Jonathan, c/o Headquarters 301st AISS, Fernando Air Base and Maj. Sy/Reyes with address at No. 09 Amsterdam Ext., Merville Subd., Parañaque City, but nothing has happened; and the threats and harassment incidents have been reported to the Dasmariñas municipal and Cavite provincial police stations, but nothing eventful resulted from their respective investigations.

Two of the four witnesses to Lourdes' abduction went into hiding after being visited by government agents in civilian clothes; and

5. *Karapatan* conducted an investigation on the incidents. The investigation would indicate that men belonging to the Armed Forces

of the Philippines (AFP), namely Capt. Cuaresma of the Philippine Air Force (PAF), Alfaro, Santana, Jonathan and Maj. Darwin Sy/Reyes, led the abduction of Lourdes; that unknown to the abductors, Lourdes was able to pilfer a "mission order" which was addressed to CA Ruben Alfaro and signed by Capt. Cuaresma of the PAF.

The petition prayed that a writ of *amparo* issue, ordering the individual respondents to desist from performing any threatening act against the security of the petitioners and for the Office of the Ombudsman (OMB) to immediately file an information for kidnapping qualified with the aggravating circumstance of gender of the offended party. It also prayed for damages and for respondents to produce documents submitted to any of them on the case of Lourdes.

Before the CA, respondents President Gloria Macapagal-Arroyo, Gen. Hermogenes Esperon, then Armed Forces of the Philippines (AFP) Chief of Staff, Police Director-General (P/Dir. Gen.) Avelino Razon, then Philippine National Police (PNP) Chief, Police Superintendent (P/Supt.) Roquero of the Cavite Police Provincial Office, Police Inspector (P/Insp.) Gomez, now retired, and the OMB (answering respondents, collectively) filed, through the Office of the Solicitor General (OSG), a joint return on the writ specifically denying the material inculpatory averments against them. The OSG also denied the allegations against the following impleaded persons, namely: Cuaresma, Alfaro, Santana, Jonathan, and Sy/Reyes, for lack of knowledge or information sufficient to form a belief as to the allegations' truth. And by way of general affirmative defenses, answering respondents interposed the following defenses: (1) the President may not be sued during her incumbency; and (2) the petition is incomplete, as it fails to indicate the matters required by Sec. 5(d) and (e) of the *Amparo* Rule.[4]

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[4] Sec. 5. *Contents of the Petition*.—The petition x x x shall allege the following: x x x d) The investigation conducted, if any, specifying the names and personal circumstances and addresses of the investigating authority or individuals, as well as the manner and conduct of the investigation, together with any report; e) The actions and recourses taken by the petitioner to determine the fate or whereabouts of the aggrieved party and the identity of the person responsible for the threat, act or omission.

Attached to the return were the affidavits of the following, among other public officials, containing their respective affirmative defenses and/or statements of what they had undertaken or committed to undertake regarding the claimed disappearance of Lourdes and the harassments made to bear on her and her daughters:

1. **Gen. Esperon** – attested that, pursuant to a directive of then Secretary of National Defense (SND) Gilberto C. Teodoro, Jr., he ordered the Commanding General of the PAF, with information to all concerned units, to conduct an investigation to establish the circumstances behind the disappearance and the reappearance of Lourdes insofar as the involvement of alleged personnel/unit is concerned. The Provost Marshall General and the Office of the Judge Advocate General (JAGO), AFP, also undertook a parallel action.

Gen. Esperon manifested his resolve to provide the CA with material results of the investigation; to continue with the probe on the alleged abduction of Lourdes and to bring those responsible, including military personnel, to the bar of justice when warranted by the findings and the competent evidence that may be gathered in the investigation process by those mandated to look into the matter;[5]

2. **P/Dir. Gen. Razon** – stated that an investigation he immediately ordered upon receiving a copy of the petition is on-going vis-à-vis Lourdes' abduction, and that a background verification with the PNP Personnel Accounting and Information System disclosed that the names Santana, Alfaro, Cuaresma and one Jonathan do not appear in the police personnel records, although the PNP files carry the name of Darwin Reyes Y. Muga.

Per the initial investigation report of the Dasmariñas municipal police station, P/Dir. Gen. Razon disclosed, Lourdes was abducted by six armed men in the afternoon of April 3, 2007 and dragged aboard a Toyota Revo with plate number XRR 428, which plate was issued for a Mitsubishi van to AK Cottage Industry with address at 9 Amsterdam St., Merville Subd., Parañaque City. The person residing in the apartment on that given address is one Darius/Erwin See @ Darius Reyes allegedly working, per the latter's house helper, in Camp Aguinaldo.

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[5] *Rollo*, pp. 196-198.

P/Dir. Gen. Razon, however, bemoaned the fact that Mrs. Rubrico never contacted nor coordinated with the local police or other investigating units of the PNP after her release, although she is in the best position to establish the identity of her abductors and/or provide positive description through composite sketching. Nonetheless, he manifested that the PNP is ready to assist and protect the petitioners and the key witnesses from threats, harassments and intimidation from whatever source and, at the same time, to assist the Court in the implementation of its orders.[6]

3. **P/Supt. Roquero** – stated conducting, upon receipt of Lourdes' complaint, an investigation and submitting the corresponding report to the PNP Calabarzon, observing that neither Lourdes nor her relatives provided the police with relevant information;

4. **P/Insp. Gomez** – alleged that Lourdes, her kin and witnesses refused to cooperate with the investigating Cavite PNP; and

5. **Overall Deputy Ombudsman Orlando Casimiro** – alleged that cases for violation of Articles 267 and 124, or kidnapping and arbitrary detention, respectively, have been filed with, and are under preliminary investigation by the OMB against those believed to be involved in Lourdes' kidnapping; that upon receipt of the petition for a writ of *amparo*, proper coordination was made with the Office of the Deputy Ombudsman for the Military and other Law Enforcement Offices (MOLEO) where the subject criminal and administrative complaints were filed.

Commenting on the return, petitioners pointed out that the return was no more than a general denial of averments in the petition. They, thus, pleaded to be allowed to present evidence *ex parte* against the President, Santana, Alfaro, Capt. Cuaresma, Darwin Sy, and Jonathan. And with leave of court, they also asked to serve notice of the petition through publication, owing to their failure to secure the current address of the latter five and thus submit, as the CA required, proof of service of the petition on them.

The hearing started on November 13, 2007.[7] In that setting, petitioners' counsel prayed for the issuance of a temporary

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[6] *Id.* at 228-233.

[7] *Id.* at 48.

protection order (TPO) against the answering respondents on the basis of the allegations in the petition. At the hearing of November 20, 2007, the CA granted petitioners' motion that the petition and writ be served by the court's process server on Darwin Sy/Reyes, Santana, Alfaro, Capt. Cuaresma, and Jonathan.

The legal skirmishes that followed over the propriety of excluding President Arroyo from the petition, petitioners' motions for service by publication, and the issuance of a TPO are not of decisive pertinence in this recital. The bottom line is that, by separate resolutions, the CA dropped the President as respondent in the case; denied the motion for a TPO for the court's want of authority to issue it in the tenor sought by petitioners; and effectively denied the motion for notice by publication owing to petitioners' failure to submit the affidavit required under Sec. 17, Rule 14 of the Rules of Court.[8]

After due proceedings, the CA rendered, on July 31, 2008, its partial judgment, subject of this review, disposing of the petition but only insofar as the answering respondents were concerned. The *fallo* of the CA decision reads as follows:

> WHEREFORE, premises considered, partial judgment is hereby rendered **DISMISSING** the instant petition with respect to respondent Gen. Hermogenes Esperon, P/Dir. Gen. Avelino Razon, Supt. Edgar B. Roquero, P/Sr. Insp. Arsenio C. Gomez (ret.) and the Office of the Ombudsman.
>
> Nevertheless, in order that petitioners' complaint will not end up as another unsolved case, the heads of the Armed Forces of the Philippines and the Philippine National Police are directed to ensure that the investigations already commenced are diligently pursued to bring the perpetrators to justice. The Chief of Staff of the Armed Forces of the Philippines and P/Dir. Gen. Avelino Razon are directed

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[8] Sec. 17. *Leave of Court*. – Any application to the court under this Rule for leave to effect service in any manner which leave of court is necessary shall be made by motion in writing, supported by an affidavit of the plaintiff or some person on his behalf, setting forth the grounds for the application.

to regularly update petitioners and this Court on the status of their investigation.

SO ORDERED.

In this recourse, petitioners formulate the issue for resolution in the following wise:

> WHETHER OR NOT the [CA] committed reversible error in dismissing [their] Petition and dropping President Gloria Macapagal Arroyo as party respondent.

Petitioners first take issue on the President's purported lack of immunity from suit during her term of office. The 1987 Constitution, so they claim, has removed such immunity heretofore enjoyed by the chief executive under the 1935 and 1973 Constitutions.

Petitioners are mistaken. The presidential immunity from suit remains preserved under our system of government, albeit not expressly reserved in the present constitution. Addressing a concern of his co-members in the 1986 Constitutional Commission on the absence of an express provision on the matter, Fr. Joaquin Bernas, S.J. observed that it was already understood in jurisprudence that the President may not be sued during his or her tenure.[9] The Court subsequently made it abundantly clear in *David v. Macapagal-Arroyo*, a case likewise resolved under the umbrella of the 1987 Constitution, that indeed the President enjoys immunity during her incumbency, and why this must be so:

> Settled is the doctrine that the President, during his tenure of office or actual incumbency, may not be sued in any civil or criminal case, and there is no need to provide for it in the Constitution or law. It will degrade the dignity of the high office of the President, the Head of State, if he can be dragged into court litigations while serving as such. Furthermore, it is important that he be freed from any form of

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[9] Bernas, *THE CONSTITUTION OF THE REPUBLIC OF THE PHILIPPINES* 738 (1996); citing *Soliven v. Makasiar*, Nos. 82585, 82827 & 83979, November 14, 1988, 167 SCRA 393.

harassment, hindrance or distraction to enable him to fully attend to the performance of his official duties and functions. Unlike the legislative and judicial branch, only one constitutes the executive branch and anything which impairs his usefulness in the discharge of the many great and important duties imposed upon him by the Constitution necessarily impairs the operation of the Government.[10]

x x x

And lest it be overlooked, the petition is simply bereft of any allegation as to what specific presidential act or omission violated or threatened to violate petitioners' protected rights.

This brings us to the correctness of the assailed dismissal of the petition with respect to Gen. Esperon, P/Dir. Gen. Razon, P/Supt. Roquero, P/Insp. Gomez, and the OMB.

None of the four individual respondents immediately referred to above has been implicated as being connected to, let alone as being behind, the alleged abduction and harassment of petitioner Lourdes. Their names were not even mentioned in Lourdes' *Sinumpaang Salaysay*[11] of April 2007. The same goes for the respective *Sinumpaang Salaysay* and/or *Karagdagang Sinumpaang Salaysay* of Jean[12] and Mary Joy.[13]

As explained by the CA, Gen. Esperon and P/Dir. Gen. Razon were included in the case on the theory that they, as commanders, were responsible for the unlawful acts allegedly committed by their subordinates against petitioners. To the appellate court, "the privilege of the writ of *amparo* must be denied as against Gen. Esperon and P/Dir. Gen. Razon for the simple reason that petitioners have not presented evidence showing that those who allegedly abducted and illegally detained Lourdes and later threatened her and her family were, in fact, members of the military or the police force." The two generals, the CA's holding broadly hinted, would have been accountable for the abduction

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[10] G.R. No. 171396, May 3, 2006, 489 SCRA 160, 224-225.

[11] *Rollo*, pp. 524-527.

[12] *Id.* at 528-530, 531-532.

[13] *Id.* at 311-313.

and threats if the actual malefactors were members of the AFP or PNP.

As regards the three other answering respondents, they were impleaded because they allegedly had not exerted the required extraordinary diligence in investigating and satisfactorily resolving Lourdes' disappearance or bringing to justice the actual perpetrators of what amounted to a criminal act, albeit there were allegations against P/Insp. Gomez of acts constituting threats against Mary Joy.

While in a qualified sense tenable, the dismissal by the CA of the case as against Gen. Esperon and P/Dir. Gen. Razon is incorrect if viewed against the backdrop of the stated rationale underpinning the assailed decision vis-à-vis the two generals, *i.e.*, command responsibility. The Court assumes the latter stance owing to the fact that command responsibility, as a concept defined, developed, and applied under international law, has little, if at all, bearing in *amparo* proceedings.

The evolution of the command responsibility doctrine finds its context in the development of laws of war and armed combats. According to Fr. Bernas, "command responsibility," in its simplest terms, means the "responsibility of commanders for crimes committed by subordinate members of the armed forces or other persons subject to their control in international wars or domestic conflict."[14] In this sense, command responsibility is properly a form of criminal complicity. The Hague Conventions of 1907 adopted the doctrine of command responsibility,[15] foreshadowing the present-day precept of holding a superior accountable for the atrocities committed by his subordinates should he be remiss in his duty of control over them. As then

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[14] J.G. Bernas, S.J., *Command Responsibility*, February 5, 2007 <http://sc.judiciary.gov.ph/publications/summit/Summit%20Papers/Bernas%20-%20Command%20Responsibility.pdf>.

[15] Eugenia Levine, *Command Responsibility, The Mens Rea Requirement, Global Policy Forum*, February 2005 <www.globalpolicy.org.>. As stated in *Kuroda v. Jalandoni*, 83 Phil. 171 (1949), the Philippines is not a signatory to the Hague Conventions.

formulated, command responsibility is "**an omission mode of individual criminal liability**," whereby the superior is made responsible for **crimes committed** by his subordinates for failing to prevent or punish the perpetrators[16] (as opposed to crimes he ordered).

The doctrine has recently been codified in the Rome Statute[17] of the International Criminal Court (ICC) to which the Philippines is signatory. Sec. 28 of the Statute imposes individual responsibility on military commanders for crimes committed by forces under their control. The country is, however, not yet formally bound by the terms and provisions embodied in this treaty-statute, since the Senate has yet to extend concurrence in its ratification.[18]

While there are several pending bills on command responsibility,[19] there is still no Philippine law that provides for criminal liability under that doctrine.[20]

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[16] Iavor Rangelov and Jovan Nicic, "*Command Responsibility: The Contemporary Law*," <http://www.hlc-rdc.org/uploads/editor/Command%20Responsibility.pdf> (visited September 9, 2009).

[17] Adopted by 120 members of the UN on July 17, 1998 and entered into force on July 1, 2002 <http://www.un.org/News/facts/iccfact.htm> (visited November 26, 2009).

[18] *Pimentel v. Office of the Executive Secretary*, G.R. No. 158088, July 6, 2005, 462 SCRA 622.

[19] S. Bill 1900: DEFINING THE LIABILITY OF HEADS OF DEPARTMENTS CONCERNED FOR GROSS VIOLATIONS OF HUMAN RIGHTS COMMITTED BY MEMBERS OF THE [PNP] OR OTHER LAW ENFORCEMENT AGENCIES.

S. Bill 1427: PUNISHING GOVERNMENT OFFICIALS OR SUPERIORS FOR CRIMES OR OFFENSES COMMITTED BY THEIR SUBORDINATES UNDER THE PRINCIPLE OF COMMAND RESPONSIBILITY.

S. Bill 2159: AN ACT ADOPTING THE DOCTRINE OF "SUPERIOR RESPONSIBILITY" TO ALL ACTIONS INVOLVING MILITARY PERSONNEL, MEMBERS OF THE [PNP] AND OTHER CIVILIANS INVOLVED IN LAW ENFORCEMENT.

[20] The attempt of the 1986 Constitutional Commission to incorporate said doctrine in the Bill of Rights that would have obliged the State to

It may plausibly be contended that command responsibility, as legal basis to hold military/police commanders liable for extra-legal killings, enforced disappearances, or threats, may be made applicable to this jurisdiction on the theory that the command responsibility doctrine now constitutes a principle of international law or customary international law in accordance with the incorporation clause of the Constitution.[21] Still, it would be inappropriate to apply to these proceedings the doctrine of command responsibility, as the CA seemed to have done, as a form of criminal complicity through omission, for individual respondents' criminal liability, if there be any, is beyond the reach of *amparo*. In other words, the Court does not rule in such proceedings on any issue of criminal culpability, even if incidentally a crime or an infraction of an administrative rule may have been committed. As the Court stressed in *Secretary of National Defense v. Manalo* (*Manalo*),[22] the writ of *amparo* was conceived to provide expeditious and effective procedural relief against violations or threats of violation of the basic rights to life, liberty, and security of persons; the corresponding *amparo* suit, however, "is not an action to determine criminal guilt requiring proof beyond reasonable doubt x x x or administrative liability requiring substantial evidence that will require full and exhaustive proceedings."[23] Of the same tenor, and by way of expounding on the nature and role of *amparo,* is what the Court said in *Razon v. Tagitis*:

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compensate victims of abuses committed against the right to life by government forces was shot down, on the ground that the proposal would violate a fundamental principle of criminal liability under the Penal Code upholding the tenet *nullum crimen, nulla poena sine lege* (there is no crime when there is no law punishing it). I Record of the 1986 Constitutional Commission, pp. 753-54.

[21] The incorporation clause (Art. II, Sec. 2) of the Constitution states that the Philippines adopts the generally accepted principles of international law as part of the law of the land.

[22] G.R. No. 180906, October 7, 2008, 568 SCRA 1.

[23] *Id.*; citing the deliberations of the Committee on the Revision of the Rules of Court, dated August 10, 24, and 31, 2007 and September 20, 2008.

It does not determine guilt nor pinpoint criminal culpability for the disappearance [threats thereof or extra-judicial killings]; it determines *responsibility*, or at least *accountability*, for the enforced disappearance [threats thereof or extra-judicial killings] for purposes of imposing the appropriate remedies to address the disappearance [or extra-judicial killings].

x x x x x x x x x

As the law now stands, extra-judicial killings and enforced disappearances in this jurisdiction are not crimes penalized separately from the component criminal acts undertaken to carry out these killings and enforced disappearances and are now penalized under the Revised Penal Code and special laws. The simple reason is that the Legislature has not spoken on the matter; the determination of what acts are criminal x x x are matters of substantive law that only the Legislature has the power to enact.[24] x x x

If command responsibility were to be invoked and applied to these proceedings, it should, at most, be only to determine the author who, at the first instance, is accountable for, and has the duty to address, the disappearance and harassments complained of, so as to enable the Court to devise remedial measures that may be appropriate under the premises to protect rights covered by the writ of *amparo*. As intimated earlier, however, the determination should not be pursued to fix criminal liability on respondents preparatory to criminal prosecution, or as a prelude to administrative disciplinary proceedings under existing administrative issuances, if there be any.

Petitioners, as the CA has declared, have not adduced substantial evidence pointing to government involvement in the disappearance of Lourdes. To a concrete point, petitioners have not shown that the actual perpetrators of the abduction and the harassments that followed formally or informally formed part of either the military or the police chain of command. A preliminary police investigation report, however, would tend to show a link, however hazy, between the license plate (XRR 428) of the vehicle allegedly used in the abduction of Lourdes

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[24] G.R. No. 182498, December 3, 2009.

and the address of Darwin Reyes/Sy, who was alleged to be working in Camp Aguinaldo.[25] Then, too, there were affidavits and testimonies on events that transpired which, if taken together, logically point to military involvement in the alleged disappearance of Lourdes, such as, but not limited to, her abduction in broad daylight, her being forcibly dragged to a vehicle blindfolded and then being brought to a place where the sounds of planes taking off and landing could be heard. Mention may also be made of the fact that Lourdes was asked about her membership in the Communist Party and of being released when she agreed to become an "asset."

Still and all, the identities and links to the AFP or the PNP of the alleged abductors, namely Cuaresma, Alfaro, Santana, Jonathan, and Sy/Reyes, have yet to be established.

Based on the separate sworn statements of Maj. Paul Ciano[26] and Technical Sergeant John N. Romano,[27] officer-in-charge and a staff of the 301st AISS, respectively, none of the alleged abductors of Lourdes belonged to the 301st AISS based in San Fernando Air Base. Neither were they members of any unit of the Philippine Air Force, per the certification[28] of Col. Raul Dimatactac, Air Force Adjutant. And as stated in the challenged CA decision, a verification with the Personnel Accounting and Information System of the PNP yielded the information that, except for a certain Darwin Reyes *y* Muga, the other alleged abductors, *i.e.*, Cuaresma, Alfaro, Santana and Jonathan, were not members of the PNP. Petitioners, when given the opportunity to identify Police Officer 1 Darwin Reyes *y* Muga, made no effort to confirm if he was the same Maj. Darwin Reyes *a.k.a.* Darwin Sy they were implicating in Lourdes' abduction.

Petitioners, to be sure, have not successfully controverted answering respondents' documentary evidence, adduced to debunk the former's allegations directly linking Lourdes' abductors and

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[25] *Supra* note 6.

[26] *Rollo*, pp. 206-207.

[27] *Id.* at 209-210.

[28] *Id.* at 208.

tormentors to the military or the police establishment. We note, in fact, that Lourdes, when queried on cross-examination, expressed the belief that Sy/Reyes was an NBI agent.[29] The Court is, of course, aware of what was referred to in *Razon*[30] as the "evidentiary difficulties" presented by the nature of, and encountered by petitioners in, enforced disappearance cases. But it is precisely for this reason that the Court should take care too that no wrong message is sent, lest one conclude that any kind or degree of evidence, even the outlandish, would suffice to secure *amparo* remedies and protection.

Sec. 17, as complemented by Sec. 18 of the *Amparo* Rule, expressly prescribes the minimum evidentiary substantiation requirement and norm to support a cause of action under the Rule, thus:

> Sec. 17. *Burden of Proof and Standard of Diligence Required.*— The parties shall **establish their claims** by **substantial evidence**.
>
> xxx xxx xxx
>
> Sec. 18. *Judgment.*—x x x 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 added.)

Substantial evidence is more than a mere imputation of wrongdoing or violation that would warrant a finding of liability against the person charged;[31] it is more than a scintilla of evidence. It means such amount of relevant evidence which a reasonable mind might accept as adequate to support a conclusion, even if other equally reasonable minds might opine otherwise.[32] Per the CA's evaluation of their evidence, consisting of the testimonies

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[29] TSN, February 11, 2008, p. 30.

[30] *Supra* note 24.

[31] *Republic v. Meralco*, G.R. No. 141314, November 15, 2002, 391 SCRA 700.

[32] *Bautista v. Sula*, A.M. No. P-04-1920, August 17, 2007, 530 SCRA 406; *Portuguez v. GSIS Family Bank (Comsavings Bank)*, G.R. No. 169570, March 2, 2007, 517 SCRA 309.

and affidavits of the three Rubrico women and five other individuals, petitioners have not satisfactorily hurdled the evidentiary bar required of and assigned to them under the *Amparo* Rule. In a very real sense, the burden of evidence never even shifted to answering respondents. The Court finds no compelling reason to disturb the appellate court's determination of the answering respondents' role in the alleged enforced disappearance of petitioner Lourdes and the threats to her family's security.

Notwithstanding the foregoing findings, the Court notes that both Gen. Esperon and P/Dir. Gen. Razon, per their separate affidavits, lost no time, upon their receipt of the order to make a return on the writ, in issuing directives to the concerned units in their respective commands for a thorough probe of the case and in providing the investigators the necessary support. As of this date, however, the investigations have yet to be concluded with some definite findings and recommendation.

As regards P/Supt. Romero and P/Insp. Gomez, the Court is more than satisfied that they have no direct or indirect hand in the alleged enforced disappearance of Lourdes and the threats against her daughters. As police officers, though, theirs was the duty to thoroughly investigate the abduction of Lourdes, a duty that would include looking into the cause, manner, and like details of the disappearance; identifying witnesses and obtaining statements from them; and following evidentiary leads, such as the Toyota Revo vehicle with plate number XRR 428, and securing and preserving evidence related to the abduction and the threats that may aid in the prosecution of the person/s responsible. As we said in *Manalo*,[33] the right to security, as a guarantee of protection by the government, is breached by the superficial and one-sided—hence, ineffective—investigation by the military or the police of reported cases under their jurisdiction. As found by the CA, the local police stations concerned, including P/Supt. Roquero and P/Insp. Gomez, did conduct a preliminary fact-finding on petitioners' complaint. They could not, however, make any headway, owing to what

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[33] *Supra* note 22.

was perceived to be the refusal of Lourdes, her family, and her witnesses to cooperate. Petitioners' counsel, Atty. Rex J.M.A. Fernandez, provided a plausible explanation for his clients and their witnesses' attitude, "**[They] do not trust the government agencies to protect them**."[34] The difficulty arising from a situation where the party whose complicity in extra-judicial killing or enforced disappearance, as the case may be, is alleged to be the same party who investigates it is understandable, though.

The seeming reluctance on the part of the Rubricos or their witnesses to cooperate ought not to pose a hindrance to the police in pursuing, on its own initiative, the investigation in question to its natural end. To repeat what the Court said in *Manalo*, the right to security of persons is a guarantee of the protection of one's right by the government. And this protection includes conducting effective investigations of extra-legal killings, enforced disappearances, or threats of the same kind. The nature and importance of an investigation are captured in the *Velasquez Rodriguez* case,[35] in which the Inter-American Court of Human Rights pronounced:

> [The duty to investigate] must be undertaken in a serious manner and not as a mere formality preordained to be ineffective. An investigation must have an objective and be assumed by the State as its own legal duty, **not a step taken by private interests that depends upon the initiative of the victim** or his family or upon offer of proof, without an effective search for the truth by the government. (Emphasis added.)

This brings us to Mary Joy's charge of having been harassed by respondent P/Insp. Gomez. With the view we take of this incident, there is nothing concrete to support the charge, save for Mary Joy's bare allegations of harassment. We cite with

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[34] *Rollo*, p. 54.

[35] I/A Court, H.R. Velasquez Rodriguez Case, Judgment of July 29, 1988, Series C No. 4; cited in *Secretary of National Defense v. Manalo, supra*.

approval the following self-explanatory excerpt from the appealed CA decision:

> In fact, during her cross-examination, when asked what specific act or threat P/Sr. Gomez (ret) committed against her or her mother and sister, Mary Joy replied "None …"[36]

Similarly, there appears to be no basis for petitioners' allegations about the OMB failing to act on their complaint against those who allegedly abducted and illegally detained Lourdes. Contrary to petitioners' contention, the OMB has taken the necessary appropriate action on said complaint. As culled from the affidavit[37] of the Deputy Overall Ombudsman and the joint affidavits[38] of the designated investigators, all dated November 7, 2007, the OMB had, on the basis of said complaint, commenced criminal[39] and administrative[40] proceedings, docketed as OMB-P-C-07-0602-E and OMB-P-A 07-567-E, respectively, against Cuaresma, Alfaro, Santana, Jonathan, and Sy/Reyes. The requisite orders for the submission of counter-affidavits and verified position papers had been sent out.

The privilege of the writ of *amparo*, to reiterate, is a remedy available to victims of extra-judicial killings and enforced disappearances or threats of similar nature, regardless of whether the perpetrator of the unlawful act or omission is a public official or employee or a private individual.

At this juncture, it bears to state that petitioners have not provided the CA with the correct addresses of respondents Cuaresma, Alfaro, Santana, Jonathan, and Sy/Reyes. The mailed envelopes containing the petition for a writ of *amparo* individually addressed to each of them have all been returned unopened. And petitioners' motion interposed before the appellate court

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[36] TSN, March 3, 2008, p. 17.

[37] *Rollo*, pp. 223-225.

[38] *Id.* at 226-227.

[39] For arbitrary detention and kidnapping.

[40] For grave abuse of authority and grave misconduct.

for notice or service via publication has not been accompanied by supporting affidavits as required by the Rules of Court. Accordingly, the appealed CA partial judgment—disposing of the underlying petition for a writ of *amparo* without (1) pronouncement as to the accountability, or lack of it, of the four non-answering respondents or (2) outright dismissal of the same petition as to them—hews to the prescription of Sec. 20 of the *Amparo* Rule on archiving and reviving cases.[41] Parenthetically, petitioners have also not furnished this Court with sufficient data as to where the afore-named respondents may be served a copy of their petition for review.

Apart from the foregoing considerations, the petition did not allege ultimate facts as would link the OMB in any manner to the violation or threat of violation of the petitioners' rights to life, liberty, or personal security.

The privilege of the writ of *amparo* is envisioned basically to protect and guarantee the rights to life, liberty, and security of persons, free from fears and threats that vitiate the quality of this life.[42] It is an extraordinary writ conceptualized and adopted in light of and in response to the prevalence of extra-legal killings and enforced disappearances.[43] Accordingly, the remedy ought to be resorted to and granted judiciously, lest the ideal sought by the *Amparo* Rule be diluted and undermined by the indiscriminate filing of *amparo* petitions for purposes less

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[41] SEC. 20. *Archiving and Revival of Cases*. – The [*amparo*] court shall not dismiss the petition, but shall archive it, if upon its determination it cannot proceed for a valid cause such as the failure of the petitioner or witnesses to appear due to threats on their lives.

A periodic review of the archived cases shall be made by the *amparo* court that shall, *motu proprio* or upon motion by any party, order their revival when ready for further proceedings. The petition shall be dismissed with prejudice, upon failure to prosecute the case after the lapse of two (2) years from notice to the petitioner of the order archiving the case.

[42] *Secretary of National Defense v. Manalo, supra*.

[43] *Annotation to the Writ of Amparo*, p. 2 <http://sc.judiciary.gov.ph/Annotation_amparo.pdf>.

than the desire to secure *amparo* reliefs and protection and/or on the basis of unsubstantiated allegations.

In their petition for a writ of *amparo*, petitioners asked, as their main prayer, that the Court order the impleaded respondents "to immediately desist from doing any acts that would threaten or seem to threaten the security of the Petitioners and to desist from approaching Petitioners, x x x their residences and offices where they are working under pain of contempt of [this] Court." Petitioners, however, failed to adduce the threshold substantive evidence to establish the predicate facts to support their cause of action, *i.e.*, the adverted harassments and threats to their life, liberty, or security, against responding respondents, as responsible for the disappearance and harassments complained of. This is not to say, however, that petitioners' allegation on the fact of the abduction incident or harassment is necessarily contrived. The reality on the ground, however, is that the military or police connection has not been adequately proved either by identifying the malefactors as components of the AFP or PNP; or in case identification is not possible, by showing that they acted with the direct or indirect acquiescence of the government. For this reason, the Court is unable to ascribe the authorship of and responsibility for the alleged enforced disappearance of Lourdes and the harassment and threats on her daughters to individual respondents. To this extent, the dismissal of the case against them is correct and must, accordingly, be sustained.

Prescinding from the above considerations, the Court distinctly notes that the appealed decision veritably extended the privilege of the writ of *amparo* to petitioners when it granted what to us are *amparo* reliefs. Consider: the appellate court decreed, and rightly so, that the police and the military take specific measures for the protection of petitioners' right or threatened right to liberty or security. The protection came in the form of directives specifically to Gen. Esperon and P/Dir. Gen. Razon, requiring each of them (1) to ensure that the investigations already commenced by the AFP and PNP units, respectively, under them on the complaints of Lourdes and her daughters are being pursued with urgency to bring to justice the perpetrators

of the acts complained of; and (2) to submit to the CA, copy furnished the petitioners, a regular report on the progress and status of the investigations. The directives obviously go to Gen. Esperon in his capacity as head of the AFP and, in a sense, chief guarantor of order and security in the country. On the other hand, P/Dir. Gen. Razon is called upon to perform a duty pertaining to the PNP, a crime-preventing, investigatory, and arresting institution.

As the CA, however, formulated its directives, no definitive time frame was set in its decision for the completion of the investigation and the reportorial requirements. It also failed to consider Gen. Esperon and P/Dir. Gen. Razon's imminent compulsory retirement from the military and police services, respectively. Accordingly, the CA directives, as hereinafter redefined and amplified to fully enforce the *amparo* remedies, are hereby given to, and shall be directly enforceable against, whoever sits as the commanding general of the AFP and the PNP.

At this stage, two postulates and their implications need highlighting for a proper disposition of this case.

First, a criminal complaint for kidnapping and, alternatively, for arbitrary detention rooted in the same acts and incidents leading to the filing of the subject *amparo* petition has been instituted with the OMB, docketed as OMB-P-C-O7-0602-E. The usual initial steps to determine the existence of a *prima facie* case against the five (5) impleaded individuals suspected to be actually involved in the detention of Lourdes have been set in motion. It must be pointed out, though, that the filing[44] of the OMB complaint came before the effectivity of the *Amparo* Rule on October 24, 2007.

Second, Sec. 22[45] of the *Amparo* Rule proscribes the filing of an *amparo* petition should a criminal action have, in the

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[44] Sometime in April 2007.

[45] Sec. 22. *Effect of Filing of a Criminal Action*. – When a criminal action has been commenced, no separate petition [for a writ of *amparo*]

meanwhile, been commenced. The succeeding Sec. 23,[46] on the other hand, provides that when the criminal suit is filed subsequent to a petition for *amparo,* the petition shall be **consolidated** with the criminal action where the *Amparo* Rule shall nonetheless govern the disposition of the relief under the Rule. Under the terms of said Sec. 22, the present petition ought to have been dismissed at the outset. But as things stand, the outright dismissal of the petition by force of that section is no longer technically feasible in light of the interplay of the following factual mix: (1) the Court has, pursuant to Sec. 6[47] of the Rule, already issued *ex parte* the writ of *amparo*; (2) the CA, after a summary hearing, has dismissed the petition, but not on the basis of Sec. 22; and (3) the complaint in OMB-P-C-O7-0602-E named as respondents only those believed to be the actual abductors of Lourdes, while the instant petition impleaded, in addition, those tasked to investigate the kidnapping and detention incidents and their superiors at the top. Yet, the acts and/or omissions subject of the criminal complaint and the *amparo* petition are so linked as to call for the consolidation of both proceedings to obviate the mischief inherent in a multiplicity-of-suits situation.

Given the above perspective and to fully apply the beneficial nature of the writ of *amparo* as an inexpensive and effective tool to protect certain rights violated or threatened to be violated, the Court hereby adjusts to a degree the literal application of

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shall be filed. The reliefs under the writ shall be available by motion in the criminal case.

The procedure under this Rule shall govern the disposition of the reliefs available under the writ of *amparo*.

[46] SEC. 23. *Consolidation*. – When a criminal action is filed subsequent to the filing for the writ, the latter shall be consolidated with the criminal action. x x x

After consolidation, the procedure under this Rule shall continue to apply to the disposition of the reliefs in the petition.

[47] SEC. 6. *Issuance of the Writ*. – Upon the filing of the petition, the court, justice or judge shall immediately order the issuance of the writ if on its face it ought to issue.

Secs. 22 and 23 of the *Amparo* Rule to fittingly address the situation obtaining under the premises.[48] Towards this end, two things are at once indicated: (1) the consolidation of the probe and fact-finding aspects of the instant petition with the investigation of the criminal complaint before the OMB; and (2) the incorporation in the same criminal complaint of the allegations in this petition bearing on the threats to the right to security. Withal, the OMB should be furnished copies of the investigation reports to aid that body in its own investigation and eventual resolution of OMB-P-C-O7-0602-E. Then, too, the OMB shall be given easy access to all pertinent documents and evidence, if any, adduced before the CA. Necessarily, Lourdes, as complainant in OMB-P-C-O7-0602-E, should be allowed, if so minded, to amend her basic criminal complaint if the consolidation of cases is to be fully effective.

WHEREFORE, the Court *PARTIALLY GRANTS* this petition for review and makes a decision:

(1) Affirming the dropping of President Gloria Macapagal-Arroyo from the petition for a writ of *amparo*;

(2) Affirming the dismissal of the *amparo* case as against Gen. Hermogenes Esperon, and P/Dir. Gen. Avelino Razon, insofar as it tended, under the command responsibility principle, to attach accountability and responsibility to them, as then AFP Chief of Staff and then PNP Chief, for the alleged enforced disappearance of Lourdes and the ensuing harassments allegedly committed against petitioners. The dismissal of the petition with respect to the OMB is also affirmed for failure of the petition to allege ultimate facts as to make out a case against that body for the enforced disappearance of Lourdes and the threats and harassment that followed; and

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[48] As held in *Razon v. Tagitis*, *supra* note 24, "the unique situations that call for the issuance of the writ [of *amparo*] as well as the considerations and measures necessary to address the situations, may not at all be the same as the standard measures and procedures in ordinary court actions and proceedings."

(3) Directing the incumbent Chief of Staff, AFP, or his successor, and the incumbent Director-General of the PNP, or his successor, to ensure that the investigations already commenced by their respective units on the alleged abduction of Lourdes Rubrico and the alleged harassments and threats she and her daughters were made to endure are pursued with extraordinary diligence as required by Sec. 17[49] of the *Amparo* Rule. They shall order their subordinate officials, in particular, to do the following:

> (a) Determine based on records, past and present, the identities and locations of respondents Maj. Darwin Sy, *a.k.a.* Darwin Reyes, Jimmy Santana, Ruben Alfaro, Capt. Angelo Cuaresma, and one Jonathan; and submit certifications of this determination to the OMB with copy furnished to petitioners, the CA, and this Court;
>
> (b) Pursue with extraordinary diligence the evidentiary leads relating to Maj. Darwin Sy and the Toyota Revo vehicle with Plate No. XRR 428; and
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> (c) Prepare, with the assistance of petitioners and/or witnesses, cartographic sketches of respondents Maj. Sy/Reyes, Jimmy Santana, Ruben Alfaro, Capt. Angelo Cuaresma, and a certain Jonathan to aid in positively identifying and locating them.

The investigations shall be completed not later than **six (6) months** from receipt of this Decision; and within thirty (30) days after completion of the investigations, the Chief of Staff of the AFP and the Director-General of the PNP shall submit a full report of the results of the investigations to the Court, the CA, the OMB, and petitioners.

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[49] Sec. 17. *Burden of Proof and Standard of Diligence Required.*— x x x 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. x x x.

This case is accordingly referred back to the CA for the purpose of monitoring the investigations and the actions of the AFP and the PNP.

Subject to the foregoing modifications, the Court *AFFIRMS* the partial judgment dated July 31, 2008 of the CA.

SO ORDERED.

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

Carpio, J., joins the separate opinion of Justice Carpio Morales.

Carpio Morales and *Brion, JJ.,* please see separate opinions.

Peralta, J., no part.

SEPARATE OPINION

CARPIO MORALES, *J.*:

I concur with the *ponencia* in all respects, except its treatment of the doctrine of command responsibility.

The *ponencia*'s ambivalence on the applicability of the doctrine of command responsibility overlooks its general acceptance in public international law, which warrants its incorporation into Philippine law via the incorporation clause of the Constitution.

Under Article II, Section 2 of the Constitution, the Philippines adopts the generally accepted principles of international law as part of the law of the land. Based on the clarification provided by then Commissioner Adolfo Azcuna, now a retired member of this Court, during the deliberations of the Constitutional Commission, the import of this provision is that the incorporated law would have the force of a statute.[1]

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[1] 4 RECORD OF THE CONSTITUTIONAL COMMISSION 772 (1986). The Commission unanimously voted in favor of the provision, with no abstentions.

The most authoritative enumeration of the sources of international law, Article 38 of the Statute of the International Court of Justice (ICJ Statute),[2] does not specifically include "generally accepted principles of international law." To be sure, it is not quite the same as the "general principles of law" recognized under Article 38(1)(c) of the ICJ Statute. Renowned publicist Ian Brownlie suggested, however, that "general principles of international law" may refer to rules of customary law, to general principles of law as in Article 38(1)(c), or to logical propositions resulting from judicial reasoning on the basis of existing international law and municipal analogies.[3]

Indeed, **judicial reasoning** has been the bedrock of Philippine jurisprudence on the determination of generally accepted principles of international law and consequent application of the incorporation clause.

In *Kuroda v. Jalandoni*,[4] the Court held that while the Philippines was not a signatory to the Hague Convention and became a signatory to the Geneva Convention only in 1947, a Philippine Military Commission had jurisdiction over war crimes committed in violation of the two conventions before 1947. The

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[2] The Court, whose function is to decide in accordance with international law such disputes as are submitted to it, shall apply:

> (a) international conventions, whether general or particular, establishing rules expressly recognized by the contesting States;
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> (b) international custom, as evidence of a general practice accepted as law;
>
> (c) general principles of law recognized by civilized nations;
>
> (d) subject to the provisions of Article 59, judicial decisions and the teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law.

Statute of the International Court of Justice, Art. 38(1).

[3] IAN BROWNLIE, *PRINCIPLES OF PUBLIC INTERNATIONAL LAW Sixth Edition* 18 (2003).

[4] 83 Phil. 171, 178 (1949).

Court reasoned that the rules and regulations of the Hague and Geneva Conventions formed part of generally accepted principles of international law. *Kuroda* thus recognized that principles of customary international law do not cease to be so, and are in fact reinforced, when codified in multilateral treaties.

In *International School Alliance of Educators v. Quisumbing*,[5] the Court invalidated as discriminatory the practice of International School, Inc. of according foreign hires higher salaries than local hires. The Court found that, among other things, there was a general principle against discrimination evidenced by a number of international conventions proscribing it, which had been incorporated as part of national laws through the Constitution.

The Court thus subsumes within the rubric of "generally accepted principles of international law" both "international custom" and "general principles of law," two distinct sources of international law recognized by the ICJ Statute.

Respecting the doctrine of command responsibility, a careful scrutiny of its origin and development shows that it is a widely accepted general principle of law if not, also, an international custom.

The doctrine of command responsibility traces its roots to the laws of war and armed combat espoused by ancient civilizations. In a 1439 declaration of Charles VII of Orleans, for instance, he proclaimed in his Ordinances for the Armies:

> [T]he King orders each captain or lieutenant be held responsible for the abuses, ills, and offences committed by members of his company, and that as soon as he receives any complaint concerning any such misdeed or abuse, he bring the offender to justice so that the said offender be punished in a manner commensurate with his offence, according to these Ordinances. If he fails to do so or covers up the misdeed or delays taking action, or if, because of his negligence

[5] G.R. No. 128845, June 1, 2000, 333 SCRA 13.

or otherwise, the offender escapes and thus evades punishment, the captain shall be deemed responsible for the offence, as if he has committed it x x x.[6] (underscoring supplied.)

The first treaty codification of the doctrine of command responsibility was in the Hague Convention IV of 1907.[7] A provision therein held belligerent nations responsible for the acts of their armed forces,[8] prefiguring the modern precept of holding superiors accountable for the crimes of subordinates if they fail in their duties of control, which is anchored firmly in customary international law.[9]

The development of the command responsibility doctrine is largely attributable to the cases related to World War II and subsequent events.

One prominent case is the *German High Command Case*[10] tried by the Nuremberg Tribunal, wherein German officers were indicted for atrocities allegedly committed in the European war. Among the accused was General Wilhelm Von Leeb, who was charged with implementing Hitler's Commissar and Barbarossa Orders, which respectively directed the murder of Russian political officers and maltreatment of Russian civilians. Rejecting the

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[6] Text culled from Theodor Meron, *Henry's Wars and Shakespeare's Laws* 149 N.40, Article 19 (Eng. Tr. 1993); Louis Guillaume De Vilevault & Louis Brequigny, *Ordonnances Des Rois De France De La Troisieme Race* XIII, 306 (1782).

[7] Respecting the Laws and Customs of War on Land, October 18, 1907, U.S.T.S. 539, 36 Stat. 2277.

[8] *Id.*, Article 3.

[9] *Vide Prosecutor v. Mucic*, International Criminal Tribunal for the Former Yugoslavia (Appeals Chamber), judgment of February 20, 2001, para. 195. For command responsibility in international armed conflict, *vide Prosecutor v. Hadzihasanovic*, International Criminal Tribunal for the Former Yugoslavia (Appeals Chamber), decision on Interlocutory Appeal Challenging Jurisdiction in Relation to Command Responsibility of July 16, 2003, paras. 11 *et seq.*

[10] United Nations War Crimes Commission, XII Law Reports of Trials of War Criminals 1, 76 (1948).

thesis that a superior is automatically responsible for atrocities perpetrated by his subordinates, the tribunal acquitted Von Leeb. It acknowledged, however, that a superior's *negligence* may provide a proper basis for his accountability even absent direct participation in the commission of the crimes. Thus:

> [C]riminality does not attach to every individual in this chain of command from that fact alone. There must be a personal dereliction. That can occur only where the act is directly traceable to him or where his failure to properly supervise his subordinates constitutes criminal negligence on his part. (underscoring supplied.)

In *In re Yamashita*,[11] the issue was framed in this wise:

> The question then is whether the law of war imposes on an army commander a duty to take such appropriate measures as are within his power to **control** the troops under his command for the *prevention* of the specified acts which are violations of the law of war and which are likely to attend the occupation of hostile territory by an uncontrolled soldiery, and whether he may be charged with personal responsibility for his *failure to take such measures* when violations result. (emphasis, underscoring and italics supplied.)

Resolving the issue in the affirmative, the Court found General Tomoyuki Yamashita guilty of **failing to control** the members of his command who committed war crimes, even without any direct evidence of instruction or knowledge on his part.

The post-World War II formulation of the doctrine of command responsibility then came in Protocol I of 1977, Additional Protocol to the Geneva Conventions[12] of 1949, Article 86 of which provides:

> 1. The High Contracting Parties and the Parties to the conflict shall repress grave breaches, and take measures necessary to suppress all other breaches, of the Conventions or of this Protocol which result from a failure to act when under a duty to do so.

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[11] 327 US 1 (1946).

[12] The Geneva Conventions consist of four treaties concluded in Geneva, Switzerland that deal primarily with the treatment of non-combatants and prisoners of war. The four Conventions are:

2. The fact that a breach of the Conventions or of this Protocol was committed by a subordinate **does not absolve his superiors** from penal or disciplinary responsibility, as the case may be, if they knew, or had information that should have enabled them to conclude in the circumstances at the time, that he was committing or was going to commit such a breach *and* if they did not take all feasible measures within their power to prevent or repress the breach.[13] (emphasis, underscoring and italics supplied.)

The doctrine of command responsibility has since been invariably applied by *ad hoc* tribunals created by the United Nations for the prosecution of international crimes, and it remains codified in the statutes of all major international tribunals.[14]

From the foregoing, it is abundantly clear that there is a long-standing adherence by the international community to the doctrine of command responsibility, which makes it a general principle of law recognized by civilized nations. As such, it should be incorporated into Philippine law as a generally accepted principle of international law.

While the exact formulation of the doctrine of command responsibility varies in different international legal instruments, the variance is more apparent than real. The Court should take judicial notice of the core element that permeates these

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First Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field (first adopted in 1864, last revised in 1949)

Second Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea (first adopted in 1949, successor to the 1907 Hague Convention X)

Third Geneva Convention relative to the Treatment of Prisoners of War (first adopted in 1929, last revised in 1949)

Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War (first adopted in 1949, based on parts of the 1907 Hague Convention IV).

[13] Protocol I Additional to the Geneva Conventions of August 12, 1949 and relating to the Protection of Victims of International Armed Conflicts, June 8, 1977, 1125 U.N.T.S. 3.

formulations – a commander's **negligence** in preventing or repressing his subordinates' commission of the crime, or in bringing them to justice thereafter. Such judicial notice is but a necessary consequence of the application of the incorporation clause vis-à-vis the rule on mandatory judicial notice of international law.[15]

That proceedings under the Rule on the Writ of *Amparo* do not determine criminal, civil or administrative liability should not abate the applicability of the doctrine of command responsibility. Taking *Secretary of National Defense v. Manalo*[16] and *Razon v. Tagitis*[17] in proper context, they do not preclude the application of the doctrine of command responsibility to *Amparo* cases.

Manalo was actually emphatic on the importance of the right to security of person and its contemporary signification as a guarantee of protection of one's rights by the government. It further stated that protection includes conducting effective investigations, organization of the government apparatus to extend

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[14] Statute of the International Criminal Tribunal for the former Yugoslavia, UN Doc. S/RES/827 (1993), Annex, Article 7(3); Statute of the International Criminal Tribunal for Rwanda, UN Doc. S/RES/955 (1994), Annex, Article 6(3); Statute of the Special Court for Sierra Leone, Agreement Between the United Nations and the Government of Sierra Leone on the Establishment of a Special Court for Sierra Leone, January 16, 2002, Annex, Article 6(3); Statute of the Khmer Rouge Tribunal, Law on the Establishment of Extraordinary Chambers in the Courts of Cambodia for the Prosecution of Crimes Committed During the Period of Democratic Kampuchea, Article 29; Rome Statute of the International Criminal Court, circulated as document A/CONF. 183/9 of July 17, 1998 and corrected by process-*verbaux* of November 10, 1998, July 12, 1999, November 30, 1999, May 8, 2000, January 17, 2001 and January 16, 2002, Article 28; Statute of the Special Tribunal for Lebanon, UN Doc. S/RES/1757 (2007), Article 3(2).

[15] Section 1, Rule 129 of the Rules of Court provides in relevant part:

Section 1. *Judicial notice, when mandatory.* - A court shall take judicial notice, without the introduction of evidence, of . . . the law of nations . . .

[16] G.R. No. 180906, October 7, 2008, 568 SCRA 1.

[17] G.R. No. 182498, December 3, 2009.

protection to victims of extralegal killings or enforced disappearances, or threats thereof, and/or their families, and bringing offenders to the bar of justice.[18]

Tagitis, on the other hand, cannot be more categorical on the application, at least in principle, of the doctrine of command responsibility:

> Given their mandates, the PNP and PNP-CIDG officials and members were the ones who were remiss in their duties when the government completely failed to exercise the extraordinary diligence that the *Amparo* Rule requires. **We hold these organizations accountable through their incumbent Chiefs who**, under this Decision, **shall carry the personal responsibility of seeing to it that extraordinary diligence**, in the manner the *Amparo* Rule requires, **is applied in addressing the enforced disappearance** of Tagitis. (emphasis and underscoring supplied.)

Neither does Republic Act No. 9851[19] emasculate the applicability of the command responsibility doctrine to *Amparo* cases. The short title of the law is the "*Philippine Act on Crimes Against International Humanitarian Law, Genocide, and Other Crimes Against Humanity.*" Obviously, it should, as it did, only treat of superior responsibility as a ground for criminal responsibility for the crimes covered.[20] Such limited treatment, however, is merely in keeping with the statute's

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[18] *Supra* note 16 at 57.

[19] AN ACT DEFINING AND PENALIZING CRIMES AGAINST INTERNATIONAL HUMANITARIAN LAW, GENOCIDE AND OTHER CRIMES AGAINST HUMANITY, ORGANIZING JURISDICTION, DESIGNATING SPECIAL COURTS, AND FOR RELATED PURPOSES; SIGNED INTO LAW on December 11, 2009.

[20] Section 10. *Responsibility of Superiors.* - In addition to other grounds of criminal responsibility for crimes defined and penalized under this Act, a superior shall be criminally responsible as a principal for such crimes committed by subordinates under his/her effective command and control, or effective authority and control as the case may be, as a result of his/her failure to properly exercise control over such subordinates, where:

(a) That superior either knew or, owing to the circumstances at the time, should have known that the subordinates were committing or about to commit such crimes;

purpose and not intended to rule out the application of the doctrine of command responsibility to other appropriate cases.

Indeed, one can imagine the innumerable dangers of insulating high-ranking military and police officers from the coverage of reliefs available under the Rule on the Writ of *Amparo*. The explicit adoption of the doctrine of command responsibility in the present case will only bring *Manalo* and *Tagitis* to their logical conclusion.

In fine, I submit that the Court should take this opportunity to state what the law ought to be if it truly wants to make the Writ of *Amparo* an effective remedy for victims of extralegal killings and enforced disappearances or threats thereof. While there is a genuine dearth of evidence to hold respondents Gen. Hermogenes Esperon and P/Dir. Gen. Avelino Razon accountable under the command responsibility doctrine, the *ponencia*'s hesitant application of the doctrine itself is replete with implications abhorrent to the rationale behind the Rule on the Writ of *Amparo*.

SEPARATE OPINION

BRION, *J.*:

I **CONCUR** with the *ponencia* and its results but am compelled to write this Separate Opinion to elaborate on some of the *ponencia's* points and to express my own approach to the case, specifically, an "alternative approach" in resolving the case that the *ponencia* only partially reflects. On this point, I still believe that my "alternative approach" would be more effective in achieving the objectives of a Writ of *Amparo*.

For the record, I wish at the outset to draw attention to the recent enactment on **December 11, 2009** of Republic Act No. 9851 (*RA 9851*), otherwise known as *"An Act Defining and Penalizing Crimes Against International Humanitarian*

(b) That superior failed to take all necessary and reasonable measures within his/her power to prevent or repress their commission or to submit the matter to the competent authorities for investigation and prosecution.

Law, Genocide and Other Crimes Against Humanity, Organizing Jurisdiction, Designating Special Courts, and for Related Purposes." Two aspects relevant to the present case have been touched upon by this law, namely, the definition of enforced or involuntary disappearance, and liability under the doctrine of command responsibility. Under Section 3(g) of the law, "enforced or involuntary disappearance" is now defined as follows:

> (g) "Enforced or involuntary disappearance of persons" means the arrest, detention, or abduction of persons by, or with the authorization, support or acquiescence of, a State or a political organization followed by a refusal to acknowledge that deprivation of freedom or to give information on the fate or whereabouts of those persons with the intention of removing from the protection of the law for a prolonged period of time.[1]

With this law, the Rule on the Writ of *Amparo* is now a procedural law anchored, not only on the constitutional rights to the rights to life, liberty and security, but on a concrete statutory definition as well of what an "enforced or involuntary disappearance" is. This new law renders academic and brings to a close the search for a definition that we undertook in *Razon v. Tagitis*[2] to look for a firm anchor in applying the Rule on the Writ of *Amparo* procedures.

I shall discuss RA 9851's effect on doctrine of command responsibility under the appropriate topic below.

Background

By way of background, the petition for the Writ of *Amparo* dated October 25, 2007 alleged that petitioner Lourdes Rubrico (*Lourdes*) was kidnapped and detained without any basis in law on April 3, 2007, but was subsequently released by her

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[1] Under Section 6 of RA 9851, enforced or involuntary disappearance is penalized under the concept of "other crimes against humanity" when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack.

[2] G.R. No. 182498, Dec. 3, 2009.

captors. Soon after her release on April 10, 2007, Lourdes and her children Jean Rubrico Apruebo and Joy Rubrico Carbonel (collectively, the *petitioners*) filed with the Ombudsman their complaint (dated April 19, 2007) against respondents *Capt. Angelo Cuaresma, Ruben Alfaro, Jimmy Santana,* a certain *Jonathan* and *Darwin Sy* or *Darwin Reyes*. The Ombudsman complaint was for violation of Articles 124 and 267 of the Revised Penal Code, and of Section 4, Rep. Act No. 7438, paragraphs (a) and (b).

During Lourdes' detention and after her release, her children (who initially looked for her and subsequently followed up the investigation of the reported detention with the police), and even Lourdes herself, alleged that they were harassed by unknown persons they presumed to be military or police personnel.

On October 25, 2007, the petitioners filed the present petition regarding: (1) the failure of the respondents to properly investigate the alleged kidnapping; and (2) the acts of harassment the petitioners suffered during the search for Lourdes and after her release. The petition also alleged that the Ombudsman violated Lourdes' right to the speedy disposition of her case, and placed her and her witnesses in danger because of its inaction.

Re: Respondent President Macapagal-Arroyo

The *ponencia* correctly ruled that the dismissal of the petition as against the President is proper because of her immunity from suit during her term.[3] The more basic but unstated reason

[3] Under Section 9 of RA 9851, the Philippine constitutional standard of presidential immunity from suit is also made an exception to the higher international criminal law standard of non-immunity of heads of state for the most serious crimes of concern to the international community as a whole – namely, war crimes, genocide, and crimes against humanity. Thus, Section 9 states:

> **Section 9.** *Irrelevance of Official Capacity.* - This Act shall apply equally to all persons without any distinction based on official capacity. **In particular, official capacity as a head of state or government, a member of a government or parliament, an elected representative or a government official shall in no case exempt**

is that the petitioners did not even specifically state the act or omission by which the President violated their right as required by Section 2, Rule 2 of the Rules of Court, and therefore, failed to prove it. Thus, I fully concur with the dismissal the *ponencia* directed.

Re: The Ombudsman

I likewise agree with the *ponencia's* conclusion that the petition against the Ombudsman should be dismissed for the reason discussed below.

The petitioner simply alleged that the Ombudsman *violated her right to speedy disposition of the criminal complaint*, with the passing claim that the delay has placed her life and that of her witnesses in danger. She failed to aver the fact of delay; the dilatory acts of the Ombudsman, if any; and manner and kind of danger the delay caused her.

Thus, the petition did not allege anything that would place it within the ambit of the Rule on the Writ of *Amparo* (the *Amparo Rule*) with respect to the Ombudsman; it did not involve any violation by the Ombudsman relating to any disappearance, extrajudicial killing or any violation or threat of violation of the petitioners' constitutional rights to life, liberty or security.

For this reason, the petition stated no cause of action against the Ombudsman under the *Amparo* Rule, contrary to Section 2, Rule 2 of the Rules of Court, in relation with Section 5 of the

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a person from criminal responsibility under this Act, nor shall it, in and of itself, constitute a ground for reduction of sentence. **However**:

(a) Immunities or special procedural rules that may be attached to the official capacity of a person under Philippine law **other than the established constitutional immunity from suit of the Philippine President during his/her tenure**, shall not bar the court from exercising jurisdiction over such a person; and

(b) Immunities that may be attached to the official capacity of a person under international law may limit the application of this Act, not only within the bounds established under international law. [emphasis supplied]

Amparo Rule. I thus join the *ponencia* in dismissing the case against the Ombudsman.

Re: The Command Responsibility Ruling

On the command responsibility issue, the CA held in its decision that:

> The doctrine of command responsibility holds military commanders and other persons occupying positions of superior authority criminally responsible for the unlawful conduct of their subordinates. For the doctrine to apply, the following elements must be shown to exist: (i) the existence of a superior-subordinate relationship; (ii) the superior knew or had reason to know that the criminal act was about to be or had been committed; and (iii) the superior failed to take the necessary and reasonable measures to prevent the criminal act or punish the perpetrator (Joaquin Bernas, S.J. *Command Responsibility*, February 7, 2007).
>
> Since petitioners failed to establish by substantial evidence the first element of command responsibility, *i.e.,* that the perpetrators of the acts complained of are subordinates of Gen. Esperon and P/Dir. Gen. Razon, we cannot hold the two officials liable under a writ of *amparo*.

Under these terms, the CA effectively ruled that the doctrine of command responsibility applies in an *Amparo* case, but could not be applied in this case for lack of proof that the alleged perpetrators were military or police personnel.

The *ponencia* rejects the CA's approach and conclusion and holds that command responsibility is not an appropriate consideration in an *Amparo* proceeding, except for purposes specific and directly relevant to these proceedings. I fully concur with this conclusion.

The doctrine of command responsibility is a substantive rule that establishes criminal or administrative liability that is different from the purpose and approach of the *Amparo* Rule. As we have painstakingly explained in *Secretary of Defense v. Manalo*[4] and *Razon v. Tagitis*,[5] the *Amparo* Rule merely provides for a

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[4] G.R. No. 180906, Oct. 7, 2008, 568 SCRA 1, 57-58.

[5] *Supra* note 1.

procedural protective remedy against violations or threats of violations of the *constitutional* rights to life, liberty and security. It **does not address *criminal, civil or administrative liability*** as these are matters determined from the application of **substantive law**.

As heretofore mentioned, a new law – RA 9851 – has recently been passed relating to enforced disappearance and command responsibility. Section 10 of this law explicitly makes superiors *criminally liable* under the doctrine of command responsibility, as follows:[6]

Section 10. Responsibility of Superiors. – In addition to other grounds of criminal responsibility for crimes defined and penalized under this Act, a superior shall be criminally responsible as a principal for such crimes committed by subordinates under his/her effective command and control, or effective authority and control as the case may be, as a result of his/her failure to properly exercise control over such subordinates, where:

(a) That superior either knew or, owing to the circumstances at the time, should have known that the subordinates were committing or about to commit such crimes;

(b) That superior, failed to take all necessary and reasonable measures within his/her power to prevent or repress their commission or to submit the matter to the competent authorities for investigation and prosecution.

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[6] Similarly, Section 13 of Republic Act No. 9745, otherwise known as the "Anti-Torture Act of 2009" makes "[t]he immediate commanding officer of the unit concerned of the AFP or the immediate senior public official of the PNP and other law enforcement agencies criminally liable as a principal to the crime of torture or other cruel or inhuman and degrading treatment or punishment "[i]f he/she has knowledge of or, owing to the circumstances at the time, should have known that acts of torture or other cruel, inhuman and degrading treatment or punishment shall be committed, is being committed, or has been committed by his/her subordinates or by others within his/her area of responsibility and, despite such knowledge, did not take preventive or corrective action either before, during or immediately after its commission, when he/she has the authority to prevent or investigate allegations of torture or other cruel, inhuman and degrading treatment or punishment but failed to prevent or investigate allegations of such act, whether deliberately or due to negligence shall also be liable as principals."

Thus, liability under the doctrine of command responsibility is no longer simply administrative (based on neglect of duty),[7] but is now criminal. This new development all the more stresses that the doctrine of command responsibility has limited application to the Rule on the Writ of *Amparo* whose concern is the protection of constitutional rights through procedural remedies.

The factual issue an *Amparo* case directly confronts is whether there has been a disappearance or an extrajudicial killing or threats to the constitutional rights to life, liberty and security. If at all possible, a preliminary determination can be made on who could have perpetrated the acts complained of, but only for the purpose of pointing the way to the remedies that should be undertaken. On the basis of a positive finding, the case proceeds to its main objective of defining and directing the appropriate procedural remedies to address the threat, disappearance or killing.[8] In meeting these issues, the *Amparo* Rule specifies the standard of diligence that responsible public officials carry in the performance of their duties. Expressly,[9] one duty the *Amparo* Rule commands is the investigation of a reported crime that, by law,[10] the police is generally duty bound to address.

To the extent of (1) answering the question of whether an enforced disappearance, an extrajudicial killing or threats thereof have taken place and who could have been the perpetrators of these deeds; (2) determining who has the *immediate* duty to address the threat, disappearance, extrajudicial killing or violation of constitutional right; and in (2) determining the remedial measures that need to be undertaken – the doctrine of command responsibility may find some relevance to the present petition.

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[7] As provided under Executive Order No. 226 for the Philippine National Police and Circular No. 28, Series of 1956 of the Armed Forces of the Philippines.

[8] *Id*.

[9] Rule on the Writ of *Amparo*, Sections 5, 9 and 17.

[10] Republic Act No. 6975, Section 24.

This linkage, however, does not go all the way to a definitive determination of criminal or administrative liability, or non-liability, for the act of a subordinate or for neglect of duty. This question is far from what the CA or this Court can definitively answer in an *Amparo* petition and is certainly an improper one to answer in an *Amparo* proceeding. It has never been the intention of the *Amparo* Rule to determine liability, whether criminal or administrative; the Court, under the *Amparo* Rule, can only direct that procedural remedies be undertaken for the protection of constitutional rights to life, liberty and security.

In *Tagitis,* we pointedly stated that while the Court can preliminarily determine ***responsibility*** in terms of authorship (not liability), this is only "as a measure of the remedies this Court shall craft, among them, the directive to file the appropriate criminal and civil cases against the responsible parties in the proper courts." In doing this, we gave "*responsibility*" a peculiar meaning in an *Amparo* proceeding. (We did the same with the term "*accountability*.")[11] It is only in this same sense that the CA can hold respondents Gen. Esperon and P/Dir. Gen. Razon not liable under the doctrine of command responsibility.

Re: Respondents P/Dir. Gen. Razon and Gen. Esperon

Subject to the above observations and for the reasons discussed below, I concur in dismissing the petition against the respondents P/Dir. Gen. Razon and Gen. Esperon who were impleaded in

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[11] In *Tagitis*, 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."

their capacities as Philippine National Police (*PNP*) Chief and Armed Forces of the Philippines (*AFP*) Chief of Staff, respectively. As a matter of judicial notice, they are no longer the incumbents of the abovementioned positions and cannot therefore act to address the concerns of a Writ of *Amparo*. **In their places should be the incumbent PNP Chief and AFP Chief of Staff to whom the concerns of and the responsibilities under the petition and the *Amparo* Rule should be addressed.** Unless otherwise directed by the Court, these incumbent officials shall assume direct responsibility for what their respective offices and their subordinate officials should undertake in *Amparo* petitions. This is in line with what we did in *Tagitis* where, as appropriate remedy, we applied the broadest brush by holding the highest PNP officials tasked by law to investigate, to be *accountable* for the conduct of further investigation based on our finding that no extraordinary diligence had been applied to the investigation of the case.

Consistent with this position, the petition should likewise be dismissed as against respondents Edgar B. Roquero (*Roquero*) and Arsenio C. Gomez (*Gomez*), except to the extent that Gomez may be charged with harassment and oppression before the Ombudsman[12] as these are substantive liability matters that are not laid to rest under an *Amparo* petition.

Re: Consideration of the Evidence and the Remedy

I acknowledge that the police at the municipal and provincial levels conducted investigations that unfortunately did not produce concrete results because of, among others, the lack of cooperation from the petitioners *at some point during the investigation.* No amount of extraordinary diligence indeed can produce results if the very persons seeking the investigation would not cooperate.

I do not read this intervening development, however, to be indicative of lack of interest in the case, given the efforts on record exerted by the petitioners to follow up the case at every

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[12] See *Prudencio M. Reyes, Jr. v. Simplicio C. Belisario,* G.R. No. 154652, August 15, 2009.

level of police investigation. Moreover, the petitioners still pursued their petition and relied on this Court, in the hope that we can remedy what they perceive to be inadequate police investigative response.

In my view, the perceived lack of cooperation resulted more from frustration with police processes rather than from the outright refusal to cooperate. As we discussed in *Tagitis*, this is precisely the type of situation that a Writ of *Amparo* addresses – a situation where the petitioners swim against the current in a river strewn with investigative and evidentiary difficulties.

From the records, I note that very significant gaps exist in the handling of the investigation – among them, the failure to identify and locate the respondents Major Darwin Reyes/ Sy, Jimmy Santana, Ruben Alfaro, Captain Angelo Cuaresma and a certain Jonathan – to the point that the petition was not even served on these respondents. This gap occurred despite evidence that the respondents are military or police personnel and that the address of Darwin Reyes/Sy had apparently been located and he had been identified to be connected with the military. A major problem, as the petition pointed out, is that *the AFP itself certified that these respondents are not in the roster of Philippine Air Force personnel;* ***no search and certification was ever made on whether they are AFP personnel or in other branches of the service.*** *No significant follow through was also made in locating and properly placing Darwin Reyes/Sy within the jurisdiction of the court despite the evidentiary leads provided*. These constitute major gaps in the investigation that became the stumbling blocks to its progress, both with the CA and the Ombudsman. Both bodies failed to make any headway because only the investigating respondents who are not alleged participants in the kidnapping showed up while the alleged perpetrators did not. This Court will never know unless further investigation is conducted whether this happened by design or by accident.

Based on this view, I agree with the *ponencia* that further investigation and monitoring should be undertaken. While past investigations may have been conducted, no extraordinary

diligence had been applied to critical aspects of the case that are outside the petitioners' capability to act upon and which therefore have not been affected by the petitioners' lack of cooperation, even assuming this to be true. Because of this investigative shortcoming, we do not have sufficient factual findings that would give us the chance to fashion commensurate remedies. Otherwise stated, we cannot rule on the case until a more meaningful investigation using extraordinary diligence is undertaken.

The *ponencia* holds that the needed additional actions should be undertaken by the CA. I concur with this ruling as it is legally correct; the CA started the fact-finding on the case and has adequate powers and capability to pursue it. **I wish to reiterate in this Separate Opinion, however, that an alternative way exists that is more direct and more efficient in achieving the goals of the Rule on the *Writ of Amparo* – *i.e.* the full and complete investigation with the observance of extraordinary diligence, and the recommendation for the prosecution of the parties who appear to be responsible for the violation of the constitutional rights to life, liberty and security. This alternative is based on the relevant provisions of the *Amparo* Rule, particularly Sections 20 to 23** which provide:

> **SECTION 20.** ***Archiving and Revival of Cases.*** — The court shall not dismiss the petition, but shall archive it, if upon its determination it cannot proceed for a valid cause such as the failure of petitioner or witnesses to appear due to threats on their lives.
>
> A periodic review of the archived cases shall be made by the *Amparo* court that shall, *motu proprio* or upon motion by any party, order their revival when ready for further proceedings. The petition shall be dismissed with prejudice upon failure to prosecute the case after the lapse of two (2) years from notice to the petitioner of the order archiving the case.
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> The clerks of court shall submit to the Office of the Court Administrator a consolidated list of archived cases under this Rule not later than the first week of January of every year.

SECTION 21. ***Institution of Separate Actions.*** — This Rule shall not preclude the filing of separate criminal, civil or administrative actions.

SECTION 22. ***Effect of Filing of a Criminal Action.*** – When a criminal action has been commenced, no separate petition shall be filed. The reliefs under the writ shall be available by motion in the criminal case.

The procedure under this Rule shall govern the disposition of the reliefs available under the writ of *amparo*.

SECTION 23. ***Consolidation.*** — When a criminal action is filed subsequent to the filing of a petition for the writ, the latter shall be consolidated with the criminal action.

When a criminal action and a separate civil action are filed subsequent to a petition for a writ of *Amparo,* the latter shall be consolidated with the criminal action.

After consolidation, the procedure under this Rule shall continue to apply to the disposition of the reliefs in the petition.

SECTION 26. ***Applicability to Pending Cases.*** — This Rule shall govern cases involving extralegal killings and enforced disappearances or threats thereof pending in the trial and appellate courts.

Section 22 of the *Amparo* Rule would be the closest provision to apply to the present case since a criminal action has been commenced before the Ombudsman (on April 19, 2007) before the present petition was filed on October 25, 2007. Under Section 22, no petition for the Writ of *Amparo* can technically be filed because of the previous commencement of criminal action before the Ombudsman. In the regular course, the present petition should have been dismissed outright at the first instance.

Yet, as the case developed, the Court issued the Writ of *Amparo* and the CA denied the petition on other grounds. As things now stand, it appears late in the day to dismiss the petition on the basis of Section 22. We should consider, too, that the present petition came under a unique non-repeatable circumstance – the Ombudsman complaint was filed before the *Amparo* Rule took effect; thus, the petitioners did not really have a choice of remedies when they filed the criminal complaint before the

Ombudsman. There is likewise the consideration that the Ombudsman complaint was only against the perceived perpetrators of the kidnapping, whereas the present petition impleaded even those who had the duty to investigate or could effectively direct investigation of the case. The kidnapping and the threats that resulted, too, are inextricably linked and should not separately and independently be considered under prevailing procedural rules.[13]

Under the circumstances, I believe that the best approach is to simply avail of the possibilities that the *combined application* of the above-quoted provisions offer, appropriately *modified to fit the current situation*. Thus, this Court can simply consolidate the *investigative and fact-finding* aspects of the present petition with the investigation of the criminal complaint before the Ombudsman, directing in the process that the *threats to the right to security* aired in the present petition be incorporated in the Ombudsman complaint. Necessarily, all the records and evidence so far adduced before the CA should likewise be turned over and be made available to the Ombudsman in its investigation, in accordance with the dispositions made in this Decision. For purposes of its delegated investigative and fact-finding authority, the Ombudsman should be granted the complete investigative power available under the *Amparo* Rule.

The petitioners should be allowed, as they see fit, to amend their Ombudsman complaint to give full effect to this consolidation.

In the above manner, the Court continues to exercise jurisdiction over the *Amparo* petition and any interim relief issue that may

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[13] See *Philippine National Bank v. Gotesco Tyan Ming Development, Inc.*, G.R. No. 183211, June 5, 2009, where the Court held that "[t]he rule allowing consolidation is designed to avoid multiplicity of suits, to guard against oppression or abuse, to prevent delays, to clear congested dockets, and to simplify the work of the [courts]; in short, the attainment of justice with the least expense and vexation to the parties-litigants." See also *Teston v. Development Bank of the Philippines*, G.R. No. 144374, November 11, 2005, 474 SCRA 597, 605.

arise, taking into account the Ombudsman's investigative and fact-finding recommendations.

The Ombudsman, for its part, shall rule on the complaint before it in accordance with its authority under Republic Act 6770 and its implementing rules and regulations, and report to the Court its investigative and fact-finding recommendations on the *Amparo* petition within one year from the promulgation of this Decision.

The incumbent Chiefs of the AFP and the PNP and their successors shall remain parties to the Ombudsman case and to the present petition in light of and under the terms of the consolidation, and can be directed to act, as the *ponencia* does direct them to act.

Now that the case has been remanded for further investigation and monitoring to the Court of Appeals, the investigation using the standards of extraordinary diligence now rests with that court to enforce, using all the powers and authority that this Court can grant under the Rule on the Writ of *Amparo*. The Ombudsman, for its part, has been duly enlightened by the *ponencia* and by this Separate Opinion on the directions it should take to effectively discharge its tasks in handling the complaint before it. The petitioners, too, have their share of the burden in pushing their case to a meaningful conclusion and cannot just wait for the other *dramatis personae* to act. With the Court's Decision, action has again shifted to the lower levels and the Court now simply waits to see if the appellate court, the Ombudsman and the parties, acting on their own and collectively, can be equal to the tasks before them.

FIRST DIVISION

[G.R. No. 185709. February 18, 2010]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **MICHAEL A. HIPONA,** *appellant.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; WEIGHT AND SUFFICIENCY OF EVIDENCE; CIRCUMSTANTIAL EVIDENCE; REQUISITES; ESTABLISHED IN CASE AT BAR.— For circumstantial evidence to suffice to convict an accused, the following requisites must concur: (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. The confluence of the following established facts and circumstances sustains the appellate court's affirmance of appellant's conviction: *First*, appellant was frequently visiting AAA prior to her death, hence, his familiarity with the layout of the house; *second*, appellant admitted to his relatives and the media that he was present during commission of the crime, albeit only as a look-out; *third*, appellant was in possession of AAA's necklace at the time he was arrested; and *fourth*, appellant extrajudicially confessed to the radio reporter that he committed the crime due to his peers and because of poverty.

2. CRIMINAL LAW; RAPE; PRESENCE OF SPERMATOZOA IS NOT ESSENTIAL IN FINDING THAT RAPE WAS COMMITTED.— Appellant argues that he should only be held liable for robbery and not for the complex crime of "Rape with Homicide (and Robbery)" [*sic*]. He cites the testimony of prosecution witness Aida Viloria-Magsipoc, DNA expert of the National Bureau of Investigation, that she found the vaginal smears taken from AAA to be negative of appellant's DNA. Appellant's argument fails. Presence of spermatozoa is not essential in finding that rape was committed, the important consideration being not the emission of semen but the penetration of the female genitalia by the male organ. As underlined above, the post-mortem examination of AAA's body revealed fresh hymenal lacerations which are consistent with findings of rape.

3. REMEDIAL LAW; EVIDENCE; ADMISSIBILITY; CONFESSION TO MEDIA; PROPERLY ADMITTED.— Not only does appellant's conviction rest on an unbroken chain of circumstantial evidence. It rests also on his unbridled admission to the media. *People v. Andan* instructs: Appellant's confessions to the media were likewise properly admitted. The confessions were made in response to questions by news reporters, not by the police or any other investigating officer. We have held that statements spontaneously made by a suspect to news reporters on a televised interview are deemed voluntary and are admissible in evidence. Appellant argues, however, that the questions posed to him by the radio broadcaster were vague for the latter did not specify what crime was being referred to when he questioned appellant. But, as the appellate court posited, appellant should have qualified his answer during the interview if indeed there was a need. Besides, he had the opportunity to clarify his answer to the interview during the trial. But, as stated earlier, he opted not to take the witness stand.

4. CRIMINAL LAW; ROBBERY WITH VIOLENCE OR INTIMIDATION OF PERSONS; CRIME COMMITTED IN CASE AT BAR.— The Court gathers, however, that from the evidence for the prosecution, robbery was the main intent of appellant, and AAA's death resulted by reason of or on the occasion thereof. Following Article 294(1) and Article 62(1)1 of the Revised Penal Code, rape should have been appreciated as an aggravating circumstance instead.

5. CIVIL LAW; DAMAGES; EXEMPLARY DAMAGES; REDUCTION THEREOF IS PROPER.— A word on the amount of exemplary damages awarded. As the Court finds the award of ₱100,000 exemplary damages excessive, it reduces it to ₱25,000, in consonance with prevailing jurisprudence.

APPEARANCES OF COUNSEL

The Solicitor General for appellee.
Public Attorney's Office for appellant.

D E C I S I O N

CARPIO MORALES, *J.*:

Michael A. Hipona (appellant) was convicted by Decision of September 10, 2002[1] of the Regional Trial Court of Cagayan de Oro City, Branch 18 with "Rape with Homicide (and Robbery)" [*sic*]. His conviction was affirmed by the Court of Appeals by Decision of January 28, 2008.[2]

The Second Amended Information charged appellant together with Romulo Seva, Jr. and one John Doe with Robbery with Rape and Homicide as follows:

> That on or about June 12, 2000 at 1:00 o'clock dawn at District 3, Isla Copa, Consolation, Cagayan de Oro City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating together, and mutually helping one another, by means of force and intimidation, did then and there willfully, unlawfully and feloniously have **carnal knowledge** with the offended party (AAA) who is the Aunt of accused Michael A. Hipona, she being the younger sister of the accused's mother and against her will, that on occasion of the said rape, accused, with evident premeditation, treachery and abuse of superior strength, and dwelling, with intent to kill and pursuant to their conspiracy, **choked and strangulated** said AAA which strangulation resulted to the victim's untimely death. That on the said occasion the victim's brown bag worth ₱3,800.00; cash money in the amount of no less than ₱5,000.00; and gold necklace were **stolen** by all accused but the gold necklace was later on recovered and confiscated in the person of accused Michael A. Hipona.[3] (emphasis and underscoring in the original)

The following facts are not disputed.

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[1] CA *rollo*, pp. 41-69.

[2] Penned by Associate Justice Romulo V. Borja with the concurrence of Associate Justices Mario V. Lopez and Elihu A. Ybañez; *rollo*, pp. 5-32.

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

AAA[4] was found dead on the morning of June 12, 2000 in her house in Isla Copa, Consolation, Cagayan de Oro City. She was raped, physically manhandled and strangled, which eventually led to her death. Her furniture and belongings were found strewn on the floor. AAA's necklace with two heart-shaped pendants bearing her initials and handbag were likewise missing.

Upon investigation, the local police discovered a hole bored into the *lawanit* wall of the comfort room inside AAA's house, big enough for a person of medium build to enter. The main electrical switch behind a "shower curtain" located at the "back room" was turned off, drawing the police to infer that the perpetrator is familiar with the layout of AAA's house.

SPO1 Bladimir Agbalog of the local police thus called for a meeting of AAA's relatives during which AAA's sister BBB, who is appellant's mother, declared that her son-appellant had told her that "Mama, I'm sorry, I did it because I did not have the money," and he was thus apologizing for AAA's death. BBB executed an affidavit affirming appellant's confession.[5]

On the basis of BBB's information, the police arrested appellant on June 13, 2000 or the day after the commission of the crime. He was at the time wearing AAA's missing necklace. When on even date he was presented to the media and his relatives, appellant apologized but qualified his participation in the crime, claiming that he only acted as a look-out, and attributed the crime to his co-accused Romulo B. Seva, Jr. (Seva) *alias* "Gerpacs" and a certain "Reypacs."

A day after his arrest or on June 14, 2000, appellant in an interview which was broadcasted, when asked by a radio reporter

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[4] The Court shall withhold the real name of the victim and shall use fictitious initials instead to represent her. Likewise, the personal circumstances of the victim/s 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. (*People v. Cabalquinto*, G.R. No. 167693, September 19, 2006, 502 SCRA 419-420)

[5] Records, p. 5.

"*Why did you do it to your aunt?,*" answered "*Because of my friends and peers.*" When pressed if he was intoxicated or was on drugs when he "did it," appellant answered that he did it because of his friends and of poverty.

Appellant's co-accused Seva was later arrested on July 9, 2000, while "Reypacs" remained at large.

Appellant entered a plea of not guilty while Seva refused to enter a plea, hence, the trial court entered a "not guilty" plea on his behalf.

Post mortem examination of AAA revealed the following findings:

Rigor mortis, generalized, Livor mortis, back, buttocks, flanks, posterior aspect of neck and extremities (violaceous).

Face, markedly livid. Nailbeds, cyanotic. With extensive bilateral subconjunctival hemorrhages and injections. Petecchial hemorrhages are likewise, noted on the face and upper parts of neck.

ABRASIONS, with fibrin: curvilinear; three (3) in number; measuring 1.1x0.4 cms., 0.8x0.3 cms., and 0.6x0.1 cm.; within an area of 2.8x1.1 cms. at the left side of the neck, antero-lateral aspect.

HEMATOMAS, violaceous; hemispherical in shapes, highly characteristic of bite marks: 3.5 x 0.4 cms. and 4.1x1.4 cms.; located at the right lower buccal region, lateral and medial aspects, respectively.

SOFT TISSUE DEFECT, with irregular edges; 2.5 x 2.7 cms.; left thigh, distal 3rd, medial aspect; involving only the skin and underlying adipose tissues; with an approximate depth of 1.6 cms.

ABRASIONS, with fibrin, curvilinear in shapes; 0.6x0.3 cm. and 0.5x0.3cm., right upper eyelid; 0.4x0.2 cms. and 0.3x 0.2 cms, right upper arm, distal 3rd, medial aspect; 0.5x0.3 cm., right forearm, proximal 3rd, medial aspect; 0.7x0.3 cm., left elbow; 0.5x0.2 cm., left forearm, middle 3rd, posterior aspect.

HEMATOMA, violaceous: 2.2x2.5 cms., right upper arm, middle 3rd, medial aspect.

DEPRESSED FRACTURE, body of thyroid cartilage, lateral aspects, bilateral.

PETECCHIAL HEMORRHAGES, subpleural, bilateral, and sub-epicardial.

xxx xxx xxx

GENITAL FINDINGS:

Subject is menstruating. Pubic hairs, fully grown, abundant. Labiae majora and minora, both coaptated. Vestibular mucosa, pinkish, smooth. Hymen, short, thin with COMPLETE, FRESH HYMENAL LACERATION (with fibrin and fresh reddish soft blood clot) at 6:00 o'clock position, and extending to the posterior aspect of vestibular mucosa up to the area of fourchette. Hymenal orifice originally annular, admits a glass tube of 2.5 cms. diameter with moderate resistance. Vaginal rugosities, prominent. Cervix, firm. Uterus, small.

xxx xxx xxx

CAUSE OF DEATH: Asphyxia by strangulation (manual).

REMARKS: Genital injury noted, age of which is compatible with sexual intercourse(s) with man/men on or about June 11-12 2000.[6] (underscoring supplied)

Albeit appellant's mother BBB refused to take the witness stand, SPO1 Agbalog and Consuelo Maravilla, another relative of appellant, testified on BBB's declaration given during the meeting of relatives.

Appellant refused to present evidence on his behalf while Seva presented evidence to controvert the evidence on his alleged participation in the crime.

By Decision of September 10, 2002, the trial court, after considering circumstantial evidence, *viz*:

Based on the foregoing circumstances, specially of his failure to explain why he was in possession of victim's stolen necklace with pendants, plus his confession to the media in the presence of his relatives, and to another radio reporter "live-on-the-air" about a day after his arrest, sealed his destiny to perdition and points to a conclusion beyond moral certainty that his hands were soiled and sullied by blood of his own Aunt.[7] (underscoring supplied),

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[6] *Id.* at 415-416.

[7] CA *rollo*, p. 139.

found appellant guilty beyond reasonable doubt of "Rape with Homicide (and Robbery)." [*sic*]. It acquitted Seva. Thus the trial court disposed:

WHEREFORE, in view of all the foregoing, the Court finds accused **MICHAEL HIPONA GUILTY beyond reasonable doubt** of a special complex crime of Rape with Homicide (and Robbery) punishable under Articles 266-A and 266-B, of the Revised Penal Code, as amended by R.A. 8353, and after taking into account the generic aggravating circumstance of dwelling, without a mitigating circumstance, accused **MICHAEL HIPONA is hereby sentenced and SO ORDERED to suffer the supreme penalty of DEATH by lethal injection**, plus the accessory penalties. He is hereby **SO ORDERED** to pay the heirs the sum of One Hundred Thousand (₱100,000.00) Pesos, as indemnity. Another One Hundred Thousand (₱100,000.00) Pesos, as moral damages. In order to further give accused Michael Hipona a lesson that would serve as a warning to others, he is also directed and **SO ORDERED** to pay another Fifty Thousand (₱50,000.00) Pesos, as exemplary damages.

For failure on the part of the prosecution to prove the guilt of the accused Romulo Seva, Jr., beyond reasonable doubt, it is **SO ORDERED** that he should be acquitted and it is hereby ACQUITTED of the crime charged, and is hereby released from custody unless detained for other legal ground.

Pursuant to Section 22 of R.A. 7659, and Section 10 of Rule 122 of the Rules of Court, let the entire record be forwarded to the Supreme Court for automatic review."[8] (emphasis in the original; underscoring supplied)

On elevation of the records of the case, the Court, following *People v. Mateo*,[9] referred the same to the Court of Appeals.

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[8] *Id.* at 143-144.

[9] G.R. Nos. 147678-87, July 7, 2004, 433 SCRA 640. The case modified the pertinent provisions of the Revised Rules on Criminal Procedure, more particularly Section 3 and Section 10 of Rule 122, Section 13 of Rule 124, Section 3 of Rule 125 insofar as they provide for direct appeals from the Regional Trial Courts to the Supreme Court in cases where the penalty imposed is death, *reclusion perpetua* or life imprisonment and allowed intermediate review by the Court of Appeals before such cases are elevated to the Supreme Court.

Appellant maintains that his guilt was not proven beyond reasonable doubt.[10]

As stated early on, the Court of Appeals sustained appellant's conviction. It, however, modified the penalty[11] imposed, and the amount of damages awarded by the trial court. Thus the appellate court, by the challenged Decision of January 28, 2008, disposed:

> WHEREFORE, the Decision of the lower court is hereby AFFIRMED with the following MODIFICATIONS:
>
> 1. That the penalty imposed is *reclusion perpetua;*
> 2. That appellant is hereby ordered to pay the heirs of AAA the following: the sum of ₱100,000.00 as civil indemnity; ₱75,000.00 as moral damages; and ₱100,000.00 as exemplary damages.
>
> SO ORDERED.[12] (underscoring supplied)

The records of the case were elevated to this Court in view of the Notice of Appeal filed by appellant. Both the People and appellant manifested that they were no longer filing any supplemental briefs.

The appeal is bereft of merit.

For circumstantial evidence to suffice to convict an accused, the following requisites must concur: (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.[13]

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[10] CA *rollo*, pp. 93-115.

[11] The imposition of death penalty has been prohibited by Republic Act No. 9346, otherwise known as *"An Act Prohibiting the Imposition of Death Penalty in the Philippines."*

[12] *Rollo*, p. 31.

[13] RULES OF COURT, Rule 133, Sec. 4.

The confluence of the following established facts and circumstances sustains the appellate court's affirmance of appellant's conviction: *First,* appellant was frequently visiting AAA prior to her death, hence, his familiarity with the layout of the house; *second,* appellant admitted to his relatives and the media that he was present during commission of the crime, albeit only as a look-out; *third*, appellant was in possession of AAA's necklace at the time he was arrested; and *fourth,* appellant extrajudicially confessed to the radio reporter that he committed the crime due to his peers and because of poverty.

Appellant argues that he should only be held liable for robbery and not for the complex crime of "Rape with Homicide (and Robbery)" [*sic*]. He cites the testimony of prosecution witness Aida Viloria-Magsipoc, DNA expert of the National Bureau of Investigation, that she found the vaginal smears taken from AAA to be negative of appellant's DNA.

Appellant's argument fails. Presence of spermatozoa is not essential in finding that rape was committed, the important consideration being not the emission of semen but the penetration of the female genitalia by the male organ.[14] As underlined above, the post-mortem examination of AAA's body revealed fresh hymenal lacerations which are consistent with findings of rape.

Not only does appellant's conviction rest on an unbroken chain of circumstantial evidence. It rests also on his unbridled admission to the media. *People v. Andan* instructs:

> Appellant's confessions to the media were likewise properly admitted. The confessions were made in response to questions by news reporters, not by the police or any other investigating officer. We have held that statements spontaneously made by a suspect to news reporters on a televised interview are deemed voluntary and are admissible in evidence.[15] (underscoring supplied)

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[14] *People v. Bato*, 382 Phil. 558, 566 (2000), citing *People v. Sacapaño*, 372 Phil. 543, 555 (1999); *People v. Manuel*, 358 Phil. 664, 672 (1998).

[15] Citing *People v. Andan*, G.R. No. 116437, March 3, 1997, 269 SCRA 95, 111 citing *People v. Vizcarra,* 115 SCRA 743, 752 (1982).

Appellant argues, however, that the questions posed to him by the radio broadcaster were vague for the latter did not specify what crime was being referred to when he questioned appellant. But, as the appellate court posited, appellant should have qualified his answer during the interview if indeed there was a need. Besides, he had the opportunity to clarify his answer to the interview during the trial. But, as stated earlier, he opted not to take the witness stand.

The Court gathers, however, that from the evidence for the prosecution, robbery was the main intent of appellant, and AAA's death resulted by reason of or on the occasion thereof. Following Article 294(1)[16] and Article 62(1)[17] 1 of the Revised Penal Code, rape should have been appreciated as an aggravating circumstance instead.[18]

A word on the amount of exemplary damages awarded. As the Court finds the award of ₱100,000 exemplary damages excessive, it reduces it to ₱25,000, in consonance with prevailing jurisprudence.[19]

WHEREFORE, the Decision of January 28, 2008 of the Court of Appeals is hereby *AFFIRMED* with *MODIFICATION*. Appellant, Michael A. Hipona is found guilty beyond reasonable doubt of *Robbery with Homicide* under Article 294(1) of the Revised Penal Code. He is accordingly sentenced to *reclusion*

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[16] Art. 294. *Robbery with violence or intimidation of persons – Penalties.* – Any person guilty of robbery with the use of violence against or intimidation of any person shall suffer:

1. The penalty of from *reclusion perpetua* to death, when by reason or on occasion of the robbery, the crime of **homicide** shall have been committed; or when the robbery shall have been **accompanied by rape** or intentional mutilation or arson. x x x (emphasis and underscoring supplied)

[17] Aggravating circumstances which in themselves constitute a crime specially punishable by law or which are included by the law in defining a crime and prescribing the penalty therefor shall not be taken into account for the purpose of increasing the penalty.

[18] *People v. Ganal*, 85 Phil. 743 (1950).

[19] *People v. Basmayor*, G.R. No. 182791, February 10, 2009, 578 SCRA 369.

perpetua. And the award of exemplary damages is reduced to ₱25,000. In all other respects, the Decision is affirmed.

SO ORDERED.

Puno, C.J. (Chairperson), Nachura,[*] *Bersamin,* and *Villarama, Jr., JJ.,* concur.

EN BANC

[A.M. No. CA-08-45-J. February 22, 2010]
(Formerly OCA IPI No. 08-130-CA-J)

ATTY. DENNIS V. NIÑO, *complainant, vs.* **JUSTICE NORMANDIE B. PIZARRO,** *respondent.*

SYLLABUS

1. LEGAL ETHICS; JUDGES; GROSS IGNORANCE OF THE LAW; MUST BE ATTENDED BY BAD FAITH, FRAUD, DISHONESTY OR CORRUPTION IN ORDER TO PROSPER AS AN ADMINISTRATIVE OFFENSE; NOT A CASE OF.— There is no merit in the charge against respondent for gross ignorance of the law. In order for this administrative offense to prosper, the subject order or actuation of the judge in the performance of his official duties must not only be contrary to existing law and jurisprudence but, more importantly, must be attended by bad faith, fraud, dishonesty or corruption. Complainant wrongfully construed the contents of the August Resolution as an implied grant of a TRO. On the contrary, it was very clear that respondent held in abeyance the resolution of the prayer for TRO pending issuance of summons. In addition, the fact that complainant subsequently filed several petitions to ask the court to expedite the resolution of the motion for issuance of TRO negates his very theory that a TRO was actually issued. Similarly, the inclusion in the footnote of the May Resolution that Gentle Supreme had already been enjoying

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[*] Additional member per Special Order No. 821.

possession of the property is not tantamount to gross ignorance of the law. As explained by respondent, it was an honest mistake too trivial to prejudice the resolution of the merits of the case.

2. ID.; ID.; INHIBITION OF JUDGES; NOT TO BE TREATED AS AN ADMINISTRATIVE MATTER.— There was no evasion of duty when respondent inhibited from the case. As correctly put by the OCA, a judge's inhibition is a judicial matter. It should not be treated as an administrative matter.

3. ID.; ID.; DELAY IN THE DISPOSITION OF CASES; NOT A CASE OF; EXPLAINED.— It is a settled principle that judges have the sworn duty to administer justice without undue delay. A judge who fails to do so has to suffer the consequences of his omission as any delay in the disposition of the cases undermines the people's faith in the judiciary. Respondent practiced the principle. There was no delay on the part of respondent that would warrant an administrative sanction. It is undisputed that respondent did not issue a resolution on the motion for a TRO. However, We cannot simply close our eyes to the legal maneuverings of complainant, and more importantly, to the peculiar circumstances obtaining in this case which should serve to exonerate respondent. We are faced with a situation where the party against whom a TRO is sought to be issued is himself insisting that the matter be resolved at once, and now complaining that there was undue delay in resolving the prayer for TRO. Indeed, We see reason in the observation of respondent in his May Resolution that in the ordinary course of things, it is unusual for the party to be enjoined to persist in having the TRO application resolved. Be that as it may, We cannot speculate on complainant's ulterior motives. But this much we can deduce from the records: Complainant is the counsel for the winning party in the collection case before the RTC; and it was the losing party who filed for annulment of judgment accompanied by a prayer for TRO before the Court of Appeals. While complainant was praying for the resolution on the TRO, he was also acknowledging that the pending TRO application had become moot and academic. The public auction sale sought to be enjoined had in fact been already implemented. Seemingly, complainant was seeking a formal denial of the application for a TRO, but no denial in such form was issued by respondent. Obviously, complainant did not appreciate the fact that absence

of action on the prayer for TRO amounts to a denial of the same. As a matter of fact, respondent was not prevented from executing the decision, which was sought to be annulled, as he was able to proceed with the auction sale. Indeed, even the "judicial courtesy" portion of the August Resolution did not prevent the auction sale of Consulta's property. Complainant stood to benefit, as he did benefit, from the inaction on the TRO application. Assuming *arguendo* that a formal resolution of the TRO was necessary, respondent did not actually incur delay. Subsequent to the issuance of the August 2006 Resolution and before respondent could decide on the TRO, complainant filed a motion for summary judgment on 18 September 2006, a motion for early resolution, and a reiteration of the motion for early resolution. All these motions were tackled in the April Resolution, where the appellate court directed that Consulta file his comment, and that a special process even be effected personally. The motion for summary judgment, the resolution of which would have included the ancillary issue of the TRO, effectively extended the time within which to issue, assuming it to be needed, the formal resolution of the TRO. Respondent had to wait for the expiration of the period to comment before he could issue a resolution. There was yet, at that time, no delay on the part of respondent. x x x [The Court is] mindful of the Court's ruling in *Gonzales v. Bantolo*, that "regardless of whether the grounds or relief prayed for have become moot, a judge has the duty to resolve motion in the interest of orderly administration of justice and to properly inform the parties of the outcome of the motion." But taking into account all the circumstances of this case, We find that there is sufficient justification for respondent's "inaction." The dismissal of the charge for undue delay is warranted by the facts of this case.

4. ID.; ID.; COURT OF APPEALS IS A COLLEGIATE COURT WHOSE MEMBERS REACH THEIR CONCLUSIONS IN CONSULTATION AND ACCORDINGLY RENDER THEIR COLLECTIVE JUDGMENT AFTER DUE DELIBERATION.— x x x [I]t is evident that the filing of the instant administrative complaint was meant to harass respondent. Furthermore, it is notable that only respondent was singled out in the complaint despite the fact that the challenged Resolutions were a collective decision of the Court of Appeals Seventeenth Division. In

Bautista v. Associate Justice Abdulwahid, this Court held that the Court of Appeals is a collegiate court whose members reach their conclusions in consultation and accordingly render their collective judgment after due deliberation. The filing of charges against a single member of a division of the appellate court is inappropriate.

D E C I S I O N

PEREZ, *J.*:

For resolution is the administrative complaint charging respondent Court of Appeals Associate Justice Normandie B. Pizarro with gross ignorance of the law, rendering an unjust judgment, partiality and undue delay in the resolution of an application for a temporary restraining order (TRO).

Complainant Atty. Dennis V. Niño is the lawyer representing Gentle Supreme, the respondent in CA-G.R. SP No. 94817, entitled "*Ricardo F. Consulta v. Gentle Supreme Philippines, Inc.,*" which is a petition for annulment of a judgment rendered by the Regional Trial Court (RTC) of Pasig City.

The case below was an action for collection of a sum of money docketed as Civil Case No. 70544, entitled "*Gentle Supreme Philippines, Inc. v. Consar Trading Corp., Norberto Sarayba and Ricardo Consulta,*" before the RTC, Branch 68 of Pasig City. Ricardo Consulta (Consulta) was impleaded as a defendant in his capacity as a corporate officer of Consar Trading Corporation. Judgment was rendered in favor of Gentle Supreme, thus:

WHEREFORE, in view of the foregoing, the Court finds the defendants to have fraudulently and maliciously defrauded plaintiff to the latter's damage and prejudice for which the defendants are hereby jointly and severally held liable and ordered to pay the plaintiff the following amounts:

a. SIX MILLION SIX HUNDRED THREE THOUSAND SIX HUNDRED FORTY-FOUR PESOS and 33 Centavos (Php6,603,644.33) plus twelve percent (12%) legal interest from July 2005 as actual damages;

b. THREE HUNDRED THOUSAND (Php300,000.00) as attorney's fee; and

c. Cost of suit.[1]

To satisfy the judgment, a Notice of Sale on Execution of Real Property was issued to Consulta notifying him that his house and lot will be sold at public auction on 15 June 2006.

Consulta filed a petition for Annulment of Judgment[2] with the Court of Appeals on the ground of lack of jurisdiction, as he was not served copies of the summons and complaint relative to the case. He likewise prayed for the issuance of a TRO to enjoin the public sale of his property.[3]

On 9 August 2006, a Resolution[4] (August Resolution) penned by respondent was issued giving due course to the petition and directing the issuance of summons upon Gentle Supreme. Respondent deferred the resolution of the TRO.

Complainant filed his Answer with Counterclaim arguing that the prayer for issuance of TRO should be denied on the ground that the acts sought to be enjoined, specifically the public auction sale scheduled on 15 June 2006, had already been accomplished.[5]

On 18 September 2006, complainant filed a Motion for Summary Judgment.[6] Thereafter, he successively filed a motion for early resolution of the motion for issuance of TRO[7] on 2 February 2007 and a reiteration of the Motion for Early Resolution[8] on 26 March 2007.

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[1] *Rollo*, p. 39.

[2] *Id.* at 36-49.

[3] *Id.* at 48.

[4] *Id.* at 53-54.

[5] *Id.* at 56-74.

[6] *Id.* at 75-83.

[7] *Id.* at 86-89.

[8] *Id.* at 90-92.

In a Resolution dated 3 April 2007 (April Resolution), respondent directed Consulta to file a Comment on the Motion for Summary Judgment.[9] Instead of submitting his Comment, Consulta filed a Motion for Inhibition of the entire division where respondent belongs. In a Resolution[10] dated 3 May 2007 (May Resolution), respondent granted the motion to inhibit and directed an immediate re-raffling of the case to another division.[11] In the same Resolution, respondent stressed that no TRO or *status quo* order was issued, because the act sought to be enjoined had already been performed, and the application had been rendered moot by the sale of the property to complainant.[12]

On 14 June 2007, the instant Complaint was filed. Complainant zeroes in on two (2) Resolutions—the 9 August 2006 and the 3 May 2007 Resolutions—to demonstrate the alleged gross ignorance of the law on the part of respondent. The assailed portion of the August Resolution reads:

> The prayer for the issuance of the Temporary Restraining Order and/or Preliminary Injunction is held in abeyance pending issuance of the summons.
>
> Meantime, considering the allegations in the instant Petition, in order not to render moot and academic the issues presented before this Court, Respondent is hereby urged to observe the principle of judicial courtesy, as enunciated in the cases of *Eternal Gardens Memorial Park, Corp. v. Court of Appeals, Joy Mart Consolidated Corp. v. Court of Appeals, and Jimmy T. Go v. Judge Abrogar*, and defer the implementation of the assailed Decision dated December 14, 2005, pending Our resolution of the petitioner's application for Temporary Restraining Order and/or Writ of Preliminary Injunction.[13] (Emphasis supplied)

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

[10] *Id.* at 121-123.

[11] In its Decision dated 17 March 2008 and penned by Associate Justice Vicente Q. Roxas, the Court of Appeals Eleventh Division, reversed and set aside the trial court's ruling in Civil Case No. 70544, remanded the case to the trial court, and ordered it to ensure the proper service of summons to each of the defendants. *Rollo,* pp. 183-191.

[12] *Id.* at 122.

[13] *Id.* at 54.

Complainant contends that by deferring the resolution on the issuance of the TRO, respondent virtually restrained the trial court from further taking any action relative to the case. Hence, said resolution had the effect of granting the TRO without the benefit of a hearing and filing of a bond.

With respect to the May Resolution, wherein respondent noted that complainant was in possession of the subject property, complainant imputes gross ignorance of the law to respondent for failure to consider the express provisions of the law which grant possession to the auction sale buyer only after one year from registration of the certificate of sale, if no redemption is made. Complainant claims that, in this case, the one-year period had not yet lapsed, so the property remained with Consulta.

Moreover, complainant doubts the impartiality of respondent when the latter further observed in the same resolution that Consulta should be the one insisting on the court's ruling on the TRO and not respondent. Also, complainant equates inhibition of respondent from the case, without sufficient justification, to evasion of duty.

Finally, complainant accuses respondent of undue delay in the resolution of the motion for issuance of TRO, since the summons have long been issued and, until the filing of the complaint on 14 June 2007, respondent had not yet acted on the motions.

The Office of the Court Administrator (OCA), through its 1st Indorsement dated 18 June 2007, directed respondent to comment on the Complaint.[14]

In his Comment, respondent denies all the charges hurled against him. On the allegations of gross ignorance, respondent maintains that no TRO was issued, so hearing and filing of bond are not necessary. And he admits that a mistake was committed in the inclusion of the phrase "and is now in possession thereof," pertaining to Gentle Supreme in the footnote of his resolution.

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[14] *Id.* at 124.

Respondent insists that he is not partial to any party, and that he inhibited from the case only to dispel any doubt about his position.

In explaining that there was no undue delay, respondent points out that, in the first place, there was nothing to enjoin, since the auction sale sought to be enjoined had already been conducted on 15 June 2006 or two days after the case was raffled to him. Respondent reiterates that the resolution of Consulta's prayer for injunctive relief has already become moot and academic.

Complainant filed his Reply, to which respondent submitted a Rejoinder.

In its Resolution of 22 July 2008, this Court resolved to re-docket the administrative matter as a regular administrative case and to require the parties to manifest whether they would submit the instant case for resolution on the basis of the pleadings filed.[15]

Complainant and respondent submitted their manifestations on 13[16] and 15 August 2008,[17] respectively, expressing their willingness to have the administrative matter resolved on the basis of the extant pleadings.

On 8 July 2008, the OCA recommended the dismissal of the charges of gross ignorance of law, rendering an unjust judgment, and partiality against respondent. However, it found respondent liable for delay in resolving Consulta's prayer for issuance of a TRO.

The OCA held that respondent should have resolved the motion by issuing a resolution informing the parties of the fact that the prayer for TRO had already been mooted. The OCA perceived the failure on the part of respondent to resolve a motion as inefficiency, which warrants an imposition of an administrative sanction. Thus, the OCA recommended that a fine of ₱10,000.00 be meted out to respondent.

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[15] *Id.* at 173.

[16] *Id.* at 198.

[17] *Id.* at 174-181.

We are partially in accord with the OCA's findings.

There is no merit in the charge against respondent for gross ignorance of the law. In order for this administrative offense to prosper, the subject order or actuation of the judge in the performance of his official duties must not only be contrary to existing law and jurisprudence but, more importantly, must be attended by bad faith, fraud, dishonesty or corruption.[18]

Complainant wrongfully construed the contents of the August Resolution as an implied grant of a TRO. On the contrary, it was very clear that respondent held in abeyance the resolution of the prayer for TRO pending issuance of summons. In addition, the fact that complainant subsequently filed several petitions to ask the court to expedite the resolution of the motion for issuance of TRO negates his very theory that a TRO was actually issued.

Similarly, the inclusion in the footnote of the May Resolution that Gentle Supreme had already been enjoying possession of the property is not tantamount to gross ignorance of the law. As explained by respondent, it was an honest mistake too trivial to prejudice the resolution of the merits of the case.

The charge of partiality should likewise not prosper. We do not find any impropriety on the part of respondent when he observed that, instead of Consulta, it was complainant who was interested in the resolution of the TRO.

There was no evasion of duty when respondent inhibited from the case. As correctly put by the OCA, a judge's inhibition is a judicial matter. It should not be treated as an administrative matter.[19]

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[18] *Office of the Solicitor General v. Judge De Castro*, A.M. NO. RTJ-06-2018, 3 August 2007, 529 SCRA 157, 174; *Santos v. Judge How*, A.M. No. RTJ-05-1946, 26 January 2007, 513 SCRA 25, 36; *Go v. Judge Abrogar*, 446 Phil. 227, 242 (2003), citing *Heirs of the late Nasser D. Yasin v. Felix*, A.M. No. RTJ-94-1167, 4 December 1995, 250 SCRA 545, 554.

[19] *Burias v. Valencia*, A.M. No. MTJ-07-1689, 13 March 2009.

What needs review is the finding of the OCA of undue delay by respondent in the resolution of the application of Consulta for a TRO. We find otherwise.

It is a settled principle that judges have the sworn duty to administer justice without undue delay. A judge who fails to do so has to suffer the consequences of his omission as any delay in the disposition of the cases undermines the people's faith in the judiciary.[20]

Respondent practiced the principle. There was no delay on the part of respondent that would warrant an administrative sanction.

It is undisputed that respondent did not issue a resolution on the motion for a TRO. However, We cannot simply close our eyes to the legal maneuverings of complainant, and more importantly, to the peculiar circumstances obtaining in this case which should serve to exonerate respondent.

We are faced with a situation where the party against whom a TRO is sought to be issued is himself insisting that the matter be resolved at once, and now complaining that there was undue delay in resolving the prayer for TRO. Indeed, We see reason in the observation of respondent in his May Resolution that in the ordinary course of things, it is unusual for the party to be enjoined to persist in having the TRO application resolved.

Be that as it may, We cannot speculate on complainant's ulterior motives. But this much we can deduce from the records: Complainant is the counsel for the winning party in the collection case before the RTC; and it was the losing party who filed for annulment of judgment accompanied by a prayer for TRO before the Court of Appeals. While complainant was praying for the resolution on the TRO, he was also acknowledging that the pending TRO application had become moot and academic. The public auction sale sought to be enjoined had in fact been already

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[20] *Torrevillas v. Judge Natividad*, A.M. No. RTJ-06-1976, 29 April 2009, citing *Galanza v. Trocino*, A.M. No. RTJ-07-2057, 7 August 2007, 529 SCRA 200, 212.

implemented. Seemingly, complainant was seeking a formal denial of the application for a TRO, but no denial in such form was issued by respondent. Obviously, complainant did not appreciate the fact that absence of action on the prayer for TRO amounts to a denial of the same. As a matter of fact, respondent was not prevented from executing the decision, which was sought to be annulled, as he was able to proceed with the auction sale. Indeed, even the "judicial courtesy" portion of the August Resolution did not prevent the auction sale of Consulta's property. Complainant stood to benefit, as he did benefit, from the inaction on the TRO application.

Assuming *arguendo* that a formal resolution of the TRO was necessary, respondent did not actually incur delay. Subsequent to the issuance of the August 2006 Resolution and before respondent could decide on the TRO, complainant filed a motion for summary judgment on 18 September 2006, a motion for early resolution, and a reiteration of the motion for early resolution. All these motions were tackled in the April Resolution, where the appellate court directed that Consulta file his comment, and that a special process even be effected personally. The motion for summary judgment, the resolution of which would have included the ancillary issue of the TRO, effectively extended the time within which to issue, assuming it to be needed, the formal resolution of the TRO. Respondent had to wait for the expiration of the period to comment before he could issue a resolution. There was yet, at that time, no delay on the part of respondent.

Based on the foregoing, it is evident that the filing of the instant administrative complaint was meant to harass respondent. Furthermore, it is notable that only respondent was singled out in the complaint despite the fact that the challenged Resolutions were a collective decision of the Court of Appeals Seventeenth Division. In *Bautista v. Associate Justice Abdulwahid*,[21] this Court held that the Court of Appeals is a collegiate court whose members reach their conclusions in consultation and accordingly

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[21] A.M. OCA IPI No. 06-97-CA-J, 2 May 2006, 488 SCRA 428.

render their collective judgment after due deliberation. The filing of charges against a single member of a division of the appellate court is inappropriate.[22]

We are mindful of the Court's ruling in *Gonzales v. Bantolo,*[23] that "regardless of whether the grounds or relief prayed for have become moot, a judge has the duty to resolve motion in the interest of orderly administration of justice and to properly inform the parties of the outcome of the motion."[24] But taking into account all the circumstances of this case, We find that there is sufficient justification for respondent's "inaction." The dismissal of the charge for undue delay is warranted by the facts of this case.

WHEREFORE, premises considered, the administrative complaint against Justice Normandie B. Pizarro is *DISMISSED* for lack of merit.

SO ORDERED.

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

Bersamin, J., no part.

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[22] *Id.* at 435-436.

[23] A.M. No. RTJ-06-1993, 26 April 2006, 488 SCRA 300.

[24] *Id.* at 304.

SECOND DIVISION

[G.R. No. 169481. February 22, 2010]

REPUBLIC OF THE PHILIPPINES, *petitioner, vs.* **HEIRS OF JULIO RAMOS, represented by Reynaldo Ramos Medina, Zenaida Ramos Medina, Dolores Ramos Medina, Romeo Ramos Medina, Virgie Ramos Medina, Herminia Ramos Medina, Cesar Ramos Medina and Remedios Ramos Medina,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; FINDINGS OF FACT OF THE COURT OF APPEALS ARE CONCLUSIVE AND BINDING UPON THE SUPREME COURT; EXCEPTIONS.— Ordinarily, this Court will not review, much less reverse, the factual findings of the CA, especially where such findings coincide with those of the trial court. The findings of facts of the CA are, as a general rule, conclusive and binding upon this Court, since this Court is not a trier of facts and does not routinely undertake the re-examination of the evidence presented by the contending parties during the trial of the case. The above rule, however, is subject to a number of exceptions, such as (1) when the inference made is manifestly mistaken, absurd or impossible; (2) when there is grave abuse of discretion; (3) when the finding is grounded entirely on speculations, surmises, or conjectures; (4) when the judgment of the CA is based on misapprehension of facts; (5) when the findings of fact are conflicting; (6) when the CA, in making its findings, went beyond the issues of the case and the same is contrary to the admissions of both parties; (7) when the findings of the CA are contrary to those of the trial court; (8) when the findings of fact are conclusions without citation of specific evidence on which they are based; (9) when the CA manifestly overlooked certain relevant facts not disputed by the parties and which, if properly considered, would justify a different conclusion; and (10) when the findings of fact of the CA are premised on the absence of evidence and are contradicted by the evidence on record.

2. ID.; JURISDICTION; REPUBLIC ACT 26; REGIONAL TRIAL COURTS; CONFERRED JURISDICTION TO HEAR AND DECIDE PETITIONS FOR JUDICIAL RECONSTITUTION; REQUIREMENTS; NOT COMPLIED WITH IN CASE AT BAR.— RA 26 lays down the specific procedure for the reconstitution of lost or destroyed Torrens certificates of title. It confers jurisdiction upon trial courts to hear and decide petitions for judicial reconstitution. However, before said courts can assume jurisdiction over the petition and grant the reconstitution prayed for, the petitioner must observe certain special requirements and mode of procedure prescribed by law. Some of these requirements are enumerated in Sections 12 and 13 of RA 26. x x x Perusal of respondents' Petition for Reconstitution, for the purpose of verifying whether the strict and mandatory requirements of RA 26, particularly Section 12 (b) and (e) thereof, have been faithfully complied with, would reveal that it did not contain an allegation that no co-owner's, mortgagee's or lessees duplicate had been issued or, if any had been issued, the same had been lost or destroyed. The petition also failed to state the names and addresses of the present occupants of Lot 54. Correspondingly, the Notice of Hearing issued by the court *a quo* did not also indicate the names of the occupants or persons in possession of Lot 54, in gross violation of Section 13 of RA 26. Because of these fatal omissions, the trial court never acquired jurisdiction over respondents' petition. Consequently, the proceedings it conducted, as well as those of the CA, are null and void.

3. ID.; ID.; ID.; SECTION 2 (F) THEREOF, CONSTRUED; CASE AT BAR.— Section 2 of RA 26 enumerates in the following order the sources from which reconstitution of lost or destroyed original certificates of title may be based: SEC. 2. Original certificates of title shall be reconstituted from such of the sources hereunder enumerated as may be available in the following order: (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 has 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. Respondents predicate their Petition for Reconstitution on Section 2(f) of RA 26. And to avail of its benefits, respondents presented survey plan, technical description, Certification issued by the Land Registration Authority, Lot Data Computation, and tax declarations. Unfortunately, these pieces of documentary evidence are not similar to those mentioned in subparagraphs (a) to (e) of Section 2 of RA 26, which all pertain to documents issued or are on file with the Registry of Deeds. Hence, respondents' documentary evidence cannot be considered to fall under subparagraph (f). Under the principle of *ejusdem generis*, 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 or class as those specifically mentioned. Thus, in *Republic of the Philippines v. Santua*, we held that when Section 2(f) of RA 26 speaks of "any other document," the same must refer to similar documents previously enumerated therein, that is, those mentioned in Sections 2(a), (b), (c), (d), and (e).

4. ID.; ID.; ID.; SOURCES OF RECONSTITUTION; SURVEY PLAN AND TECHNICAL DESCRIPTION ARE NOT COMPETENT AND SUFFICIENT SOURCES OF RECONSTITUTION.— x x x [T]he survey plan and technical description are not competent and sufficient sources of reconstitution when the petition is based on Section 2(f) of RA 26. They are mere additional documentary requirements. This is the clear import of the last sentence of Section 12, RA 26 earlier quoted. Thus, in *Lee v. Republic of the Philippines*, where the trial court ordered reconstitution on the basis of the survey plan and technical description, we declared the order of reconstitution void for want of factual support.

5. CIVIL LAW; LAND REGISTRATION; LAND REGISTRATION ACT; TWO CLASSES OF DECREES IN LAND REGISTRATION PROCEEDINGS; CASE AT BAR.— x x x [T]he Certification issued by the LRA stating that Decree No. 190622

was issued for Lot 54 means nothing. The Land Registration Act expressly recognizes two classes of decrees in land registration proceedings, namely, (i) decrees dismissing the application and (ii) decrees of confirmation and registration. In the case at bench, we cannot ascertain from said Certification whether the decree alluded to by the respondents granted or denied Julio Ramos' claim. Moreover, the LRA's Certification did not state to whom Lot 54 was decreed. Thus, assuming that Decree No. 190622 is a decree of confirmation, it would be too presumptuous to further assume that the same was issued in the name and in favor of Julio Ramos. Furthermore, said Certification did not indicate the number of the original certificate of title and the date said title was issued. In *Tahanan Development Corporation v. Court of Appeals*, we held that the absence of any document, private or official, mentioning the number of the certificate of title and date when the certificate of title was issued, does not warrant the granting of such petition.

6. ID.; ID.; REPUBLIC ACT 26; SOURCES OF RECONSTITUTION; A TAX DECLARATION IS NOT A RELIABLE SOURCE OF RECONSTITUTION OF A CERTIFICATE OF TITLE; EXPLAINED.— Anent the tax declaration submitted, the same covered only taxable year 1998. Obviously, it had no bearing with what occurred before or during the last world war. Besides, a tax declaration is not a reliable source of reconstitution of a certificate of title. As we held in *Republic of the Philippines v. Santua*, a tax declaration can only be *prima facie* evidence of claim of ownership, which, however, is not the issue in a reconstitution proceeding. A reconstitution of title does not pass upon the ownership of land covered by the lost or destroyed title but merely determines whether a re-issuance of such title is proper.

7. ID.; LAND REGISTRATION; PRESIDENTIAL DECREE NO. 1529; IN CASE OF LOSS OF THE ORIGINAL CERTIFICATE OF TITLE, THE OWNER IS MANDATED TO FILE WITH THE REGISTRY OF DEEDS A NOTICE OF LOSS EXECUTED UNDER OATH; NOT COMPLIED WITH IN CASE AT BAR.— The Court also shares the observation of petitioner that the non-submission of an affidavit of loss by the person who was allegedly in actual possession of OCT No. 3613 at the time of its loss, casts doubt on respondents' claim that OCT No. 3613

once existed and subsequently got lost. Under Section 109 of Presidential Decree No. 1529, the owner must file with the proper Registry of Deeds a notice of loss executed under oath. Here, despite the lapse of a considerable length of time, the alleged owners of Lot 54 or the persons who were in possession of the same, *i.e.*, respondents' grandparents, never executed an affidavit relative to the loss of OCT No. 3613.

8. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; A TESTIMONY THAT IS HIGHLY SUSPECT CANNOT BE GIVEN PROBATIVE WEIGHT; CASE AT BAR.— The presentation of such affidavit becomes even more important considering the doubtful testimony of Reynaldo. When he testified on November 29, 2001, he was only 62 years old and, therefore, he was barely six years old during the Japanese occupation until the Liberation. Also, his testimony consisted only of his declaration that his *unnamed* grandmother used to keep said copy of OCT No. 3613; that it was buried in a foxhole during the Japanese occupation; and, subsequently, got lost. He did not testify on how he obtained knowledge of the alleged facts and circumstances surrounding the loss of the owner's copy of OCT No. 3613. In fact, he neither named the person responsible for the burying or hiding of the title in a foxhole nor mentioned the place where that foxhole was located. Reynaldo's testimony was also lacking in details as to how he participated in searching for the title's whereabouts. Indeed, Reynaldo's testimony is highly suspect and cannot be given the expected probative weight.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.
Orlando Paguio & Associates Law Office for respondents.

D E C I S I O N

DEL CASTILLO, *J.*:

In petitions for reconstitution of a lost or destroyed Torrens certificate of title, trial courts are duty-bound to examine the

records of the case to determine whether the jurisdictional requirements have been *strictly* complied with. They must also exercise extreme caution in granting the petition, lest they become unwitting accomplices in the reconstitution of questionable titles instead of being instruments in promoting the stability of our land registration system.[1]

This petition[2] for review on *certiorari* seeks to reverse the August 31, 2005 Decision[3] of the Court of Appeals (CA) in CA-G.R. CV No. 75345. The CA's assailed Decision affirmed the February 19, 2002 Order[4] of the Regional Trial Court (RTC), Branch 3, Balanga City, Bataan, which in turn granted respondents' Petition[5] for Reconstitution of Original Certificate of Title (OCT) No. 3613.

Proceedings before the Regional Trial Court

On February 23, 2001, respondents filed a Petition for Reconstitution of OCT No. 3613, before the RTC of Balanga City containing the following material averments:

> That the late Julio Ramos is being represented by herein petitioners who are all of legal age, married, Filipinos and residents of Kaparangan, Orani, Bataan;
>
> That the late Julio Ramos, grandfather of herein petitioners, is the original claimant of Lot No. 54 of the Cadastral Survey of Orani, Bataan, as evidenced by a Relocation Plan of said lot duly approved by the Chief, Regional Surveys Division, Ruperto P. Sawal, and the Regional Technical Director Eriberto V. Almazan, the plan hereto attached as Annex "A" and the technical descriptions as Annex "B";
>
> That the Land Registration Authority issued a Certification to the effect that Lot No. 54 of Orani Cadastre, Bataan was issued Decree No. 190622 on September 29, 1925, hereto attached as Annex "C";

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[1] *Republic v. Planes*, 430 Phil. 848, 851, 869 (2002).

[2] *Rollo*, pp. 18-42.

[3] CA *rollo*, pp 50-55; penned by Associate Justice Eliezer R. De Los Santos and concurred in by Associate Justices Eugenio S. Labitoria and Arturo D. Brion.

[4] Records, pp. 41-43; penned by Judge Remigio M. Escalada, Jr.

[5] *Id.* at 2-4.

That the Acting Registrar of Deeds of Bataan likewise issued a Certification to the effect that OCT No. 3613 covering Lot No. 54 of Orani Cadastre is not among the salvaged records of the said Registry, copy hereto attached as Annex "D";

That the owner's copy of OCT No. 3613 was lost and all efforts exerted to locate the same are in vain;

That petitioners secured a Lot Data Computation from the Bureau of Lands wherein it is shown that Julio Ramos is the claimant of Lot No. 54 of Orani Cadastre, certified machine copy hereto attached as Annex "E";

That the adjoining owners of said Lot No. 54 are:

NE by Lot 58 & 49 – Jose Peña, *et al.*, Orani, Bataan;
SE by Lot 51 – Pedro de Leon, Orani, Bataan;
SW by Jose Zulueta Street;
NW by Lot 55 – Jose Sioson, Orani, Bataan;

That OCT No. 3613 may be reconstituted on the basis of the approved plan and technical descriptions and the Lot Data Computation;

That said Lot No. 54 is declared for taxation purposes in the name of Julio Ramos and taxes due thereon are fully paid up to the current year;

That the title is necessary to enable petitioners [to] partition said lot among themselves;

That there is no document pending registration with the Registry of Deeds of Bataan affecting said Lot 54.[6]

Respondents prayed for the issuance of an order directing the Registrar of Deeds to reconstitute OCT No. 3613 on the basis of the approved plan and technical description.

On February 28, 2001, the trial court issued a Notice[7] setting the case for initial hearing on August 30, 2001, which was reset to September 27, 2001.[8] During the said hearing, respondents

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[6] *Id.* at 2-3.

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

[8] See Order dated August 30, 2001, *id.* at 19.

presented several pieces of documentary evidence[9] purportedly to establish compliance with the jurisdictional requirements. Thereafter, trial ensued.

Respondent Reynaldo Ramos Medina (Reynaldo), a 62-year old watch technician, testified on the material allegations of the petition, as well as on the appended annexes. He likewise declared on the witness stand that his mother used to keep the owner's copy of OCT No. 3613. During the Japanese occupation, however, it was buried in a foxhole and since then it could no longer be found. Reynaldo further testified that he and his co-heirs are the present occupants of Lot 54. He was not cross-examined by the public prosecutor, who was then representing the petitioner.

On February 19, 2002, the trial court issued an Order[10] granting respondents' petition and disposing as follows:

> WHEREFORE, the Petition, being in order, is hereby GRANTED.
>
> The Acting Registrar of Deeds of Bataan is directed, upon payment by petitioners of the corresponding legal fees, to reconstitute Original Certificate of Title No. T-3613 covering Lot No. 54 of the Orani Cadastre based on the approved Relocation Plan and Technical Description.
>
> SO ORDERED.[11]

Proceedings before the Court of Appeals

Believing that the court *a quo* erred in granting the petition for reconstitution, petitioner Republic of the Philippines appealed to the CA ascribing upon the court *a quo* the following errors:

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[9] Exhibit "A", Notice dated February 28, 2001, *id.* at 15; Exhibit "B", Certificate of Publication dated April 18, 2001 issued by the National Printing Office, *id.* at 18; Exhibit "C", Certificate of Posting dated March 1, 2001, *id.* at 17; Exhibit "D", Relocation Plan, *id.* at 4; Exhibit "E", Technical Description, *id.* at 5; Exhibit "F", Certification dated February 17, 1997 issued by the Land Registration Authority, *id.* at 8; Exhibit "G", Certification dated July 21, 1997 issued by the Registry of Deeds of Balanga, Bataan, *id.* at 9; Exhibit "H", Lot Data Computation, *id.* at 10; Exhibit "I", Tax Declaration of Real Property, *id.* at 11.

[10] *Id.* at 41-43.

[11] *Id.* at 43.

THE TRIAL COURT ERRED IN GRANTING THE PETITION FOR RECONSTITUTION OF OCT NO. 3613 DESPITE PETITIONERS-APPELLEES' [sic] FAILURE TO ESTABLISH THAT AT THE TIME OF ITS ALLEGED LOSS, SUBJECT OCT WAS VALID AND SUBSISTING.

THE TRIAL COURT ERRED IN GRANTING THE PETITION FOR RECONSTITUTION OF OCT NO. 3613 DESPITE PETITIONERS-APPELLEES' [sic] FAILURE TO ADDUCE ADEQUATE BASIS OR SOURCE FOR RECONSTITUTION.[12]

On August 31, 2005, the CA rendered the assailed Decision dismissing the appeal. The appellate court found that the pieces of documentary evidence presented by the respondents are sufficient to grant reconstitution of OCT No. 3613. Besides, the respondents had been paying realty taxes. Moreover, the adjacent lot owners did not oppose the petition despite due notice. The dispositive portion of the CA's Decision reads:

> WHEREFORE, premises considered, the instant appeal is hereby DISMISSED for lack of merit. The appealed Order dated February 19, 2002 of the Regional Trial Court of Bataan is AFFIRMED.
>
> SO ORDERED.[13]

Hence, this petition.

Issues

Petitioner interposed the present recourse anchored on the following grounds:

I.

THE COURT OF APPEALS ERRED IN AFFIRMING THE TRIAL COURT'S ORDER GRANTING RECONSTITUTION OF ORIGINAL CERTIFICATE OF TITLE NO. 3613.

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[12] CA *rollo*, pp. 32-33.

[13] *Id.* at 54.

II.

THE COURT OF APPEALS ERRED IN ITS APPLICATION OF PARAGRAPH F, SECTION 2 OF REPUBLIC ACT NO. 26.[14]

Petitioner's Allegations

Petitioner contends that the CA erred in affirming the Order of the trial court granting respondents' petition for reconstitution considering that respondents failed to present competent proof to establish their claim. First, respondents anchor their claim on the Certification[15] issued by the Land Registration Authority (LRA) to prove that Decree No. 190622 was issued for Lot 54. However, said Certification did not state that Decree No. 190622 was issued in the name Julio Ramos. Second, when reconstitution is anchored on Section 2(f) of Republic Act (RA) No. 26,[16] just like in this case, the Relocation Survey Plan and Technical Description are mere supporting evidence to the "other document which, in the judgment of the court, is sufficient and proper basis for reconstituting the lost or destroyed certificate of title." Thus, the court *a quo* erred in ordering reconstitution based on the Relocation Survey Plan and Technical Description presented by the respondents.

Lastly, petitioner insists that respondents failed to present competent proof of loss of OCT No. 3613. It maintains that the non-execution of an affidavit of loss by the grandparents of the heirs of Julio Ramos who, allegedly, were in possession of OCT No. 3613 at the time of its loss, and the failure of the respondents to inform immediately the Registrar of Deeds of such loss, cast doubt on respondents' claim that there existed OCT No. 3613.

Respondents, on the other hand, assert that in a petition for review on *certiorari*, the only issues that can be raised are limited to pure questions of law. Here, both the trial court and

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[14] *Rollo,* p. 25.

[15] Records, p. 8.

[16] AN ACT PROVIDING A SPECIAL PROCEDURE FOR THE RECONSTITUTION OF TORRENS CERTIFICATE OF TITLE LOST OR DESTROYED.

the appellate court found factual bases to grant the reconstitution they prayed for. Hence, the present petition should be denied.

Petitioner counter argues that this case falls under the numerous exceptions to the rule cited by the respondents.

Our Ruling

The petition is meritorious. Before delving into the arguments advanced by the petitioner, we shall first tackle some procedural and jurisdictional matters involved in this case.

The instant petition falls under the exceptions to the general rule that factual findings of the appellate court are binding on this Court.

Ordinarily, this Court will not review, much less reverse, the factual findings of the CA, especially where such findings coincide with those of the trial court.[17] The findings of facts of the CA are, as a general rule, conclusive and binding upon this Court, since this Court is not a trier of facts and does not routinely undertake the re-examination of the evidence presented by the contending parties during the trial of the case.[18]

The above rule, however, is subject to a number of exceptions, such as (1) when the inference made is manifestly mistaken, absurd or impossible; (2) when there is grave abuse of discretion; (3) when the finding is grounded entirely on speculations, surmises, or conjectures; (4) when the judgment of the CA is based on misapprehension of facts; (5) when the findings of fact are conflicting; (6) when the CA, in making its findings, went beyond the issues of the case and the same is contrary to the admissions of both parties; (7) when the findings of the CA are contrary to those of the trial court; (8) when the findings of fact are conclusions without citation of specific evidence on which they are based; (9) when

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[17] *Ledonio v. Capitol Development Corporation*, G.R. No. 149040, July 4, 2007, 526 SCRA 379, 392.

[18] *Cosmos Bottling Corporation v. Nagrama, Jr.*, G.R. No. 164403, March 4, 2008, 547 SCRA 571, 584-585.

the CA manifestly overlooked certain relevant facts not disputed by the parties and which, if properly considered, would justify a different conclusion; and (10) when the findings of fact of the CA are premised on the absence of evidence and are contradicted by the evidence on record.

As will be discussed later, this case falls under the last three exceptions and, hence, we opt to take cognizance of the questions brought to us by petitioner. But first, we shall address a jurisdictional question although not raised in the petition.

The trial court did not acquire jurisdiction over the petition for reconstitution.

RA 26 lays down the specific procedure for the reconstitution of lost or destroyed Torrens certificates of title. It confers jurisdiction upon trial courts to hear and decide petitions for judicial reconstitution. However, before said courts can assume jurisdiction over the petition and grant the reconstitution prayed for, the petitioner must observe certain special requirements and mode of procedure prescribed by law. Some of these requirements are enumerated in Sections 12 and 13 of RA 26, *viz*:

SEC. 12. Petitions for reconstitution from sources enumerated in Sections 2(c), 2(d), 2(e), 2(f), 3(c), 3(d), 3(e), and/or 3(f) of this Act, shall be filed with the [Regional Trial Court], by the registered owner, his assigns, or any person having an interest in the property. ***The petition shall state or contain, among other things, the following:*** (a) that the owner's duplicate of the certificate of title had been lost or destroyed; (b) ***that no co-owner's, mortgagee's, or lessee's duplicate had been issued, or, if any had been issued, the same had been lost or destroyed***; (c) the location area and boundaries of the property; (d) the nature and description of the building or improvements, if any, which do not belong to the owner of the land, and the names and addresses of the owners of such buildings or improvements; (e) ***the names and addresses of the occupants or persons in possession of the property***, of the owners of the adjoining properties and of all persons who may have any interest in the property; (f) a detailed description of the encumbrances, if any, affecting the property; and (g) a statement that no deeds or other instruments affecting the property have been presented for registration, or if there be any, the registration thereof has not been accomplished,

as yet. All the documents, or authenticated copies thereof, to be introduced in evidence in support of the petition for reconstitution shall be attached thereto and filed with the same: ***Provided, That in case the reconstitution is to be made exclusively from sources enumerated in Section 2(f) or 3(f) of this Act, the petition shall be further accompanied with a plan and technical description of the property duly approved by the Chief of the General Land Registration Office or with a certified copy of the description taken from a prior certificate of title covering the same property***.

SEC. 13. The court shall cause a notice of the petition, filed under the preceding section, to be published, at the expense of the petitioner, twice in successive issues of the Official Gazette, and to be posted on the main entrance of the provincial building and of the municipal building of the municipality or city in which the land is situated, at least thirty days prior to the date of hearing. The court shall likewise cause a copy of the notice to be sent, by registered mail or otherwise, at the expense of the petitioner, to every person named therein whose address is known, at least thirty days prior to the date of hearing. ***Said notice shall state, among other things, the number of the lost or destroyed certificate of title, if known, the name of the registered owner***, ***the names of the occupants or persons in possession of the property***, the owners of the adjoining properties and all other interested parties, the location area and boundaries of the property, and the date on which all persons having any interest therein must appear and file their claim or objections to the petition. The petitioner shall, at the hearing, submit proof of the publication, posting and service of the notice as directed by the court. (Emphasis supplied)

Perusal of respondents' Petition for Reconstitution, for the purpose of verifying whether the strict and mandatory requirements of RA 26, particularly Section 12 (b) and (e) thereof, have been faithfully complied with, would reveal that it did not contain an allegation that no co-owner's, mortgagee's or lessee's duplicate had been issued or, if any had been issued, the same had been lost or destroyed. The petition also failed to state the names and addresses of the present occupants of Lot 54. Correspondingly, the Notice of Hearing issued by the court *a quo* did not also indicate the names of the occupants or persons in possession of Lot 54, in gross violation of Section 13 of RA 26. Because of these fatal omissions, the trial court never acquired jurisdiction over respondents'

petition. Consequently, the proceedings it conducted, as well as those of the CA, are null and void.

It is unfortunate that despite the mandatory nature of the above requirements[19] and our constant reminder to courts to scrutinize and verify carefully all supporting documents in petitions for reconstitution,[20] the same still escaped the attention of the trial court and the CA. And while petitioner also overlooked those jurisdictional infirmities and failed to incorporate them as additional issues in its petition, this Court has sufficient authority to pass upon and resolve the same since they affect jurisdiction.[21]

Respondents failed to present competent source of reconstitution.

Our disquisition could end here. Briefly though, and to explain why this case falls under the exceptions to the general rule that this Court will not review the CA's finding of facts, we shall examine the probative weight of the pieces of evidence presented by the respondents in support of their Petition for Reconstitution.

Section 2 of RA 26 enumerates in the following order the sources from which reconstitution of lost or destroyed original certificates of title may be based:

SEC. 2. Original certificates of title shall be reconstituted from such of the sources hereunder enumerated as may be available in the following order:

(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;

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[19] *Supra* note 1.

[20] *Republic of the Philippines v. El Gobierno de las Islas Filipinas*, 498 Phil. 570, 585 (2005).

[21] *Hi-Tone Marketing Corporation v. Baikal Realty Corporation*, 480 Phil. 545, 561 (2004).

(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 has 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.

Respondents predicate their Petition for Reconstitution on Section 2(f) of RA 26. And to avail of its benefits, respondents presented survey plan,[22] technical description,[23] Certification issued by the Land Registration Authority,[24] Lot Data Computation,[25] and tax declarations.[26] Unfortunately, these pieces of documentary evidence are not similar to those mentioned in subparagraphs (a) to (e) of Section 2 of RA 26, which all pertain to documents issued or are on file with the Registry of Deeds. Hence, respondents' documentary evidence cannot be considered to fall under subparagraph (f). Under the principle of *ejusdem generis*, 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 or class as those specifically mentioned.[27] Thus, in *Republic of the Philippines v. Santua*,[28] we held that when Section 2(f) of RA 26 speaks of "any other document," the same must refer to similar documents previously enumerated therein, that is, those mentioned in Sections 2(a), (b), (c), (d), and (e).

Also, the survey plan and technical description are not competent and sufficient sources of reconstitution when the petition is based

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[22] Exhibit "D", Records, p. 5.

[23] Exhibit "E", *id.* at 6.

[24] Exhibit "F", *id.* at 8.

[25] Exhibit "H", *id.* at 10.

[26] Exhibit "I", *id.* at 11.

[27] *Parayno v. Jovellanos*, G.R. No. 148408, July 14, 2006, 495 SCRA 85, 92.

[28] G.R. No. 155703, September 8, 2008, 564 SCRA 331, 338-339; see also *Heirs of Felicidad Dizon v. Hon. Discaya*, 362 Phil. 536, 545 (1999).

on Section 2(f) of RA 26. They are mere additional documentary requirements.[29] This is the clear import of the last sentence of Section 12, RA 26 earlier quoted. Thus, in *Lee v. Republic of the Philippines*,[30] where the trial court ordered reconstitution on the basis of the survey plan and technical description, we declared the order of reconstitution void for want of factual support.

Moreover, the Certification[31] issued by the LRA stating that Decree No. 190622 was issued for Lot 54 means nothing. The Land Registration Act expressly recognizes two classes of decrees in land registration proceedings, namely, (i) decrees dismissing the application and (ii) decrees of confirmation and registration.[32] In the case at bench, we cannot ascertain from said Certification whether the decree alluded to by the respondents granted or denied Julio Ramos' claim. Moreover, the LRA's Certification did not state to whom Lot 54 was decreed. Thus, assuming that Decree No. 190622 is a decree of confirmation, it would be too presumptuous to further assume that the same was issued in the name and in favor of Julio Ramos. Furthermore, said Certification did not indicate the number of the original certificate of title and the date said title was issued. In *Tahanan Development Corporation v. Court of Appeals*,[33] we held that the absence of any document, private

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[29] *Supra* note 27.

[30] 418 Phil. 793, 802-803 (2001).

[31] Records, p. 8. It reads:

> This is to certify that after due verification of our "Record Book of Cadastral Lots," it was found that Lot No. 54 of the Cadastral Survey of Orani, Province of Bataan, Cadastral Case No. 10, LRC Cadastral Record No. 315, was issued Decree No. 190622, on Sept. 29, 1925 pursuant to the decision rendered thereon. Said lot is subject of annotation to quote: RA 26, Sec. 12, (LRC) PR-6581.
>
> This certification is issued upon the request of Felix S. Peña (of) Tapulao, Orani, Bataan.

[32] *De los Reyes v. De Villa*, 48 Phil. 227, 231 (1925).

[33] 203 Phil. 652 (1982).

or official, mentioning the number of the certificate of title and date when the certificate of title was issued, does not warrant the granting of such petition.

With regard to the other Certification[34] issued by the Registry of Deeds of Balanga City, it cannot be deduced therefrom that OCT No. 3613 was actually issued and kept on file with said office. The Certification of said Registry of Deeds that said title "is not among those salvaged records of this Registry as a consequence of the last World War," did not necessarily mean that OCT No. 3613 once formed part of its records.

Anent the tax declaration submitted, the same covered only taxable year 1998. Obviously, it had no bearing with what occurred before or during the last world war. Besides, a tax declaration is not a reliable source of reconstitution of a certificate of title. As we held in *Republic of the Philippines v. Santua*,[35] a tax declaration can only be *prima facie* evidence of claim of ownership, which, however, is not the issue in a reconstitution proceeding. A reconstitution of title does not pass upon the ownership of land covered by the lost or destroyed title but merely determines whether a re-issuance of such title is proper.

We also share the observation of petitioner that the non-submission of an affidavit of loss by the person who was allegedly in actual possession of OCT No. 3613 at the time of its loss, casts doubt on respondents' claim that OCT No. 3613 once existed and subsequently got lost. Under Section 109[36] of

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[34] Records, p. 9.

[35] *Supra* note 27 at 340.

[36] SECTION 109. *Notice and replacement of lost duplicate certificate.* – In case of loss or theft of an owner's duplicate certificate of title, due notice under oath shall be sent by the owner or by someone in his behalf to the Register of Deeds of the province or city where the land lies as soon as the loss or theft is discovered. If a duplicate certificate is lost or destroyed, or cannot be produced by a person applying for the entry of a new certificate to him or for the registration of any instrument, a sworn statement of the fact of such loss or destruction may be filed by the registered owner or other person in interest and registered.

Presidential Decree No. 1529,[37] the owner must file with the proper Registry of Deeds a notice of loss executed under oath. Here, despite the lapse of a considerable length of time, the alleged owners of Lot 54 or the persons who were in possession of the same, *i.e.*, respondents' grandparents, never executed an affidavit relative to the loss of OCT No. 3613.

The presentation of such affidavit becomes even more important considering the doubtful testimony of Reynaldo. When he testified on November 29, 2001, he was only 62 years old and, therefore, he was barely six years old during the Japanese occupation until the Liberation. Also, his testimony consisted only of his declaration that his *unnamed* grandmother used to keep said copy of OCT No. 3613; that it was buried in a foxhole during the Japanese occupation; and, subsequently, got lost. He did not testify on how he obtained knowledge of the alleged facts and circumstances surrounding the loss of the owner's copy of OCT No. 3613. In fact, he neither named the person responsible for the burying or hiding of the title in a foxhole nor mentioned the place where that foxhole was located. Reynaldo's testimony was also lacking in details as to how he participated in searching for the title's whereabouts. Indeed, Reynaldo's testimony is highly suspect and cannot be given the expected probative weight.

In fine, we are not convinced that respondents had adduced competent evidence to warrant reconstitution of the allegedly lost original certificate of title.

WHEREFORE, the instant petition is hereby *GRANTED*. The August 31, 2005 Decision of the Court of Appeals in CA-G.R. CV No. 75345 is hereby *REVERSED and SET ASIDE*. The Petition for Reconstitution filed by the respondents is *DISMISSED*.

SO ORDERED.

Carpio (Chairperson), Leonardo-de Castro,[*] *Abad,* and *Perez, JJ.,* concur.

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[37] AMENDING AND CODIFYING THE LAWS RELATIVE TO REGISTRATION OF PROPERTY AND FOR OTHER PURPOSES

[*] Per Raffle dated September 8, 2009.

FIRST DIVISION

[G.R. No. 173915. February 22, 2010]

IRENE SANTE and REYNALDO SANTE, *petitioners, vs.* **HON. EDILBERTO T. CLARAVALL, in his capacity as Presiding Judge of Branch 60, Regional Trial Court of Baguio City, and VITA N. KALASHIAN,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; JURISDICTION; MUNICIPAL TRIAL COURT IN CITIES; JURISDICTIONAL AMOUNT; BASIS.— Section 19(8) of *Batas Pambansa Blg*. 129, as amended by Republic Act No. 7691, states: SEC. 19. *Jurisdiction in civil cases.* – Regional Trial Courts shall exercise exclusive original jurisdiction: x x x (8) In all other cases in which the demand, exclusive of interest, damages of whatever kind, attorney's fees, litigation expenses, and costs or the value of the property in controversy exceeds One hundred thousand pesos (₱100,000.00) or, in such other cases in Metro Manila, where the demand, exclusive of the abovementioned items exceeds Two hundred thousand pesos (₱200,000.00). Section 5 of Rep. Act No. 7691 further provides: SEC. 5. After five (5) years from the effectivity of this Act, the jurisdictional amounts mentioned in Sec. 19(3), (4), and (8); and Sec. 33(1) of *Batas Pambansa Blg.* 129 as amended by this Act, shall be adjusted to Two hundred thousand pesos (₱200,000.00). Five (5) years thereafter, such jurisdictional amounts shall be adjusted further to Three hundred thousand pesos (₱300,000.00): *Provided, however*, That in the case of Metro Manila, the abovementioned jurisdictional amounts shall be adjusted after five (5) years from the effectivity of this Act to Four hundred thousand pesos (₱400,000.00). Relatedly, Supreme Court Circular No. 21-99 was issued declaring that the first adjustment in jurisdictional amount of first level courts outside of Metro Manila from ₱100,000.00 to ₱200,000.00 took effect on March 20, 1999. Meanwhile, the second adjustment from ₱200,000.00 to ₱300,000.00 became effective on February 22, 2004 in accordance with OCA Circular No. 65-2004 issued by the Office of the Court Administrator on May

13, 2004. Based on the foregoing, there is no question that at the time of the filing of the complaint on April 5, 2004, the MTCC's jurisdictional amount has been adjusted to ₱300,000.00.

2. ID.; ID.; ID.; WHERE DAMAGES IS THE MAIN CAUSE OF ACTION, THE BASIS FOR DETERMINING WHICH COURT HAS JURISDICTION SHALL BE THE TOTAL AMOUNT OF ALL DAMAGES CLAIMED REGARDLESS OF KIND AND NATURE; REGIONAL TRIAL COURT HAD JURISDICTION OVER THE CASE AT BAR.— But where damages is the main cause of action, should the amount of moral damages prayed for in the complaint be the sole basis for determining which court has jurisdiction or should the total amount of all the damages claimed regardless of kind and nature, such as exemplary damages, nominal damages, and attorney's fees, *etc*., be used? In this regard, Administrative Circular No. 09-94 is instructive: x x x 2. The exclusion of the term "damages of whatever kind" in determining the jurisdictional amount under Section 19 (8) and Section 33 (1) of B.P. Blg. 129, as amended by R.A. No. 7691, applies to cases where the damages are merely incidental to or a consequence of the main cause of action. **However, in cases where the claim for damages is the main cause of action, or one of the causes of action, the amount of such claim shall be considered in determining the jurisdiction of the court.** In the instant case, the complaint filed in Civil Case No. 5794-R is for the recovery of damages for the alleged malicious acts of petitioners. The complaint principally sought an award of moral and exemplary damages, as well as attorney's fees and litigation expenses, for the alleged shame and injury suffered by respondent by reason of petitioners' utterance while they were at a police station in Pangasinan. It is settled that jurisdiction is conferred by law based on the facts alleged in the complaint since the latter comprises a concise statement of the ultimate facts constituting the plaintiff's causes of action. It is clear, based on the allegations of the complaint, that respondent's main action is for damages. Hence, the other forms of damages being claimed by respondent, *e.g.*, exemplary damages, attorney's fees and litigation expenses, are not merely incidental to or consequences of the main action but constitute the primary relief prayed for in the complaint. In *Mendoza v. Soriano*, it was held that in cases where the claim for damages is the main cause of action, or one of the causes of action, the

amount of such claim shall be considered in determining the jurisdiction of the court. In the said case, the respondent's claim of ₱929,000.06 in damages and ₱25,000 attorney's fees plus ₱500 per court appearance was held to represent the monetary equivalent for compensation of the alleged injury. The Court therein held that the total amount of monetary claims including the claims for damages was the basis to determine the jurisdictional amount. Also, in *Iniego v. Purganan*, the Court has held: The amount of damages claimed is within the jurisdiction of the RTC, since it is the claim for all kinds of damages that is the basis of determining the jurisdiction of courts, whether the claims for damages arise from the same or from different causes of action. x x x Considering that the total amount of damages claimed was ₱420,000.00, the Court of Appeals was correct in ruling that the RTC had jurisdiction over the case.

3. ID.; ID.; APPEALS; PETITION FOR REVIEW ON *CERTIORARI*; NO GRAVE ABUSE OF DISCRETION ON THE PART OF THE REGIONAL TRIAL COURT WHEN IT ALLOWED THE AMENDMENT OF THE COMPLAINT; EXPLAINED.— x x x [The Court finds] no error, much less grave abuse of discretion, on the part of the Court of Appeals in affirming the RTC's order allowing the amendment of the original complaint from ₱300,000.00 to ₱1,000,000.00 despite the pendency of a petition for *certiorari* filed before the Court of Appeals. While it is a basic jurisprudential principle that an amendment cannot be allowed when the court has no jurisdiction over the original complaint and the purpose of the amendment is to confer jurisdiction on the court, here, the RTC clearly had jurisdiction over the original complaint and amendment of the complaint was then still a matter of right.

APPEARANCES OF COUNSEL

Gerald C. Jacob for petitioners.

Domogan and Associates Law Offices for private respondents.

D E C I S I O N

VILLARAMA, JR., *J.*:

Before this Court is a petition for *certiorari*[1] under Rule 65 of the 1997 Rules of Civil Procedure, as amended, filed by petitioners Irene and Reynaldo Sante assailing the Decision[2] dated January 31, 2006 and the Resolution[3] dated June 23, 2006 of the Seventeenth Division of the Court of Appeals in CA-G.R. SP No. 87563. The assailed decision affirmed the orders of the Regional Trial Court (RTC) of Baguio City, Branch 60, denying their motion to dismiss the complaint for damages filed by respondent Vita Kalashian against them.

The facts, culled from the records, are as follows:

On April 5, 2004, respondent filed before the RTC of Baguio City a complaint for damages[4] against petitioners. In her complaint, docketed as Civil Case No. 5794-R, respondent alleged that while she was inside the Police Station of Natividad, Pangasinan, and in the presence of other persons and police officers, petitioner Irene Sante uttered words, which when translated in English are as follows, "*How many rounds of sex did you have last night with your boss, Bert? You fuckin' bitch!*" Bert refers to Albert Gacusan, respondent's friend and one (1) of her hired personal security guards detained at the said station and who is a suspect in the killing of petitioners' close relative. Petitioners also allegedly went around Natividad, Pangasinan telling people that she is protecting and cuddling the suspects in the aforesaid killing. Thus, respondent prayed that petitioners be held liable to pay moral damages in the amount of ₱300,000.00; ₱50,000.00 as exemplary damages; ₱50,000.00

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[1] *Rollo*, pp. 3-19.

[2] *Id.* at 96-103. Penned by Associate Justice Josefina Guevara-Salonga, with Associate Justices Fernanda Lampas Peralta and Sesinando E. Villon, concurring.

[3] *Id.* at 21-22.

[4] *Id.* at 23-27.

attorney's fees; ₱20,000.00 litigation expenses; and costs of suit.

Petitioners filed a Motion to Dismiss[5] on the ground that it was the Municipal Trial Court in Cities (MTCC) and not the RTC of Baguio, that had jurisdiction over the case. They argued that the amount of the claim for moral damages was not more than the jurisdictional amount of ₱300,000.00, because the claim for exemplary damages should be excluded in computing the total claim.

On June 24, 2004,[6] the trial court denied the motion to dismiss citing our ruling in *Movers-Baseco Integrated Port Services, Inc. v. Cyborg Leasing Corporation*.[7] The trial court held that the total claim of respondent amounted to ₱420,000.00 which was above the jurisdictional amount for MTCCs outside Metro Manila. The trial court also later issued Orders on July 7, 2004[8] and July 19, 2004,[9] respectively reiterating its denial of the motion to dismiss and denying petitioners' motion for reconsideration.

Aggrieved, petitioners filed on August 2, 2004, a Petition for *Certiorari* and Prohibition,[10] docketed as **CA-G.R. SP No. 85465**, before the Court of Appeals. Meanwhile, on July 14, 2004, respondent and her husband filed an Amended Complaint[11] increasing the claim for moral damages from ₱300,000.00 to ₱1,000,000.00. Petitioners filed a Motion to Dismiss with Answer *Ad Cautelam* and Counterclaim, but the trial court denied their motion in an Order[12] dated September 17, 2004.

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[5] *Id.* at 29-31.

[6] *Id.* at 32-33.

[7] G.R. No. 131755, October 25, 1999, 317 SCRA 327.

[8] *Rollo*, p. 36.

[9] *Id.* at 37.

[10] *Id.* at 38-44.

[11] *Id.* at 76-80.

[12] *Id.* at 82.

Hence, petitioners again filed a Petition for *Certiorari* and Prohibition[13] before the Court of Appeals, docketed as **CA-G.R. SP No. 87563**, claiming that the trial court committed grave abuse of discretion in allowing the amendment of the complaint to increase the amount of moral damages from ₱300,000.00 to ₱1,000,000.00. The case was raffled to the Seventeenth Division of the Court of Appeals.

On January 23, 2006, the Court of Appeals, Seventh Division, promulgated a decision in CA-G.R. SP No. 85465, as follows:

> WHEREFORE, finding grave abuse of discretion on the part of [the] Regional Trial Court of Baguio, Branch 60, in rendering the assailed Orders dated June 24, 2004 and July [19], 2004 in Civil Case No. 5794-R the instant petition for *certiorari* is GRANTED. The assailed Orders are hereby ANNULLED and SET ASIDE. Civil Case No. 5794-R for damages is ordered DISMISSED for lack of jurisdiction.
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> SO ORDERED.[14]

The Court of Appeals held that the case clearly falls under the jurisdiction of the MTCC as the allegations show that plaintiff was seeking to recover moral damages in the amount of ₱300,000.00, which amount was well within the jurisdictional amount of the MTCC. The Court of Appeals added that the totality of claim rule used for determining which court had jurisdiction could not be applied to the instant case because plaintiff's claim for exemplary damages was not a separate and distinct cause of action from her claim of moral damages, but merely incidental to it. Thus, the prayer for exemplary damages should be excluded in computing the total amount of the claim.

On January 31, 2006, the Court of Appeals, this time in CA-G.R. SP No. 87563, rendered a decision affirming the September 17, 2004 Order of the RTC denying petitioners' Motion to Dismiss *Ad Cautelam*. In the said decision, the appellate court held that the total or aggregate amount demanded in the complaint

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[13] *Id.* at 45-53.

[14] *Id.* at 93.

constitutes the basis of jurisdiction. The Court of Appeals did not find merit in petitioners' posture that the claims for exemplary damages and attorney's fees are merely incidental to the main cause and should not be included in the computation of the total claim.

The Court of Appeals additionally ruled that respondent can amend her complaint by increasing the amount of moral damages from ₱300,000.00 to ₱1,000,000.00, on the ground that the trial court has jurisdiction over the original complaint and respondent is entitled to amend her complaint as a matter of right under the Rules.

Unable to accept the decision, petitioners are now before us raising the following issues:

I.

WHETHER OR NOT THERE WAS GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR IN EXCESS OF JURISDICTION ON THE PART OF THE (FORMER) SEVENTEENTH DIVISION OF THE HONORABLE COURT OF APPEALS WHEN IT RESOLVED THAT THE REGIONAL TRIAL COURT OF BAGUIO CITY BRANCH 60 HAS JURISDICTION OVER THE SUBJECT MATTER OF THE CASE FOR DAMAGES AMOUNTING TO ₱300,000.00;

II.

WHETHER OR NOT THERE WAS GRAVE ABUSE OF DISCRETION ON THE PART OF THE HONORABLE RESPONDENT JUDGE OF THE REGIONAL TRIAL COURT OF BAGUIO BRANCH 60 FOR ALLOWING THE COMPLAINANT TO AMEND THE COMPLAINT (INCREASING THE AMOUNT OF DAMAGES TO 1,000,000.00 TO CONFER JURISDICTION OVER THE SUBJECT MATTER OF THE CASE DESPITE THE PENDENCY OF A PETITION FOR *CERTIORARI* FILED AT THE COURT OF APPEALS, SEVENTH DIVISION, DOCKETED AS CA G.R. NO. 85465.[15]

In essence, the basic issues for our resolution are:

1) Did the RTC acquire jurisdiction over the case? and

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[15] *Id.* at 10.

2) Did the RTC commit grave abuse of discretion in allowing the amendment of the complaint?

Petitioners insist that the complaint falls under the exclusive jurisdiction of the MTCC. They maintain that the claim for moral damages, in the amount of ₱300,000.00 in the original complaint, is the main action. The exemplary damages being discretionary should not be included in the computation of the jurisdictional amount. And having no jurisdiction over the subject matter of the case, the RTC acted with grave abuse of discretion when it allowed the amendment of the complaint to increase the claim for moral damages in order to confer jurisdiction.

In her Comment,[16] respondent averred that the nature of her complaint is for recovery of damages. As such, the totality of the claim for damages, including the exemplary damages as well as the other damages alleged and prayed in the complaint, such as attorney's fees and litigation expenses, should be included in determining jurisdiction. The total claim being ₱420,000.00, the RTC has jurisdiction over the complaint.

We deny the petition, which although denominated as a petition for *certiorari*, we treat as a petition for review on *certiorari* under Rule 45 in view of the issues raised.

Section 19(8) of *Batas Pambansa Blg*. 129,[17] as amended by Republic Act No. 7691,[18] states:

SEC. 19. *Jurisdiction in civil cases*. – Regional Trial Courts shall exercise exclusive original jurisdiction:

xxx xxx xxx

(8) In all other cases in which the demand, exclusive of interest, damages of whatever kind, attorney's fees, litigation expenses, and

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[16] *Id.* at 245-252.

[17] Also known as "The Judiciary Reorganization Act of 1980."

[18] An Act Expanding the Jurisdiction of the Metropolitan Trial Courts, Municipal Trial Courts and Municipal Circuit Trial Courts, Amending for the Purpose *Batas Pambansa Blg*. 129, Otherwise Known as the "Judiciary Reorganization Act of 1980."

costs or the value of the property in controversy exceeds One hundred thousand pesos (₱100,000.00) or, in such other cases in Metro Manila, where the demand, exclusive of the abovementioned items exceeds Two hundred thousand pesos (₱200,000.00).

Section 5 of Rep. Act No. 7691 further provides:

SEC. 5. After five (5) years from the effectivity of this Act, the jurisdictional amounts mentioned in Sec. 19(3), (4), and (8); and Sec. 33(1) of *Batas Pambansa Blg.* 129 as amended by this Act, shall be adjusted to Two hundred thousand pesos (₱200,000.00). Five (5) years thereafter, such jurisdictional amounts shall be adjusted further to Three hundred thousand pesos (₱300,000.00): *Provided, however*, That in the case of Metro Manila, the abovementioned jurisdictional amounts shall be adjusted after five (5) years from the effectivity of this Act to Four hundred thousand pesos (₱400,000.00).

Relatedly, Supreme Court Circular No. 21-99 was issued declaring that the first adjustment in jurisdictional amount of first level courts outside of Metro Manila from ₱100,000.00 to ₱200,000.00 took effect on March 20, 1999. Meanwhile, the second adjustment from ₱200,000.00 to ₱300,000.00 became effective on February 22, 2004 in accordance with OCA Circular No. 65-2004 issued by the Office of the Court Administrator on May 13, 2004.

Based on the foregoing, there is no question that at the time of the filing of the complaint on April 5, 2004, the MTCC's jurisdictional amount has been adjusted to ₱300,000.00.

But where damages is the main cause of action, should the amount of moral damages prayed for in the complaint be the sole basis for determining which court has jurisdiction or should the total amount of all the damages claimed regardless of kind and nature, such as exemplary damages, nominal damages, and attorney's fees, *etc*., be used?

In this regard, Administrative Circular No. 09-94[19] is instructive:

xxx xxx xxx

[19] Guidelines in the Implementation of Republic Act No. 7691.

2. The exclusion of the term "damages of whatever kind" in determining the jurisdictional amount under Section 19 (8) and Section 33 (1) of B.P. Blg. 129, as amended by R.A. No. 7691, applies to cases where the damages are merely incidental to or a consequence of the main cause of action. **However, in cases where the claim for damages is the main cause of action, or one of the causes of action, the amount of such claim shall be considered in determining the jurisdiction of the court.** (Emphasis ours.)

In the instant case, the complaint filed in Civil Case No. 5794-R is for the recovery of damages for the alleged malicious acts of petitioners. The complaint principally sought an award of moral and exemplary damages, as well as attorney's fees and litigation expenses, for the alleged shame and injury suffered by respondent by reason of petitioners' utterance while they were at a police station in Pangasinan. It is settled that jurisdiction is conferred by law based on the facts alleged in the complaint since the latter comprises a concise statement of the ultimate facts constituting the plaintiff's causes of action.[20] It is clear, based on the allegations of the complaint, that respondent's main action is for damages. Hence, the other forms of damages being claimed by respondent, *e.g.*, exemplary damages, attorney's fees and litigation expenses, are not merely incidental to or consequences of the main action but constitute the primary relief prayed for in the complaint.

In *Mendoza v. Soriano*,[21] it was held that in cases where the claim for damages is the main cause of action, or one of the causes of action, the amount of such claim shall be considered in determining the jurisdiction of the court. In the said case, the respondent's claim of ₱929,000.06 in damages and ₱25,000 attorney's fees plus ₱500 per court appearance was held to represent the monetary equivalent for compensation of the alleged injury. The Court therein held that the total amount of monetary claims including the claims for damages was the basis to determine the jurisdictional amount.

Also, in *Iniego v. Purganan*,[22] the Court has held:

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[20] *Nocum v. Tan*, G.R. No. 145022, September 23, 2005, 470 SCRA 639, 644-645.

[21] G.R. No. 164012, June 8, 2007, 524 SCRA 260, 266-267.

[22] G.R. No. 166876, March 24, 2006, 485 SCRA 394, 402.

The amount of damages claimed is within the jurisdiction of the RTC, since it is the claim for all kinds of damages that is the basis of determining the jurisdiction of courts, whether the claims for damages arise from the same or from different causes of action.

xxx xxx xxx

Considering that the total amount of damages claimed was ₱420,000.00, the Court of Appeals was correct in ruling that the RTC had jurisdiction over the case.

Lastly, we find no error, much less grave abuse of discretion, on the part of the Court of Appeals in affirming the RTC's order allowing the amendment of the original complaint from ₱300,000.00 to ₱1,000,000.00 despite the pendency of a petition for *certiorari* filed before the Court of Appeals. While it is a basic jurisprudential principle that an amendment cannot be allowed when the court has no jurisdiction over the original complaint and the purpose of the amendment is to confer jurisdiction on the court,[23] here, the RTC clearly had jurisdiction over the original complaint and amendment of the complaint was then still a matter of right.[24]

WHEREFORE, the petition is *DENIED,* for lack of merit. The Decision and Resolution of the Court of Appeals dated January 31, 2006 and June 23, 2006, respectively, are *AFFIRMED.* The Regional Trial Court of Baguio City, Branch 60 is *DIRECTED* to continue with the trial proceedings in Civil Case No. 5794-R with deliberate dispatch.

No costs.

SO ORDERED.

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

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[23] *Siasoco v. Court of Appeals*, G.R. No. 132753, February 15, 1999, 303 SCRA 186, 196.

[24] SEC. 2, RULE 10, RULES OF COURT.

SECOND DIVISION

[G.R. No. 177100. February 22, 2010]

BANDILA SHIPPING, INC., MR. REGINALDO A. OBEN, and FUYOH SHIPPING, INC., *petitioners, vs.* **MARCOS C. ABALOS,** *respondent.*

SYLLABUS

LABOR AND SOCIAL LEGISLATION; LABOR STANDARDS; OVERSEAS EMPLOYMENT; STANDARD CONTRACT FOR FILIPINO SEAFARERS; *CHOLECYSTOLITHIASIS* OR GALLSTONES IS EXCLUDED AS A COMPENSABLE ILLNESS; DISCUSSED.— x x x [S]ince *cholecystolithiasis* or gallstone has been excluded as a compensable illness under the applicable standard contract for Filipino seafarers that binds both respondent Abalos and the vessel's foreign owner, it was an error for the CA to treat Abalos' illness as "work-related" and, therefore, compensable. The standard contract precisely did not consider gallstone as compensable illness because the parties agreed, presumably based on medical science, that such affliction is not caused by working on board ocean-going vessels. Nor has respondent Abalos proved by some evidence that the nature of his work on board a ship aggravated his illness. No one knew when he boarded the vessel that he was sick of gallstone. By the nature of this illness, it is highly probable that Abalos already had it when he boarded his assigned ship although it went undiagnosed because he had yet to experience its symptoms. If respondent Abalos had instead been sick of asthma and the shipping company knew of it even as it assigned him to do work that exposed him to allergens, then it can be said that the company assigned him work that aggravated his illness. Here, however, he himself was unaware that he had gallstone until excruciating pains manifested its presence for the first time when his vessel was sailing the seas. The Court recognized in *Vergara v. Hammonia Maritime Services, Inc*. the significance of the adoption by the Department of Labor and Employment of the Philippine Overseas Employment Administration Standard Employment Contract as a condition for deploying Filipino seafarers working on foreign

ocean-going vessels. When the foreign shipping company signs that contract, there is assurance that it voluntarily subjects itself to Philippine laws and jurisdiction. If the NLRC orders the payment of benefits not found in that contract, the particular seaman might be favored but the credibility of our standard employment contract will suffer. Foreign shipping companies might regard it as non-binding to the detriment of other seamen.

APPEARANCES OF COUNSEL

Del Rosario & Del Rosario for petitioners.
Melosino L. Respicio and *Concepcion & Associates* for respondent.

D E C I S I O N

ABAD, *J.*:

Statement of the Case

This case is about a Filipino seafarer's claim for disability benefits from *cholecystolithiasis* or gallstone that was discovered when he suffered excruciating pain while working on board an ocean-going vessel, an illness that was not in the list of compensable diseases listed in the standard seafarer's contract that he signed with the vessel owner.

The Facts and the Case

On July 25, 2002 respondent Marcos C. Abalos entered into a contract of employment with petitioner Bandila Shipping, Inc. (BSI), a Philippine manning agency acting on behalf of its co-petitioner Fuyoh Shipping, Inc., as fourth engineer for the ocean-going vessel M/V Estrella Eterna at US$765.00 per month for 10 months.[1] Prior to embarkation, Abalos underwent pre-employment medical examination and was found to be "*fit for*

[1] *Rollo*, p. 553.

sea service."[2] He boarded his vessel in Singapore on August 28, 2002.[3]

As the vessel headed towards Nagoya, Japan, on January 23, 2003, respondent Abalos felt excruciating pain in his stomach while he was on duty. He tried to tolerate it until he got off but he was unable to sleep because of severe pain. The following day, unable to bear the pain, he told the vessel's master about it. After being examined at the International Clinic in Nagoya, Japan, he was diagnosed to be suffering from "gallstone, acute cholecystitis, and pancreatitis suspected." The attending physician found him unfit for duty and recommended his repatriation.[4]

On January 25, 2003 respondent Abalos was repatriated to the Philippines. He was referred to Dr. Ruby Dizon who found that he had *cholecystolithiasis*, commonly known as gallstone, and needed to undergo *cholecystectomy* or gall bladder removal that would cost ₱80,000.00.[5] Unable to get the company's approval for his surgery,[6] Abalos sought the opinion of other physicians who made the same diagnosis and suggested surgery.[7]

On June 12, 2003 Abalos filed a complaint with the Labor Arbiter for disability benefits, unexpired portion of his contract, moral and exemplary damages, and attorney's fees against petitioner BSI, its claims manager, and its foreign principal, petitioner Fuyoh Shipping, Inc.,[8] in NLRC OFW-(M) Case 03-06-1493-00. Persuaded by the opinion of a company-designated physician that *cholecystolithiasis* was not work-related, BSI denied liability.

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[2] *Id.* at 13.

[3] *Id.* at 225.

[4] *Id.* at 554.

[5] *Id.* at 555.

[6] *Id.*

[7] *Id.* at 14.

[8] *Id.* at 555.

Meantime, respondent Abalos amended his complaint to include nonpayment of disability benefits, medical reimbursement, sickness allowance, compensatory damages, moral and exemplary damages, and attorney's fees.[9]

To establish compensability, respondent Abalos consulted Dr. Efren R. Vicaldo, an internist of the Philippine Heart Center, who certified that: 1) Abalos had gall bladder stones requiring surgery; 2) he was unfit to resume work as seaman; and 3) his illness was work-aggravated with an impediment of grade VII (41.80%).[10]

Efforts to amicably settle the dispute did not materialize.[11] Thus, on January 29, 2004 the Labor Arbiter rendered a decision,[12] granting respondent Abalos permanent disability benefit, sickness allowance, and 10 percent of the award as attorney's fees. The Labor Arbiter found that Abalos became ill while on board his assigned vessel and the demanding nature of his work aggravated it, thus, establishing a reasonable connection between the two. He denied the other claims for lack of merit.

But, on appeal by petitioner BSI, on February 23, 2006 the National Labor Relations Commission (NLRC) rendered judgment[13] that set aside the Labor Arbiter's decision. The NLRC pointed out that the applicable standard terms of employment did not regard respondent Abalos' illness as an occupational disease. He also failed to show that his work on ship aggravated it. His motion for reconsideration having been denied,[14] Abalos went up to the Court of Appeals (CA) in CA-G.R. SP 95238.

On January 30, 2007 the CA rendered a decision,[15] granting the petition, setting aside the NLRC decision, and reinstating

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[9] *Id.* at 556.

[10] *Id.*

[11] *Id.* at 223.

[12] *Id.* at 223-240.

[13] *Id.* at 552-563.

[14] *Id.* at 359.

[15] *Id.* at 12-23.

that of the Labor Arbiter. On March 19, 2007 the appellate court denied BSI's motion for reconsideration,[16] hence, the present petition for review.

Issue Presented

The core issue presented in this case is whether or not Abalos' *cholecystolithiasis* or gallstone is compensable and, thus, entitles him to disability benefits and sickness allowance.

The Court's Rulings

Whether or not respondent Abalos' illness is compensable is essentially a factual issue. Yet the Court can and will be justified in looking into it considering the conflicting views of the NLRC and the CA.[17]

There is no question as to what respondent Abalos was sick of. He was sick of *cholecystolithiasis* or gallstone. It does not develop overnight. It is caused by stone formation in the gallbladder that blocks the tube leading out of the gallbladder, causing bile to build up, resulting in gallbladder inflammation. These gallstones are solid accumulations of the components of bile, particularly cholesterol, bile pigments, and calcium.[18] The formation of gallbladder stones take months, if not years, to build up.

According to the NLRC, medical reports show that gallstone relates to one's weight or diet and in some instances may be a genetic predisposition. It is not one of those enumerated as compensable diseases in the Revised Standard Terms and Conditions Governing the Employment of Filipino Seafarers on Board Ocean-Going Vessels that covered Abalos' employment. The NLRC denied him disability benefits and sickness allowance for this reason.

The CA held, however, that Abalos' diet or sustenance on board the vessel had presumably caused or contributed to his

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[16] *Id.* at 325-354.

[17] *Masangcay v. Trans-Global Maritime Agency, Inc.*, G.R. No. 172800, October 17, 2008, 569 SCRA 592, 607.

[18] http://emedicine.medscape.com/article/774352.overview.

illness for he had no choice but eat ship food. Consequently, although his gallstone is not a compensable illness under his employment contract, it can be said that his illness was either work-related or reasonably connected with his work.

But, since *cholecystolithiasis* or gallstone has been excluded as a compensable illness under the applicable standard contract for Filipino seafarers that binds both respondent Abalos and the vessel's foreign owner, it was an error for the CA to treat Abalos' illness as "work-related" and, therefore, compensable. The standard contract precisely did not consider gallstone as compensable illness because the parties agreed, presumably based on medical science, that such affliction is not caused by working on board ocean-going vessels.

Nor has respondent Abalos proved by some evidence that the nature of his work on board a ship aggravated his illness. No one knew when he boarded the vessel that he was sick of gallstone. By the nature of this illness, it is highly probable that Abalos already had it when he boarded his assigned ship although it went undiagnosed because he had yet to experience its symptoms.

If respondent Abalos had instead been sick of asthma and the shipping company knew of it even as it assigned him to do work that exposed him to allergens, then it can be said that the company assigned him work that aggravated his illness. Here, however, he himself was unaware that he had gallstone until excruciating pains manifested its presence for the first time when his vessel was sailing the seas.

The Court recognized in *Vergara v. Hammonia Maritime Services, Inc.*[19] the significance of the adoption by the Department of Labor and Employment of the Philippine Overseas Employment Administration Standard Employment Contract as a condition for deploying Filipino seafarers working on foreign ocean-going vessels. When the foreign shipping company signs that contract, there is assurance that it voluntarily subjects itself

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[19] G.R. No. 172933, October 6, 2008, 567 SCRA 610, 623.

to Philippine laws and jurisdiction. If the NLRC orders the payment of benefits not found in that contract, the particular seaman might be favored but the credibility of our standard employment contract will suffer. Foreign shipping companies might regard it as non-binding to the detriment of other seamen.

ACCORDINGLY, the Court grants the petition, *SETS ASIDE* the decision of the Court of Appeals in CA-G.R. SP 95238 dated January 30, 2007 and its resolution dated March 19, 2007, and *REINSTATES* the decision of the National Labor Relations Commission in NLRC NCR CA 039306-04 dated February 23, 2006.

SO ORDERED.

Carpio (Chairperson), Brion, Del Castillo, and *Perez, JJ.,* concur.

FIRST DIVISION

[G.R. No. 182299. February 22, 2010]

WILFREDO M. BARON, BARRY ANTHONY BARON, RAMIL CAYAGO, DOMINADOR GEMINO, ARISTEO PUZON, BERNARD MANGSAT, MARIFE BALLESCA, CYNTHIA JUNATAS, LOURDES RABAGO, JEFFERSON DELA ROSA and JOMAR M. DELA ROSA, *petitioners, vs.* **NATIONAL LABOR RELATIONS COMMISSION and MAGIC SALES, INC. represented by JOSE Y. SY,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; PETITION FOR REVIEW ON *CERTIORARI*; ONLY QUESTIONS OF

LAW MAY BE REVIEWED; EXCEPTION.— At the outset, it must be stressed that the issues raise questions of fact which are not proper subjects of a petition for review on *certiorari* under Rule 45 of the 1997 Rules of Civil Procedure, as amended. It is axiomatic that in an appeal by *certiorari*, only questions of law may be reviewed. Furthermore, factual findings of administrative agencies, when affirmed by the Court of Appeals, are conclusive on the parties and not reviewable by this Court. This is so because of the special knowledge and expertise gained by these quasi-judicial agencies from presiding over matters falling within their jurisdiction, which is confined to specific matters. So long as these factual findings are supported by substantial evidence, this Court will not disturb the same. In this case, the Labor Arbiter found that petitioners Aristeo Puzon, Dominador Gemino, Bernard Mangsat, Ramil Cayago, Barry Anthony Baron, Cynthia Junatas, Marife Ballesca and Lourdes Rabago were illegally dismissed. The NLRC disagreed with the Labor Arbiter and reversed the latter's findings. On appeal, the appellate court concurred with the findings of the NLRC. In view of the discordance between the findings of the Labor Arbiter, on one hand, and the NLRC and the Court of Appeals, on the other, there is a need for the Court to review the factual findings and the conclusions based on the said findings. As this Court held in *Diamond Motors Corporation v. Court of Appeals*: A disharmony between the factual findings of the Labor Arbiter and the National Labor Relations Commission opens the door to a review thereof by this Court. Factual findings of administrative agencies are not infallible and will be set aside when they fail the test of arbitrariness. Moreover, when the findings of the National Labor Relations Commission contradict those of the labor arbiter, this Court, in the exercise of its equity jurisdiction, may look into the records of the case and reexamine the questioned findings.

2. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; TERMINATION OF EMPLOYMENT; TERMINATION BY EMPLOYER; MUST BE FOR A JUST OR VALID CAUSE AND ONLY AFTER DUE PROCESS.— The Constitution, statutes and jurisprudence uniformly mandate that no worker shall be dismissed except for a just or valid cause provided by law, and only after due process is properly observed. In a recent decision, this Court said that dismissals have two facets: first, the legality of the act of dismissal, which constitutes substantive

due process; and, second, the legality of the manner of dismissal, which constitutes procedural due process.

3. ID.; ID.; ID.; ID.; JUST CAUSES; SERIOUS MISCONDUCT; SUBSTANTIALLY PROVEN IN CASE AT BAR.— Misconduct has been defined as improper or wrong conduct. It is the transgression of some established and definite rule of action, a forbidden act, a dereliction of duty, willful in character, and implies wrongful intent and not mere error of judgment. The misconduct to be serious must be of such grave and aggravated character and not merely trivial and unimportant. Such misconduct, however serious, must nevertheless be in connection with the employee's work to constitute just cause for his separation. To our mind, respondents were able to prove substantially the existence of serious misconduct committed by petitioners to justify their termination from employment. Daroya submitted a report dated February 19, 2000 stating that in spite of management's memorandum, the keys to the office and filing cabinets were not surrendered. It was likewise stated in the report that Wilfredo Baron pulled out some records without allowing a representative from the audit team to inspect them. He noticed Wilfredo Baron deleting some files from the computer which could no longer be retrieved. Moreover, Armida Que, a member of the audit team, saw petitioner Cynthia Junatas carrying some documents, including a Daily Collection Report. When asked to present the documents for inspection, Junatas refused and tore the document. In addition, the audit team discovered that MSI incurred an inventory shortage of One Million Thirty Thousand Two Hundred Fifty-Eight Pesos and Twenty-One Centavos (₱1,030,258.21). It found that Wilfredo Baron, the operations manager, in conspiracy with the other petitioners, orchestrated massive irregularities and grand scale fraud, which could no longer be documented because of theft of company documents and deletion of computer files. Unmistakably, the unauthorized taking of company documents and files, failure to pay unremitted collections, failure to surrender keys to the filing cabinets despite earlier instructions, concealment of shortages, and failure to record inventory transactions pursuant to a fraudulent scheme are acts of grave misconduct, which are sufficient causes for petitioners' dismissal from employment.

4. ID.; ID.; ID.; ID.; ID.; LOSS OF TRUST AND CONFIDENCE; EXPLAINED.— x x x For there to be a valid dismissal based

on loss of trust and confidence, the breach of trust must be willful, meaning it must be done intentionally, knowingly, and purposely, without justifiable excuse. The basic premise for dismissal on the ground of loss of confidence is that the employees concerned hold a position of trust and confidence. It is the breach of this trust that results in the employer's loss of confidence in the employee. In the instant case, we note that petitioners were holding the following positions: Wilfredo Baron - operations manager, Jomar dela Rosa and Jefferson dela Rosa - sales representatives, Cynthia Junatas and Marife Ballesca - accounting clerks, and Lourdes Rabago - warehouse checker. Clearly, petitioners were holding positions imbued with trust and confidence, which are deemed to have been reposed on them by virtue of the nature of their work.

5. ID.; ID.; ID.; ID.; DUE PROCESS; TWIN REQUIREMENTS OF NOTICE AND HEARING; COMPLIED WITH IN CASE AT BAR.— In the dismissal of employees, it has been consistently held that the twin requirements of notice and hearing are essential elements of due process. The employer must furnish the worker with two written notices before termination of employment can be legally effected: (1) a notice apprising the employee of the particular acts or omissions for which his dismissal is sought, and (2) a subsequent notice informing the employee of the employer's decision to dismiss him. With regard to the requirement of a hearing, the essence of due process lies simply in an opportunity to be heard, and not that an actual hearing should always and indispensably be held. Likewise, there is no requirement that the notices of dismissal themselves be couched in the form and language of judicial or quasi-judicial decisions. What is required is that the employer conduct a formal investigation process, with notices duly served on the employees informing them of the fact of investigation, and subsequently, if warranted, a separate notice of dismissal. Through the formal investigatory process, the employee must be accorded the right to present his or her side, which must be considered and weighed by the employer. The employee must be sufficiently apprised of the nature of the charge, so as to be able to intelligently defend himself or herself against the charges. In this case, records show that respondents complied with the two-notice rule prescribed in Article 277(b) of the Labor Code, as amended. Petitioners were given all avenues to present their side and disprove the allegations of

respondents. Thus, we agree with the Court of Appeals when it held: *On various dates, two [2] separate notices were given the employees. In the first notice, the acts imputed against them were enumerated with a call for an investigation, while the second notice contained MSI's decision terminating them after they failed to respond to the first notice. Thus, the employees' inaction is attributable to them. Due process is not violated where a person is given the opportunity to be heard but chooses not to give his side of the case (Caurdanetaan Piece Workers Union vs. Laguesma, 286 SCRA 401).* Evidence shows that petitioners were properly notified of the charges against them. They received letters signed by Jose Y. Sy instructing them to explain within seventy-two (72) hours from receipt why they should not be dismissed for their offenses. They were likewise warned that failure to reply would mean that they were waiving their right to present evidence in their favor. Furthermore, petitioners were afforded the chance to defend themselves during the scheduled investigation on April 12, 2000. Given the foregoing, it is clear that the required procedural due process for their termination was strictly complied with. When parties have been given an opportunity to be heard and to present their case, there is no denial of due process.

APPEARANCES OF COUNSEL

Ricardo N. Olairez & Nellie M. Olairez Law Office for petitioners.

Fernandez Law Office for private respondents.

D E C I S I O N

VILLARAMA, JR., *J.*:

The present petition for review on *certiorari* seeks to annul the Decision[1] dated August 31, 2007, as well as the Resolution[2]

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[1] *Rollo*, pp. 61-75. Penned by Associate Justice Edgardo P. Cruz, with Associate Justices Fernanda Lampas Peralta and Normandie B. Pizarro concurring.

[2] *Id.* at 77.

dated March 6, 2008, of the Court of Appeals in CA-G.R. SP No. 78925, which affirmed the Decision[3] of the National Labor Relations Commission (NLRC) in NLRC-NCR CA No. 028180-01.

Respondent Magic Sales, Inc. (MSI) is a domestic corporation engaged in the business of trading consumer goods such as soap, biscuits, candy, coffee, and juice drinks, among other things,[4] while respondent Jose Y. Sy is the company's President and General Manager.[5] On the other hand, petitioners claim to be employees of MSI.[6]

It appears that on January 18, 2000, Sy ordered an inventory of the company's stock after noticing a steady increase in the company's payables and a decline in its investments. Mr. Jovencio A. Daroya, a Certified Public Accountant and the Corporate Finance Manager of MSI, was tasked to conduct a thorough audit of the company's business. Sy then informed petitioner Wilfredo Baron that he had to be temporarily relieved of some of his duties as Operations Manager to allow the audit process to take its course for reconciliation of documents.

In a memorandum dated February 18, 2000, the employees were instructed (1) to give all the support needed by the audit team; (2) to surrender all keys and documents; (3) not to bring out anything belonging to management; and (4) to undergo a search before leaving the office.[7] Petitioners, however, refused to cooperate in the audit process, and thereafter, refrained from reporting for work.[8] Nonetheless, the audit was completed, and an Internal Audit Report[9] was submitted on April 29, 2000.

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[3] CA *rollo*, pp. 47-84.

[4] NLRC records, p. 15.

[5] *Id.* at 16.

[6] *Id.* at 159.

[7] *Id.* at 44.

[8] *Rollo*, p. 203.

[9] NLRC records, pp. 64-71.

According to the audit team, there were several irregularities in the operations of MSI. The accounting system designed by Baron was generally weak and compliance to procedures was not strictly implemented. The team was also convinced that Baron abused his authority and took advantage of the laxity of the system he designed. It likewise believed that Baron's subordinates were not honest enough to report the anomalies to the management; otherwise, the irregularities could have been limited. The audit team further concluded that there was collusion between Baron and his subordinates and that they benefited from the irregularities.[10]

Consequently, management informed petitioners of the charges against them, to wit: (1) serious misconduct and willful disobedience to the company's lawful orders; (2) fraud or willful breach of trust reposed by the employer; and (3) abandonment or absence without official leave. Although petitioners were required to explain and refute the charges, they neither rebutted the same nor attended the investigation. Hence, MSI decided to terminate their services.[11]

Petitioners forthwith filed complaints[12] with the NLRC Arbitration Branch against MSI and Sy for illegal dismissal, 13th month pay, service incentive leave pay, moral and exemplary damages and attorney's fees.[13] In their Joint Position Paper,[14] petitioners principally argued that they were dismissed whimsically and capriciously in a very oppressive manner, without valid cause and without due process of law. They prayed that respondents be declared guilty of illegal dismissal and that they be reinstated to their respective former positions without loss of seniority rights, with full back wages and payment of damages. They also prayed for payment of their monetary claims.

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[10] *Id.* at 71.

[11] *Id.* at 123, 142-144.

[12] Docketed as *NLRC Case Nos. SUB-RAB-I-7-3-0051-2000 D.C.* and *SUB-RAB-I-7-4-0069-2000 D.C.*

[13] NLRC records, pp. 1-4.

[14] *Id.* at 159-193.

For its part, MSI countered in its Consolidated Position Paper[15] that the petitioners are not entitled to the reliefs prayed for because they were validly dismissed. MSI insisted that Baron orchestrated the massive irregularities and grand scale fraud. With the help of the other petitioners, they were able to misappropriate company funds and goods. When petitioners sensed that their offenses would be discovered during the audit, they suddenly abandoned their work. Furthermore, MSI insisted that petitioners are guilty of insubordination by refusing to cooperate with the company and subject themselves to audit to clear themselves. Worse, petitioners attempted to sabotage the audit by locking their drawers and refusing to surrender the keys, stealing files and destroying documents and other papers.

On January 22, 2001, Labor Arbiter Jose G. De Vera rendered judgment[16] ordering respondents to reinstate petitioners Aristeo Puzon, Dominador Gemino, Bernard Mangsat, Ramil Cayago, Barry Anthony Baron, Cynthia Junatas, Marife Ballesca and Lourdes Rabago to their former positions with all the rights, privileges, and benefits appurtenant thereto, plus full back wages from the date of dismissal until finally reinstated. Respondents were further ordered to pay money claims and attorney's fees to petitioners. However, the complaints of Wilfredo Baron, Jefferson dela Rosa and Jomar dela Rosa were dismissed for lack of merit.

Separate appeals to the NLRC were filed by both parties.[17] Petitioners argued that the decision is not in accord with law and jurisprudence and that they are appealing partially for the denial of their claim for damages. On the other hand, respondents claimed that the Labor Arbiter erred in holding that: (1) petitioners Gemino, Puzon, Barry Baron and Cayago were employees of MSI and that they were illegally dismissed; (2) petitioners Ballesca, Junatas and Rabago were dismissed without just and valid cause;

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[15] *Id.* at 14-38.

[16] *Id.* at 218-242.

[17] CA *rollo*, pp. 205-223, 506-537.

and (3) respondent Sy is solidarily liable with MSI. Respondents also argued that the Labor Arbiter erred in granting petitioners' money claims.

On December 27, 2002, the NLRC rendered a Decision[18] as follows:

> WHEREFORE, judgment is hereby rendered:
>
> 1. Treating the appeal of complainants Jomar de la Rosa and Jefferson dela Rosa as withdrawn;
>
> 2. Dismissing the appeal of Wilfredo Baron for being without merit; and
>
> 3. Dismissing the complaints of Aristeo Puzon, Dominador Gemino, Bernard [Mangsat], Ramil Cayago, Barry Anthony [Baron], Cynthia Junatas, Marife Ballesca and Lourdes Rabago for being also without merit.
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> SO ORDERED.

According to the NLRC, there was enough evidence to show that there was conspiracy among the employees of MSI. It found that massive irregularities were committed in the company and one (1) of those involved was the operations manager himself. The audit revealed that it was Wilfredo Baron who orchestrated the massive irregularities and grand scale fraud which, however, could no longer be documented because of the theft of company files and deletion of computer files which he and the other petitioners had access to. The NLRC found that petitioners anticipated that the audit would eventually lead to their dismissal and prosecution in court. Hence, they abandoned their work and filed cases at the start of the audit.[19] The NLRC held that the acts of abandoning their jobs without prior leave and of not surrendering all the keys and documents in their possession so that management could thoroughly conduct its audit are enough reasons to justify their termination pursuant to Article 282 of the Labor Code, as amended.

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[18] *Id.* at 47-84.

[19] *Id.* at 77.

Petitioners filed a Motion for Reconsideration.[20] The NLRC, however, was not persuaded, and resolved to deny the motion in its Order dated May 7, 2003.[21]

Contending that the NLRC acted with grave abuse of discretion amounting to lack or in excess of jurisdiction in rendering its Decision and Order, petitioners filed a Petition for *Certiorari*[22] with the Court of Appeals.

On August 31, 2007, the appellate court rendered a Decision,[23] the dispositive portion of which reads:

> WHEREFORE, for lack of merit, the petition is DENIED due course and, accordingly, DISMISSED. Consequently, the assailed decision of the National Labor Relations Commission is AFFIRMED.
>
> SO ORDERED.

Later, the Court of Appeals denied petitioners' motion for reconsideration[24] in its Resolution[25] dated March 6, 2008.

Hence, the present petition.

The core issues in this controversy are: (1) Were petitioners validly dismissed on the grounds of grave misconduct and loss of confidence? and (2) Were petitioners denied of their right to due process when they were terminated from their employment?

At the outset, it must be stressed that the issues raise questions of fact which are not proper subjects of a petition for review on *certiorari* under Rule 45 of the 1997 Rules of Civil Procedure, as amended. It is axiomatic that in an appeal by *certiorari*, only questions of law may be reviewed.[26] Furthermore, factual findings

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[20] *Id.* at 224-255.

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

[22] *Id.* at 1-B-44.

[23] *Rollo*, pp. 61-75.

[24] CA *rollo*, pp. 587-615.

[25] *Rollo*, p. 77.

[26] *Morales v. Skills International Company*, G.R. No. 149285, August 30, 2006, 500 SCRA 186, 194; *JMM Promotions and Management, Inc. v. Court of Appeals*, G.R. No. 139401, October 2, 2002, 390 SCRA 223, 229.

of administrative agencies, when affirmed by the Court of Appeals, are conclusive on the parties and not reviewable by this Court. This is so because of the special knowledge and expertise gained by these quasi-judicial agencies from presiding over matters falling within their jurisdiction, which is confined to specific matters. So long as these factual findings are supported by substantial evidence, this Court will not disturb the same.[27]

In this case, the Labor Arbiter found that petitioners Aristeo Puzon, Dominador Gemino, Bernard Mangsat, Ramil Cayago, Barry Anthony Baron, Cynthia Junatas, Marife Ballesca and Lourdes Rabago were illegally dismissed. The NLRC disagreed with the Labor Arbiter and reversed the latter's findings. On appeal, the appellate court concurred with the findings of the NLRC. In view of the discordance between the findings of the Labor Arbiter, on one hand, and the NLRC and the Court of Appeals, on the other, there is a need for the Court to review the factual findings and the conclusions based on the said findings. As this Court held in *Diamond Motors Corporation v. Court of Appeals*:[28]

> A disharmony between the factual findings of the Labor Arbiter and the National Labor Relations Commission opens the door to a review thereof by this Court. Factual findings of administrative agencies are not infallible and will be set aside when they fail the test of arbitrariness. Moreover, when the findings of the National Labor Relations Commission contradict those of the Labor Arbiter, this Court, in the exercise of its equity jurisdiction, may look into the records of the case and reexamine the questioned findings.

The Constitution, statutes and jurisprudence uniformly mandate that no worker shall be dismissed except for a just or valid cause provided by law, and only after due process is properly observed. In a recent decision,[29] this Court said that dismissals have two

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[27] *Morales v. Skills International Company*, *supra* at 195; *Cosmos Bottling Corporation v. National Labor Relations Commission*, G.R. No. 146397, July 1, 2003, 405 SCRA 258, 262-263.

[28] G.R. No. 151981, December 1, 2003, 417 SCRA 46, 50.

[29] *Tirazona v. Court of Appeals*, G.R. No. 169712, March 14, 2008, 548 SCRA 560, 579, citing *Shoemart, Inc. v. National Labor Relations Commission*, G.R. No. 74229, August 11, 1989, 176 SCRA 385, 390.

facets: first, the legality of the act of dismissal, which constitutes substantive due process; and, second, the legality of the manner of dismissal, which constitutes procedural due process.

The just causes for termination of employment are enumerated in Article 282 of the Labor Code, as amended, *viz.*:

ART. 282. *Termination by employer*. – An employer may terminate an employment for any of the following causes:

(a) Serious misconduct or willful disobedience by the employee of the lawful orders of his employer or representative in connection with his work;

(b) Gross and habitual neglect by the employee of his duties;

(c) Fraud or willful breach by the employee of the trust reposed in him by his employer or duly authorized representative;

(d) Commission of a crime or offense by the employee against the person of his employer or any immediate member of his family or his duly authorized representative; and

(e) Other causes analogous to the foregoing.

In the present case, respondents terminated petitioners from their employment based on the following grounds: (1) serious misconduct and willful disobedience to the company's lawful orders; (2) fraud or willful breach of trust reposed by the employer; and (3) abandonment or absence without official leave.

Misconduct has been defined as improper or wrong conduct. It is the transgression of some established and definite rule of action, a forbidden act, a dereliction of duty, willful in character, and implies wrongful intent and not mere error of judgment. The misconduct to be serious must be of such grave and aggravated character and not merely trivial and unimportant. Such misconduct, however serious, must nevertheless be in connection with the employee's work to constitute just cause for his separation.[30]

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[30] *Samson v. National Labor Relations Commission*, 386 Phil. 669, 682 (2000).

To our mind, respondents were able to prove substantially the existence of serious misconduct committed by petitioners to justify their termination from employment. Daroya submitted a report[31] dated February 19, 2000 stating that in spite of management's memorandum, the keys to the office and filing cabinets were not surrendered. It was likewise stated in the report that Wilfredo Baron pulled out some records without allowing a representative from the audit team to inspect them. He noticed Wilfredo Baron deleting some files from the computer which could no longer be retrieved. Moreover, Armida Que, a member of the audit team, saw petitioner Cynthia Junatas carrying some documents, including a Daily Collection Report. When asked to present the documents for inspection, Junatas refused and tore the document.

In addition, the audit team discovered that MSI incurred an inventory shortage of One Million Thirty Thousand Two Hundred Fifty-Eight Pesos and Twenty-One Centavos (₱1,030,258.21). It found that Wilfredo Baron, the operations manager, in conspiracy with the other petitioners, orchestrated massive irregularities and grand scale fraud, which could no longer be documented because of theft of company documents and deletion of computer files. Unmistakably, the unauthorized taking of company documents and files, failure to pay unremitted collections, failure to surrender keys to the filing cabinets despite earlier instructions, concealment of shortages, and failure to record inventory transactions pursuant to a fraudulent scheme are acts of grave misconduct, which are sufficient causes for petitioners' dismissal from employment.

They are also grounds for loss of trust and confidence under Article 282 of the Labor Code, as amended. For there to be a valid dismissal based on loss of trust and confidence, the breach of trust must be willful, meaning it must be done intentionally, knowingly, and purposely, without justifiable

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[31] NLRC records, p. 49.

excuse.[32] The basic premise for dismissal on the ground of loss of confidence is that the employees concerned hold a position of trust and confidence. It is the breach of this trust that results in the employer's loss of confidence in the employee. In the instant case, we note that petitioners were holding the following positions: Wilfredo Baron - operations manager, Jomar dela Rosa and Jefferson dela Rosa - sales representatives, Cynthia Junatas and Marife Ballesca - accounting clerks, and Lourdes Rabago - warehouse checker. Clearly, petitioners were holding positions imbued with trust and confidence, which are deemed to have been reposed on them by virtue of the nature of their work.

All given, we affirm the conclusion of the NLRC and appellate court that petitioners Wilfredo Baron, Jomar dela Rosa, Jefferson dela Rosa, Cynthia Junatas, Marife Ballesca and Lourdes Rabago were dismissed for just causes. Meanwhile, petitioners Aristeo Puzon, Dominador Gemino, Bernard Mangsat, Barry Anthony Baron and Ramil Cayago failed to prove by substantial evidence the existence of an employer-employee relationship between them and MSI. In fact, they admitted that they were probationary employees of Superb Trading and Services, Inc. (STSI), and not of MSI. It must also be stressed that the connection between MSI and STSI was not proven. Thus, having no cause of action against MSI, the Court of Appeals correctly upheld the NLRC in dismissing their complaints.

On the procedural aspect, petitioners claim that they were denied due process. We disagree.

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[32] *Philippine National Construction Corporation v. Matias,* G.R. No. 156283, May 6, 2005, 458 SCRA 148, 159, citing *Gonzales v. National Labor Relations Commission,* G.R. No. 131653, March 26, 2001, 355 SCRA 195, 207*; P.J. Lhuillier, Inc. v. National Labor Relations Commission,* G.R. No. 158758, April 29, 2005, 457 SCRA 784, 798, citing *Tiu v. National Labor Relations Commission*, G.R. No. 83433, November 12, 1992, 215 SCRA 540, 547; *Felix v. National Labor Relations Commission,* G.R. No. 148256, November 17, 2004, 442 SCRA 465, 485, citing *Dela Cruz v. National Labor Relations Commission,* G.R. No. 119536, February 17, 1997, 268 SCRA 458, 470.

In the dismissal of employees, it has been consistently held that the twin requirements of notice and hearing are essential elements of due process. The employer must furnish the worker with two written notices before termination of employment can be legally effected: (1) a notice apprising the employee of the particular acts or omissions for which his dismissal is sought, and (2) a subsequent notice informing the employee of the employer's decision to dismiss him. With regard to the requirement of a hearing, the essence of due process lies simply in an opportunity to be heard, and not that an actual hearing should always and indispensably be held.[33]

Likewise, there is no requirement that the notices of dismissal themselves be couched in the form and language of judicial or quasi-judicial decisions. What is required is that the employer conduct a formal investigation process, with notices duly served on the employees informing them of the fact of investigation, and subsequently, if warranted, a separate notice of dismissal.[34] Through the formal investigatory process, the employee must be accorded the right to present his or her side, which must be considered and weighed by the employer. The employee must be sufficiently apprised of the nature of the charge, so as to be able to intelligently defend himself or herself against the charges.

In this case, records show that respondents complied with the two-notice rule prescribed in Article 277(b) of the Labor Code, as amended. Petitioners were given all avenues to present their side and disprove the allegations of respondents. Thus, we agree with the Court of Appeals when it held:

On various dates, two [2] separate notices were given the employees. In the first notice, the acts imputed against them were

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[33] *Paguio Transport Corporation v. NLRC*, 356 Phil. 158, 170 (1998); *Conti v. National Labor Relations Commission*, 337 Phil. 560, 565-566 (1997), citing *Roces v. Aportadera,* Adm. Case No. 2936, March 31, 1995, 243 SCRA 108, 114 and *Pamantasan ng Lungsod ng Maynila v. Civil Service Commission*, G.R. No. 107590, February 21, 1995, 241 SCRA 506, 516.

[34] See ARTICLE 277, LABOR CODE, as amended.

enumerated with a call for an investigation, while the second notice contained MSI's decision terminating them after they failed to respond to the first notice. Thus, the employees' inaction is attributable to them. Due process is not violated where a person is given the opportunity to be heard but chooses not to give his side of the case (Caurdanetaan Piece Workers Union vs. Laguesma, 286 SCRA 401).[35]

Evidence shows that petitioners were properly notified of the charges against them. They received letters[36] signed by Jose Y. Sy instructing them to explain within seventy-two (72) hours from receipt why they should not be dismissed for their offenses. They were likewise warned that failure to reply would mean that they were waiving their right to present evidence in their favor. Furthermore, petitioners were afforded the chance to defend themselves during the scheduled investigation on April 12, 2000. Given the foregoing, it is clear that the required procedural due process for their termination was strictly complied with. When parties have been given an opportunity to be heard and to present their case, there is no denial of due process.[37]

WHEREFORE, the petition is *DENIED*. The Decision dated August 31, 2007 and the Resolution dated March 6, 2008 of the Court of Appeals in CA-G.R. SP No. 78925 are *AFFIRMED* and *UPHELD*.

With costs against the petitioners.

SO ORDERED.

Puno, C.J. (Chairperson), Carpio Morales, Nachura,[*] and *Bersamin, JJ.,* concur.

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[35] *Rollo,* p. 73.

[36] NLRC records, pp. 83-85, 87, 122, 131, 137-138, 140-141.

[37] *J.D. Legaspi Construction v. National Labor Relations Commission,* G.R. No. 143161, October 2, 2002, 390 SCRA 233, 238.

[*] Designated additional member per Special Order No. 821, in view of the official leave of absence of Associate Justice Teresita J. Leonardo-De Castro.

SECOND DIVISION

[G.R. No. 184546. February 22, 2010]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **WILSON SUAN *y* JOLONGON,** *appellant.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; WHILE WITNESSES MAY DIFFER IN THEIR RECOLLECTION OF AN INCIDENT, IT DOES NOT NECESSARILY FOLLOW FROM THEIR DISAGREEMENTS THAT BOTH OR ALL OF THEM ARE NOT CREDIBLE AND THEIR TESTIMONIES COMPLETELY DISCARDED AS WORTHLESS.— While it may be conceded that there are a number of inconsistencies in the testimonies of the prosecution's principal witnesses as alluded to above, they are not, in our view, substantial enough to impair the veracity of the prosecution's evidence that a buy-bust operation resulting in the arrest of appellant, was indeed conducted. The maxim *falsus in unus, falsus in omnibus* does not lay down a categorical test of credibility. While witnesses may differ in their recollection of an incident, it does not necessarily follow from their disagreements that both or all of them are not credible and their testimonies completely discarded as worthless.

2. CRIMINAL LAW; ENTRAPMENT; PRIOR SURVEILLANCE IS NOT NECESSARY.— A prior surveillance much less a lengthy one, is not necessary during an entrapment as in the case at bench. 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. In this case, the buy-bust operation was set up precisely to test the veracity of the informant's tip and to arrest the malefactor if the report proved to be true. Thus in one case we emphasized our refusal to establish on *a priori* basis what detailed acts the police authorities might credibly undertake in their entrapment operations.

3. ID.; REPUBLIC ACT NO. 9165 (COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002); ILLEGAL SALE OF DRUGS;

PRESENTATION AND MARKING OF THE MONEY USED IN A BUY-BUST OPERATION IS NOT AN ELEMENT OF THE CRIME.— The doubt cast by the appellant on whether marked money was used in the operation did not in any way shatter the factuality of the transaction. Neither law nor jurisprudence requires the presentation of any of the money used in a buy-bust operation. Much less is it required that the money be marked. In fact, not even the absence or non-presentation of the marked money would weaken the evidence for the prosecution. The elements necessary to show that the crime had indeed been committed are proof that the illicit transaction took place coupled with the presentation in court of the *corpus delicti* or the illicit drug.

4. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; GENERALLY, TRIAL COURT'S FINDINGS THAT ARE FACTUAL IN NATURE AND THAT INVOLVE CREDIBILITY ARE ACCORDED RESPECT; NOT APPLICABLE IN CASE AT BAR.— It is a fundamental rule that the trial court's findings that are factual in nature and that 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 rule finds an even more stringent application where said findings are sustained by the CA. However, this rule will not apply in this case. As will be discussed shortly, the courts below overlooked two significant and substantial facts which if considered, as we do now consider, will affect the outcome of the case.

5. CRIMINAL LAW; REPUBLIC ACT NO. 9165 (COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002); ILLEGAL SALE OF DANGEROUS DRUGS; IDENTITY OF THE SUBSTANCE, NOT ESTABLISHED BEYOND REASONABLE DOUBT; DISCUSSED.— The main issue in the case at bench is whether the prosecution witnesses were able to properly identify the dangerous drug taken from appellant. For while the drug may be admitted in evidence it does not necessarily follow that the same should be given evidentiary weight. It must be stressed that admissibility should not be equated with its probative value in proving the *corpus delicti*. Appellant submits that the *shabu* alleged to have been sold was not properly identified by the police officers thus rendering doubtful and open to suspicion if the *shabu* submitted for examination is indeed the same

substance sold by him. We agree. As we have stated at the outset, the prosecution miserably failed to establish the identity of the substance allegedly recovered from the appellant. Records show that while the police officers were able to prove the factuality of the buy-bust operation, the prosecution dismally failed to prove the identity of the substance taken from appellant. x x x Thus, when the Certificate of Inventory was prepared by P02 Labasano, the item allegedly seized from the appellant bore no markings. However, in the Request for Laboratory Examination/Urine Test prepared by the Provincial Chief of Police, the item being subjected for laboratory examination was already referred to as Exhibit A. Next, in the Memorandum of the Regional Chief of PNP, the item that was referred to the Forensic Chemist already had other markings. From the foregoing, there is already doubt as to the identity of the substance being subjected for laboratory examination. At this time, we are no longer sure whether the item allegedly seized by PO2 Labasano from the appellant was the same item referred to by the Provincial Chief and then the Regional Chief of PNP to the Forensic Chemist for laboratory examination. Worse, in the Certificate of Inventory prepared by PO2 Labasano, the Memorandum prepared by the Provincial Chief, and the transmittal letter prepared by the Regional Chief, the substance supposedly weighed **0.01** gram. However, in the Chemistry Report No. D-500-2003 prepared by Forensic Chemist Carvajal, the substance was indicated as weighing **0.1** gram. x x x Indeed there is absolutely nothing in the evidence on record that tends to show identification of the drug. For sure, the difference particularly in the weight of the substance is fatal to the case of the prosecution. Sale or possession of a dangerous drug can never be proven without seizure and identification of the prohibited drug. In *People v. Magat,* we held that the existence of dangerous drugs is a condition *sine qua non* for conviction for the illegal sale and possession of dangerous drugs, it being the very *corpus delicti* of the crime. In prosecutions involving narcotics, the narcotic substance itself constitutes the *corpus delicti* of the offense and the fact of its existence is vital to sustain a judgment of conviction beyond reasonable doubt. Of paramount importance therefore in these cases is that the identity of the dangerous drug be likewise established beyond reasonable doubt.

6. ID.; ID.; ID.; UNBROKEN CHAIN OF CUSTODY OF THE SUBSTANCE, NOT ESTABLISHED IN CASE AT BAR.— Not only did the prosecution fail to identify the substance that was allegedly seized from the appellant; it also failed to establish that the chain of custody of the substance was unbroken. x x x The testimonies of PO2 Labasano are contradictory. At first, he testified that the substance recovered from the appellant was delivered to the crime laboratory but he did not know who received the same. On cross-examination, however, he claimed that the substance was delivered to their team leader, SPO2 Cañonero. Notably, the prosecution failed to put on the witness stand SPO2 Cañonero or the person from the crime laboratory who allegedly received the substance. Consequently, there was a break in the chain of custody because no mention is made as regards what happened to the substance from the time SPO2 Cañonero received it to the time the transmittal letter was prepared by Police Chief Inspector Jesus Atchico Rebua addressed to the Provincial Chief of Police, Lanao del Norte requesting for laboratory examination/urine test. We do not know how or from whom Police Chief Inspector Jesus Atchico Rebua received the substance. There is no dispute that in the Chemistry Report it was established that the object examined was found positive for methamphetamine hydrochloride or *shabu*, a dangerous drug. While the Forensic Chemist showed the contents of the sachet as the substance she examined and confirmed to be *shabu*, nonetheless, it is not positively and convincingly clear from her testimony that what was submitted for laboratory examination and later presented in court as evidence was the same *shabu* actually recovered from the appellant. The Forensic Chemist did not testify at all as to the identity of the person from whom she received the specimen for examination. Verily, there is a break in the chain of custody of the seized substance. The standard operating procedure on the seizure and custody of the drug as mandated in Section 21, Article II of RA 9165 and its Implementing Rules and Regulations was not complied with. As we observed, the chain of custody of the drug from the time the same was turned over to the Team Leader, as testified by PO2 Labasano or the Records Custodian as related by PO1 Gondol, to the time of submission to the crime laboratory was not clearly shown. There is no indication whether the Team Leader and the Records Custodian were one and the same person. Neither was there reference to

the person who submitted it to the crime laboratory. The prosecution needs to establish that the Team Leader or Records Custodian indeed submitted such particular drug to the crime laboratory for examination. The failure on the part of the Team Leader or Records Custodian as the case may be, to testify on what he did with the drug while he was in possession resulted in a break in the chain of custody of the drug. There is obviously a missing link from the point when the drug was in his hands to the point when the same was submitted for examination. The failure to establish the evidence's chain of custody is fatal to the prosecution's case. Under no circumstance can we consider or even safely assume that the integrity and evidentiary value of the drug was properly preserved by the apprehending officers. There can be no crime of illegal possession of a prohibited drug when nagging doubts persist on whether the item confiscated was the same specimen examined and established to be the prohibited drug.

7. ID.; ID.; ID.; DEVIATION FROM THE STANDARD PROCEDURE IN AN ANTI-NARCOTICS OPERATION PRODUCES DOUBTS AS TO THE IDENTITY AND ORIGIN OF THE DRUG; ACQUITTAL OF THE ACCUSED, WARRANTED; RELEVANT RULINGS, CITED.— Jurisprudence abounds with cases where deviation from the standard procedure in an anti-narcotics operation produces doubts as to the identity and origin of the drug which inevitably results to the acquittal of the accused. In *People v. Mapa*, we acquitted the appellant after the prosecution failed to clarify whether the specimen submitted to the National Bureau of Investigation for laboratory examination was the same one allegedly taken from the appellant. Also in *People v. Dimuske*, we ruled that the failure to prove that the specimen of marijuana examined by the forensic chemist was that seized from the accused was fatal to the prosecution's case. The same holds true in *People v. Casimiro* and in *Zarraga v. People* where the appellant was acquitted for failure of the prosecution to establish the identity of the prohibited drug which constitutes the *corpus delicti*. Recently in *Catuiran v. People*, we acquitted the petitioner for failure of the prosecution witnesses to observe the standard procedure regarding the authentication of the evidence.

8. ID.; ID.; ID.; INDISPENSABLE ELEMENTS OF *CORPUS DELICTI* OF THE CRIME, NOT PROVEN IN CASE AT BAR; REVERSAL

OF JUDGMENT OF CONVICTION IS PROPER.— x x x [T]he prosecution has not proven the indispensable element of *corpus delicti* of the crime. To repeat, the existence of dangerous drugs is a condition *sine qua non* for conviction for the illegal sale and possession of dangerous drugs, it being the very *corpus delicti* of the crime. Based on these findings and following our precedents in the afore-mentioned cases, we are compelled to reverse the judgment of conviction in this case. Consequently, we need not pass upon the merits of appellant's defense of denial and frame-up. It is a well-entrenched rule in criminal law that the conviction of an accused must be based on the strength of the prosecution's evidence and not on the weakness or absence of evidence of the defense.

APPEARANCES OF COUNSEL

The Solicitor General for appellee.
Public Attorney's Office for appellant.

D E C I S I O N

DEL CASTILLO, *J.*:

Once again we find occasion to reiterate the most echoed constitutional guarantee that an accused in criminal prosecutions is presumed innocent until his guilt is proven beyond reasonable doubt.[1] To overcome the presumption of innocence and arrive at a finding of guilt, the prosecution is duty bound to establish with moral certainty the elemental acts constituting the offense. In prosecutions involving narcotics, the narcotic substance itself constitutes the *corpus delicti* of the offense and the fact of its existence is vital to sustain a judgment of conviction beyond reasonable doubt.[2] The identity of the narcotic substance must therefore be established beyond reasonable doubt.[3]

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[1] CONSTITUTION, Article III, Section 14(12).

[2] *People v. Simbahon*, 449 Phil. 74, 83 (2003); *Corino v. People*, G.R. No. 178757, March 13, 2009.

[3] *Malillin v. People*, G.R. No. 172953, April 30, 2008, 553 SCRA 619, 632.

We are compelled to acquit appellant in this case because the prosecution miserably failed to establish the identity of the substance allegedly seized from him. In addition, we find that there was a break in the chain of custody thereby casting doubt on the integrity and evidentiary value of the substance allegedly seized from the appellant.

This is an appeal from the Decision[4] dated March 25, 2008 of the Court of Appeals (CA) in CA-G.R. CR No. 00054. The CA affirmed *in toto* the Decision[5] dated November 17, 2004 of the Regional Trial Court (RTC) of Lanao del Norte, Branch 01, Iligan City finding appellant Wilson Suan *y* Jolongon guilty of violation of Section 11, Article II of Republic Act (RA) No. 9165, the Comprehensive Dangerous Drugs Act of 2002.

Factual Antecedents

On August 12, 2003, an Information was filed with the RTC of Lanao del Norte, Branch 6 against appellant for violation of Section 5, Article II of RA 9165. The case was docketed as Criminal Case No. 10315. Subsequent to his arraignment on September 6, 2003 wherein he pleaded not guilty and before the pre-trial, appellant filed an Urgent Motion for Re-Investigation[6] which the trial court granted on September 19, 2003.[7] As a result of the re-investigation, an Amended Information[8] was filed charging appellant with violation of Section 11, Article II of RA 9165. The accusatory portion of the Amended Information reads:

The undersigned Prosecutor III of Iligan City accuses WILSON SUAN *y* JOLONGON for VIOLATION OF REPUBLIC ACT NO. 9165, committed as follows:

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[4] CA *rollo*, pp. 129-145; penned by Associate Justice Romulo V. Borja and concurred in by Associate Justices Mario V. Lopez and Elihu Y. Ybañez.

[5] Records, pp. 62-67; penned by Judge Mamindiara P. Mangotara.

[6] *Id.* at 18.

[7] *Id.* at 20.

[8] *Id.* at 21.

That on or about August 12, 2003, in the City of Iligan, Philippines, and within the jurisdiction of this Honorable Court, the said accused, without being authorized by law, did then and there willfully, unlawfully and feloniously have in his possession, custody and control one (1) sachet of methamphetamine hydrochloride, a dangerous drug commonly known as *shabu*, weighing more or less 0.01 gram.

Contrary to and in violation of Republic Act No. 9165, Article II, Section 11, thereof.

City of Iligan, October 13, 2003.

The Amended Information was raffled to Branch 01 wherein appellant was arraigned and to which offense he pleaded not guilty.

The evidence for the prosecution, as culled from the testimonies of PO2 Allan Labasano (PO2 Labasano), PO1 Samsodim Gondol (PO1 Gondol),[9] and Forensic Chemist Police Senior Inspector April Carvajal[10] (Forensic Chemist Carvajal), is as follows:

On August 12, 2003 at about 3:30 a.m., PO2 Labasano and PO1 Gondol conducted a buy-bust operation at Purok 4, Saray, Iligan City. PO1 Gondol, who was provided with two pieces of ₱50.00[11] bills, acted as the buyer while PO2 Labasano served as back-up. Upon reaching the target area, the two saw appellant sitting outside the house. PO1 Gondol approached appellant and the latter asked the former if he wanted to buy a narcotic substance. PO1 Gondol replied "I will buy "*Piso*", meaning ₱100.00. After a brief exchange of the money and the stuff, appellant was informed of his constitutional rights and thereafter was arrested. Appellant was brought to the police headquarters and presented before the investigator. At the police headquarters, PO2 Labasano prepared a Certificate of Inventory. The buy-bust money and the plastic sachet containing the stuff they recovered were turned over to the evidence custodian as related

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[9] Spelled as Gundol in the TSN.

[10] Sometimes spelled as Carbajal in the records.

[11] Exhibit "A" and "A-1", records, p. 53.

by PO1 Gondol, and to the Team Leader, as testified to by PO2 Labasano. Upon request, the plastic sachet was sent to the PNP Regional Crime Laboratory for examination.[12]

Forensic Chemist Carvajal received the written request for laboratory examination of one sachet containing white crystalline substance submitted to their office.[13] She conducted the test and the result showed that it contained methamphetamine hydrochloride or *shabu,* a dangerous drug. She then prepared Chemistry Report No. D-500-2003[14] on her finding on the tests.

Appellant denied the charge against him. He claimed that while he was sleeping on a bench beside the road, PO2 Labasano suddenly held his arm and handcuffed him. PO2 Labasano inserted his hand into appellant's pocket, frisked him and *shabu* was later shown to him. He was brought to Tipanoy for a drug test and detained in jail for violation of the anti-drugs law.

Ruling of the Regional Trial Court

Giving full faith and credence to the prosecution's version, the trial court found the test-buy and buy-bust operation established. In its Decision dated November 17, 2004, the trial court found appellant guilty beyond reasonable doubt of the crime charged and disposed as follows:

> WHEREFORE, premises considered, the Court find[s] the guilt of the accused WILSON SUAN *y* JOLONGON beyond reasonable doubt of the crime charged against him in the information and hereby sentences him to suffer the penalty of imprisonment from 12 years and 1 day to 20 years and to pay a fine of ₱100,000.00.
>
> The *shabu* taken from him is hereby confiscated in favor of the government.
>
> SO ORDERED.[15]

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[12] Exhibit "D", *id.* at 56.

[13] Exhibit "E", *id.* at 56 (posterior part).

[14] Exhibit "F", *id.* at 57.

[15] *Id.* at 67.

Ruling of the Court of Appeals

Appellant appealed the trial court's Decision to the CA. Finding no error committed by the trial court in convicting appellant of the offense of illegal possession of dangerous drug, the CA affirmed the trial court's decision.

Undaunted, appellant seeks a final recourse before this Court *via* the instant appeal.

In the Resolution dated November 24, 2008, we accepted the appeal and notified the parties that they may file their respective supplemental briefs if they so desire. However, both parties manifested that they are adopting their respective briefs earlier submitted with the CA.

In support of his prayer for a reversal of the verdict of his conviction, appellant contends: a) that the testimonies of the police operatives contained material inconsistencies and contradictions as to (i) whether a surveillance was made prior to the buy-bust operation, (ii) whether there was marked money used in the operation, and, (iii) the amount of the *shabu* sold; b) there was no proper identification of the illegal drug; c) the prosecution witnesses failed to testify on matters regarding the possession of the illegal drug; and, d) the defense of alibi was not properly appreciated.

Our Ruling

The appeal is meritorious.

The inconsistencies in the testimonies of the police operatives as regards prior surveillance and use of marked money are immaterial.

While it may be conceded that there are a number of inconsistencies in the testimonies of the prosecution's principal witnesses as alluded to above, they are not, in our view, substantial enough to impair the veracity of the prosecution's evidence that a buy-bust operation resulting in the arrest of appellant,

was indeed conducted. The maxim *falsus in unus, falsus in omnibus* does not lay down a categorical test of credibility. While witnesses may differ in their recollection of an incident, it does not necessarily follow from their disagreements that both or all of them are not credible and their testimonies completely discarded as worthless.

A prior surveillance much less a lengthy one, is not necessary during an entrapment as in the case at bench. 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. In this case, the buy-bust operation was set up precisely to test the veracity of the informant's tip and to arrest the malefactor if the report proved to be true. Thus in one case[16] we emphasized our refusal to establish on *a priori* basis what detailed acts the police authorities might credibly undertake in their entrapment operations.

The doubt cast by the appellant on whether marked money was used in the operation did not in any way shatter the factuality of the transaction. Neither law nor jurisprudence requires the presentation of any of the money used in a buy-bust operation.[17] Much less is it required that the money be marked. In fact, not even the absence or non-presentation of the marked money would weaken the evidence for the prosecution.[18] The elements necessary to show that the crime had indeed been committed are proof that the illicit transaction took place coupled with the presentation in court of the *corpus delicti* or the illicit drug.[19]

It is a fundamental rule that the trial court's findings that are factual in nature and that involve credibility are accorded respect when no glaring errors; gross misapprehension of facts;

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[16] *People v. Gonzales*, 430 Phil. 504, 514 (2002).

[17] *People v. Fabro*, 382 Phil. 166, 177 (2000).

[18] *People v. Simbulan*, G.R. No. 100754, October 13, 1992, 214 SCRA 537, 546.

[19] *People v. Chang*, 382 Phil. 669, 684 (2000).

or speculative, arbitrary and unsupported conclusions can be gathered from such findings.[20] The rule finds an even more stringent application where said findings are sustained by the CA.[21] However, this rule will not apply in this case. As will be discussed shortly, the courts below overlooked two significant and substantial facts which if considered, as we do now consider, will affect the outcome of the case.

The prosecution failed to establish beyond reasonable doubt the identity of the substance recovered from the appellant.

The main issue in the case at bench is whether the prosecution witnesses were able to properly identify the dangerous drug taken from appellant. For while the drug may be admitted in evidence it does not necessarily follow that the same should be given evidentiary weight. It must be stressed that admissibility should not be equated with its probative value in proving the *corpus delicti.*

Appellant submits that the *shabu* alleged to have been sold was not properly identified by the police officers thus rendering doubtful and open to suspicion if the *shabu* submitted for examination is indeed the same substance sold by him.

We agree. As we have stated at the outset, the prosecution miserably failed to establish the identity of the substance allegedly recovered from the appellant. Records show that while the police officers were able to prove the factuality of the buy-bust operation, the prosecution dismally failed to prove the identity of the substance taken from appellant.

The Certificate of Inventory[22] prepared by PO2 Labasano merely stated that a sachet of a substance weighing 0.01 gram was seized from the appellant. PO2 Labasano made no mention

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[20] *People v. Julian-Fernandez,* 423 Phil. 895, 911-912 (2001).

[21] *People v. Cabugatan*, G.R. No. 172019, February 12, 2007, 515 SCRA 537, 547.

[22] Exhibit "2", records, p. 6.

that he placed some markings on the sachet for purposes of future identification. Thus:

TO WHOM IT MAY CONCERN:

THIS IS TO CERTIFY that an inventory was conducted in connection with the following operation:

Persons Arrested	:	Wilson Suan *Y* Jolongon
Date/Time of Arrest	:	3:30 AM of 12 August 2003
Place of Arrest	:	Purok 4, Barangay Saray, Iligan City

This is to certify further that the following items were seized during the said operation:

One [1] sachet of suspected *shabu* weighing more or less .01 gram
Two [2] pieces Php 50.00 peso bill – marked money

x x x (Emphasis supplied)

However, we find it rather odd that in the Request for Laboratory Examination/Urine Test prepared by Police Chief Inspector Jesus Atchico Rebua and addressed to the Provincial Chief of Police, Lanao del Norte, the item allegedly seized from the appellant was already marked as **Exhibit "A"**. Thus:

x x x x x x x x x

2. Request the conduct of laboratory examination of evidence to determine the presence of Dangerous Drugs or controlled precursors and essential chemicals:

EXHIBITS

Exh. "A" **one small heat-sealed, plastic transparent sachet containing white crystalline granules suspected to be *shabu* weighing more or less 0.01 grams marked as Exh. "A" placed in a stapled transparent plastic bag.**

x x x (Emphasis supplied)

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[23] Exhibit "B", *id.* at 54.

Still, in the Memorandum[24] for the Regional Chief of the Philippine National Police (PNP) Crime Laboratory Office prepared by the Provincial Chief, the item subject of the request for laboratory examination was already referred to as **with markings**. Thus:

x x x x x x x x x

2. In connection with the above reference, request conduct laboratory examination on the specimen described below to determine the presence of dangerous drugs.

EXH. A – One (1) small heat-sealed transparent plastic sachet marked as "Exhibit A" containing white crystalline substance suspected to be *SHABU* placed inside a big staple-sealed transparent plastic pack with markings.

x x x (Emphasis supplied)

Thus, when the Certificate of Inventory was prepared by PO2 Labasano, the item allegedly seized from the appellant bore no markings. However, in the Request for Laboratory Examination/Urine Test prepared by the Provincial Chief of Police, the item being subjected for laboratory examination was already referred to as Exhibit A. Next, in the Memorandum of the Regional Chief of PNP, the item that was referred to the Forensic Chemist already had other markings. From the foregoing, there is already doubt as to the identity of the substance being subjected for laboratory examination. At this time, we are no longer sure whether the item allegedly seized by PO2 Labasano from the appellant was the same item referred to by the Provincial Chief and then the Regional Chief of PNP to the Forensic Chemist for laboratory examination.

Worse, in the Certificate of Inventory prepared by PO2 Labasano, the Memorandum prepared by the Provincial Chief, and the transmittal letter prepared by the Regional Chief, the substance supposedly weighed **0.01** gram. However, in the Chemistry Report No. D-500-2003[25] prepared by Forensic

[24] *Supra* note 12.

[25] *Supra* note 14.

Chemist Carvajal, the substance was indicated as weighing **0.1** gram. Thus:

xxx xxx xxx

SPECIMEN SUBMITTED:

A = One (1) heat-sealed transparent plastic sachet with markings EXHIBIT A containing **0.1** gram of white crystalline substance, placed in a transparent plastic bag with markings EXHIBIT A.

xxx xxx xxx

Indeed there is absolutely nothing in the evidence on record that tends to show identification of the drug. For sure, the difference particularly in the weight of the substance is fatal to the case of the prosecution.

Sale or possession of a dangerous drug can never be proven without seizure and identification of the prohibited drug. In *People v. Magat,*[26] we held that the existence of dangerous drugs is a condition *sine qua non* for conviction for the illegal sale and possession of dangerous drugs, it being the very *corpus delicti* of the crime. In prosecutions involving narcotics, the narcotic substance itself constitutes the *corpus delicti* of the offense and the fact of its existence is vital to sustain a judgment of conviction beyond reasonable doubt. Of paramount importance therefore in these cases is that the identity of the dangerous drug be likewise established beyond reasonable doubt.[27]

It is lamentable that the trial court and even the appellate court overlooked the significance of the absence of this glaring detail in the records of the case but instead focused their deliberation on the warrantless arrest of appellant in arriving at their conclusions.

The prosecution failed to establish the unbroken chain of custody of the confiscated substance.

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[26] G.R. No. 179939, September 29, 2008, 567 SCRA 86, 94.

[27] *Catuiran v. People*, G.R. No. 175647, May 8, 2009, 587 SCRA 567.

Not only did the prosecution fail to identify the substance that was allegedly seized from the appellant; it also failed to establish that the chain of custody of the substance was unbroken.

In his direct testimony, PO2 Labasano testified that:

Q. After arresting the accused, what transpired thereafter?
A. We brought him in our office and we filed a case against him.

Q. By the way, who brought the sachet which you bought from the accused to the crime laboratory for examination?
A. We, I with Gundol.

Q. And who received that sachet?
A. A certain person who was on duty at that time but I do not know him.[28]

In contrast, PO2 Labasano stated during his cross-examination that he entrusted the substance recovered from the appellant to their team leader. Thus:

Q. Who was in possession of that sachet of *shabu*?
A. When they approached the accused, I saw the accused taking the sachet of *shabu* from his pocket and putting it on his hand and I did not see what had happened already.

Q. You did not see who received the sachet of *shabu* coming from the suspect?
A. I was able to take of that but it was really Gundol who bought that *shabu* from him.

Q. And who recovered the marked money from the accused?
A. It was Gundol also.

Q. So, it was PO1 Gundol who was in possession of this marked money and one (1) sachet of *shabu* from the time the suspect was arrested, is it not?
A. Yes, sir.

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[28] TSN, April 12, 2004, pp. 5-6.

Q. And what did you do with that marked money [or] that alleged *shabu* being confiscated from the accused?
A. We turned it over to our team leader.

Q. Are you referring to SPO2 Cañonero?
A. Yes, sir.[29]

The foregoing testimonies of PO2 Labasano are contradictory. At first, he testified that the substance recovered from the appellant was delivered to the crime laboratory but he did not know who received the same. On cross-examination, however, he claimed that the substance was delivered to their team leader, SPO2 Cañonero.

Notably, the prosecution failed to put on the witness stand SPO2 Cañonero or the person from the crime laboratory who allegedly received the substance. Consequently, there was a break in the chain of custody because no mention is made as regards what happened to the substance from the time SPO2 Cañonero received it to the time the transmittal letter was prepared by Police Chief Inspector Jesus Atchico Rebua addressed to the Provincial Chief of Police, Lanao del Norte requesting for laboratory examination/urine test. We do not know how or from whom Police Chief Inspector Jesus Atchico Rebua received the substance.

There is no dispute that in the Chemistry Report[30] it was established that the object examined was found positive for methamphetamine hydrochloride or *shabu*, a dangerous drug. While the Forensic Chemist showed the contents of the sachet as the substance she examined and confirmed to be *shabu*, nonetheless, it is not positively and convincingly clear from her testimony that what was submitted for laboratory examination and later presented in court as evidence was the same *shabu* actually recovered from the appellant. The Forensic Chemist did not testify at all as to the identity of the person from whom she received the specimen for examination.

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[29] *Id.* at 14-15.

[30] *Supra* note 14.

Verily, there is a break in the chain of custody of the seized substance. The standard operating procedure on the seizure and custody of the drug as mandated in Section 21, Article II of RA 9165 and its Implementing Rules and Regulations was not complied with. As we observed, the chain of custody of the drug from the time the same was turned over to the Team Leader, as testified by PO2 Labasano or the Records Custodian as related by PO1 Gondol, to the time of submission to the crime laboratory was not clearly shown. There is no indication whether the Team Leader and the Records Custodian were one and the same person. Neither was there reference to the person who submitted it to the crime laboratory. The prosecution needs to establish that the Team Leader or Records Custodian indeed submitted such particular drug to the crime laboratory for examination. The failure on the part of the Team Leader or Records Custodian as the case may be, to testify on what he did with the drug while he was in possession resulted in a break in the chain of custody of the drug. There is obviously a missing link from the point when the drug was in his hands to the point when the same was submitted for examination. The failure to establish the evidence's chain of custody is fatal to the prosecution's case. Under no circumstance can we consider or even safely assume that the integrity and evidentiary value of the drug was properly preserved by the apprehending officers. There can be no crime of illegal possession of a prohibited drug when nagging doubts persist on whether the item confiscated was the same specimen examined and established to be the prohibited drug.[31]

Jurisprudence abounds with cases where deviation from the standard procedure in an anti-narcotics operation produces doubts as to the identity and origin of the drug which inevitably results to the acquittal of the accused. In *People v. Mapa*,[32] we acquitted the appellant after the prosecution failed to clarify whether the specimen submitted to the National Bureau of

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[31] *Valdez v. People*, G.R. No. 170180, November 23, 2007, 538 SCRA 611, 628-629.

[32] G.R. No. 91014, March 31, 1993, 220 SCRA 670, 679.

Investigation for laboratory examination was the same one allegedly taken from the appellant. Also in *People v. Dimuske*,[33] we ruled that the failure to prove that the specimen of marijuana examined by the forensic chemist was that seized from the accused was fatal to the prosecution's case. The same holds true in *People v. Casimiro*[34] and in *Zarraga v. People*[35] where the appellant was acquitted for failure of the prosecution to establish the identity of the prohibited drug which constitutes the *corpus delicti*. Recently in *Catuiran v. People*,[36] we acquitted the petitioner for failure of the prosecution witnesses to observe the standard procedure regarding the authentication of the evidence.

In the light of the above disquisition, we find no further need to discuss the other remaining argument regarding the propriety of appellant's conviction for violation of Section 11, Article II of RA 9165 when the evidence adduced and proved during the trial consists mainly of acts pertaining to a sale of dangerous drugs under Section 5, Article II of the said law. From whatever angle we look at it, whether it was a sale or merely possession of the dangerous drug, we arrive at the same conclusion that the prosecution has not proven the indispensable element of *corpus delicti* of the crime. To repeat, the existence of dangerous drugs is a condition *sine qua non* for conviction for the illegal sale and possession of dangerous drugs, it being the very *corpus delicti* of the crime.

Based on these findings and following our precedents in the afore-mentioned cases, we are compelled to reverse the judgment of conviction in this case. Consequently, we need not pass upon the merits of appellant's defense of denial and frame-up. It is a well-entrenched rule in criminal law that the conviction of an accused must be based on the strength of the prosecution's

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[33] G.R. No. 108453, July 11, 1994, 234 SCRA 51, 61.

[34] 432 Phil. 966, 979 (2002).

[35] G.R. No. 162064, March 14, 2006, 484 SCRA 639, 647.

[36] G.R. No. 175647, May 8, 2009, 587 SCRA 567.

evidence and not on the weakness or absence of evidence of the defense.[37]

WHEREFORE, on ground of reasonable doubt, the instant appeal is *GRANTED* and the challenged Decision of the Court of Appeals in CA-G.R. CR No. 00054 affirming the Decision of the Regional Trial Court of Lanao del Norte, Branch 01, in Criminal Case No. 10315 is hereby *REVERSED*. Appellant *WILSON SUAN y JOLONGON* is hereby *ACQUITTED* and ordered released from detention unless his further confinement is warranted for some other lawful cause or ground.

SO ORDERED.

Carpio (Chairman), Brion, Abad, and *Perez, JJ.*, concur.

EN BANC

[G.R. No. 189698. February 22, 2010]

ELEAZAR P. QUINTO and GERINO A. TOLENTINO, JR., *petitioners, vs.* **COMMISSION ON ELECTIONS,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; PROCEDURE IN THE SUPREME COURT; MOTION FOR RECONSIDERATION OF THE COMMISSION ON ELECTIONS, TIMELY FILED IN CASE AT BAR.— Pursuant to Section 2, Rule 56-A of the 1997 Rules of Court, in relation to Section 1, Rule 52 of the same rules, COMELEC had a period of fifteen days from receipt of notice of the assailed Decision within which to move for its reconsideration. COMELEC received notice of the assailed Decision on December 2, 2009, hence, had until December 17, 2009 to file a Motion for Reconsideration.

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[37] *People v. Teves*, 408 Phil. 82, 102 (2001).

The Motion for Reconsideration of COMELEC was timely filed. It was filed on December 14, 2009. The corresponding Affidavit of Service (in substitution of the one originally submitted on December 14, 2009) was subsequently filed on December 17, 2009 – still within the reglementary period.

2. ID.; ID.; MOTION FOR INTERVENTION; REQUISITES.— Section 1, Rule 19 of the Rules of Court provides: A person who has 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. Pursuant to the foregoing rule, this Court has held that a motion for intervention shall be entertained when the following requisites are satisfied: (1) the would-be intervenor shows that he has a substantial right or interest in the case; and (2) such right or interest cannot be adequately pursued and protected in another proceeding.

3. ID.; ID.; ID.; TIME TO INTERVENE; RULE IS NOT INFLEXIBLE; RATIONALE.— x x x Section 2, Rule 19 of the Rules of Court provides the time within which a motion for intervention may be filed, *viz.*: SECTION 2. Time to intervene.– *The motion for intervention 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. This rule, however, is not inflexible. Interventions have been allowed even beyond the period prescribed in the Rule, when demanded by the higher interest of justice. Interventions have also been granted to afford indispensable parties, who have not been impleaded, the right to be heard even after a decision has been rendered by the trial court, when the petition for review of the judgment has already been submitted for decision before the Supreme Court, and even where the assailed order has already become final and executory. In ***Lim v. Pacquing***, the motion for intervention filed by the Republic of the Philippines was allowed by this Court to avoid grave injustice and injury and to settle once

and for all the substantive issues raised by the parties. In fine, the allowance or disallowance of a motion for intervention rests on the sound discretion of the court after consideration of the appropriate circumstances. We stress again that Rule 19 of the Rules of Court is a rule of procedure whose object is to make the powers of the court fully and completely available for justice. Its purpose is not to hinder or delay, but to facilitate and promote the administration of justice.

4. ID.; ID.; ID.; RIGHT TO INTERVENE OF PARTIES, DISCUSSED.— [The Court rules] that, with the exception of the IBP – Cebu City Chapter, all the movants-intervenors may properly intervene in the case at bar. First, the movants-intervenors have each sufficiently established a substantial right or interest in the case. As a Senator of the Republic, Senator Manuel A. Roxas has a right to challenge the December 1, 2009 Decision, which nullifies a long established law; as a voter, he has a right to intervene in a matter that involves the electoral process; and as a public officer, he has a personal interest in maintaining the trust and confidence of the public in its system of government. On the other hand, former Senator Franklin M. Drilon and Tom V. Apacible are candidates in the May 2010 elections running against appointive officials who, in view of the December 1, 2009 Decision, have not yet resigned from their posts and are not likely to resign from their posts. They stand to be directly injured by the assailed Decision, unless it is reversed. Moreover, the rights or interests of said movants-intervenors cannot be adequately pursued and protected in another proceeding. Clearly, their rights will be foreclosed if this Court's Decision attains finality and forms part of the laws of the land. With regard to the IBP – Cebu City Chapter, it anchors its standing on the assertion that "this case involves the constitutionality of elections laws for this coming 2010 National Elections," and that "there is a need for it to be allowed to intervene xxx so that the voice of its members in the legal profession would also be heard before this Highest Tribunal as it resolves issues of transcendental importance." Prescinding from our rule and ruling case law, we find that the IBP-Cebu City Chapter has failed to present a specific and substantial interest sufficient to clothe it with standing to intervene in the case at bar. Its invoked interest is, in character, too indistinguishable to justify its intervention.

5. POLITICAL LAW; ELECTION LAWS; SECTION 4 (A) OF COMMISSION ON ELECTIONS (COMELEC) RESOLUTION NO. 8678, COMPLIANT WITH LAW; ELUCIDATED.— Section 4(a) of COMELEC Resolution 8678 is a faithful reflection of the present state of the law and jurisprudence on the matter, *viz.*: **Incumbent Appointive Official**. - Under Section 13 of RA 9369, which reiterates Section 66 of the Omnibus Election Code, any person holding a public appointive office or position, including active members of the Armed Forces of the Philippines, and officers and employees in government-owned or controlled corporations, shall be considered *ipso facto* resigned from his office upon the filing of his certificate of candidacy. **Incumbent Elected Official**. – Upon the other hand, pursuant to Section 14 of RA 9006 or the Fair Election Act, which repealed Section 67 of the Omnibus Election Code and rendered ineffective Section 11 of R.A. 8436 insofar as it considered an elected official as resigned only upon the start of the campaign period corresponding to the positions for which they are running, an elected official is not deemed to have resigned from his office upon the filing of his certificate of candidacy for the same or any other elected office or position. In fine, an elected official may run for another position without forfeiting his seat. These laws and regulations implement Section 2(4), Article IX-B of the 1987 Constitution, which prohibits civil service officers and employees from engaging in any electioneering or partisan political campaign.

6. ID.; CONSTITUTIONAL LAW; SECTION 2 (4), ARTICLE IX-B OF THE 1987 CONSTITUTION; APPLIES ONLY TO CIVIL SERVANTS HOLDING APOLITICAL OFFICES.— Section 2(4), Article IX-B of the 1987 Constitution and the implementing statutes apply only to civil servants holding **apolitical** offices. Stated differently, **the constitutional ban does not cover elected officials**, notwithstanding the fact that "[t]he civil service embraces all branches, subdivisions, instrumentalities, and agencies of the Government, including government-owned or controlled corporations with original charters." This is because elected public officials, by the very nature of their office, engage in partisan political activities almost all year round, even outside of the campaign period. Political partisanship is the inevitable essence of a political office, elective positions included.

7. ID.; ID.; BILL OF RIGHTS; EQUAL PROTECTION CLAUSE; NOT VIOLATED BY SECTION 4 (A) OF RESOLUTION 8678, SECTION 13 OF REPUBLIC ACT 9369, AND SECTION 66 OF THE OMNIBUS ELECTION CODE; *FARIÑAS, ET AL. V. EXECUTIVE SECRETARY, ET AL.* IS CONTROLLING.— [The Court now holds] that Section 4(a) of Resolution 8678, Section 66 of the Omnibus Election Code, and the second proviso in the third paragraph of Section 13 of RA 9369 are not violative of the equal protection clause of the Constitution.

***i. Fariñas, et al. v. Executive Secretary, et al.* is Controlling**

In truth, this Court has already ruled squarely on whether these deemed-resigned provisions challenged in the case at bar violate the equal protection clause of the Constitution in ***Fariñas, et al. v. Executive Secretary, et al.*** In **Fariñas**, the constitutionality of Section 14 of the Fair Election Act, in relation to Sections 66 and 67 of the Omnibus Election Code, was assailed on the ground, among others, that it unduly discriminates against appointive officials. As Section 14 repealed Section 67 (*i.e.*, the deemed-resigned provision in respect of elected officials) of the Omnibus Election Code, elected officials are no longer considered *ipso facto* resigned from their respective offices upon their filing of certificates of candidacy. In contrast, since Section 66 was not repealed, the limitation on appointive officials continues to be operative – they are deemed resigned when they file their certificates of candidacy. The petitioners in **Fariñas** thus brought an equal protection challenge against Section 14, with the end in view of having the deemed-resigned provisions "apply equally" to both elected and appointive officials. We held, however, that the legal dichotomy created by the Legislature is a reasonable classification, as there are material and significant distinctions between the two classes of officials. Consequently, the contention that Section 14 of the Fair Election Act, in relation to Sections 66 and 67 of the Omnibus Election Code, infringed on the equal protection clause of the Constitution, failed muster.

8. ID.; ID.; ID.; ID.; ID.; ID.; DOCTRINE OF *STARE DECISIS*; ELUCIDATED; APPLICATION.— The case at bar is a crass attempt to resurrect a dead issue. The miracle is that our assailed Decision gave it new life. We ought to be guided by the doctrine of *stare decisis et non quieta movere*. This doctrine, which is really "adherence to precedents," mandates that once a case

has been decided one way, then another case involving exactly the same point at issue should be decided in the same manner. This doctrine is one of policy grounded on the necessity for securing certainty and stability of judicial decisions. As the renowned jurist Benjamin Cardozo stated in his treatise **The Nature of the Judicial Process**: It will not do to decide the same question one way between one set of litigants and the opposite way between another. "If a group of cases involves the same point, the parties expect the same decision. It would be a gross injustice to decide alternate cases on opposite principles. If a case was decided against me yesterday when I was a defendant, I shall look for the same judgment today if I am plaintiff. *To decide differently would raise a feeling of resentment and wrong in my breast; it would be an infringement, material and moral, of my rights." Adherence to precedent must then be the rule rather than the exception if litigants are to have faith in the even-handed administration of justice in the courts*.

9. ID.; ID.; ID.; ID.; ID.; FARIÑAS RULING, NOT MERE *OBITER DICTUM*.— Our **Fariñas** ruling on the equal protection implications of the deemed-resigned provisions cannot be minimalized as mere *obiter dictum*. It is trite to state that an adjudication on any point within the issues presented by the case cannot be considered as *obiter dictum*. This rule applies to all pertinent questions that are presented and resolved in the regular course of the consideration of the case and lead up to the final conclusion, and to any statement as to the matter on which the decision is predicated. For that reason, a point expressly decided does not lose its value as a precedent because the disposition of the case is, or might have been, made on some other ground; or even though, by reason of other points in the case, the result reached might have been the same if the court had held, on the particular point, otherwise than it did. As we held in ***Villanueva, Jr. v. Court of Appeals, et al.***: … *A decision which the case could have turned on is not regarded as obiter dictum merely because, owing to the disposal of the contention, it was necessary to consider another question*, nor can an additional reason in a decision, brought forward after the case has been disposed of on one ground, be regarded as *dicta*. So, also, where a case presents two (2) or more points, any one of which is sufficient to determine the ultimate issue,

but the court actually decides all such points, *the case as an authoritative precedent as to every point decided, and none of such points can be regarded as having the status of a dictum, and one point should not be denied authority merely because another point was more dwelt on and more fully argued and considered*, nor does a decision on one proposition make statements of the court regarding other propositions dicta.

10. ID.; ID.; ID.; ID.; VALID CLASSIFICATION; TEST OF REASONABLENESS; REQUISITES.— To start with, the equal protection clause does not require the universal application of the laws to all persons or things without distinction. What it simply requires is equality among equals as determined according to a valid classification. The test developed by jurisprudence here and yonder is that of reasonableness, which has four requisites: (1) The classification rests on substantial distinctions; (2) It is germane to the purposes of the law; (3) It is not limited to existing conditions only; and (4) It applies equally to all members of the same class.

11. ID.; ID.; ID.; ID.; ID.; ID.; THE FACT THAT A LEGISLATIVE CLASSIFICATION, BY ITSELF, IS UNDERINCLUSIVE WILL NOT RENDER IT UNCONSTITUTIONALLY ARBITRARY OR INVIDIOUS.— [The Court's] assailed Decision readily acknowledged that these deemed-resigned provisions satisfy the first, third and fourth requisites of reasonableness. It, however, proffers the dubious conclusion that the differential treatment of appointive officials *vis-à-vis* elected officials is not germane to the purpose of the law, because "whether one holds an appointive office or an elective one, the evils sought to be prevented by the measure remain," *viz.*: … For example, the Executive Secretary, or any Member of the Cabinet for that matter, could wield the same influence as the Vice-President who at the same time is appointed to a Cabinet post (in the recent past, elected Vice-Presidents were appointed to take charge of national housing, social welfare development, interior and local government, and foreign affairs). With the fact that they both head executive offices, there is no valid justification to treat them differently when both file their [Certificates of Candidacy] for the elections. Under the present state of our law, the Vice-President, in the example, running this time, let us say, for President, retains his position during the entire election period and can still use the resources of his office to

support his campaign. Sad to state, this conclusion conveniently ignores the long-standing rule that to remedy an injustice, the Legislature need not address every manifestation of the evil at once; it may proceed "one step at a time." In addressing a societal concern, it must invariably draw lines and make choices, thereby creating some inequity as to those included or excluded. Nevertheless, as long as "the bounds of reasonable choice" are not exceeded, the courts must defer to the legislative judgment. We may not strike down a law merely because the legislative aim would have been more fully achieved by expanding the class. Stated differently, the fact that a legislative classification, by itself, is underinclusive will not render it unconstitutionally arbitrary or invidious. There is no constitutional requirement that regulation must reach each and every class to which it might be applied; that the Legislature must be held rigidly to the choice of regulating all or none. Thus, any person who poses an equal protection challenge must convincingly show that the law creates a classification that is "palpably arbitrary or capricious." He must refute *all* possible rational bases for the differing treatment, whether or not the Legislature cited those bases as reasons for the enactment, such that the constitutionality of the law must be sustained even if the reasonableness of the classification is "fairly debatable." In the case at bar, the petitioners failed – and in fact did not even attempt – to discharge this heavy burden.

12. ID.; ID.; SEPARATION OF POWERS; APPLICABILITY OF THE DEEMED-RESIGNED PROVISIONS TO ELECTED OFFICIALS IS WITHIN THE POWER OF THE LEGISLATURE TO MAKE, NOT WITH THE COURT.— The concern, voiced by our esteemed colleague, Mr. Justice Nachura, in his dissent, that elected officials (*vis-à-vis* appointive officials) have greater political clout over the electorate, is indeed a matter worth exploring – but **not** by this Court. Suffice it to say that the remedy lies with the Legislature. It is the Legislature that is given the authority, under our constitutional system, to balance competing interests and thereafter make policy choices responsive to the exigencies of the times. It is certainly within the Legislature's power to make the deemed-resigned provisions applicable to elected officials, should it later decide that the evils sought to be prevented are of such frequency and magnitude as to tilt the balance in favor of expanding the class.

This Court cannot and should not arrogate unto itself the power to ascertain and impose on the people the best state of affairs from a public policy standpoint.

13. ID.; ID.; BILL OF RIGHTS; EQUAL PROTECTION CLAUSE; *MANCUSO V. TAFT* HAS BEEN OVERRULED; DISCUSSED.— Our assailed Decision's reliance on **Mancuso** is completely misplaced. We cannot blink away the fact that the United States Supreme Court ***effectively overruled*** **Mancuso** three months after its promulgation by the United States Court of Appeals. [I]t cannot be denied that **Letter Carriers** and **Broadrick** effectively overruled **Mancuso.** By no stretch of the imagination could **Mancuso** still be held operative, as **Letter Carriers** and **Broadrick** (i) concerned virtually identical resign-to-run laws, and (ii) were decided by a superior court, the United States Supreme Court. It was thus not surprising for the First Circuit Court of Appeals – the same court that decided **Mancuso** – to hold **categorically and emphatically** in ***Magill v. Lynch*** that **Mancuso is no longer good law**. As we priorly explained: **Magill** involved Pawtucket, Rhode Island firemen who ran for city office in 1975. Pawtucket's "Little Hatch Act" prohibits city employees from engaging in a broad range of political activities. Becoming a candidate for any city office is specifically proscribed, the violation being punished by removal from office or immediate dismissal. The firemen brought an action against the city officials on the ground that that (sic) the provision of the city charter was unconstitutional. **However, the court, fully cognizant of *Letter Carriers* and *Broadrick*, took the position that *Mancuso* had since lost considerable vitality. It observed that the view that political candidacy was a fundamental interest which could be infringed upon only if less restrictive alternatives were not available, was a position which was no longer viable, since the Supreme Court (finding that the government's interest in regulating both the conduct and speech of its employees differed significantly from its interest in regulating those of the citizenry in general) had given little weight to the argument that prohibitions against the coercion of government employees were a less drastic means to the same end, deferring to the judgment of Congress, and applying a "balancing" test to determine whether limits on political activity by public employees substantially served government interests which were "important" enough to outweigh the employees' First Amendment rights.**

14. ID.; ID.; SECTION 4 (A) OF RESOLUTION 8678, SECTION 13 OF REPUBLIC ACT 9369, AND SECTION 66 OF THE OMNIBUS ELECTION CODE DO NOT SUFFER FROM OVERBREADTH; LIMITATION ON CANDIDACY REGARDLESS OF INCUMBENT APPOINTIVE OFFICIAL'S POSITION, VALID; EXPLAINED.— According to the assailed Decision, the challenged provisions of law are overly broad because they apply indiscriminately to all civil servants holding appointive posts, without due regard for the type of position being held by the employee running for elective office and the degree of influence that may be attendant thereto. Its underlying assumption appears to be that the evils sought to be prevented are extant only when the incumbent appointive official running for elective office holds an influential post. Such a myopic view obviously fails to consider a different, yet equally plausible, threat to the government posed by the partisan potential of a large and growing bureaucracy: the danger of systematic abuse perpetuated by a "powerful political machine" that has amassed "the scattered powers of government workers" so as to give itself and its incumbent workers an "unbreakable grasp on the reins of power." As elucidated in our prior exposition: Attempts by government employees to wield influence over others or to make use of their respective positions (apparently) to promote their own candidacy may seem tolerable – even innocuous – particularly when viewed in isolation from other similar attempts by other government employees. Yet it would be decidedly foolhardy to discount the equally (if not more) realistic and dangerous possibility that such seemingly disjointed attempts, when taken together, constitute a veiled effort on the part of an emerging central party structure to advance its own agenda through a "carefully orchestrated use of [appointive and/or elective] officials" coming from various levels of the bureaucracy. …[T]he avoidance of such a "politically active public work force" which could give an emerging political machine an "unbreakable grasp on the reins of power" is reason enough to impose a restriction on the candidacies of all appointive public officials without further distinction as to the type of positions being held by such employees or the degree of influence that may be attendant thereto.

15. ID.; ID.; ID.; LIMITATION ON CANDIDACY REGARDLESS OF TYPE OF OFFICE SOUGHT, VALID; ELUCIDATED.— [A]

careful study of the challenged provisions and related laws on the matter will show that the alleged overbreadth is more apparent than real. Our exposition on this issue has not been repudiated, *viz.*: A perusal of Resolution 8678 will immediately disclose that the rules and guidelines set forth therein refer to the filing of certificates of candidacy and nomination of official candidates of registered **political parties, in connection with the May 10, 2010 National and Local Elections**. Obviously, these rules and guidelines, including the restriction in Section 4(a) of Resolution 8678, were issued specifically for purposes of the May 10, 2010 National and Local Elections, which, it must be noted, are decidedly *partisan* in character. Thus, it is clear that the restriction in Section 4(a) of RA 8678 applies only to the candidacies of appointive officials vying for *partisan* elective posts in the May 10, 2010 National and Local Elections. On this score, the overbreadth challenge leveled against Section 4(a) is clearly unsustainable. Similarly, a considered review of Section 13 of RA 9369 and Section 66 of the Omnibus Election Code, in conjunction with other related laws on the matter, will confirm that these provisions are likewise not intended to apply to elections for nonpartisan public offices. The only elections which are relevant to the present inquiry are the elections for *barangay* offices, since these are the only elections in this country which involve *nonpartisan* public offices. In this regard, it is well to note that from as far back as the enactment of the Omnibus Election Code in 1985, Congress has intended that these nonpartisan *barangay* elections be governed by special rules, including a separate rule on deemed resignations which is found in Section 39 of the Omnibus Election Code. Said provision states: Section 39. Certificate of Candidacy. – No person shall be elected *punong barangay or kagawad ng sangguniang barangay* unless he files a sworn certificate of candidacy in triplicate on any day from the commencement of the election period but not later than the day before the beginning of the campaign period in a form to be prescribed by the Commission. The candidate shall state the *barangay* office for which he is a candidate. x x x *Any elective or appointive municipal, city, provincial or national official or employee, or those in the civil or military service, including those in government-owned or-controlled corporations, shall be considered automatically resigned upon the filing of certificate of candidacy for a barangay office*. Since *barangay* elections

are governed by a separate deemed resignation rule, under the present state of law, there would be no occasion to apply the restriction on candidacy found in Section 66 of the Omnibus Election Code, and later reiterated in the proviso of Section 13 of RA 9369, to any election other than a *partisan* one. For this reason, the overbreadth challenge raised against Section 66 of the Omnibus Election Code and the pertinent proviso in Section 13 of RA 9369 must also fail. In any event, even if we were to assume, for the sake of argument, that Section 66 of the Omnibus Election Code and the corresponding provision in Section 13 of RA 9369 are general rules that apply also to elections for nonpartisan public offices, the overbreadth challenge would still be futile. Again, we explained: In the first place, the view that Congress is limited to controlling only partisan behavior has not received judicial imprimatur, because the general proposition of the relevant US cases on the matter is simply that the government has an interest in regulating the conduct and speech of its employees that differs significantly from those it possesses in connection with regulation of the speech of the citizenry in general. Moreover, in order to have a statute declared as unconstitutional or void on its face for being overly broad, particularly where, as in this case, "conduct" and not "pure speech" is involved, the overbreadth must not only be real, but substantial as well, judged in relation to the statute's plainly legitimate sweep. In operational terms, measuring the substantiality of a statute's overbreadth would entail, among other things, a rough balancing of the number of valid applications compared to the number of potentially invalid applications. In this regard, some sensitivity to reality is needed; an invalid application that is far-fetched does not deserve as much weight as one that is probable. The question is a matter of degree. Thus, assuming for the sake of argument that the partisan-nonpartisan distinction is valid and necessary such that a statute which fails to make this distinction is susceptible to an overbreadth attack, the overbreadth challenge presently mounted must demonstrate or provide this Court with some idea of the number of potentially invalid elections (*i.e*. the number of elections that were insulated from party rivalry but were nevertheless closed to appointive employees) that may in all probability result from the enforcement of the statute. The state of the record, however, does not permit us to find overbreadth. Borrowing from the words of *Magill v. Lynch*,

indeed, such a step is not to be taken lightly, much less to be taken in the dark, especially since an overbreadth finding in this case would effectively prohibit the State from 'enforcing an otherwise valid measure against conduct that is admittedly within its power to proscribe.'

CARPIO, *J., concurring opinion:*

POLITICAL LAW; CONSTITUTIONAL LAW; ELECTIONS; THE FILING OF A CERTIFICATE OF CANDIDACY FOR AN ELECTIVE POSITION IS BY THE VERY NATURE OF THE ACT, AN ELECTIONEERING OR A PARTISAN POLITICAL ACTIVITY; REASONS.— The filing of a Certificate of Candidacy for an elective position is, by the very nature of the act, an electioneering or partisan political activity. ***Filing a certificate of candidacy is obviously a partisan political activity***. *First,* the mere filing of a Certificate of Candidacy is a definitive announcement to the world that a person will actively solicit the votes of the electorate to win an elective public office. Such an announcement is already a promotion of the candidate's election to public office. Indeed, once a person becomes an official candidate, he abandons the role of a mere passive voter in an election, and assumes the role of a political partisan, a candidate promoting his own candidacy to public office. *Second*, only a candidate for a political office files a Certificate of Candidacy. A person merely exercising his or her right to vote does not. A candidate for a political office is necessarily a partisan political candidate because he or she is contesting an elective office against other political candidates. The candidate and the electorate know that there are, more often than not, other candidates vying for the same elective office, making the contest politically partisan. *Third*, a candidate filing his or her Certificate of Candidacy almost always states in the Certificate of Candidacy the name of the political party to which he or she belongs. The candidate will even attach to his or her Certificate of Candidacy the certification of his or her political party that he or she is the official candidate of the political party. Such certification by a political party is obviously designed to promote the election of the candidate. *Fourth*, the constitutional ban prohibiting civil servants from engaging in partisan political activities is intended, among others, to keep the civil service non-partisan. This constitutional ban is violated when a civil servant files his or her Certificate of Candidacy as a candidate of a political party. From the moment the civil servant files his or her Certificate

of Candidacy, he or she is immediately identified as a political partisan because everyone knows he or she will prepare, and work, for the victory of his or her political party in the elections. *Fifth*, the constitutional ban prohibiting civil servants from engaging in partisan political activities is also intended to prevent civil servants from using their office, and the resources of their office, to promote their candidacies or the candidacies of other persons. We have seen the spectacle of civil servants who, after filing their certificates of candidacies, still cling to their public office while campaigning during office hours. *Sixth*, the constitutional ban prohibiting civil servants from engaging in partisan political activities is further intended to prevent conflict of interest. We have seen Comelec officials who, after filing their certificates of candidacies, still hold on to their public office. Finally, filing of a Certificate of Candidacy is a partisan political act that *ipso facto* operates to consider the candidate deemed resigned from public office pursuant to paragraph 3, Section 11 of R.A. No. 8436, as amended by R.A. No. 9369, as well as Section 66 of the Omnibus Election Code, as amended.

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

1. POLITICAL LAW; ELECTION LAWS; AUTOMATIC RESIGNATION RULE ON APPOINTIVE GOVERNMENT OFFICIALS AND EMPLOYEES RUNNING FOR ELECTIVE POST IS UNCONSTITUTIONAL.— I vote to maintain this Court's December 1, 2009 Decision. The automatic resignation rule on appointive government officials and employees running for elective posts is, to my mind, unconstitutional. I therefore respectfully register my dissent to the resolution of the majority granting the motion for reconsideration. I earnestly believe that by this resolution, the majority refused to rectify an unjust rule, leaving in favor of a discriminatory state regulation and disregarding the primacy of the people's fundamental rights to the equal protection of the laws. Let it be recalled that, on December 1, 2009, the Court rendered its Decision granting the petition and declaring as unconstitutional the second proviso in the third paragraph of Section 13 of Republic Act (R.A.) No. 9369, Section 66 of the Omnibus Election Code (OEC) and Section 4(a) of Commission on Elections (COMELEC) Resolution No. 8678.

2. REMEDIAL LAW; CIVIL PROCEDURE; MOTIONS; MOTIONS FOR INTERVENTION; DENIAL THEREOF, PROPER; CASE AT BAR.— The motions for intervention should be denied. Section 2, Rule 19 of the Rules of Court explicitly states that motions to intervene may be filed at any time "before the rendition of judgment." Obviously, as this Court already rendered judgment on December 1, 2009, intervention may no longer be allowed. The movants, Roxas, Drilon, IBP-Cebu City Chapter, and Apacible, cannot claim to have been unaware of the pendency of this much publicized case. They should have intervened prior to the rendition of this Court's Decision on December 1, 2009. To allow their intervention at this juncture is unwarranted and highly irregular. While the Court has the power to suspend the application of procedural rules, I find no compelling reason to excuse movants' procedural lapse and allow their much belated intervention. Further, a perusal of their pleadings-in-intervention reveals that they merely restated the points and arguments in the earlier dissenting opinions of Chief Justice Puno and Senior Associate Justices Carpio and Carpio Morales. These very same points, incidentally, also constitute the gravamen of the motion for reconsideration filed by respondent COMELEC. Thus, even as the Court should deny the motions for intervention, it is necessary to, pass upon the issues raised therein, because they were the same issues raised in respondent COMELEC's motion for reconsideration.

3. POLITICAL LAW; CONSTITUTIONAL LAW; BILL OF RIGHTS; EQUAL PROTECTION CLAUSE; SECOND PROVISO IN THE THIRD PARAGRAPH OF SECTION 13 OF REPUBLIC ACT NO. 9369, SECTION 66 OF THE OMNIBUS ELECTION CODE AND SECTION 4(A) OF COMELEC RESOLUTION NO. 8678 ARE UNCONSTITUTIONAL FOR BEING VIOLATIVE THEREOF; EXPLAINED.— I wish to reiterate the Court's earlier declaration that the second proviso in the third paragraph of Section 13 of R.A. No. 9369, Section 66 of the OEC and Section 4(a) of COMELEC Resolution No. 8678 are unconstitutional for being violative of the equal protection clause and for being overbroad. In considering persons holding appointive positions as *ipso facto* resigned from their posts upon the filing of their certificates of candidacy (CoCs), but not considering as resigned all other civil servants, specifically the elective ones, the law unduly discriminates against the first class. The fact alone that there is substantial distinction between the two classes does

not justify such disparate treatment. Constitutional law jurisprudence requires that the classification must and should be germane to the purposes of the law. As clearly explained in the assailed decision, whether one holds an appointive office or an elective one, the evils sought to be prevented by the measure remain. Indeed, a candidate, whether holding an appointive or an elective office, may use his position to promote his candidacy or to wield a dangerous or coercive influence on the electorate. Under the same scenario, he may also, in the discharge of his official duties, be swayed by political considerations. Likewise, he may neglect his or her official duties, as he will predictably prioritize his campaign. Chief Justice Puno, in his dissent to the assailed decision, even acknowledges that the "danger of systemic abuse" remains present whether the involved candidate holds an appointive or an elective office, thus— Attempts by government employees to wield influence over others or to make use of their respective positions (apparently) to promote their own candidacy may seem tolerable—even innocuous—particularly when viewed in isolation from other similar attempts by other government employees. *Yet it would be decidedly foolhardy to discount the equally (if not more) realistic and dangerous possibility that such seemingly disjointed attempts, when taken together, constitute a veiled effort on the part of a reigning political party to advance its own agenda through a "carefully orchestrated use of [appointive and/or elective] officials" coming from various levels of the bureaucracy*. To repeat for emphasis, classifying candidates, whether they hold appointive or elective positions, and treating them differently by considering the first as *ipso facto* resigned while the second as not, is not germane to the purposes of the law, because, as clearly shown, the measure is not reasonably necessary to, nor does it necessarily promote, the fulfillment of the state interest sought to be served by the statute. In fact, it may not be amiss to state that, more often than not, the elective officials, not the appointive ones, exert more coercive influence on the electorate, with the greater tendency to misuse the powers of their office. This is illustrated by, among others, the proliferation of "private armies" especially in the provinces. It is common knowledge that "private armies" are backed or even formed by elective officials precisely for the latter to ensure that the electorate will not oppose them, be cowed to submit to their dictates and

vote for them. To impose a prohibitive measure intended to curb this evil of wielding undue influence on the electorate and apply the prohibition only on appointive officials is not only downright ineffectual, but is also, as shown in the assailed decision, offensive to the equal protection clause.

4. ID.; ID.; AUTOMATIC RESIGNATION RULE; UNCONSTITUTIONAL FOR BEING OVERBROAD; ELUCIDATED.— x x x [A]s the Court explained in the assailed decision, this *ipso facto* resignation rule is overbroad. It covers all civil servants holding appointive posts without distinction, regardless of whether they occupy positions of influence in government or not. Certainly, a utility worker, a messenger, a chauffeur, or an industrial worker in the government service cannot exert the same influence as that of a Cabinet member, an undersecretary or a bureau head. Parenthetically, it is also unimaginable how an appointive utility worker, compared to a governor or a mayor, can form his own "private army" to wield undue influence on the electorate. It is unreasonable and excessive, therefore, to impose a blanket prohibition—one intended to discourage civil servants from using their positions to influence the votes—on all civil servants without considering the nature of their positions. Let it be noted, that, despite their employment in the government, civil servants remain citizens of the country, entitled to enjoy the civil and political rights granted to them in a democracy, including the right to aspire for elective public office. In addition, this general provision on automatic resignation is directed to the activity of seeking any and all public elective offices, whether partisan or nonpartisan in character, whether in the national, municipal or *barangay* level. No compelling state interest has been shown to justify such a broad, encompassing and sweeping application of the law. It may also be pointed out that **this automatic resignation rule has no pretense to be the exclusive and only available remedy to curb the uncontrolled exercise of undue influence and the feared "danger of systemic abuse."** As we have explained in the assailed decision, our Constitution and our body of laws are replete with provisions that directly address these evils. We reiterate our earlier pronouncement that **specific evils require specific remedies, not overly broad measures that unduly restrict guaranteed freedoms**.

5. ID.; ID.; COURT'S EARLIER RULING (DECEMBER 1, 2009 DECISION), NOT INCONSISTENT WITH THE CONSTITUTION AND THE ADMINISTRATIVE CODE OF 1987.— It should be stressed that when the Court struck down (in the earlier decision) the assailed provisions, the Court did not act in a manner inconsistent with Section 2(4) of Article IX-B of the Constitution, which reads: Sec. 2. x x x. (4) No officer or employee in the civil service shall engage, directly or indirectly, in any electioneering or partisan political activity. or with Section 5(3), Article XVI of the Constitution, which reads: Sec. 5. x x x. (3) Professionalism in the armed forces and adequate remuneration and benefits of its members shall be a prime concern of the State. The armed forces shall be insulated from partisan politics. No member of the military shall engage, directly or indirectly, in any partisan political activity, except to vote. Neither does the Court's earlier ruling infringe on Section 55, Chapter 8, Title I, Book V of the Administrative Code of 1987, which reads: Sec. 55. *Political Activity*.—No officer or employee in the Civil Service including members of the Armed Forces, shall engage directly or indirectly in any partisan political activity or take part in any election except to vote nor shall he use his official authority or influence to coerce the political activity of any other person or body. Nothing herein provided shall be understood to prevent any officer or employee from expressing his views on current political problems or issues, or from mentioning the names of candidates for public office whom he supports: *Provided*, That public officers and employees holding political offices may take part in political and electoral activities but it shall be unlawful for them to solicit contributions from their subordinates or subject them to any of the acts involving subordinates prohibited in the Election Code.

6. ID.; ELECTION LAWS; OMNIBUS ELECTION CODE; PARTISAN POLITICAL ACTIVITY; FILING OF A CERTIFICATE OF CANDIDACY FOR AN ELECTIVE POSITION, WHILE IT MAY BE A POLITICAL ACTIVITY, IS NOT A "PARTISAN POLITICAL ACTIVITY" WITHIN THE CONTEMPLATION OF THE LAW; RELEVANT RULING, CITED.— "Partisan political activity" includes every form of solicitation of the elector's vote in favor of a specific candidate. Section 79(b) of the OEC defines "partisan political activity" x x x Given the aforequoted Section

79(b), it is obvious that **the filing of a Certificate of Candidacy (CoC) for an elective position, while it may be a political activity, is not a "partisan political activity" within the contemplation of the law**. The act of **filing** is only **an announcement of one's intention to run for office**. It is only an **aspiration** for a public office, **not yet** a **promotion** or a solicitation of votes for the election or defeat of a candidate for public office. In fact, even after the filing of the CoC but before the start of the campaign period, there is yet **no candidate** whose election or defeat will be promoted. *Rosalinda A. Penera v. Commission on Elections and Edgar T. Andanar* instructs that **any person who files his CoC shall only be considered a candidate at the start of the campaign period**. Thus, in the absence of a "candidate," the mere filing of CoC cannot be considered as an "election campaign" or a "partisan political activity." Section 79 of the OEC does not even consider as "partisan political activity" acts performed for the purpose of enhancing the chances of aspirants for nominations for candidacy to a public office. Thus, when appointive civil servants file their CoCs, they are not engaging in a "partisan political activity" and, therefore, do not transgress or violate the Constitution and the law. Accordingly, at that moment, there is no valid basis to consider them as *ipso facto* resigned from their posts.

7. ID.; CONSTITUTIONAL LAW; AUTOMATIC RESIGNATION RULE; DISCUSSION IN *FARIÑAS V. THE EXECUTIVE SECRETARY* RELATIVE TO THE DIFFERENTIAL TREATMENT OF TWO CLASSES OF CIVIL SERVANTS IN RELATION THERETO IS *OBITER DICTUM*.— There is a need to point out that the discussion in *Fariñas v. The Executive Secretary*, relative to the differential treatment of the two classes of civil servants in relation to the *ipso facto* resignation clause, is *obiter dictum*. That discussion is **not necessary** to the decision of the case, the main issue therein being the constitutionality of the repealing clause in the Fair Election Act. Further, unlike in the instant case, no direct challenge was posed in *Fariñas* to the constitutionality of the rule on the *ipso facto* resignation of appointive officials. In any event, the Court *en banc*, in deciding subsequent cases, can very well reexamine, as it did in the assailed decision, its earlier pronouncements and even abandon them when perceived to be incorrect.

8. ID.; ID.; ID.; *MANCUSO V. TAFT* IS NOT THE HEART OF THE DECEMBER 1, 2009 DECISION.— Let it also be noted that *Mancuso v. Taft* is not the heart of the December 1, 2009 Decision. *Mancuso* was only cited to show that resign-to-run provisions, such as those which are specifically involved herein, have been stricken down in the United States for unduly burdening First Amendment rights of employees and voting rights of citizens, and for being overbroad. Verily, in our jurisdiction, foreign jurisprudence only enjoys a persuasive influence on the Court. Thus, the contention that *Mancuso* has been effectively overturned by subsequent American cases, such as *United States Civil Service Commission v. National Association of Letter Carriers* and *Broadrick v. State of Oklahoma*, is not controlling. Be that as it may, a closer reading of these latter US cases reveals that *Mancuso* is still applicable.

9. ID.; ID.; ID.; THE DIFFERENTIAL TREATMENT IN THE APPLICATION THEREOF IS NOT GERMANE TO THE PURPOSES OF THE LAW, BECAUSE WHETHER ONE HOLDS AN APPOINTIVE OFFICE OR AN ELECTIVE ONE, THE EVILS SOUGHT TO BE PREVENTED ARE NOT EFFECTIVELY ADDRESSED BY THE MEASURE.— x x x [F]or an *ipso facto* resignation rule to be valid, it must be shown that the classification is reasonably necessary to attain the objectives of the law. Here, as already explained in the assailed decision, **the differential treatment in the application of this resign-to-run rule is not germane to the purposes of the law, because whether one holds an appointive office or an elective one, the evils sought to be prevented are not effectively addressed by the measure**. Thus, the ineluctable conclusion that the concerned provisions are invalid for being unconstitutional.

10. ID.; ID.; ID.; INVALIDATION OF THE *IPSO FACTO* RESIGNATION PROVISIONS DOES NOT MEAN THE CESSATION IN OPERATION OF OTHER PROVISIONS OF THE CONSTITUTION AND OF EXISTING LAWS; ILLUSTRATION.— The invalidation of the *ipso facto* resignation provisions does not mean the cessation in operation of other provisions of the Constitution and of existing laws. Section 2(4) of Article IX-B and Section 5(3), Article XVI of the Constitution, and Section 55, Chapter 8, Title I, Book V of the Administrative Code of 1987 still apply. So do other statutes,

such as the Civil Service Laws, OEC, the Anti-Graft Law, the Code of Conduct and Ethical Standards for Public Officials and Employees, and related laws. Covered civil servants running for political offices who later on engage in "partisan political activity" run the risk of being administratively charged. Civil servants who use government funds and property for campaign purposes, likewise, run the risk of being prosecuted under the Anti-Graft and Corrupt Practices Act or under the OEC on election offenses. Those who abuse their authority to promote their candidacy shall be made liable under the appropriate laws. Let it be stressed at this point that **the said laws provide for specific remedies for specific evils, unlike the automatic resignation provisions that are sweeping in application and not germane to the purposes of the law**. To illustrate, we hypothetically assume that a municipal election officer, who is an employee of the COMELEC, files his CoC. Given the invalidation of the automatic resignation provisions, the said election officer is not considered as *ipso facto* resigned from his post at the precise moment of the filing of the CoC. Thus, he remains in his post, and his filing of a CoC cannot be taken to be a violation of any provision of the Constitution or any statute. At the start of the campaign period, however, if he is still in the government service, that is, if he has not voluntarily resigned, and he, at the same time, engages in a "partisan political activity," then, he becomes vulnerable to prosecution under the Administrative Code, under civil service laws, under the Anti-Graft and Corrupt Practices Act or under the OEC. Upon the proper action being filed, he could, thus, be disqualified from running for office, or if elected, prevented from assuming, or if he had already assumed office, be removed from, office. At this juncture, it may even be said that *Mitchell*, *Letter Carriers* and *Broadrick*, the cases earlier cited by Chief Justice Puno and Associate Justices Carpio and Carpio Morales, support the proposition advanced by the majority in the December 1, 2009 Decision. While the provisions on the *ipso facto* resignation of appointive civil servants are unconstitutional for being violative of the equal protection clause and for being overbroad, the general provisions prohibiting civil servants from engaging in "partisan political activity" remain valid and operational, and should be strictly applied.

11. ID.; ID.; ID.; THE COURT NEVER STATED IN THE DECEMBER 1, 2009 DECISION THAT APPOINTIVE CIVIL SERVANTS RUNNING FOR ELECTIVE POSTS ARE ALLOWED TO STAY IN OFFICE DURING THE ENTIRE ELECTION PERIOD.— In its motion, the OSG pleads that this Court clarify whether, by declaring as unconstitutional the concerned *ipso facto* resignation provisions, the December 1, 2009 Decision intended to allow appointive officials to stay in office during the entire election period. The OSG points out that the official spokesperson of the Court explained before the media that "the decision would in effect allow appointive officials to stay on in their posts even during the campaign period, or until they win or lose or are removed from office." I pose the following response to the motion for clarification. **The language of the December 1, 2009 Decision is too plain to be mistaken. The Court only declared as unconstitutional Section 13 of R.A. No. 9369, Section 66 of the OEC and Section 4(a) of COMELEC Resolution No. 8678. The Court never stated in the decision that appointive civil servants running for elective posts are allowed to stay in office during the entire election period**. The only logical and legal effect, therefore, of the Court's earlier declaration of unconstitutionality of the *ipso facto* resignation provisions is that appointive government employees or officials who intend to run for elective positions are not considered automatically resigned from their posts at the moment of filing of their CoCs. Again, as explained above, **other Constitutional and statutory provisions do not cease in operation** and should, in fact, be strictly implemented by the authorities.

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The Solicitor General for respondent.

Cadiz & Tabayoyong for movant-intervenor Manuel A. Roxas.

Angara Abello Concepcion Regala & Cruz for movant-intervenor Franklin M. Drilon.

Bartolome Salazar Palomar & Associates for intervenor Tom V. Apacible.

R E S O L U T I O N

PUNO, *C.J.*:

Upon a careful review of the case at bar, this Court resolves to grant the respondent Commission on Elections' (COMELEC) motion for reconsideration, and the movants-intervenors' motions for reconsideration-in-intervention, of this Court's December 1, 2009 Decision (Decision).[1]

The assailed Decision granted the Petition for *Certiorari* and Prohibition filed by Eleazar P. Quinto and Gerino A. Tolentino, Jr. and declared as unconstitutional the second proviso in the third paragraph of Section 13 of Republic Act No. 9369,[2] Section 66 of the Omnibus Election Code[3] and Section 4(a) of COMELEC

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[1] Penned by Justice Antonio Eduardo B. Nachura, the Decision was promulgated on a vote of 8-6. Justices Corona, Chico-Nazario, Velasco, Leonardo-De Castro, Brion, Bersamin, and Del Castillo concurred. Justices Peralta, Abad and Villarama joined the Dissenting Opinion of Chief Justice Puno, while Justices Carpio and Carpio Morales wrote separate Dissenting Opinions.

[2] SEC. 15. *Official Ballot.* –

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For this purpose, the Commission shall set the deadline for the filing of the certificate of candidacy/petition of registration/manifestation to participate in the election. Any person who files his certificate of candidacy within this period shall only be considered as a candidate at the start of the campaign period for which he filed his certificate of candidacy: Provided, That, unlawful acts or omissions applicable to a candidate shall take effect only upon that start of the campaign period: *Provided, finally, That any person holding a public appointive office or position, including active members of the armed forces, and officers and employees in government-owned or-controlled corporations, shall be considered ipso facto resigned from his/her office and must vacate the same at the start of the day of the filing of his/her certification of candidacy*. (italics supplied)

[3] SECTION 66. *Candidates holding appointive office or positions.* — Any person holding a public appointive office or position, including active members of the Armed Forces of the Philippines, and officers and employees in government-owned or controlled corporations, shall be considered *ipso facto* resigned from his office upon the filing of his certificate of candidacy.

Resolution No. 8678,[4] mainly on the ground that they violate the equal protection clause of the Constitution and suffer from overbreadth. The assailed Decision thus paved the way for public appointive officials to continue discharging the powers, prerogatives and functions of their office notwithstanding their entry into the political arena.

In support of their respective motions for reconsideration, respondent COMELEC and movants-intervenors submit the following arguments:

(1) The assailed Decision is contrary to, and/or violative of, the constitutional proscription against the participation of public appointive officials and members of the military in partisan political activity;

(2) The assailed provisions do not violate the equal protection clause when they accord differential treatment to elective and appointive officials, because such differential treatment rests on material and substantial distinctions and is germane to the purposes of the law;

(3) The assailed provisions do not suffer from the infirmity of overbreadth; and

(4) There is a compelling need to reverse the assailed Decision, as public safety and interest demand such reversal.

We find the foregoing arguments meritorious.

I.

Procedural Issues

First, we shall resolve the procedural issues on the timeliness of the COMELEC's motion for reconsideration which was filed

[4] SECTION 4. *Effects of Filing Certificates of Candidacy.*— a) Any person holding a public appointive office or position including active members of the Armed Forces of the Philippines, and other officers and employees in government-owned or controlled corporations, shall be considered *ipso facto* resigned from his office upon the filing of his certificate of candidacy.

on December 15, 2009, as well as the propriety of the motions for reconsideration-in-intervention which were filed after the Court had rendered its December 1, 2009 Decision.

i. Timeliness of COMELEC's Motion for Reconsideration

Pursuant to Section 2, Rule 56-A of the 1997 Rules of Court,[5] in relation to Section 1, Rule 52 of the same rules,[6] COMELEC had a period of fifteen days from receipt of notice of the assailed Decision within which to move for its reconsideration. COMELEC received notice of the assailed Decision on December 2, 2009, hence, had until December 17, 2009 to file a Motion for Reconsideration.

The Motion for Reconsideration of COMELEC was timely filed. It was filed on December 14, 2009. The corresponding Affidavit of Service (in substitution of the one originally submitted on December 14, 2009) was subsequently filed on December 17, 2009 – still within the reglementary period.

ii. Propriety of the Motions for Reconsideration-in-Intervention

Section 1, Rule 19 of the Rules of Court provides:

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[5] Sec. 2. Rules applicable. The procedure in original cases for *certiorari*, prohibition, *mandamus*, *quo warranto* and *habeas corpus* shall be in accordance with the applicable provisions of the Constitution, laws, and Rules 46, 48, 49, 51, 52 and this Rule, subject to the following provisions:

a) All references in said Rules to the Court of Appeals shall be understood to also apply to the Supreme Court;

b) The portions of ssaid Rules dealing strictly with and specifically intended for appealed cases in the Court of Appeals shall not be applicable; and

c) Eighteen (18) clearly legible copies of the petition shall be filed, together with proof of service on all adverse parties.

The proceedings for disciplinary action against members of the judiciary shall be governed by the laws and Rules prescribed therefor, and those against attorneys by Rule 139-B, as amended.

[6] Section 1. Period for filing. A party may file a motion for reconsideration of a judgment or final resolution within fifteen (15) days from notice thereof, with proof of service on the adverse party.

A person who has 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.

Pursuant to the foregoing rule, this Court has held that a motion for intervention shall be entertained when the following requisites are satisfied: (1) the would-be intervenor shows that he has a substantial right or interest in the case; and (2) such right or interest cannot be adequately pursued and protected in another proceeding.[7]

Upon the other hand, Section 2, Rule 19 of the Rules of Court provides the time within which a motion for intervention may be filed, *viz.*:

SECTION 2. Time to intervene.– *The motion for intervention 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. (italics supplied)

This rule, however, is not inflexible. Interventions have been allowed even beyond the period prescribed in the Rule, when demanded by the higher interest of justice. Interventions have also been granted to afford indispensable parties, who have not been impleaded, the right to be heard even after a decision has been rendered by the trial court,[8] when the petition for review of the judgment has already been submitted for decision before the Supreme Court,[9] and even where the assailed order

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[7] *Secretary of Agrarian Reform, et al. v. Tropical Homes,* G.R. Nos. 136827 & 136799, July 31, 2001, 362 SCRA 115.

[8] *Tahanan Development Corporation v. Court of Appeals,* G.R. No. 155771, 15 November 1982, 118 SCRA 273.

[9] *Director of Lands v. Court of Appeals,* G.R. No. L-45168, September 25, 1979, 93 SCRA 238.

has already become final and executory.[10] In ***Lim v. Pacquing***,[11] the motion for intervention filed by the Republic of the Philippines was allowed by this Court to avoid grave injustice and injury and to settle once and for all the substantive issues raised by the parties.

In fine, the allowance or disallowance of a motion for intervention rests on the sound discretion of the court[12] after consideration of the appropriate circumstances.[13] We stress again that Rule 19 of the Rules of Court is a rule of procedure whose object is to make the powers of the court fully and completely available for justice.[14] Its purpose is not to hinder or delay, but to facilitate and promote the administration of justice.[15]

We rule that, with the exception of the IBP – Cebu City Chapter, all the movants-intervenors may properly intervene in the case at bar.

First, the movants-intervenors have each sufficiently established a substantial right or interest in the case.

As a Senator of the Republic, Senator Manuel A. Roxas has a right to challenge the December 1, 2009 Decision, which nullifies a long established law; as a voter, he has a right to intervene in a matter that involves the electoral process; and as a public officer, he has a personal interest in maintaining the trust and confidence of the public in its system of government.

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[10] *Mago v. Court of Appeals*, G.R. No. 115624, February 25, 1999, 300 SCRA 600.

[11] G.R. No. 115044, January 27, 1995, 240 SCRA 649.

[12] *Heirs of Geronimo Restrivera v. De Guzman*, G.R. No. 146540, July 14, 2004, 434 SCRA 456; *Office of the Ombudsman v. Rolando S. Miedes*, G.R. No. 176409, February 27, 2008, 547 SCRA 148.

[13] See *Mago v. Court of Appeals*, *supra* note 10.

[14] *Manila Railroad Company v. Attorney-General*, 20 Phil. 523, 529 (1912). See also *Director of Lands v. Court of Appeals*, *supra* note 9 at 246, and *Mago v. Court of Appeals*, *supra* note 10 at 234.

[15] *Manila Railroad Company v. Attorney-General*, *id.* at 530.

On the other hand, former Senator Franklin M. Drilon and Tom V. Apacible are candidates in the May 2010 elections running against appointive officials who, in view of the December 1, 2009 Decision, have not yet resigned from their posts and are not likely to resign from their posts. They stand to be directly injured by the assailed Decision, unless it is reversed.

Moreover, the rights or interests of said movants-intervenors cannot be adequately pursued and protected in another proceeding. Clearly, their rights will be foreclosed if this Court's Decision attains finality and forms part of the laws of the land.

With regard to the IBP – Cebu City Chapter, it anchors its standing on the assertion that "this case involves the constitutionality of elections laws for this coming 2010 National Elections," and that "there is a need for it to be allowed to intervene xxx so that the voice of its members in the legal profession would also be heard before this Highest Tribunal as it resolves issues of transcendental importance."[16]

Prescinding from our rule and ruling case law, we find that the IBP-Cebu City Chapter has failed to present a specific and substantial interest sufficient to clothe it with standing to intervene in the case at bar. Its invoked interest is, in character, too indistinguishable to justify its intervention.

We now turn to the substantive issues.

II.

Substantive Issues

The assailed Decision struck down Section 4(a) of Resolution 8678, the second proviso in the third paragraph of Section 13 of Republic Act (RA) 9369, and Section 66 of the Omnibus Election Code, on the following grounds:

(1) They violate the equal protection clause of the Constitution because of the differential treatment of persons holding appointive offices and those holding elective positions;

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[16] Motion for Leave to Intervene dated December 14, 2009, p. 2.

(2) They are overbroad insofar as they prohibit the candidacy of all civil servants holding appointive posts: (a) without distinction as to whether or not they occupy high/influential positions in the government, and (b) they limit these civil servants' activity regardless of whether they be partisan or nonpartisan in character, or whether they be in the national, municipal or *barangay* level; and

(3) Congress has not shown a compelling state interest to restrict the fundamental right of these public appointive officials.

We grant the motions for reconsideration. We **now rule** that Section 4(a) of Resolution 8678, Section 66 of the Omnibus Election Code, and the second proviso in the third paragraph of Section 13 of RA 9369 are not unconstitutional, and accordingly **reverse** our December 1, 2009 Decision.

III.

Section 4(a) of COMELEC Resolution 8678 Compliant with Law

Section 4(a) of COMELEC Resolution 8678 is a faithful reflection of the present state of the law and jurisprudence on the matter, *viz.*:

Incumbent Appointive Official. - Under Section 13 of RA 9369, which reiterates Section 66 of the Omnibus Election Code, any person holding a public appointive office or position, including active members of the Armed Forces of the Philippines, and officers and employees in government-owned or -controlled corporations, shall be considered *ipso facto* resigned from his office upon the filing of his certificate of candidacy.

Incumbent Elected Official. – Upon the other hand, pursuant to Section 14 of RA 9006 or the Fair Election Act,[17] which

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[17] SECTION 14. *Repealing Clause*. — *Sections 67* and 85 of the Omnibus Election Code (Batas Pambansa Blg. 881) and Sections 10 and 11 of Republic Act No. 6646 are hereby repealed. *As a consequence, the first proviso in the third paragraph of Section 11 of Republic Act No. 8436*

repealed Section 67 of the Omnibus Election Code[18] and rendered ineffective Section 11 of R.A. 8436 insofar as it considered an elected official as resigned only upon the start of the campaign period corresponding to the positions for which they are running,[19] an elected official is not deemed to have resigned from his office upon the filing of his certificate of candidacy for the same or any other elected office or position. In fine, an elected official may run for another position without forfeiting his seat.

These laws and regulations implement Section 2(4), Article IX-B of the 1987 Constitution, which prohibits civil service officers and employees from engaging in any electioneering or partisan political campaign.

The intention to impose a strict limitation on the participation of civil service officers and employees in partisan political campaigns is unmistakable. The exchange between Commissioner Quesada and Commissioner Foz during the deliberations of the Constitutional Commission is instructive:

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is rendered ineffective. All laws, presidential decrees, executive orders, rules and regulations, or any part thereof inconsistent with the provisions of this Act are hereby repealed or modified or amended accordingly. (italics supplied)

[18] SECTION 67. *Candidates holding elective office.* — Any elective official, whether national or local, running for any office other than the one which he is holding in a permanent capacity, except for President and Vice-President, shall be considered *ipso facto* resigned from his office upon the filing of his certificate of candidacy.

[19] SECTION 11. Official Ballot. —

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For this purpose, the deadline for the filing of certificate of candidacy/ petition for registration/manifestation to participate in the election shall not be later than one hundred twenty (120) days before the elections: Provided, That, any elective official, whether national or local, running for any office other than the one which he/she is holding in a permanent capacity, except for president and vice-president, shall be deemed resigned only upon the start of the campaign period corresponding to the position for which he/she is running: Provided, further, That, x x x. (italics supplied)

MS. QUESADA.

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Secondly, I would like to address the issue here as provided in Section 1 (4), line 12, and I quote: "No officer or employee in the civil service shall engage, directly or indirectly, in any partisan political activity." This is almost the same provision as in the 1973 Constitution. However, we in the government service have actually experienced how this provision has been violated by the direct or indirect partisan political activities of many government officials.

So, is the Committee willing to include certain clauses that would make this provision more strict, and which would deter its violation?

MR. FOZ. *Madam President, the existing Civil Service Law and the implementing rules on the matter are more than exhaustive enough to really prevent officers and employees in the public service from engaging in any form of partisan political activity. But the problem really lies in implementation because, if the head of a ministry, and even the superior officers of offices and agencies of government will themselves violate the constitutional injunction against partisan political activity, then no string of words that we may add to what is now here in this draft will really implement the constitutional intent against partisan political activity*. x x x[20] (italics supplied)

To emphasize its importance, this constitutional ban on civil service officers and employees is presently reflected and implemented by a number of statutes. Section 46(b)(26), Chapter 7 and Section 55, Chapter 8 – both of Subtitle A, Title I, Book V of the Administrative Code of 1987 – respectively provide in relevant part:

Section 44. Discipline: General Provisions:

x x x x x x x x x

(b) The following shall be grounds for disciplinary action:

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[20] Record of the Constitutional Commission, Vol. I, p. 536.

(26) Engaging directly or indirectly in partisan political activities by one holding a non-political office.

xxx xxx xxx

Section 55. Political Activity. — No officer or employee in the Civil Service including members of the Armed Forces, shall engage directly or indirectly in any partisan political activity or take part in any election except to vote nor shall he use his official authority or influence to coerce the political activity of any other person or body. Nothing herein provided shall be understood to prevent any officer or employee from expressing his views on current political problems or issues, or from mentioning the names of his candidates for public office whom he supports: Provided, That public officers and employees holding political offices may take part in political and electoral activities but it shall be unlawful for them to solicit contributions from their subordinates or subject them to any of the acts involving subordinates prohibited in the Election Code.

Section 261(i) of Batas Pambansa Blg. 881 (the Omnibus Election Code) further makes intervention by civil service officers and employees in partisan political activities an election offense, *viz.*:

SECTION 261. Prohibited Acts. — The following shall be guilty of an election offense:

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(i) Intervention of public officers and employees. — Any officer or employee in the civil service, except those holding political offices; any officer, employee, or member of the Armed Forces of the Philippines, or any police force, special forces, home defense forces, *barangay* self-defense units and all other para-military units that now exist or which may hereafter be organized who, directly or indirectly, intervenes in any election campaign or engages in any partisan political activity, except to vote or to preserve public order, if he is a peace officer.

The intent of both Congress and the framers of our Constitution to limit the participation of civil service officers and employees in partisan political activities is too plain to be mistaken.

But Section 2(4), Article IX-B of the 1987 Constitution and the implementing statutes apply only to civil servants holding **apolitical**

offices. Stated differently, **the constitutional ban does not cover elected officials**, notwithstanding the fact that "[t]he civil service embraces all branches, subdivisions, instrumentalities, and agencies of the Government, including government-owned or controlled corporations with original charters."[21] This is because elected public officials, by the very nature of their office, engage in partisan political activities almost all year round, even outside of the campaign period.[22] Political partisanship is the inevitable essence of a political office, elective positions included.[23]

The prohibition notwithstanding, civil service officers and employees are allowed to vote, as well as express their views on political issues, or mention the names of certain candidates for public office whom they support. This is crystal clear from the deliberations of the Constitutional Commission, *viz.*:

MS. AQUINO: Mr. Presiding Officer, my proposed amendment is on page 2, Section 1, subparagraph 4, lines 13 and 14. On line 13, between the words "any" and "partisan," add the phrase ELECTIONEERING AND OTHER; and on line 14, delete the word "activity" and in lieu thereof substitute the word CAMPAIGN.

May I be allowed to explain my proposed amendment?

THE PRESIDING OFFICER (Mr. Treñas): Commissioner Aquino may proceed.

MS. AQUINO: The draft as presented by the Committee deleted the phrase "except to vote" which was adopted in both the 1935 and 1973 Constitutions. The phrase "except to vote" was not intended as a guarantee to the right to vote but as a qualification of the general prohibition against taking part in elections.

Voting is a partisan political activity. Unless it is explicitly provided for as an exception to this prohibition, it will amount to disenfranchisement. We know that suffrage, although plenary, is not an unconditional right. In other words, the Legislature can always

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[21] Section 2(1), Article IX-B, 1987 Constitution.

[22] Dissenting Opinion of Justice Antonio T. Carpio, p. 5.

[23] Dissenting Opinion of Justice Conchita Carpio Morales, p. 6.

pass a statute which can withhold from any class the right to vote in an election, if public interest so required. I would only like to reinstate the qualification by specifying the prohibited acts so that those who may want to vote but who are likewise prohibited from participating in partisan political campaigns or electioneering may vote.

MR. FOZ: There is really no quarrel over this point, but please understand that *there was no intention on the part of the Committee to disenfranchise any government official or employee. The elimination of the last clause of this provision was precisely intended to protect the members of the civil service in the sense that they are not being deprived of the freedom of expression in a political contest. The last phrase or clause might have given the impression that a government employee or worker has no right whatsoever in an election campaign except to vote, which is not the case. They are still free to express their views although the intention is not really to allow them to take part actively in a political campaign.*[24]

IV.

Section 4(a) of Resolution 8678, Section 13 of RA 9369, and Section 66 of the Omnibus Election Code Do Not Violate the Equal Protection Clause

We now hold that Section 4(a) of Resolution 8678, Section 66 of the Omnibus Election Code, and the second proviso in the third paragraph of Section 13 of RA 9369 are not violative of the equal protection clause of the Constitution.

i. Fariñas, et al. v. Executive Secretary, et al. is Controlling

In truth, this Court has already ruled squarely on whether these deemed-resigned provisions challenged in the case at bar violate the equal protection clause of the Constitution in ***Fariñas, et al. v. Executive Secretary, et al.***[25]

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[24] Record of the Constitutional Commission, Vol. I, p. 573.

[25] G.R. No. 147387, December 10, 2003, 417 SCRA 503.

In **Fariñas**, the constitutionality of Section 14 of the Fair Election Act, in relation to Sections 66 and 67 of the Omnibus Election Code, was assailed on the ground, among others, that it unduly discriminates against appointive officials. As Section 14 repealed Section 67 (*i.e.*, the deemed-resigned provision in respect of elected officials) of the Omnibus Election Code, elected officials are no longer considered *ipso facto* resigned from their respective offices upon their filing of certificates of candidacy. In contrast, since Section 66 was not repealed, the limitation on appointive officials continues to be operative – they are deemed resigned when they file their certificates of candidacy.

The petitioners in **Fariñas** thus brought an equal protection challenge against Section 14, with the end in view of having the deemed-resigned provisions "apply equally" to both elected and appointive officials. We held, however, that the legal dichotomy created by the Legislature is a reasonable classification, as there are material and significant distinctions between the two classes of officials. Consequently, the contention that Section 14 of the Fair Election Act, in relation to Sections 66 and 67 of the Omnibus Election Code, infringed on the equal protection clause of the Constitution, failed muster. We ruled:

> The petitioners' contention, that the repeal of Section 67 of the Omnibus Election Code pertaining to elective officials gives undue benefit to such officials as against the appointive ones and violates the equal protection clause of the constitution, is tenuous.
>
> The equal protection of the law clause in the Constitution is not absolute, but is subject to reasonable classification. If the groupings are characterized by substantial distinctions that make real differences, one class may be treated and regulated differently from the other. The Court has explained the nature of the equal protection guarantee in this manner:
>
> > The equal protection of the law clause is against undue favor and individual or class privilege, as well as hostile discrimination or the oppression of inequality. It is not intended to prohibit legislation which is limited either in the object to which it is directed or by territory within which it is to operate. It does not demand absolute equality among residents; it merely requires

> that all persons shall be treated alike, under like circumstances and conditions both as to privileges conferred and liabilities enforced. The equal protection clause is not infringed by legislation which applies only to those persons falling within a specified class, if it applies alike to all persons within such class, and reasonable grounds exist for making a distinction between those who fall within such class and those who do not.

Substantial distinctions clearly exist between elective officials and appointive officials. The former occupy their office by virtue of the mandate of the electorate. They are elected to an office for a definite term and may be removed therefrom only upon stringent conditions. On the other hand, appointive officials hold their office by virtue of their designation thereto by an appointing authority. Some appointive officials hold their office in a permanent capacity and are entitled to security of tenure while others serve at the pleasure of the appointing authority.

Another substantial distinction between the two sets of officials is that under Section 55, Chapter 8, Title I, Subsection A. Civil Service Commission, Book V of the Administrative Code of 1987 (Executive Order No. 292), appointive officials, as officers and employees in the civil service, are strictly prohibited from engaging in any partisan political activity or take *(sic)* part in any election except to vote. Under the same provision, elective officials, or officers or employees holding political offices, are obviously expressly allowed to take part in political and electoral activities.

By repealing Section 67 but retaining Section 66 of the Omnibus Election Code, the legislators deemed it proper to treat these two classes of officials differently with respect to the effect on their tenure in the office of the filing of the certificates of candidacy for any position other than those occupied by them. Again, it is not within the power of the Court to pass upon or look into the wisdom of this classification.

Since the classification justifying Section 14 of Rep. Act No. 9006, *i.e.*, elected officials *vis-à-vis* appointive officials, is anchored upon material and significant distinctions and all the persons belonging under the same classification are similarly treated, the equal protection clause of the Constitution is, thus, not infringed.[26]

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[26] *Id.* at 525-528.

The case at bar is a crass attempt to resurrect a dead issue. The miracle is that our assailed Decision gave it new life. We ought to be guided by the doctrine of *stare decisis et non quieta movere*. This doctrine, which is really "adherence to precedents," mandates that once a case has been decided one way, then another case involving exactly the same point at issue should be decided in the same manner.[27] This doctrine is one of policy grounded on the necessity for securing certainty and stability of judicial decisions. As the renowned jurist Benjamin Cardozo stated in his treatise **The Nature of the Judicial Process**:

> It will not do to decide the same question one way between one set of litigants and the opposite way between another. "If a group of cases involves the same point, the parties expect the same decision. It would be a gross injustice to decide alternate cases on opposite principles. If a case was decided against me yesterday when I was a defendant, I shall look for the same judgment today if I am plaintiff. *To decide differently would raise a feeling of resentment and wrong in my breast; it would be an infringement, material and moral, of my rights." Adherence to precedent must then be the rule rather than the exception if litigants are to have faith in the even-handed administration of justice in the courts.*[28]

Our **Fariñas** ruling on the equal protection implications of the deemed-resigned provisions cannot be minimalized as mere *obiter dictum*. It is trite to state that an adjudication on any point within the issues presented by the case cannot be considered as *obiter dictum*.[29] This rule applies to all pertinent questions that are presented and resolved in the regular course of the consideration of the case and lead up to the final conclusion, and to any statement as to the matter on which the decision is predicated.[30] For that reason, a point expressly decided does

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[27] *Tan Chong v. Secretary of Labor*, 79 Phil. 249.

[28] Benjamin N. Cardozo, *The Nature of the Judicial Process* (New Haven and London: Yale University Press), 33-34 (1921).

[29] *Villanueva, Jr. v. Court of Appeals, et al.*, G.R. No. 142947, March 19, 2002, 379 SCRA 463, 469 citing 21 Corpus Juris Secundum §190.

[30] *Id.* at 469-470.

not lose its value as a precedent because the disposition of the case is, or might have been, made on some other ground; or even though, by reason of other points in the case, the result reached might have been the same if the court had held, on the particular point, otherwise than it did.[31] As we held in ***Villanueva, Jr. v. Court of Appeals, et al.:***[32]

> *… A decision which the case could have turned on is not regarded as obiter dictum merely because, owing to the disposal of the contention, it was necessary to consider another question*, nor can an additional reason in a decision, brought forward after the case has been disposed of on one ground, be regarded as dicta. So, also, where a case presents two (2) or more points, any one of which is sufficient to determine the ultimate issue, but the court actually decides all such points, *the case as an authoritative precedent as to every point decided, and none of such points can be regarded as having the status of a dictum, and one point should not be denied authority merely because another point was more dwelt on and more fully argued and considered*, nor does a decision on one proposition make statements of the court regarding other propositions dicta.[33] (italics supplied)

ii. Classification Germane to the Purposes of the Law

The **Fariñas** ruling on the equal protection challenge stands on solid ground even if reexamined.

To start with, the equal protection clause does not require the universal application of the laws to all persons or things without distinction.[34] What it simply requires is equality among equals as determined according to a valid classification.[35] The

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[31] *Id.* at 470.

[32] *Supra* note 29.

[33] *Id.* at 470.

[34] *The Philippine Judges Association, et al. v. Prado, et al.*, G.R. No. 105371, November 11, 1993, 227 SCRA 703, 712.

[35] *Id.*

test developed by jurisprudence here and yonder is that of reasonableness,[36] which has four requisites:

(1) The classification rests on substantial distinctions;

(2) It is germane to the purposes of the law;

(3) It is not limited to existing conditions only; and

(4) It applies equally to all members of the same class.[37]

Our assailed Decision readily acknowledged that these deemed-resigned provisions satisfy the first, third and fourth requisites of reasonableness. It, however, proffers the dubious conclusion that the differential treatment of appointive officials *vis-à-vis* elected officials is not germane to the purpose of the law, because "whether one holds an appointive office or an elective one, the evils sought to be prevented by the measure remain," *viz.*:

> … For example, the Executive Secretary, or any Member of the Cabinet for that matter, could wield the same influence as the Vice-President who at the same time is appointed to a Cabinet post (in the recent past, elected Vice-Presidents were appointed to take charge of national housing, social welfare development, interior and local government, and foreign affairs). With the fact that they both head executive offices, there is no valid justification to treat them differently when both file their [Certificates of Candidacy] for the elections. Under the present state of our law, the Vice-President, in the example, running this time, let us say, for President, retains his position during the entire election period and can still use the resources of his office to support his campaign.[38]

Sad to state, this conclusion conveniently ignores the long-standing rule that to remedy an injustice, the Legislature need not address every manifestation of the evil at once; it may

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[36] *The National Police Commission v. De Guzman, et al.*, G.R. No. 106724, February 9, 1994, 229 SCRA 801, 809.

[37] *People v. Cayat*, 68 Phil. 12, 18 (1939).

[38] Decision, p. 23.

proceed "one step at a time."[39] In addressing a societal concern, it must invariably draw lines and make choices, thereby creating some inequity as to those included or excluded.[40] Nevertheless, as long as "the bounds of reasonable choice" are not exceeded, the courts must defer to the legislative judgment.[41] We may not strike down a law merely because the legislative aim would have been more fully achieved by expanding the class.[42] Stated differently, the fact that a legislative classification, by itself, is underinclusive will not render it unconstitutionally arbitrary or invidious.[43] There is no constitutional requirement that regulation must reach each and every class to which it might be applied;[44] that the Legislature must be held rigidly to the choice of regulating all or none.

Thus, any person who poses an equal protection challenge must convincingly show that the law creates a classification that is "palpably arbitrary or capricious."[45] He must refute *all* possible rational bases for the differing treatment, whether or not the Legislature cited those bases as reasons for the enactment,[46] such that the constitutionality of the law must be

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[39] *Greenberg v. Kimmelman*, 99 N.J. 552, 577, 494 A.2d 294 (1985).

[40] *New Jersey State League of Municipalities, et al. v. State of New Jersey*, 257 N.J. Super. 509, 608 A.2d 965 (1992).

[41] *Taxpayers Ass'n of Weymouth Tp. v. Weymouth Tp.*, 80 N.J. 6, 40, 364 A.2d 1016 (1976).

[42] *Robbiani v. Burke*, 77 N.J. 383, 392-93, 390 A.2d 1149 (1978).

[43] *De Guzman, et al. v. Commission on Elections*, G.R. No. 129118, July 19, 2000, 336 SCRA 188, 197; *City of St. Louis v. Liberman*, 547 S.W.2d 452 (1977); *First Bank & Trust Co. v. Board of Governors of Federal Reserve System*, 605 F.Supp. 555 (1984); *Richardson v. Secretary of Labor*, 689 F.2d 632 (1982); *Holbrook v. Lexmark International Group, Inc.*, 65 S.W.3d 908 (2002).

[44] *State v. Ewing*, 518 S.W.2d 643 (1975); *Werner v. Southern California Associated Newspapers*, 35 Cal.2d 121, 216 P.2d 825 (1950).

[45] *Chamber of Commerce of the U.S.A. v. New Jersey*, 89 N.J. 131, 159, 445 A.2d 353 (1982).

[46] *Werner v. Southern California Associated Newspapers*, *supra* note 44.

sustained even if the reasonableness of the classification is "fairly debatable."[47] In the case at bar, the petitioners failed – and in fact did not even attempt – to discharge this heavy burden. Our assailed Decision was likewise silent as a sphinx on this point even while we submitted the following thesis:

> ... [I]t is not sufficient grounds for invalidation that we may find that the statute's distinction is unfair, underinclusive, unwise, or not the best solution from a public-policy standpoint; rather, we must find that there is no reasonably rational reason for the differing treatment.[48]

In the instant case, is there a rational justification for excluding elected officials from the operation of the deemed resigned provisions? I submit that there is.

An election is the embodiment of the popular will, perhaps the purest expression of the sovereign power of the people.[49] It involves the choice or selection of candidates to public office by popular vote.[50] Considering that elected officials are put in office by their constituents **for a definite term**, it may justifiably be said that they were excluded from the ambit of the deemed resigned provisions in utmost respect for the mandate of the sovereign will. In other words, complete deference is accorded to the will of the electorate that they be served by such officials until the end of the term for which they were elected. In contrast, there is no such expectation insofar as appointed officials are concerned.

The dichotomized treatment of appointive and elective officials is therefore germane to the purposes of the law. For the law was made not merely to preserve the integrity, efficiency, and discipline of the public service; the Legislature, whose wisdom is outside the rubric of judicial scrutiny, also thought it wise to balance this with

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[47] *Newark Superior Officers Ass'n v. City of Newark*, 98 N.J. 212, 227, 486 A.2d 305 (1985); *New Jersey State League of Municipalities, et al. v. State of New Jersey, supra* note 40.

[48] *New Jersey State League of Municipalities, et al. v. State of New Jersey*, *supra* note 40.

[49] *Taule v. Santos, et al.*, G.R. No. 90336, August 12, 1991, 200 SCRA 512, 519.

[50] *Id.*

the competing, yet equally compelling, interest of deferring to the sovereign will.[51] (emphasis in the original)

In fine, the assailed Decision would have us "equalize the playing field" by invalidating provisions of law that seek to restrain the evils from running riot. Under the pretext of equal protection, it would favor a situation in which the evils are unconfined and vagrant, existing at the behest of both appointive and elected officials, over another in which a significant portion thereof is contained. The absurdity of that position is self-evident, to say the least.

The concern, voiced by our esteemed colleague, Mr. Justice Nachura, in his dissent, that elected officials (*vis-à-vis* appointive officials) have greater political clout over the electorate, is indeed a matter worth exploring – but **not** by this Court. Suffice it to say that the remedy lies with the Legislature. It is the Legislature that is given the authority, under our constitutional system, to balance competing interests and thereafter make policy choices responsive to the exigencies of the times. It is certainly within the Legislature's power to make the deemed-resigned provisions applicable to elected officials, should it later decide that the evils sought to be prevented are of such frequency and magnitude as to tilt the balance in favor of expanding the class. This Court cannot and should not arrogate unto itself the power to ascertain and impose on the people the best state of affairs from a public policy standpoint.

iii. *Mancuso v. Taft Has Been Overruled*

Finding no Philippine jurisprudence to prop up its equal protection ruling, our assailed Decision adverted to, and extensively cited, ***Mancuso v. Taft.***[52] This was a decision of the First Circuit of the United States Court of Appeals promulgated in March 1973, which struck down as unconstitutional a similar statutory provision. Pathetically, our assailed Decision, relying on **Mancuso**, claimed:

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[51] Dissenting Opinion of Chief Justice Reynato S. Puno, pp. 60-61.

[52] 476 F.2d 187 (1973).

(1) The right to run for public office is "inextricably linked" with two fundamental freedoms – freedom of expression and association;

(2) Any legislative classification that significantly burdens this fundamental right must be subjected to strict equal protection review; and

(3) While the state has a compelling interest in maintaining the honesty and impartiality of its public work force, the deemed-resigned provisions pursue their objective in a far too heavy-handed manner as to render them unconstitutional.

It then concluded with the exhortation that since "the Americans, from whom we copied the provision in question, had already stricken down a similar measure for being unconstitutional[,] it is high-time that we, too, should follow suit."

Our assailed Decision's reliance on **Mancuso** is completely misplaced. We cannot blink away the fact that the United States Supreme Court ***effectively overruled*** **Mancuso** three months after its promulgation by the United States Court of Appeals. In ***United States Civil Service Commission, et al. v. National Association of Letter Carriers AFL-CIO, et al.***[53] and ***Broadrick, et al. v. State of Oklahoma, et al.,***[54] the United States Supreme Court was faced with the issue of whether statutory provisions prohibiting federal[55] and

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[53] 413 U.S. 548, 93 S.Ct. 2880 (1973).

[54] 413 U.S. 601, 93 S.Ct. 2908 (1973).

[55] Section 9(a) of the Hatch Act provides:

> An employee in an Executive agency or an individual employed by the government of the District of Columbia may not-
>
> (1) use his official authority or influence for the purpose of interfering with or affecting the result of an election; or
>
> (2) take an active part in political management or in political campaigns. 'For the purpose of this subsection, the phrase 'an active part in political management or in political campaigns' means those acts of political management or political campaigning which were prohibited on the part of

state[56] employees from taking an active part in political management or in political campaigns were unconstitutional as

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employees in the competitive service before July 19, 1940, by determinations of the Civil Service Commission under the rules prescribed by the President.

[56] Section 818 of Oklahoma's Merit System of Personnel Administration Act provides:

> (1) No person in the classified service shall be appointed to, or demoted or dismissed from any position in the classified service, or in any way favored or discriminated against with respect to employment in the classified service because of his political or religious opinions or affiliations, or because of race, creed, color or national origin or by reason of any physical handicap so long as the physical handicap does not prevent or render the employee less able to do the work for which he is employed.
>
> (2) No person shall use or promise to use, directly or indirectly, any official authority or influence, whether possessed or anticipated, to secure or attempt to secure for any person an appointment or advantage in appointment to a position in the classified service, or an increase in pay or other advantage in employment in any such position, for the purpose of influencing the vote or political action of any person, or for consideration; provided, however, that letters of inquiry, recommendation and reference by public employees of public officials shall not be considered official authority or influence unless such letter contains a threat, intimidation, irrelevant, derogatory or false information.
>
> (3) No person shall make any false statement, certificate, mark, rating, or report with regard to any test, certification or appointment made under any provision of this Act or in any manner commit any fraud preventing the impartial execution of this Act and rules made hereunder.
>
> (4) No employee of the department, examiner, or other person shall defeat, deceive, or obstruct any person in his or her right to examination, eligibility, certification, or appointment under this law, or furnish to any person any special or secret information for the purpose of effecting (sic) the rights or prospects of any person with respect to employment in the classified service.

to warrant facial invalidation. Violation of these provisions results in dismissal from employment and possible criminal sanctions.

The Court declared these provisions compliant with the equal protection clause. It held that (i) in regulating the speech of its employees, the state as employer has interests that differ

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(5) No person shall, directly or indirectly, give, render, pay, offer, solicit, or accept any money, service, or other valuable consideration for or on account of any appointment, proposed appointment, promotion, or proposed promotion to, or any advantage in, a position in the classified service.

(6) No employee in the classified service, and no member of the Personnel Board shall, directly or indirectly, solicit, receive, or in any manner be concerned in soliciting or receiving any assessment, subscription or contribution for any political organization, candidacy or other political purpose; and no state officer or state employee in the unclassified service shall solicit or receive any such assessment, subscription or contribution from an employee in the classified service.

(7) No employee in the classified service shall be a member of any national, state or local committee of a political party, or an officer or member of a committee of a partisan political club, or a candidate for nomination or election to any paid public office, or shall take part in the management or affairs of any political party or in any political campaign, except to exercise his right as a citizen privately to express his opinion and to cast his vote.

(8) Upon a showing of substantial evidence by the Personnel Director that any officer or employee in the state classified service, has knowingly violate any of the provisions of this Section, the State Personnel Board shall notify the officer or employee so charged and the appointing authority under whose jurisdiction the officer or employee serves. If the officer or employee so desires, the State Personnel Board shall hold a public hearing, or shall authorize the Personnel Director to hold a public hearing, and submit a transcript thereof, together with a recommendation, to the State Personnel Board. Relevant witnesses shall be allowed to be present and testify at such hearings. If the officer or employee shall be found guilty by the State Personnel Board of the violation of any provision of this Section, the Board shall direct the appointing authority to dismiss such officer or employee; and the appointing authority so directed shall comply.

significantly from those it possesses in regulating the speech of the citizenry in general; (ii) the courts must therefore balance the legitimate interest of employee free expression against the interests of the employer in promoting efficiency of public services; (iii) if the employees' expression interferes with the maintenance of efficient and regularly functioning services, the limitation on speech is not unconstitutional; and (iv) the Legislature is to be given some flexibility or latitude in ascertaining which positions are to be covered by any statutory restrictions.[57] Therefore, insofar as government employees are concerned, the correct standard of review is an interest-balancing approach, a means-end scrutiny that examines the closeness of fit between the governmental interests and the prohibitions in question.[58]

Letter Carriers elucidated on these principles, as follows:

> Until now, the judgment of Congress, the Executive, and the country appears to have been that partisan political activities by federal employees must be limited if the Government is to operate effectively and fairly, elections are to play their proper part in representative government, and employees themselves are to be sufficiently free from improper influences. The restrictions so far imposed on federal employees are not aimed at particular parties, groups, or points of view, but apply equally to all partisan activities of the type described. They discriminate against no racial, ethnic, or religious minorities. Nor do they seek to control political opinions or beliefs, or to interfere with or influence anyone's vote at the polls.
>
> *But, as the Court held in Pickering v. Board of Education,*[59] *the government has an interest in regulating the conduct and 'the speech of its employees that differ(s) significantly from those it possesses in connection with regulation of the speech of the citizenry in general. The problem in any case is to arrive at a balance between the interests of the (employee), as a citizen, in commenting upon matters of public concern and the interest of the (government), as an employer, in promoting the efficiency of the public services it performs through its*

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[57] See also *Anderson v. Evans*, 660 F2d 153 (1981).

[58] *Morial, et al. v. Judiciary Commission of the State of Louisiana, et al.*, 565 F.2d 295 (1977).

[59] 391 U.S. 563, 568, 88 S.Ct. 1731, 1734, 20 L.Ed.2d 811 (1968).

employees.' Although Congress is free to strike a different balance than it has, if it so chooses, we think the balance it has so far struck is sustainable by the obviously important interests sought to be served by the limitations on partisan political activities now contained in the Hatch Act.

It seems fundamental in the first place that employees in the Executive Branch of the Government, or those working for any of its agencies, should *administer the law in accordance with the will of Congress, rather than in accordance with their own or the will of a political party. They are expected to enforce the law and execute the programs of the Government without bias or favoritism for or against any political party or group or the members thereof.* A major thesis of the Hatch Act is that to serve this great end of Government-the impartial execution of the laws-it is essential that federal employees, for example, not take formal positions in political parties, not undertake to play substantial roles in partisan political campaigns, and not run for office on partisan political tickets. Forbidding activities like these will reduce the hazards to fair and effective government.

There is another consideration in this judgment: it is not only important that the Government and its employees in fact avoid practicing political justice, *but it is also critical that they appear to the public to be avoiding it, if confidence in the system of representative Government is not to be eroded to a disastrous extent.*

Another major concern of the restriction against partisan activities by federal employees was perhaps the immediate occasion for enactment of the Hatch Act in 1939. *That was the conviction that the rapidly expanding Government work force should not be employed to build a powerful, invincible, and perhaps corrupt political machine.* The experience of the 1936 and 1938 campaigns convinced Congress that these dangers were sufficiently real that substantial barriers should be raised against the party in power-or the party out of power, for that matter-using the thousands or hundreds of thousands of federal employees, paid for at public expense, to man its political structure and political campaigns.

A related concern, and this remains as important as any other, was to further serve the goal that *employment and advancement in the Government service not depend on political performance, and at the same time to make sure that Government employees would be free from pressure and from express or tacit invitation to vote in a certain way or perform political chores in order to curry favor with their superiors*

rather than to act out their own beliefs. It may be urged that prohibitions against coercion are sufficient protection; but for many years the joint judgment of the Executive and Congress has been that to protect the rights of federal employees with respect to their jobs and their political acts and beliefs it is not enough merely to forbid one employee to attempt to influence or coerce another. For example, at the hearings in 1972 on proposed legislation for liberalizing the prohibition against political activity, the Chairman of the Civil Service Commission stated that 'the prohibitions against active participation in partisan political management and partisan political campaigns constitute the most significant safeguards against coercion . . ..' Perhaps Congress at some time will come to a different view of the realities of political life and Government service; but that is its current view of the matter, and we are not now in any position to dispute it. Nor, in our view, does the Constitution forbid it.

Neither the right to associate nor the right to participate in political activities is absolute in any event.[60] x x x

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As we see it, our task is not to destroy the Act if we can, but to construe it, if consistent with the will of Congress, so as to comport with constitutional limitations. (italics supplied)

Broadrick likewise definitively stated that the assailed statutory provision is constitutionally permissible, *viz.*:

Appellants do not question Oklahoma's right to place even-handed restrictions on the partisan political conduct of state employees. *Appellants freely concede that such restrictions serve valid and important state interests, particularly with respect to attracting greater numbers of qualified people by insuring their job security, free from the vicissitudes of the elective process, and by protecting them from 'political extortion.'* Rather, appellants maintain that however permissible, even commendable, the goals of s 818 may be, its language is unconstitutionally vague and its prohibitions too broad in their sweep, failing to distinguish between conduct that may be proscribed and

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[60] See, *e.g.*, *Rosario v. Rockefeller*, 410 U.S. 752, 93 S.Ct. 1245, 36 L.Ed.2d 1 (1973); *Dunn v. Blumstein*, 405 U.S. 330, 336, 92 S.Ct. 995, 999, 31 L.Ed.2d 274 (1972); *Bullock v. Carter*, 405 U.S. 134, 140-141, 92 S.Ct. 849, 854-855, 31 L.Ed.2d 92 (1972); *Jenness v. Fortson*, 403 U.S. 431, 91 S.Ct. 1970, 29 L.Ed.2d 554 (1971); *Williams v. Rhodes*, 393 U.S. 23, 30-31, 89 S.Ct. 5, 10-11, 21 L.Ed.2d 24 (1968).

conduct that must be permitted. For these and other reasons, appellants assert that the sixth and seventh paragraphs of s 818 are void *in toto* and cannot be enforced against them or anyone else.

We have held today that the Hatch Act is not impermissibly vague.[61] We have little doubt that s 818 is similarly not so vague that 'men of common intelligence must necessarily guess at its meaning.'[62] Whatever other problems there are with s 818, it is all but frivolous to suggest that the section fails to give adequate warning of what activities it proscribes or fails to set out 'explicit standards' for those who must apply it. In the plainest language, it prohibits any state classified employee from being 'an officer or member' of a 'partisan political club' or a candidate for 'any paid public office.' It forbids solicitation of contributions 'for any political organization, candidacy or other political purpose' and taking part 'in the management or affairs of any political party or in any political campaign.' Words inevitably contain germs of uncertainty and, as with the Hatch Act, there may be disputes over the meaning of such terms in s 818 as 'partisan,' or 'take part in,' or 'affairs of' political parties. But what was said in *Letter Carriers*, is applicable here: 'there are limitations in the English language with respect to being both specific and manageably brief, and it seems to us that although the prohibitions may not satisfy those intent on finding fault at any cost, they are set out in terms that the ordinary person exercising ordinary common sense can sufficiently understand and comply with, without sacrifice to the public interest.' x x x

xxx xxx xxx

[Appellants] nevertheless maintain that the statute is overbroad and purports to reach protected, as well as unprotected conduct, and must therefore be struck down on its face and held to be incapable of any constitutional application. We do not believe that the overbreadth doctrine may appropriately be invoked in this manner here.

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[61] *United States Civil Service Commission v. National Association of Letter Carriers, AFL-CIO*, 413 U.S. 548, 93 S.Ct. 2880, 37 L.Ed.2d 796.

[62] *Connally v. General Construction Co.*, 269 U.S. 385, 391, 46 S.Ct. 126, 127, 70 L.Ed. 322 (1926). See *Grayned v. City of Rockford*, 408 U.S. 104, 108-114, 92 S.Ct. 2294, 2298-2302, 33 L.Ed.2d 222 (1972); *Colten v. Kentucky*, 407 U.S. 104, 110-111, 92 S.Ct. 1953, 1957-1958, 32 L.Ed.2d 584 (1972); *Cameron v. Johnson*, 390 U.S. 611, 616, 88 S.Ct. 1335, 1338, 20 L.Ed.2d 182 (1968).

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The consequence of our departure from traditional rules of standing in the First Amendment area is that any enforcement of a statute thus placed at issue is totally forbidden until and unless a limiting construction or partial invalidation so narrows it as to remove the seeming threat or deterrence to constitutionally protected expression. Application of the overbreadth doctrine in this manner is, manifestly, strong medicine. It has been employed by the Court sparingly and only as a last resort. x x x

x x x But the plain import of our cases is, at the very least, that facial over-breadth adjudication is an exception to our traditional rules of practice and that *its function, a limited one at the outset, attenuates as the otherwise unprotected behavior that it forbids the State to sanction moves from 'pure speech' toward conduct* and that conduct-even if expressive-falls within the scope of otherwise valid criminal laws that reflect legitimate state interests in maintaining comprehensive controls over harmful, constitutionally unprotected conduct. *Although such laws, if too broadly worded, may deter protected speech to some unknown extent, there comes a point where that effect-at best a prediction-cannot, with confidence, justify invalidating a statute on its face and so prohibiting a State from enforcing the statute against conduct that is admittedly within its power to proscribe. To put the matter another way, particularly where conduct and not merely speech is involved, we believe that the overbreadth of a statute must not only be real, but substantial as well, judged in relation to the statute's plainly legitimate sweep.* It is our view that s 818 is not substantially overbroad and that whatever overbreadth may exist should be cured through case-by-case analysis of the fact situations to which its sanctions, assertedly, may not be applied.

Unlike ordinary breach-of-the peace statutes or other broad regulatory acts, s 818 is directed, by its terms, at political expression which if engaged in by private persons would plainly be protected by the First and Fourteenth Amendments. But at the same time, s 818 is not a censorial statute, directed at particular groups or viewpoints. The statute, rather, seeks to regulate political activity in an even-handed and neutral manner. As indicted, such statutes have in the past been subject to a less exacting overbreadth scrutiny. Moreover, the fact remains that s 818 regulates a substantial spectrum of conduct that is as manifestly subject to state regulation as the public peace or criminal trespass. This much was established in *United Public Workers v. Mitchell*, and has been unhesitatingly

reaffirmed today in *Letter Carriers*. *Under the decision in Letter Carriers, there is no question that s 818 is valid at least insofar as it forbids* classified employees from: soliciting contributions for partisan candidates, political parties, or other partisan political purposes; becoming members of national, state, or local committees of political parties, or officers or committee members in partisan political clubs, or *candidates for any paid public office*; taking part in the management or affairs of any political party's partisan political campaign; serving as delegates or alternates to caucuses or conventions of political parties; addressing or taking an active part in partisan political rallies or meetings; soliciting votes or assisting voters at the polls or helping in a partisan effort to get voters to the polls; participating in the distribution of partisan campaign literature; initiating or circulating partisan nominating petitions; or riding in caravans for any political party or partisan political candidate.

x x x *It may be that such restrictions are impermissible and that s 818 may be susceptible of some other improper applications. But, as presently construed, we do not believe that s 818 must be discarded in toto because some persons' arguably protected conduct may or may not be caught or chilled by the statute. Section 818 is not substantially overbroad and it not, therefore, unconstitutional on its face*. (italics supplied)

It bears stressing that, in his Dissenting Opinion, Mr. Justice Nachura **does not deny** the principles enunciated in **Letter Carriers** and **Broadrick.** He would hold, nonetheless, that these cases cannot be interpreted to mean a reversal of **Mancuso,** since they "pertain to different types of laws and were decided based on a different set of facts," *viz.*:

In *Letter Carriers,* the plaintiffs alleged that the Civil Service Commission was enforcing, or threatening to enforce, the Hatch Act's prohibition against "active participation in political management or political campaigns." The plaintiffs desired to campaign for candidates for public office, to encourage and get federal employees to run for state and local offices, to participate as delegates in party conventions, and to hold office in a political club.

In *Broadrick,* the appellants sought the invalidation for being vague and overbroad a provision in the *(sic)* Oklahoma's Merit System of Personnel Administration Act restricting the political activities of the State's classified civil servants, in much the same manner as

the Hatch Act proscribed partisan political activities of federal employees. Prior to the commencement of the action, the appellants actively participated in the 1970 reelection campaign of their superior, and were administratively charged for asking other Corporation Commission employees to do campaign work or to give referrals to persons who might help in the campaign, for soliciting money for the campaign, and for receiving and distributing campaign posters in bulk.

Mancuso, on the other hand, involves, as aforesaid, an automatic resignation provision. Kenneth Mancuso, a full time police officer and classified civil service employee of the City of Cranston, filed as a candidate for nomination as representative to the Rhode Island General Assembly. The Mayor of Cranston then began the process of enforcing the resign-to-run provision of the City Home Rule Charter.

Clearly, as the above-cited US cases pertain to different types of laws and were decided based on a different set of facts, *Letter Carriers* and *Broadrick* cannot be interpreted to mean a reversal of *Mancuso*. x x x (italics in the original)

We hold, however, that his position is belied by a plain reading of these cases. Contrary to his claim, **Letter Carriers, Broadrick and Mancuso *all* concerned the constitutionality of resign-to-run laws,** *viz.*:

(1) **Mancuso** involved a civil service employee who filed as a candidate for nomination as representative to the Rhode Island General Assembly. He assailed the constitutionality of §14.09(c) of the City Home Rule Charter, which prohibits "*continuing in the classified service of the city after becoming a candidate for nomination or election to any public office.*"

(2) **Letter Carriers** involved plaintiffs who alleged that the Civil Service Commission was enforcing, or threatening to enforce, the Hatch Act's prohibition against "active participation in political management or political campaigns"[63] with respect to certain defined activities

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[63] Section 9(a), Hatch Act.

in which they desired to engage. The plaintiffs relevant to this discussion are:

(a) The National Association of Letter Carriers, which alleged that its members were desirous of, among others, running in local elections for offices such as school board member, city council member or mayor;

(b) Plaintiff Gee, who alleged that he desired to, but did not, file as a candidate for the office of Borough Councilman in his local community for fear that his participation in a partisan election would endanger his job; and

(c) Plaintiff Myers, who alleged that he desired to run as a Republican candidate in the 1971 partisan election for the mayor of West Lafayette, Indiana, and that he would do so except for fear of losing his job by reason of violation of the Hatch Act.

The Hatch Act defines "active participation in political management or political campaigns" by cross-referring to the rules made by the Civil Service Commission. The rule pertinent to our inquiry states:

30. *Candidacy for local office*: *Candidacy for a nomination or for election to any National, State, county, or municipal office is not permissible*. The prohibition against political activity extends not merely to formal announcement of candidacy but also to the preliminaries leading to such announcement and to canvassing or soliciting support or doing or permitting to be done any act in furtherance of candidacy. The fact that candidacy, is merely passive is immaterial; if an employee acquiesces in the efforts of friends in furtherance of such candidacy such acquiescence constitutes an infraction of the prohibitions against political activity. (italics supplied)

Section 9(b) requires the immediate removal of violators and forbids the use of appropriated funds thereafter to pay compensation to these persons.[64]

(3) **Broadrick** was a class action brought by certain Oklahoma state employees seeking a declaration of unconstitutionality of two sub-paragraphs of Section 818 of Oklahoma's Merit System of Personnel Administration Act. Section 818 (7), the paragraph relevant to this discussion, states that "*[n]o employee in the classified service shall be … a candidate for nomination or election to any paid public office…*" Violation of Section 818 results in dismissal from employment, possible criminal sanctions and limited state employment ineligibility.

Consequently, it cannot be denied that **Letter Carriers** and **Broadrick** effectively overruled **Mancuso.** By no stretch of the imagination could **Mancuso** still be held operative, as **Letter Carriers** and **Broadrick** (i) concerned virtually identical resign-to-run laws, and (ii) were decided by a superior court, the United States Supreme Court. It was thus not surprising for the First Circuit Court of Appeals – the same court that decided **Mancuso** – to hold **categorically and emphatically** in ***Magill v. Lynch***[65] that **Mancuso is no longer good law**. As we priorly explained:

Magill involved Pawtucket, Rhode Island firemen who ran for city office in 1975. Pawtucket's "Little Hatch Act" prohibits city employees from engaging in a broad range of political activities. Becoming a candidate for any city office is specifically proscribed,[66] the violation

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[64] In 1950, Section 9(b) of the Hatch Act was amended by providing the exception that the Civil Service Commission, by unanimous vote, could impose a lesser penalty, but in no case less than 90 days' suspension without pay. In 1962, the period was reduced to 30 days' suspension without pay. The general rule, however, remains to be removal from office.

[65] 560 F.2d 22 (1977).

[66] The relevant charter provisions read as follows:

x x x x x x x x x

being punished by removal from office or immediate dismissal. The firemen brought an action against the city officials on the ground that that (sic) the provision of the city charter was unconstitutional. **However, the court, fully cognizant of *Letter Carriers* and *Broadrick*, took the position that *Mancuso* had since lost considerable vitality. It observed that the view that political candidacy was a fundamental interest which could be infringed upon only if less restrictive alternatives were not available, was a position which was no longer viable, since the Supreme Court (finding that the government's interest in regulating both the conduct and speech of its employees differed significantly from its interest in regulating those of the citizenry in general) had given little weight to the argument that prohibitions against the coercion of government employees were a less drastic means to the same end, deferring to the judgment of Congress, and applying a "balancing" test to determine whether limits on political activity by public employees substantially served government interests which were "important" enough to outweigh the employees' First Amendment rights.** [67]

It must be noted that the Court of Appeals ruled in this manner even though the election in **Magill** was characterized as **nonpartisan**, as it was reasonable for the city to fear, under the circumstances of that case, that politically active bureaucrats might use their official power to help political friends and hurt political foes. Ruled the court:

> (5) No appointed official, employee or member of any board or commission of the city, shall be a member of any national, state or local committee of a political party or organization, or an officer of a partisan political organization, or take part in a political campaign, except his right privately to express his opinion and to cast his vote.
>
> (6) No appointed official or employee of the city and no member of any board or commission shall be a candidate for nomination or election to any public office, whether city, state or federal, except elected members of boards or commissions running for re-election, unless he shall have first resigned his then employment or office.
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> x x x x x x x x x

[67] See also Davis, R., *Prohibiting Public Employee from Running for Elective Office as Violation of Employee's Federal Constitutional Rights*, 44 A.L.R. Fed. 306.

The question before us is whether Pawtucket's charter provision, which bars a city employee's candidacy in even a nonpartisan city election, is constitutional. The issue compels us to extrapolate two recent Supreme Court decisions, *Civil Service Comm'n v. Nat'l Ass'n of Letter Carriers* and *Broadrick v. Oklahoma*. Both dealt with laws barring civil servants from partisan political activity. *Letter Carriers* reaffirmed *United Public Workers v. Mitchell*, upholding the constitutionality of the Hatch Act as to federal employees. Broadrick sustained Oklahoma's "Little Hatch Act" against constitutional attack, limiting its holding to Oklahoma's construction that the Act barred only activity in partisan politics. *In Mancuso v. Taft, we assumed that proscriptions of candidacy in nonpartisan elections would not be constitutional. Letter Carriers and Broadrick compel new analysis.*

xxx xxx xxx

What we are obligated to do in this case, as the district court recognized, is to *apply the Court's interest balancing approach to the kind of nonpartisan election* revealed in this record. *We believe that the district court found more residual vigor in our opinion in Mancuso v. Taft than remains after Letter Carriers. We have particular reference to our view that political candidacy was a fundamental interest which could be trenched upon only if less restrictive alternatives were not available. While this approach may still be viable for citizens who are not government employees, the Court in Letter Carriers recognized that the government's interest in regulating both the conduct and speech of its employees differs significantly from its interest in regulating those of the citizenry in general.* Not only was *United Public Workers v. Mitchell* "unhesitatingly" reaffirmed, but the Court gave little weight to the argument that prohibitions against the coercion of government employees were a less drastic means to the same end, deferring to the judgment of the Congress. We cannot be more precise than the Third Circuit in characterizing the Court's approach as "some sort of 'balancing' process".[68] It appears that the government may place limits on campaigning by public

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[68] *Alderman v. Philadelphia Housing Authority*, 496 F.2d 164, 171 n. 45 (1974).

employees if the limits substantially serve government interests that are "important" enough to outweigh the employees' First Amendment rights. x x x (italics supplied)

Upholding thus the constitutionality of the law in question, the **Magill** court detailed the major governmental interests discussed in **Letter Carriers** and applied them to the Pawtucket provision as follows:

> In *Letter Carriers*[,] the first interest identified by the Court was that of an efficient government, faithful to the Congress rather than to party. The district court discounted this interest, reasoning that candidates in a local election would not likely be committed to a state or national platform. This observation undoubtedly has substance insofar as allegiance to broad policy positions is concerned. But a different kind of possible political intrusion into efficient administration could be thought to threaten municipal government: not into broad policy decisions, but into the particulars of administration favoritism in minute decisions affecting welfare, tax assessments, municipal contracts and purchasing, hiring, zoning, licensing, and inspections. Just as the Court in *Letter Carriers* identified a second governmental interest in the avoidance of the appearance of "political justice" as to policy, so there is an equivalent interest in avoiding the appearance of political preferment in privileges, concessions, and benefits. The appearance (or reality) of favoritism that the charter's authors evidently feared is not exorcised by the nonpartisan character of the formal election process. Where, as here, party support is a key to successful campaigning, and party rivalry is the norm, the city might reasonably fear that politically active bureaucrats would use their official power to help political friends and hurt political foes. This is not to say that the city's interest in visibly fair and effective administration necessarily justifies a blanket prohibition of all employee campaigning; if parties are not heavily involved in a campaign, the danger of favoritism is less, for neither friend nor foe is as easily identified.
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> A second major governmental interest identified in *Letter Carriers* was avoiding the danger of a powerful political machine. The Court had in mind the large and growing federal bureaucracy and its partisan potential. The district court felt

this was only a minor threat since parties had no control over nominations. But in fact candidates sought party endorsements, and party endorsements proved to be highly effective both in determining who would emerge from the primary election and who would be elected in the final election. Under the prevailing customs, known party affiliation and support were highly significant factors in Pawtucket elections. The charter's authors might reasonably have feared that a politically active public work force would give the incumbent party, and the incumbent workers, an unbreakable grasp on the reins of power. In municipal elections especially, the small size of the electorate and the limited powers of local government may inhibit the growth of interest groups powerful enough to outbalance the weight of a partisan work force. Even when nonpartisan issues and candidacies are at stake, isolated government employees may seek to influence voters or their co-workers improperly; but a more real danger is that a central party structure will mass the scattered powers of government workers behind a single party platform or slate. Occasional misuse of the public trust to pursue private political ends is tolerable, especially because the political views of individual employees may balance each other out. But party discipline eliminates this diversity and tends to make abuse systematic. Instead of a handful of employees pressured into advancing their immediate superior's political ambitions, the entire government work force may be expected to turn out for many candidates in every election. In Pawtucket, where parties are a continuing presence in political campaigns, a carefully orchestrated use of city employees in support of the incumbent party's candidates is possible. The danger is scarcely lessened by the openness of Pawtucket's nominating procedure or the lack of party labels on its ballots.

The third area of proper governmental interest in *Letter Carriers* was ensuring that employees achieve advancement on their merits and that they be free from both coercion and the prospect of favor from political activity. The district court did not address this factor, but looked only to the possibility of a civil servant using his position to influence voters, and held this to be no more of a threat than in the most nonpartisan of elections. But we think that the possibility of coercion of employees by superiors remains as strong a factor in municipal elections as it was in *Letter Carriers*. Once again, it is the systematic and coordinated exploitation of public servants for political ends that a legislature is most likely to

> see as the primary threat of employees' rights. Political oppression of public employees will be rare in an entirely nonpartisan system. Some superiors may be inclined to ride herd on the politics of their employees even in a nonpartisan context, but without party officials looking over their shoulders most supervisors will prefer to let employees go their own ways.
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> In short, the government may constitutionally restrict its employees' participation in nominally nonpartisan elections if political parties play a large role in the campaigns. In the absence of substantial party involvement, on the other hand, the interests identified by the *Letter Carriers* Court lose much of their force. While the employees' First Amendment rights would normally outbalance these diminished interests, we do not suggest that they would always do so. Even when parties are absent, many employee campaigns might be thought to endanger at least one strong public interest, an interest that looms larger in the context of municipal elections than it does in the national elections considered in *Letter Carriers*. The city could reasonably fear the prospect of a subordinate running directly against his superior or running for a position that confers great power over his superior. An employee of a federal agency who seeks a Congressional seat poses less of a direct challenge to the command and discipline of his agency than a fireman or policeman who runs for mayor or city council. The possibilities of internal discussion, cliques, and political bargaining, should an employee gather substantial political support, are considerable. (citations omitted)

The court, however, remanded the case to the district court for further proceedings in respect of the petitioners' overbreadth charge. Noting that invalidating a statute for being overbroad is "not to be taken lightly, much less to be taken in the dark," the court held:

> The governing case is *Broadrick*, which introduced the doctrine of "substantial" overbreadth in a closely analogous case. Under *Broadrick*, when one who challenges a law has engaged in constitutionally unprotected conduct (rather than unprotected speech) and when the challenged law is aimed at unprotected conduct, "the overbreadth of a statute must not only be real, but substantial as well, judged in relation to the statute's plainly legitimate sweep." Two major uncertainties attend the doctrine: how to distinguish speech from conduct, and how to define "substantial" overbreadth. We are spared the first inquiry by

Broadrick itself. The plaintiffs in that case had solicited support for a candidate, and they were subject to discipline under a law proscribing a wide range of activities, including soliciting contributions for political candidates and becoming a candidate. The Court found that this combination required a substantial overbreadth approach. The facts of this case are so similar that we may reach the same result without worrying unduly about the sometimes opaque distinction between speech and conduct.

The second difficulty is not so easily disposed of. *Broadrick* found no substantial overbreadth in a statute restricting partisan campaigning. Pawtucket has gone further, banning participation in nonpartisan campaigns as well. *Measuring the substantiality of a statute's overbreadth apparently requires, inter alia, a rough balancing of the number of valid applications compared to the number of potentially invalid applications. Some sensitivity to reality is needed; an invalid application that is far-fetched does not deserve as much weight as one that is probable. The question is a matter of degree; it will never be possible to say that a ratio of one invalid to nine valid applications makes a law substantially overbroad. Still, an overbreadth challenger has a duty to provide the court with some idea of the number of potentially invalid applications the statute permits*. Often, simply reading the statute in the light of common experience or litigated cases will suggest a number of probable invalid applications. But this case is different. Whether the statute is overbroad depends in large part on the number of elections that are insulated from party rivalry yet closed to Pawtucket employees. For all the record shows, every one of the city, state, or federal elections in Pawtucket is actively contested by political parties. Certainly the record suggests that parties play a major role even in campaigns that often are entirely nonpartisan in other cities. School committee candidates, for example, are endorsed by the local Democratic committee.

The state of the record does not permit us to find overbreadth; indeed such a step is not to be taken lightly, much less to be taken in the dark. On the other hand, the entire focus below, in the short period before the election was held, was on the constitutionality of the statute as applied. Plaintiffs may very well feel that further efforts are not justified, *but they should be afforded the opportunity to demonstrate that the charter*

> *forecloses access to a significant number of offices, the candidacy for which by municipal employees would not pose the possible threats to government efficiency and integrity which Letter Carriers, as we have interpreted it, deems significant.* Accordingly, we remand for consideration of plaintiffs' overbreadth claim. (italics supplied, citations omitted)

Clearly, *Letter Carriers, Broadrick,* and *Magill* demonstrate beyond doubt that *Mancuso v. Taft,* heavily relied upon by the *ponencia,* has effectively been overruled.[69] As it is no longer good law, the *ponencia's* exhortation that "[since] the Americans, from whom we copied the provision in question, had already stricken down a similar measure for being unconstitutional[,] it is high-time that we, too, should follow suit" is misplaced and unwarranted.[70]

Accordingly, our assailed Decision's submission that the right to run for public office is "inextricably linked" with two fundamental freedoms – those of expression and association – lies on barren ground. American case law has in fact **never recognized a fundamental right to express one's political views through candidacy,**[71] **as to invoke a rigorous standard of review.**[72] ***Bart v. Telford***[73] pointedly stated that "[t]he First Amendment does not in terms confer a right to run for public office, and this court has held that it does not do so by implication either." Thus, one's interest in seeking office, **by itself**, is **not** entitled to constitutional protection.[74] Moreover, one cannot bring one's action under the rubric of freedom of association,

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[69] *Fernandez v. State Personnel Board, et al.*, 175 Ariz. 39, 852 P.2d 1223 (1993).

[70] Dissenting Opinion of Chief Justice Reynato S. Puno, pp. 51-56.

[71] *Carver v. Dennis*, 104 F.3d 847, 65 USLW 2476 (1997); *American Constitutional Law Foundation, Inc. v. Meyer*, 120 F.3d 1092, 1101 (1997); *NAACP, Los Angeles Branch v. Jones*, 131 F.3d 1317, 1324 (1997); *Brazil-Breashears v. Bilandic*, 53 F.3d 789, 792 (1995). See also *Bullock v. Carter*, *supra* note 60, quoted in *Clements v. Fashing*, 457 U.S. 957, 963, 102 S.Ct. 2836, 2843, 73 L.Ed.2d 508 (1982).

[72] *Newcomb v. Brennan*, 558 F.2d 825 (1977).

[73] 677 F.2d 622, 624 (1982).

[74] *Newcomb v. Brennan, supra* note 72.

absent any allegation that, by running for an elective position, one is advancing the political ideas of a particular set of voters.[75]

Prescinding from these premises, it is crystal clear that the provisions challenged in the case at bar, are not violative of the equal protection clause. The deemed-resigned provisions substantially serve governmental interests (*i.e.*, (i) efficient civil service faithful to the government and the people rather than to party; (ii) avoidance of the appearance of "political justice" as to policy; (iii) avoidance of the danger of a powerful political machine; and (iv) ensuring that employees achieve advancement on their merits and that they be free from both coercion and the prospect of favor from political activity). These are interests that are important enough to outweigh the non-fundamental right of appointive officials and employees to seek elective office.

En passant, we find it quite ironic that Mr. Justice Nachura cites ***Clements v. Fashing***[76] and ***Morial, et al. v. Judiciary Commission of the State of Louisiana, et al.***[77] to buttress his dissent. Maintaining that resign-to-run provisions are valid only when made applicable to specified officials, he explains:

> …U.S. courts, in subsequent cases, sustained the constitutionality of resign-to-run provisions when applied to **specified or particular officials, as distinguished from all others**,[78] **under a classification that is germane to the purposes of the law.** These resign-to-run legislations **were not expressed in a general and sweeping provision**, and thus **did not violate the test of being germane to the purpose of the law**, the second requisite for a valid classification. Directed, as

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[75] *Id*.

[76] *Supra* note 71.

[77] *Supra* note 58.

[78] The provision in question in *Clements* covers District Clerks, County Clerks, County Judges, County Treasurers, Criminal District Attorneys, County Surveyors, Inspectors of Hides and Animals, County Commissioners, Justices of the Peace, Sheriffs, Assessors and Collectors of Taxes, District Attorneys, County Attorneys, Public Weighers, and Constables. On the other hand, the provision in *Morial* covers judges running for non-judicial elective office.

they were, to particular officials, they were not overly encompassing as to be overbroad. (emphasis in the original)

This reading is a regrettable misrepresentation of **Clements** and **Morial**. The resign-to-run provisions in these cases were upheld not because they referred to specified or particular officials (*vis-à-vis* a general class); the questioned provisions were found valid **precisely because the Court *deferred* to legislative judgment and found that a regulation is not devoid of a rational predicate simply because it happens to be incomplete**. In fact, the equal protection challenge in **Clements** revolved around the claim that the State of Texas failed to explain why ***some*** public officials are subject to the resign-to-run provisions, while others are not. Ruled the United States Supreme Court:

> Article XVI, § 65, of the Texas Constitution provides that the holders of certain offices automatically resign their positions if they become candidates for any other elected office, unless the unexpired portion of the current term is one year or less. The burdens that § 65 imposes on candidacy are even less substantial than those imposed by § 19. The two provisions, of course, serve essentially the same state interests. The District Court found § 65 deficient, however, not because of the nature or extent of the provision's restriction on candidacy, but because of the manner in which the offices are classified. *According to the District Court, the classification system cannot survive equal protection scrutiny, because Texas has failed to explain sufficiently why some elected public officials are subject to § 65 and why others are not. As with the case of § 19, we conclude that § 65 survives a challenge under the Equal Protection Clause unless appellees can show that there is no rational predicate to the classification scheme.*
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> *The history behind § 65 shows that it may be upheld consistent with the "one step at a time" approach that this Court has undertaken with regard to state regulation not subject to more vigorous scrutiny than that sanctioned by the traditional principles.* Section 65 was enacted in 1954 as a transitional provision applying only to the 1954 election. Section 65 extended the terms of those offices enumerated in the provision from two to four years. The provision also staggered the terms of other offices so that at least some county and local offices would be contested at each election.

The automatic resignation proviso to § 65 was not added until 1958. In that year, a similar automatic resignation provision was added in Art. XI, § 11, which applies to officeholders in home rule cities who serve terms longer than two years. Section 11 allows home rule cities the option of extending the terms of municipal offices from two to up to four years.

Thus, the automatic resignation provision in Texas is a creature of the State's electoral reforms of 1958. *That the State did not go further in applying the automatic resignation provision to those officeholders whose terms were not extended by § 11 or § 65, absent an invidious purpose, is not the sort of malfunctioning of the State's lawmaking process forbidden by the Equal Protection Clause. A regulation is not devoid of a rational predicate simply because it happens to be incomplete*. The Equal Protection Clause does not forbid Texas to restrict one elected officeholder's candidacy for another elected office unless and until it places similar restrictions on other officeholders. The provision's language and its history belie any notion that § 65 serves the invidious purpose of denying access to the political process to identifiable classes of potential candidates. (citations omitted and italics supplied)

Furthermore, it is unfortunate that the dissenters took the **Morial** line that "there is no blanket approval of restrictions on the right of public employees to become candidates for public office" out of context. A correct reading of that line readily shows that the Court only meant to confine its ruling to the facts of that case, as each equal protection challenge would necessarily have to involve weighing governmental interests *vis-à-vis* the specific prohibition assailed. The Court held:

The interests of public employees in free expression and political association are unquestionably entitled to the protection of the first and fourteenth amendments. Nothing in today's decision should be taken to imply that public employees may be prohibited from expressing their private views on controversial topics in a manner that does not interfere with the proper performance of their public duties. In today's decision, there is no blanket approval of restrictions on the right of public employees to become candidates for public office. Nor do we approve any general restrictions on the political and civil rights of judges in particular. *Our holding is necessarily narrowed by the methodology employed to reach it.* A requirement

that a state judge resign his office prior to becoming a candidate for non-judicial office bears a reasonably necessary relation to the achievement of the state's interest in preventing the actuality or appearance of judicial impropriety. Such a requirement offends neither the first amendment's guarantees of free expression and association nor the fourteenth amendment's guarantee of equal protection of the laws. (italics supplied)

Indeed, the **Morial** court even quoted **Broadrick** and stated that:

In any event, the legislature must have some leeway in determining which of its employment positions require restrictions on partisan political activities and which may be left unregulated. And a State can hardly be faulted for attempting to limit the positions upon which such restrictions are placed. (citations omitted)

V.

Section 4(a) of Resolution 8678, Section 13 of RA 9369, and Section 66 of the Omnibus Election Code Do Not Suffer from Overbreadth

Apart from nullifying Section 4(a) of Resolution 8678, Section 13 of RA 9369, and Section 66 of the Omnibus Election Code on equal protection ground, our assailed Decision struck them down for being overbroad in two respects, *viz.*:

(1) The assailed provisions limit the candidacy of all civil servants holding appointive posts without due regard for the type of position being held by the employee seeking an elective post and the degree of influence that may be attendant thereto;[79] and

(2) The assailed provisions limit the candidacy of any and all civil servants holding appointive positions without due regard for the type of office being sought, whether it be partisan or nonpartisan in character, or in the national, municipal or *barangay* level.

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[79] Decision, pp. 25-26.

Again, on second look, we have to revise our assailed Decision.

i. Limitation on Candidacy Regardless of Incumbent Appointive Official's Position, Valid

According to the assailed Decision, the challenged provisions of law are overly broad because they apply indiscriminately to all civil servants holding appointive posts, without due regard for the type of position being held by the employee running for elective office and the degree of influence that may be attendant thereto.

Its underlying assumption appears to be that the evils sought to be prevented are extant only when the incumbent appointive official running for elective office holds an influential post.

Such a myopic view obviously fails to consider a different, yet equally plausible, threat to the government posed by the partisan potential of a large and growing bureaucracy: the danger of systematic abuse perpetuated by a "powerful political machine" that has amassed "the scattered powers of government workers" so as to give itself and its incumbent workers an "unbreakable grasp on the reins of power."[80] As elucidated in our prior exposition:[81]

> Attempts by government employees to wield influence over others or to make use of their respective positions (apparently) to promote their own candidacy may seem tolerable – even innocuous – particularly when viewed in isolation from other similar attempts by other government employees. Yet it would be decidedly foolhardy to discount the equally (if not more) realistic and dangerous possibility that such seemingly disjointed attempts, when taken together, constitute a veiled effort on the part of an emerging central party structure to advance its own agenda through a "carefully orchestrated use of [appointive and/or elective] officials" coming from various levels of the bureaucracy.
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> …[T]he avoidance of such a "politically active public work force" which could give an emerging political machine an "unbreakable grasp

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[80] *Magill v. Lynch, supra* note 65.

[81] Dissenting Opinion of Chief Justice Reynato S. Puno, p. 63.

on the reins of power" is reason enough to impose a restriction on the candidacies of all appointive public officials without further distinction as to the type of positions being held by such employees or the degree of influence that may be attendant thereto. (citations omitted)

ii. Limitation on Candidacy Regardless of Type of Office Sought, Valid

The assailed Decision also held that the challenged provisions of law are overly broad because they are made to apply indiscriminately to all civil servants holding appointive offices, without due regard for the type of elective office being sought, whether it be partisan or nonpartisan in character, or in the national, municipal or *barangay* level.

This erroneous ruling is premised on the assumption that "the concerns of a truly partisan office and the temptations it fosters are sufficiently different from those involved in an office removed from regular party politics [so as] to warrant distinctive treatment,"[82] so that restrictions on candidacy akin to those imposed by the challenged provisions can validly apply only to situations in which the elective office sought is partisan in character. To the extent, therefore, that such restrictions are said to preclude even candidacies for nonpartisan elective offices, the challenged restrictions are to be considered as overbroad.

Again, a careful study of the challenged provisions and related laws on the matter will show that the alleged overbreadth is more apparent than real. Our exposition on this issue has not been repudiated, *viz.*:

A perusal of Resolution 8678 will immediately disclose that the rules and guidelines set forth therein refer to the filing of certificates of candidacy and nomination of official candidates of registered **political parties, in connection with the May 10, 2010 National and Local Elections**.[83] Obviously, these rules and guidelines, including

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[82] Decision, p. 27, citing *Mancuso v. Taft*, *supra* note 52.

[83] See *rollo*, p.3, where the titular heading, as well as the first paragraph of Resolution 8678, refers to the contents of said Resolution as the

the restriction in Section 4(a) of Resolution 8678, were issued specifically for purposes of the May 10, 2010 National and Local Elections, which, it must be noted, are decidedly *partisan* in character. Thus, it is clear that the restriction in Section 4(a) of RA 8678 applies only to the candidacies of appointive officials vying for *partisan* elective posts in the May 10, 2010 National and Local Elections. On this score, the overbreadth challenge leveled against Section 4(a) is clearly unsustainable.

Similarly, a considered review of Section 13 of RA 9369 and Section 66 of the Omnibus Election Code, in conjunction with other related laws on the matter, will confirm that these provisions are likewise not intended to apply to elections for nonpartisan public offices.

The only elections which are relevant to the present inquiry are the elections for *barangay* offices, since these are the only elections in this country which involve *nonpartisan* public offices.[84]

In this regard, it is well to note that from as far back as the enactment of the Omnibus Election Code in 1985, Congress has intended that these nonpartisan *barangay* elections be governed by special rules, including a separate rule on deemed resignations which is found in Section 39 of the Omnibus Election Code. Said provision states:

> Section 39. Certificate of Candidacy. – No person shall be elected *punong barangay or kagawad ng sangguniang barangay* unless he files a sworn certificate of candidacy in triplicate on any day from the commencement of the election period but not later than the day before the beginning of the campaign period in a form to be prescribed by the Commission. The candidate shall state the *barangay* office for which he is a candidate.
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> x x x x x x x x x
>
> *Any elective or appointive municipal, city, provincial or national official or employee, or those in the civil or military*

"Guidelines on the Filing of Certificates of Candidacy and Nomination of Official Candidates of Registered Political Parties in Connection with the May 10, 2010 National and Local Elections."

[84] The *Sangguniang Kabataan* elections, although nonpartisan in character, are not relevant to the present inquiry, because they are unlikely to involve the candidacies of appointive public officials.

service, including those in government-owned or-controlled corporations, shall be considered automatically resigned upon the filing of certificate of candidacy for a barangay office.

Since *barangay* elections are governed by a separate deemed resignation rule, under the present state of law, there would be no occasion to apply the restriction on candidacy found in Section 66 of the Omnibus Election Code, and later reiterated in the proviso of Section 13 of RA 9369, to any election other than a *partisan* one. For this reason, the overbreadth challenge raised against Section 66 of the Omnibus Election Code and the pertinent proviso in Section 13 of RA 9369 must also fail.[85]

In any event, even if we were to assume, for the sake of argument, that Section 66 of the Omnibus Election Code and the corresponding provision in Section 13 of RA 9369 are general rules that apply also to elections for nonpartisan public offices, the overbreadth challenge would still be futile. Again, we explained:

In the first place, the view that Congress is limited to controlling only partisan behavior has not received judicial imprimatur, because the general proposition of the relevant US cases on the matter is simply that the government has an interest in regulating the conduct and speech of its employees that differs significantly from those it possesses in connection with regulation of the speech of the citizenry in general.[86]

Moreover, in order to have a statute declared as unconstitutional or void on its face for being overly broad, particularly where, as in this case, "conduct" and not "pure speech" is involved, the overbreadth must not only be real, but substantial as well, judged in relation to the statute's plainly legitimate sweep.[87]

In operational terms, measuring the substantiality of a statute's overbreadth would entail, among other things, a rough balancing of the number of valid applications compared to the number of potentially

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[85] Dissenting Opinion of Chief Justice Reynato S. Puno, pp. 64-65.

[86] *Smith v. Ehrlich*, 430 F. Supp. 818 (1976).

[87] *Broadrick v. Oklahoma*, *supra* note 54.

invalid applications.[88] In this regard, some sensitivity to reality is needed; an invalid application that is far-fetched does not deserve as much weight as one that is probable.[89] The question is a matter of degree.[90] Thus, assuming for the sake of argument that the partisan-nonpartisan distinction is valid and necessary such that a statute which fails to make this distinction is susceptible to an overbreadth attack, the overbreadth challenge presently mounted must demonstrate or provide this Court with some idea of the number of potentially invalid elections (*i.e.* the number of elections that were insulated from party rivalry but were nevertheless closed to appointive employees) that may in all probability result from the enforcement of the statute.[91]

The state of the record, however, does not permit us to find overbreadth. Borrowing from the words of *Magill v. Lynch*, indeed, such a step is not to be taken lightly, much less to be taken in the dark,[92] especially since an overbreadth finding in this case would effectively prohibit the State from 'enforcing an otherwise valid measure against conduct that is admittedly within its power to proscribe.'[93]

This Court would do well to proceed with tiptoe caution, particularly when it comes to the application of the overbreadth doctrine in the analysis of statutes that purportedly attempt to restrict or burden the exercise of the right to freedom of speech, for such approach is manifestly strong medicine that must be used sparingly, and only as a last resort.[94]

In the United States, claims of facial overbreadth have been entertained only where, in the judgment of the court, the possibility that protected speech of others may be muted and perceived

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88 *Magill v. Lynch, supra* note 65.

89 *Id.*

90 *Id.*

91 *Id.*

92 *Id.*

93 *Broadrick v. Oklahoma, supra* note 54.

94 *Id.*

grievances left to fester (due to the possible inhibitory effects of overly broad statutes) outweighs the possible harm to society in allowing some unprotected speech or conduct to go unpunished.[95] Facial overbreadth has likewise not been invoked where a limiting construction could be placed on the challenged statute, and where there are readily apparent constructions that would cure, or at least substantially reduce, the alleged overbreadth of the statute.[96]

In the case at bar, the probable harm to society in permitting incumbent appointive officials to remain in office, even as they actively pursue elective posts, far outweighs the less likely evil of having arguably protected candidacies blocked by the possible inhibitory effect of a potentially overly broad statute.

In this light, the conceivably impermissible applications of the challenged statutes – which are, at best, bold predictions – cannot justify invalidating these statutes in *toto* and prohibiting the State from enforcing them against conduct that is, and has for more than 100 years been, unquestionably within its power and interest to proscribe.[97] Instead, the more prudent approach would be to deal with these conceivably impermissible applications through case-by-case adjudication rather than through a total invalidation of the statute itself.[98]

Indeed, the anomalies spawned by our assailed Decision have taken place. In his Motion for Reconsideration, intervenor Drilon stated that a number of high-ranking Cabinet members had already filed their Certificates of Candidacy without relinquishing their posts.[99] Several COMELEC election officers had likewise filed their Certificates of Candidacy in their respective provinces.[100]

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95 *Id*.

96 *Mining v. Wheeler*, 378 F. Supp. 1115 (1974).

97 *Broadrick v. Oklahoma*, *supra* note 54.

98 *Aiello v. City of Wilmington, Delaware*, 623 F.2d 845 (1980).

99 Motion for Reconsideration dated December 16, 2009, p. 2.

100 *Id.* at p. 3, citing *Comelec wants SC to reverse ruling on gov't. execs*, Philippine Daily Inquirer, 11 December 2009, available at http://politics.inquirer.net/view.php?article=20091211-241394.

Even the Secretary of Justice had filed her certificate of substitution for representative of the first district of Quezon province last December 14, 2009[101] – even as her position as Justice Secretary includes supervision over the City and Provincial Prosecutors,[102] who, in turn, act as Vice-Chairmen of the respective Boards of Canvassers.[103] The Judiciary has not been spared, for a Regional Trial Court Judge in the South has thrown his hat into the political arena. We cannot allow the tilting of our electoral playing field in their favor.

For the foregoing reasons, we now rule that Section 4(a) of Resolution 8678 and Section 13 of RA 9369, which merely reiterate Section 66 of the Omnibus Election Code, are not unconstitutionally overbroad.

IN VIEW WHEREOF, the Court *RESOLVES* to *GRANT* the respondent's and the intervenors' Motions for Reconsideration; *REVERSE* and *SET ASIDE* this Court's December 1, 2009 Decision; *DISMISS* the Petition; and *ISSUE* this Resolution declaring as not *UNCONSTITUTIONAL* (1) Section 4(a) of COMELEC Resolution No. 8678, (2) the second proviso in the third paragraph of Section 13 of Republic Act No. 9369, and (3) Section 66 of the Omnibus Election Code.

SO ORDERED.

Brion, Del Castillo, Abad, Villarama, Jr., Perez, and *Mendoza, JJ.,* concur.

Carpio, J., see concurring opinion.

Carpio Morales, J., concurs in accordance with her dissent to the original *ponencia.*

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[101] *Id.*, citing *Devanadera files COC for Quezon congress seat,* The Philippine Star, 15 December 2009, available at http::://www.philstar.com/Article.aspx?articleId=532552&publicationSubCategoryId=67.

[102] REVISED ADMINISTRATIVE CODE, TITLE 3, BOOK IV, Chapter 8, Sec. 39

[103] Republic Act No. 6646, Sec. 20.

Peralta, J., the *C.J.* certifies that *J.* Peralta voted in favor of this resolution.

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

Nachura, Jr., see dissenting opinion.

CONCURRING OPINION

CARPIO, *J.*:

I concur with the *ponencia* of Chief Justice Reynato S. Puno.

The filing of a Certificate of Candidacy for an elective position is, by the very nature of the act, an electioneering or partisan political activity.

Two provisions of the Constitution, taken together, mandate that ***civil service employees cannot engage in any electioneering or partisan political activity except to vote***. Thus, the Constitution provides:

> Section 2(4), Article IX-B of the Constitution
>
> No officer or employee in the civil service shall engage, directly or indirectly, in any electioneering or partisan political activity.
>
> Section 5(3), Article XVI of the Constitution
>
> No member of the military shall engage, directly or indirectly, in any partisan political activity, except to vote.

During the deliberations of the Constitutional Commission on these provisions of the Constitution, it was clear that the exercise of the right to vote is the ***only*** non-partisan political activity a citizen can do. All other political activities are deemed partisan. Thus, Commissioner Christian Monsod declared that, **"As a matter of fact, the only non partisan political activity one can engage in as a citizen is voting."**[1]

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[1] Records of the Constitutional Commission, Vol. I, p. 543.

Indisputably, any political activity except to vote is a partisan political activity. Section 79 (b) of the Omnibus Election Code implements this by declaring that ***any act designed to elect or promote the election of a candidate is an electioneering or partisan political activity***, thus:

> The term "election campaign" or "partisan political activity"refers to an act designed to promote the election or defeat of a particular candidate or candidates to a public office x x x."

Filing a certificate of candidacy is obviously a partisan political activity.

First, the mere filing of a Certificate of Candidacy is a definitive announcement to the world that a person will actively solicit the votes of the electorate to win an elective public office. Such an announcement is already a promotion of the candidate's election to public office. Indeed, once a person becomes an official candidate, he abandons the role of a mere passive voter in an election, and assumes the role of a political partisan, a candidate promoting his own candidacy to public office.

Second, only a candidate for a political office files a Certificate of Candidacy. A person merely exercising his or her right to vote does not. A candidate for a political office is necessarily a partisan political candidate because he or she is contesting an elective office against other political candidates. The candidate and the electorate know that there are, more often than not, other candidates vying for the same elective office, making the contest politically partisan.

Third, a candidate filing his or her Certificate of Candidacy almost always states in the Certificate of Candidacy the name of the political party to which he or she belongs. The candidate will even attach to his or her Certificate of Candidacy the certification of his or her political party that he or she is the official candidate of the political party. Such certification by a political party is obviously designed to promote the election of the candidate.

Fourth, the constitutional ban prohibiting civil servants from engaging in partisan political activities is intended, among others, to keep the civil service non-partisan. This constitutional ban is violated when a civil servant files his or her Certificate of Candidacy as a candidate of a political party. From the moment the civil servant files his or her Certificate of Candidacy, he or she is immediately identified as a political partisan because everyone knows he or she will prepare, and work, for the victory of his or her political party in the elections.

Fifth, the constitutional ban prohibiting civil servants from engaging in partisan political activities is also intended to prevent civil servants from using their office, and the resources of their office, to promote their candidacies or the candidacies of other persons. We have seen the spectacle of civil servants who, after filing their certificates of candidacies, still cling to their public office while campaigning during office hours.

Sixth, the constitutional ban prohibiting civil servants from engaging in partisan political activities is further intended to prevent conflict of interest. We have seen Comelec officials who, after filing their certificates of candidacies, still hold on to their public office.

Finally, filing of a Certificate of Candidacy is a partisan political act that *ipso facto* operates to consider the candidate deemed resigned from public office pursuant to paragraph 3, Section 11 of R.A. No. 8436, as amended by R.A. No. 9369, as well as Section 66 of the Omnibus Election Code, as amended.

Accordingly, I vote to grant respondent Comelec's Motion for Reconsideration.

NACHURA, *J., dissenting opinion*:

I vote to maintain this Court's December 1, 2009 Decision. The automatic resignation rule on appointive government officials and employees running for elective posts is, to my mind, unconstitutional. I therefore respectfully register my dissent to the resolution of the majority granting the motion for reconsideration.

I earnestly believe that by this resolution, the majority refused to rectify an unjust rule, leaving in favor of a discriminatory state regulation and disregarding the primacy of the people's fundamental rights to the equal protection of the laws.

Let it be recalled that, on December 1, 2009, the Court rendered its Decision granting the petition and declaring as unconstitutional the second proviso in the third paragraph of Section 13 of Republic Act (R.A.) No. 9369, Section 66 of the Omnibus Election Code (OEC) and Section 4(a) of Commission on Elections (COMELEC) Resolution No. 8678.[1]

Claiming to have legal interest in the matter in litigation, Senator Manuel A. Roxas filed, on December 14, 2009, his *Omnibus Motion for Leave of Court to: (a) Intervene in the Instant Case; (b) Admit Attached Motion for Reconsideration; and (c) If Necessary, Set the Instant Case for Oral Arguments*.[2]

On the same date, respondent COMELEC, through its Law Department, moved for the reconsideration of the aforesaid December 1, 2009 Decision.[3]

Expressing a similar desire, Franklin M. Drilon, a former senator and a senatorial candidate in the 2010 elections, filed, on December 17, 2009, his *Motion for Leave to Intervene and to Admit the Attached Motion for Reconsideration in Intervention*.[4]

On December 28, 2009, the Integrated Bar of the Philippines (IBP), Cebu City Chapter, also filed its *Motion for Leave to Intervene*[5] and *Motion for Reconsideration in Intervention*.[6]

In a related development, on January 8, 2010, the Office of the Solicitor General (OSG), which initially represented the

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[1] *Rollo*, p. 122.

[2] *Id.* at 210-215.

[3] *Id.* at 236.

[4] *Id.* at 265-270.

[5] *Id.* at 310-311.

[6] *Id.* at 315-322.

COMELEC in the proceedings herein, this time disagreed with the latter, and, instead of moving for the reconsideration of the December 1, 2009 Decision, moved for clarification of the effect of our declaration of unconstitutionality.[7]

Subsequently, Tom V. Apacible, a congressional candidate in the 2010 elections, filed, on January 11, 2010, his *Motion to Intervene and for the Reconsideration of the Decision dated December 1, 2009*.[8]

In its January 12, 2010 Resolution,[9] the Court required petitioners to comment on the aforesaid motions.

On February 1, 2010, petitioners filed their consolidated comment on the motions.

Parenthetically, petitioner Quinto admitted that he did not pursue his plan to run for an elective office.[10] Petitioner Tolentino, on the other hand, disclosed that he filed his certificate of candidacy but that he had recently resigned from his post in the executive department. These developments could very well be viewed by the Court as having rendered this case moot and academic. However, I refuse to proceed to such a conclusion, considering that the issues, viewed in relation to other appointive civil servants running for elective office, remain ubiquitously present. Thus, the issues in the instant case could fall within the classification of controversies that are capable of repetition yet evading review.

It is then proper that the Court rule on the motions.

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[7] *Id.* at 326-329.

[8] *Id.* at 333-374.

[9] *Id.* at 386-388.

[10] Petitioner Quinto was appointed, and on January 13, 2010, took his oath of office as Acting Secretary of the Department of Environment and Natural Resources (DENR). Subsequently, as reported in the February 11, 2010 issue of *Philippine Daily Inquirer*, he was appointed as Director General of the Presidential Coalition Affairs Office.

The intervention

The motions for intervention should be denied. Section 2, Rule 19 of the Rules of Court explicitly states that motions to intervene may be filed at any time "before the rendition of judgment."[11] Obviously, as this Court already rendered judgment on December 1, 2009, intervention may no longer be allowed.[12] The movants, Roxas, Drilon, IBP-Cebu City Chapter, and Apacible, cannot claim to have been unaware of the pendency of this much publicized case. They should have intervened prior to the rendition of this Court's Decision on December 1, 2009. To allow their intervention at this juncture is unwarranted and highly irregular.[13]

While the Court has the power to suspend the application of procedural rules, I find no compelling reason to excuse movants' procedural lapse and allow their much belated intervention. Further, a perusal of their pleadings-in-intervention reveals that they merely restated the points and arguments in the earlier dissenting opinions of Chief Justice Puno and Senior Associate Justices Carpio and Carpio Morales. These very same points, incidentally, also constitute the gravamen of the motion for reconsideration filed by respondent COMELEC. Thus, even as the Court should deny the motions for intervention, it is necessary to, pass upon the issues raised therein, because they were the same issues raised in respondent COMELEC's motion for reconsideration.

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[11] Rule 19, Section 2 provides in full:

SEC. 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.

[12] *Associated Bank (now United Overseas Bank [Phils.]) v. Spouses Rafael and Monaliza Pronstroller*, G.R. No. 148444, September 3, 2009; *Chavez v. Presidential Commission on Good Government*, 366 Phil. 863, 867 (1999).

[13] *Sofia Aniosa Salandanan v. Spouses Ma. Isabel and Bayani Mendez*, G.R. No. 160280, March 13, 2009; *Republic v. Gingoyon*, G.R. No. 166429, February 1, 2006, 481 SCRA 457, 470.

The COMELEC's motion for reconsideration

Interestingly, in its motion for reconsideration, the COMELEC does not raise a matter other than those already considered and discussed by the Court in the assailed decision. As aforesaid, the COMELEC merely echoed the arguments of the dissenters.

I remain unpersuaded.

I wish to reiterate the Court's earlier declaration that the second proviso in the third paragraph of Section 13 of R.A. No. 9369, Section 66 of the OEC and Section 4(a) of COMELEC Resolution No. 8678 are unconstitutional for being violative of the equal protection clause and for being overbroad.

In considering persons holding appointive positions as *ipso facto* resigned from their posts upon the filing of their certificates of candidacy (CoCs), but not considering as resigned all other civil servants, specifically the elective ones, the law unduly discriminates against the first class. The fact alone that there is substantial distinction between the two classes does not justify such disparate treatment. Constitutional law jurisprudence requires that the classification must and should be germane to the purposes of the law. As clearly explained in the assailed decision, whether one holds an appointive office or an elective one, the evils sought to be prevented by the measure remain. Indeed, a candidate, whether holding an appointive or an elective office, may use his position to promote his candidacy or to wield a dangerous or coercive influence on the electorate. Under the same scenario, he may also, in the discharge of his official duties, be swayed by political considerations. Likewise, he may neglect his or her official duties, as he will predictably prioritize his campaign. Chief Justice Puno, in his dissent to the assailed decision, even acknowledges that the "danger of systemic abuse" remains present whether the involved candidate holds an appointive or an elective office, thus—

> Attempts by government employees to wield influence over others or to make use of their respective positions (apparently) to promote their own candidacy may seem tolerable—even innocuous—particularly when viewed in isolation from other similar attempts by

other government employees. *Yet it would be decidedly foolhardy to discount the equally (if not more) realistic and dangerous possibility that such seemingly disjointed attempts, when taken together, constitute a veiled effort on the part of a reigning political party to advance its own agenda through a "carefully orchestrated use of [appointive and/or elective] officials" coming from various levels of the bureaucracy*.[14]

To repeat for emphasis, classifying candidates, whether they hold appointive or elective positions, and treating them differently by considering the first as *ipso facto* resigned while the second as not, is not germane to the purposes of the law, because, as clearly shown, the measure is not reasonably necessary to, nor does it necessarily promote, the fulfillment of the state interest sought to be served by the statute.

In fact, it may not be amiss to state that, more often than not, the elective officials, not the appointive ones, exert more coercive influence on the electorate, with the greater tendency to misuse the powers of their office. This is illustrated by, among others, the proliferation of "private armies" especially in the provinces. It is common knowledge that "private armies" are backed or even formed by elective officials precisely for the latter to ensure that the electorate will not oppose them, be cowed to submit to their dictates and vote for them. To impose a prohibitive measure intended to curb this evil of wielding undue influence on the electorate and apply the prohibition only on appointive officials is not only downright ineffectual, but is also, as shown in the assailed decision, offensive to the equal protection clause.

Furthermore, as the Court explained in the assailed decision, this *ipso facto* resignation rule is overbroad. It covers all civil servants holding appointive posts without distinction, regardless of whether they occupy positions of influence in government or not. Certainly, a utility worker, a messenger, a chauffeur, or an industrial worker in the government service cannot exert the same influence as that of a Cabinet member, an undersecretary or a bureau head. Parenthetically, it is also

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[14] Dissenting Opinion of Chief Justice Puno, p. 63. (Italics supplied.)

unimaginable how an appointive utility worker, compared to a governor or a mayor, can form his own "private army" to wield undue influence on the electorate. It is unreasonable and excessive, therefore, to impose a blanket prohibition—one intended to discourage civil servants from using their positions to influence the votes—on all civil servants without considering the nature of their positions. Let it be noted, that, despite their employment in the government, civil servants remain citizens of the country, entitled to enjoy the civil and political rights granted to them in a democracy, including the right to aspire for elective public office.

In addition, this general provision on automatic resignation is directed to the activity of seeking any and all public elective offices, whether partisan or nonpartisan in character, whether in the national, municipal or *barangay* level. No compelling state interest has been shown to justify such a broad, encompassing and sweeping application of the law.

It may also be pointed out that **this automatic resignation rule has no pretense to be the exclusive and only available remedy to curb the uncontrolled exercise of undue influence and the feared "danger of systemic abuse."** As we have explained in the assailed decision, our Constitution and our body of laws are replete with provisions that directly address these evils. We reiterate our earlier pronouncement that **specific evils require specific remedies, not overly broad measures that unduly restrict guaranteed freedoms**.

It should be stressed that when the Court struck down (in the earlier decision) the assailed provisions, the Court did not act in a manner inconsistent with Section 2(4) of Article IX-B of the Constitution, which reads:

> Sec. 2. x x x x x x x x x.
>
> (4) No officer or employee in the civil service shall engage, directly or indirectly, in any electioneering or partisan political activity.

or with Section 5(3), Article XVI of the Constitution, which reads:

> Sec. 5. x x x x x x x x x.

(3) Professionalism in the armed forces and adequate remuneration and benefits of its members shall be a prime concern of the State. The armed forces shall be insulated from partisan politics.

No member of the military shall engage, directly or indirectly, in any partisan political activity, except to vote.

Neither does the Court's earlier ruling infringe on Section 55, Chapter 8, Title I, Book V of the Administrative Code of 1987, which reads:

Sec. 55. *Political Activity*.—No officer or employee in the Civil Service including members of the Armed Forces, shall engage directly or indirectly in any partisan political activity or take part in any election except to vote nor shall he use his official authority or influence to coerce the political activity of any other person or body. Nothing herein provided shall be understood to prevent any officer or employee from expressing his views on current political problems or issues, or from mentioning the names of candidates for public office whom he supports: *Provided*, That public officers and employees holding political offices may take part in political and electoral activities but it shall be unlawful for them to solicit contributions from their subordinates or subject them to any of the acts involving subordinates prohibited in the Election Code.

"Partisan political activity" includes every form of solicitation of the elector's vote in favor of a specific candidate.[15] Section 79(b) of the OEC defines "partisan political activity" as follows:

SEC. 79. *Definitions*.—As used in this Code:

xxx xxx xxx

(b) The term "election campaign" or "partisan political activity" refers to an act designed to promote the election or defeat of a particular candidate or candidates to a public office which shall include:

(1) Forming organizations, associations, clubs, committees or other groups of persons for the purpose of soliciting votes and/or undertaking any campaign for or against a candidate;

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[15] Bernas, *The 1987 Constitution of the Republic of the Philippines, A Commentary* (2003 ed.), p. 1026, citing *People v. de Venecia*, 14 SCRA 864, 867.

(2) Holding political caucuses, conferences, meetings, rallies, parades, or other similar assemblies, for the purpose of soliciting votes and/or undertaking any campaign or propaganda for or against a candidate;

(3) Making speeches, announcements or commentaries, or holding interviews for or against the election of any candidate for public office;

(4) Publishing or distributing campaign literature or materials designed to support or oppose the election of any candidate; or

(5) Directly or indirectly soliciting votes, pledges or support for or against a candidate.

The foregoing enumerated acts if performed for the purpose of enhancing the chances of aspirants for nominations for candidacy to a public office by a political party, aggroupment, or coalition of parties shall not be considered as election campaign or partisan political activity.

Public expressions or opinions or discussions of probable issues in a forthcoming election or on attributes of or criticisms against probable candidates proposed to be nominated in a forthcoming political party convention shall not be construed as part of any election campaign or partisan political activity contemplated under this Article.

Given the aforequoted Section 79(b), it is obvious that **the filing of a Certificate of Candidacy (CoC) for an elective position, while it may be a political activity, is not a "partisan political activity" within the contemplation of the law**. The act of **filing** is only **an announcement of one's intention to run for office**. It is only an **aspiration** for a public office, **not yet** a **promotion** or a solicitation of votes for the election or defeat of a candidate for public office. In fact, even after the filing of the CoC but before the start of the campaign period, there is yet **no candidate** whose election or defeat will be promoted. *Rosalinda A. Penera v. Commission on Elections and Edgar T. Andanar*[16] instructs that **any person who files**

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[16] G.R. No. 181613, November 25, 2009.

his CoC shall only be considered a candidate at the start of the campaign period. Thus, in the absence of a "candidate," the mere filing of CoC cannot be considered as an "election campaign" or a "partisan political activity." Section 79 of the OEC does not even consider as "partisan political activity" acts performed for the purpose of enhancing the chances of aspirants for nominations for candidacy to a public office. Thus, when appointive civil servants file their CoCs, they are not engaging in a "partisan political activity" and, therefore, do not transgress or violate the Constitution and the law. Accordingly, at that moment, there is no valid basis to consider them as *ipso facto* resigned from their posts.

There is a need to point out that the discussion in *Fariñas v. The Executive Secretary*,[17] relative to the differential treatment of the two classes of civil servants in relation to the *ipso facto* resignation clause, is *obiter dictum*. That discussion is **not necessary** to the decision of the case, the main issue therein being the constitutionality of the repealing clause in the Fair Election Act. Further, unlike in the instant case, no direct challenge was posed in *Fariñas* to the constitutionality of the rule on the *ipso facto* resignation of appointive officials. In any event, the Court *en banc*, in deciding subsequent cases, can very well reexamine, as it did in the assailed decision, its earlier pronouncements and even abandon them when perceived to be incorrect.

Let it also be noted that *Mancuso v. Taft*[18] is not the heart of the December 1, 2009 Decision. *Mancuso* was only cited to show that resign-to-run provisions, such as those which are specifically involved herein, have been stricken down in the United States for unduly burdening First Amendment rights of employees and voting rights of citizens, and for being overbroad. Verily, in our jurisdiction, foreign jurisprudence only enjoys a persuasive influence on the Court. Thus, the contention that

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[17] 463 Phil. 179, 205-208 (2003).

[18] 476 F.2d 187, 190 (1973).

Mancuso has been effectively overturned by subsequent American cases, such as *United States Civil Service Commission v. National Association of Letter Carriers*[19] and *Broadrick v. State of Oklahoma*,[20] is not controlling.

Be that as it may, a closer reading of these latter US cases reveals that *Mancuso* is still applicable.

On one hand, *Letter Carriers* and *Broadrick*, which are based on *United Public Workers of America v. Mitchell*,[21] involve provisions prohibiting Federal employees from engaging in partisan political activities or political campaigns.

In *Mitchell*, the appellants sought exemption from the implementation of a sentence in the Hatch Act, which reads: "No officer or employee in the executive branch of the Federal Government x x x shall take any active part in political management or in political campaigns."[22] Among the appellants, only George P. Poole violated the provision[23] by being a ward executive committeeman of a political party and by being politically active on election day as a worker at the polls and a paymaster for the services of other party workers.[24]

In *Letter Carriers*, the plaintiffs alleged that the Civil Service Commission was enforcing, or threatening to enforce, the Hatch Act's prohibition against "active participation in political management or political campaigns." The plaintiffs desired to campaign for candidates for public office, to encourage and get federal employees to run for state and local offices, to participate as delegates in party conventions, and to hold office in a political club.[25]

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[19] 413 U.S. 548 (1973).

[20] 413 U.S. 601 (1973).

[21] 330 U.S. 75 (1947).

[22] *Id.* at 82.

[23] *Id.* at 83.

[24] *Id.* at 94.

[25] *Supra* note 19, at 551-552.

In *Broadrick*, the appellants sought the invalidation for being vague and overbroad a provision in the Oklahoma's Merit System of Personnel Administration Act restricting the political activities of the State's classified civil servants, in much the same manner as the Hatch Act proscribed partisan political activities of federal employees.[26] Prior to the commencement of the action, the appellants actively participated in the 1970 reelection campaign of their superior, and were administratively charged for asking other Corporation Commission employees to do campaign work or to give referrals to persons who might help in the campaign, for soliciting money for the campaign, and for receiving and distributing campaign posters in bulk.[27]

Mancuso, on the other hand, involves, as aforesaid, an automatic resignation provision. Kenneth Mancuso, a full-time police officer and classified civil service employee of the City of Cranston, filed his candidacy for nomination as representative to the Rhode Island General Assembly. The Mayor of Cranston then began the process of enforcing the resign-to-run provision of the City Home Rule Charter.[28]

Clearly, as the above-cited US cases pertain to different types of laws and were decided based on a different set of facts, *Letter Carriers* and *Broadrick* cannot be interpreted to mean a reversal of *Mancuso*. Thus, in *Magill v. Lynch*,[29] the same collegial court which decided *Mancuso* was so careful in its analysis that it even remanded the case for consideration on the overbreadth claim. The *Magill* court stated thus-

> Plaintiffs may very well feel that further efforts are not justified, but they should be afforded the opportunity to demonstrate that the charter forecloses access to a significant number of offices, the candidacy for which by municipal employees would not pose the possible threats to government efficiency and integrity which *Letter*

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[26] *Supra* note 20, at 602.

[27] *Id.* at 609.

[28] *Supra* note 18, at 188-189.

[29] 560 F. 2d 22 (1977).

Carriers, as we have interpreted it, deems significant. Accordingly, we remand for consideration of plaintiffs' overbreadth claim.[30]

As observed by the Court (citing *Clements v. Fashing*[31]) in the December 1, 2009 Decision, U.S. courts, in subsequent cases, sustained the constitutionality of resign-to-run rules when applied to **specified or particular officials, as distinguished from all others, under a classification that is germane to the purposes of the law**. These resign-to-run legislations **were not expressed in a general and sweeping provision**, and thus **did not violate the test of being germane to the purpose of the law**, the second requisite for a valid classification. Directed, as they were, to particular officials, they were not overly encompassing as to be overbroad. In fact, *Morial v. Judiciary Commission of the State of Louisiana*,[32] where the resign-to-run provision pertaining to judges running for political offices was upheld, declares that "there is no blanket approval of restriction on the right of public employees to become candidates for public office."[33] The *Morial* court instructed thus—

> Because the judicial office is different in key respects from other offices, the state may regulate its judges with the differences in mind. For example the contours of the judicial function make inappropriate the same kind of particularized pledges of conduct in office that are the very stuff of campaigns for most non-judicial offices. A candidate for the mayoralty can and often should announce his determination to effect some program, to reach a particular result on some question of city policy, or to advance the interests of a particular group. It is expected that his decisions in office may be predetermined by campaign commitment. Not so the candidate for judicial office. He cannot, consistent with the proper exercise of his judicial powers, bind himself to decide particular cases in order to achieve a given programmatic result. Moreover, the judge acts on individual cases and not broad programs. The judge legislates

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

[31] 457 U.S. 957; 102 S.Ct. 2836 (1982).

[32] 565 F. 2d 295 (1977).

[33] *Id.* at 306.

but interstitially; the progress through the law of a particular judge's social and political preferences is, in Mr. Justice Holmes' words, "confined from molar to molecular motions."

As one safeguard of the special character of the judicial function, Louisiana's Code of Judicial Conduct bars candidates for judicial office from making "pledges or promises of conduct in office other than the faithful and impartial performance of the duties of the office." Candidates for non-judicial office are not subject to such a ban; in the conduct of his campaign for the mayoralty, an erstwhile judge is more free to make promises of post-campaign conduct with respect both to issues and personnel, whether publicly or privately, than he would be were he a candidate for re-election to his judgeship. The state may reasonably conclude that such pledges and promises, though made in the course of a campaign for non-judicial office, might affect or, even more plausibly, appear to affect the post-election conduct of a judge who had returned to the bench following an electoral defeat. By requiring resignation of any judge who seeks a non-judicial office and leaving campaign conduct unfettered by the restrictions which would be applicable to a sitting judge, Louisiana has drawn a line which protects the state's interests in judicial integrity without sacrificing the equally important interests in robust campaigns for elective office in the executive or legislative branches of government.

This analysis applies equally to the differential treatment of judges and other office holders. A judge who fails in his bid for a post in the state legislature must not use his judgeship to advance the cause of those who supported him in his unsuccessful campaign in the legislature. In contrast, a member of the state legislature who runs for some other office is not expected upon his return to the legislature to abandon his advocacy of the interests which supported him during the course of his unsuccessful campaign. Here, too, Louisiana has drawn a line which rests on the different functions of the judicial and non-judicial office holder.[34]

Indeed, for an *ipso facto* resignation rule to be valid, it must be shown that the classification is reasonably necessary to attain the objectives of the law. Here, as already explained in the assailed decision, **the differential treatment in the application of this resign-to-run rule is not germane to the purposes**

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[34] *Id.* at 305-306. (Citations omitted.)

of the law, because whether one holds an appointive office or an elective one, the evils sought to be prevented are not effectively addressed by the measure. Thus, the ineluctable conclusion that the concerned provisions are invalid for being unconstitutional.

Without unnecessarily preempting the resolution of any subsequent actual case or unwittingly giving an advisory opinion, the Court, in the December 1, 2009 Decision, in effect, states that **what should be implemented are the other provisions of Philippine laws (not the concerned unconstitutional provisions) that specifically and directly address the evils sought to be prevented by the measure**. It is highly speculative then to contend that members of the police force or the armed forces, if they will not be considered as resigned when they file their COCs, is a "disaster waiting to happen." There are, after all, appropriate laws in place to curb abuses in the government service.

The invalidation of the *ipso facto* resignation provisions does not mean the cessation in operation of other provisions of the Constitution and of existing laws. Section 2(4) of Article IX-B and Section 5(3), Article XVI of the Constitution, and Section 55, Chapter 8, Title I, Book V of the Administrative Code of 1987 still apply. So do other statutes, such as the Civil Service Laws, OEC, the Anti-Graft Law, the Code of Conduct and Ethical Standards for Public Officials and Employees, and related laws. Covered civil servants running for political offices who later on engage in "partisan political activity" run the risk of being administratively charged.[35] Civil servants who use government funds and property for campaign purposes, likewise, run the risk of being prosecuted under the

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[35] The constitutional proscription on engagement by members of the military in partisan political activity applies only to those in the active military service, not to reservists (*Cailles v. Bonifacio*, 65 Phil. 328 [1938]). The same proscription relating to civil servants does not also extend to members of the Cabinet as their positions are essentially political (*Santos v. Yatco*, G.R. No. L-16133, November 6, 1959, 55 O.G. 8641-8642).

Anti-Graft and Corrupt Practices Act or under the OEC on election offenses. Those who abuse their authority to promote their candidacy shall be made liable under the appropriate laws. Let it be stressed at this point that **the said laws provide for specific remedies for specific evils, unlike the automatic resignation provisions that are sweeping in application and not germane to the purposes of the law**.

To illustrate, we hypothetically assume that a municipal election officer, who is an employee of the COMELEC, files his CoC. Given the invalidation of the automatic resignation provisions, the said election officer is not considered as *ipso facto* resigned from his post at the precise moment of the filing of the CoC. Thus, he remains in his post, and his filing of a CoC cannot be taken to be a violation of any provision of the Constitution or any statute. At the start of the campaign period, however, if he is still in the government service, that is, if he has not voluntarily resigned, and he, at the same time, engages in a "partisan political activity," then, he becomes vulnerable to prosecution under the Administrative Code, under civil service laws, under the Anti-Graft and Corrupt Practices Act or under the OEC. Upon the proper action being filed, he could, thus, be disqualified from running for office, or if elected, prevented from assuming, or if he had already assumed office, be removed from, office.

At this juncture, it may even be said that *Mitchell, Letter Carriers* and *Broadrick*, the cases earlier cited by Chief Justice Puno and Associate Justices Carpio and Carpio Morales, support the proposition advanced by the majority in the December 1, 2009 Decision. While the provisions on the *ipso facto* resignation of appointive civil servants are unconstitutional for being violative of the equal protection clause and for being overbroad, the general provisions prohibiting civil servants from engaging in "partisan political activity" remain valid and operational, and should be strictly applied.

The COMELEC's motion for reconsideration should, therefore, be denied.

The OSG's motion for clarification

In its motion, the OSG pleads that this Court clarify whether, by declaring as unconstitutional the concerned *ipso facto* resignation provisions, the December 1, 2009 Decision intended to allow appointive officials to stay in office during the entire election period.[36] The OSG points out that the official spokesperson of the Court explained before the media that "the decision would in effect allow appointive officials to stay on in their posts even during the campaign period, or until they win or lose or are removed from office."[37]

I pose the following response to the motion for clarification. **The language of the December 1, 2009 Decision is too plain to be mistaken. The Court only declared as unconstitutional Section 13 of R.A. No. 9369, Section 66 of the OEC and Section 4(a) of COMELEC Resolution No. 8678. The Court never stated in the decision that appointive civil servants running for elective posts are allowed to stay in office during the entire election period**.

The only logical and legal effect, therefore, of the Court's earlier declaration of unconstitutionality of the *ipso facto* resignation provisions is that appointive government employees or officials who intend to run for elective positions are not considered automatically resigned from their posts at the moment of filing of their CoCs. Again, as explained above, **other Constitutional and statutory provisions do not cease in operation** and should, in fact, be strictly implemented by the authorities.

Let the full force of the laws apply. Then let the axe fall where it should.

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[36] *Rollo*, p. 323.

[37] *Id.* at 327.

SECOND DIVISION

[A.C. No. 8158. February 24, 2010]

ATTY. ELMER C. SOLIDON, *complainant, vs.* **ATTY. RAMIL E. MACALALAD,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; WEIGHT AND SUFFICIENCY OF EVIDENCE; PREPONDERANCE OF EVIDENCE; QUANTUM OF PROOF REQUIRED IN ADMINISTRATIVE CASES AGAINST LAWYERS, SATISFIED IN CASE AT BAR.— In administrative cases against lawyers, the quantum of proof required is preponderance of evidence which the complainant has the burden to discharge. We fully considered the evidence presented and we are fully satisfied that the complainant's evidence, as outlined above, fully satisfies the required quantum of proof in proving Atty. Macalalad's negligence.

2. LEGAL ETHICS; ATTORNEYS; CODE OF PROFESSIONAL RESPONSIBILITY; RULE 18.03, CANON 18, CONSTRUED.— Rule 18.03, Canon 18 of the Code of Professional Responsibility provides for the rule on negligence and states: **Rule 18.03 – A lawyer shall not neglect a legal matter entrusted to him and his negligence in connection therewith shall render him liable.** This Court has consistently held, in construing this Rule, that the mere failure of the lawyer to perform the obligations due to the client is considered *per se* a violation. Thus, in ***Villafuerte v. Cortez***, we held that a lawyer is negligent if he failed to do anything to protect his client's interest after receiving his acceptance fee. In ***In Re: Atty. Briones***, we ruled that the failure of the counsel to submit the required brief within the reglementary period (to the prejudice of his client who languished in jail for more than a year) is an offense that warrants disciplinary action. In ***Garcia v. Atty. Manuel***, we penalized a lawyer for failing to inform the client of the status of the case, among other matters. Subsequently, in ***Reyes v. Vitan***, we reiterated that the act of receiving money as acceptance fee for legal services in handling the complainant's case and, subsequently, in failing to render the services, is a clear violation of Canon 18 of the Code of Professional Responsibility.

We made the same conclusion in ***Canoy v. Ortiz*** where we emphatically stated that the lawyer's failure to file the position paper was *per se* a violation of Rule 18.03 of the Code of Professional Responsibility.

3. ID.; ID.; ID.; ID.; CIRCUMSTANCE THAT THE CLIENT WAS ALSO AT FAULT DOES NOT EXONERATE A LAWYER FROM LIABILITY FOR HIS NEGLIGENCE IN HANDLING A CASE; RATIONALE.— The circumstance that the client was also at fault does not exonerate a lawyer from liability for his negligence in handling a case. In *Canoy*, we accordingly declared that the lawyer cannot shift the blame to his client for failing to follow up on his case because it was the lawyer's duty to inform his client of the status of the case. Our rulings in ***Macarilay v. Seriña,*** in ***Heirs of Ballesteros v. Apiag,*** and in ***Villaflores v. Limos*** were of the same tenor. In *Villaflores*, we opined that even if the client has been equally at fault for the lack of communication, the main responsibility remains with the lawyer to inquire and know the best means to acquire the required information. We held that as between the client and his lawyer, the latter has more control in handling the case. All these rulings drive home the fiduciary nature of a lawyer's duty to his client once an engagement for legal services is accepted. A lawyer so engaged to represent a client bears the responsibility of protecting the latter's interest with **utmost diligence**. The lawyer bears the duty to serve his client with competence and diligence, and to exert his best efforts to protect, within the bounds of the law, the interest of his or her client. Accordingly, competence, not only in the knowledge of law, but also in the management of the cases by giving these cases appropriate attention and due preparation, is expected from a lawyer.

4. ID.; ID.; ID.; RULE 16.01 THEREOF, VIOLATED IN CASE AT BAR.— In addition to the above finding of negligence, we also find Atty. Macalalad guilty of violating Rule 16.01 of the Code of Professional Responsibility which requires a lawyer to account for all the money received from the client. In this case, Atty. Macalalad did not immediately account for and promptly return the money he received from Atty. Solidon even after he failed to render any legal service within the contracted time of the engagement.

5. ID.; ID.; ID.; MODIFICATION OF PENALTY, PROPER IN CASE AT BAR.— x x x [The Court modifies] the IBP Commission on Bar Discipline's recommended penalty by increasing the period of Atty. Macalalad's suspension from the practice of law from three (3) months, to six (6) months. In this regard, we follow the Court's lead in *Pariñas v. Paguinto* where we imposed on the respondent lawyer suspension of six (6) months from the practice of law for violations of Rule 16.01 and Rule 18.03 of the Code of Professional Responsibility.

D E C I S I O N

BRION, *J.*:

In a verified complaint[1] before the Commission on Bar Discipline of the Integrated Bar of the Philippines (*IBP Commission on Bar Discipline*), Atty. Elmer C. Solidon (*Atty. Solidon*) sought the disbarment of Atty. Ramil E. Macalalad (*Atty. Macalalad*) for violations of Rule 16.01,[2] Rule 18.03,[3] and Rule 18.04[4] of the Code of Professional Responsibility involving negligence in handling a case.

The Facts

Atty. Macalalad is the Chief of the Legal Division of the Department of Environment and Natural Resources (*DENR*), Regional Office 8, Tacloban City. Although he is in public service, the DENR Secretary has given him the authority to engage in the practice of law.

While on official visit to Eastern Samar in October 2005, Atty. Macalalad was introduced to Atty. Solidon by a mutual acquaintance, Flordeliz Cabo-Borata (*Ms. Cabo-Borata*). Atty.

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[1] *Rollo*, pp. 1-2.

[2] A lawyer shall account for all money or property collected or received for or from the client.

[3] A lawyer shall not neglect a legal matter entrusted to him and his negligence in connection therewith shall render him liable.

[4] A lawyer shall keep the client informed of the status of his case and shall respond within a reasonable time to the client's request for information.

Solidon asked Atty. Macalalad to handle the judicial titling of a parcel of land located in Borongan, Eastern Samar and owned by Atty. Solidon's relatives. For a consideration of Eighty Thousand Pesos (₱80,000.00), Atty. Macalalad accepted the task to be completed within a period of eight (8) months. Atty. Macalalad received Fifty Thousand Pesos (₱50,000.00) as initial payment; the remaining balance of Thirty Thousand Pesos (₱30,000.00) was to be paid when Atty. Solidon received the certificate of title to the property.

Atty. Macalalad has not filed any petition for registration over the property sought to be titled up to the present time.

In the Complaint, Position Papers[5] and documentary evidence submitted, Atty. Solidon claimed that he tried to contact Atty. Macalalad to follow-up on the status of the case six (6) months after he paid the initial legal fees. He did this through phone calls and text messages to their known acquaintances and relatives, and, finally, through a letter sent by courier to Atty. Macalalad. However, he did not receive any communication from Atty. Macalalad.

In the Answer,[6] Position Paper,[7] and affidavits of witnesses, Atty. Macalalad posited that the delay in the filing of the petition for the titling of the property was caused by his clients' failure to communicate with him. He also explained that he had no intention of reneging on his obligation, as he had already prepared the draft of the petition. He failed to file the petition simply because he still lacked the needed documentary evidence that his clients should have furnished him. Lastly, Atty. Macalalad denied that Atty. Solidon tried to communicate with him.

The Findings of the IBP

In his Report and Recommendation dated June 25, 2008, Investigating Commissioner Randall C. Tabayoyong made the following finding of negligence against Atty. Macalalad:

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[5] *Rollo,* pp. 77-81.

[6] *Id.* at 9-13.

[7] *Id.* at 65-70.

. . . complainant submitted in his position paper the affidavit of Flordeliz Cabo-Borata, the mutual acquaintance of both complainant and respondent. In the said affidavit, Mrs. Cabo-Borata described how she repeatedly followed-up the matter with respondent and how respondent turned a deaf ear towards the same. There is nothing on record which would prompt this Office to view the allegations therein with caution. In fact, considering that the allegations corroborate the undisputed facts of the instant case...

As respondent has failed to duly present any reasonable excuse for the non-filing of the application despite the lapse of about a year from the time his services were engaged, it is plain that his negligence in filing the application remains uncontroverted. And such negligence is contrary to the mandate prescribed in Rule 18.03, Canon 18 of the Code of Professional Responsibility, which enjoins a lawyer not to neglect a legal matter entrusted to him. In fact, Rule 18.03 even provides that his negligence in connection therewith shall render him liable.

Acting on this recommendation, the Board of Governors of the IBP Commission on Bar Discipline passed Resolution No. XVIII-2008-336 dated July 17, 2008, holding that:

RESOLVED TO ADOPT and APPROVE, as it is hereby unanimously ADOPTED and APPROVED, ***with modification****, the Report and Recommendation of the Investigating Commissioner of the above-entitled case, herein made part of this Resolution … and, finding the recommendation fully supported by the evidence on record and the applicable laws and rules, and considering Respondent's violation of Rule 18.03 of the Code of Professional Responsibility, Atty. Ramil E. Macalalad is hereby* ***SUSPENDED*** *from the practice of law for three (3) months and* ***Ordered to Return*** *the amount of Fifty Thousand Pesos (₱50,000) with 12% interest per annum to complainant …*

The case is now before this Court for our final action pursuant to Section 12(b), Rule 139-B of the Rules of Court, considering that the IBP Commission on Bar Discipline imposed the penalty of suspension on Atty. Macalalad.

The Court's Ruling

We agree with the IBP's factual findings and legal conclusions.

In administrative cases against lawyers, the quantum of proof required is preponderance of evidence which the complainant has the burden to discharge.[8] We fully considered the evidence presented and we are fully satisfied that the complainant's evidence, as outlined above, fully satisfies the required quantum of proof in proving Atty. Macalalad's negligence.

Rule 18.03, Canon 18 of the Code of Professional Responsibility provides for the rule on negligence and states:

Rule 18.03 – A lawyer shall not neglect a legal matter entrusted to him and his negligence in connection therewith shall render him liable.

This Court has consistently held, in construing this Rule, that the mere failure of the lawyer to perform the obligations due to the client is considered *per se* a violation.

Thus, in ***Villafuerte v. Cortez***,[9] we held that a lawyer is negligent if he failed to do anything to protect his client's interest after receiving his acceptance fee. In ***In Re: Atty. Briones***,[10] we ruled that the failure of the counsel to submit the required brief within the reglementary period (to the prejudice of his client who languished in jail for more than a year) is an offense that warrants disciplinary action. In ***Garcia v. Atty. Manuel***, we penalized a lawyer for failing to inform the client of the status of the case, among other matters.[11]

Subsequently, in ***Reyes v. Vitan***,[12] we reiterated that the act of receiving money as acceptance fee for legal services in handling the complainant's case and, subsequently, in failing to render the services, is a clear violation of Canon 18 of the

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[8] *Asa v. Castillo*, A.C. No. 6501, August 31, 2006, 500 SCRA 309, 322.

[9] A.C. No. 3455, April 14, 1998, 288 SCRA 687, 690; cited in Pineda, *LEGAL AND JUDICIAL ETHICS*, p. 235 (1999 edition).

[10] A.C. No. 5486, August 15, 2001, 363 SCRA 1, 5.

[11] 443 Phil. 479, 486 (2003).

[12] 496 Phil. 1, 4 (2005).

Code of Professional Responsibility. We made the same conclusion in ***Canoy v. Ortiz***[13] where we emphatically stated that the lawyer's failure to file the position paper was *per se* a violation of Rule 18.03 of the Code of Professional Responsibility.

The circumstance that the client was also at fault does not exonerate a lawyer from liability for his negligence in handling a case. In *Canoy*, we accordingly declared that the lawyer cannot shift the blame to his client for failing to follow up on his case because it was the lawyer's duty to inform his client of the status of the case.[14] Our rulings in ***Macarilay v. Seriña,***[15] in ***Heirs of Ballesteros v. Apiag,***[16] and in ***Villaflores v. Limos***[17] were of the same tenor. In *Villaflores*, we opined that even if the client has been equally at fault for the lack of communication, the main responsibility remains with the lawyer to inquire and know the best means to acquire the required information. We held that as between the client and his lawyer, the latter has more control in handling the case.

All these rulings drive home the fiduciary nature of a lawyer's duty to his client once an engagement for legal services is accepted. A lawyer so engaged to represent a client bears the responsibility of protecting the latter's interest with **utmost diligence**.[18] The lawyer bears the duty to serve his client with competence and diligence, and to exert his best efforts to protect, within the bounds of the law, the interest of his or her client.[19]

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[13] A.C. No. 5485, March 16, 2005, 453 SCRA 410, 418.

[14] *Id.* at 421.

[15] 497 Phil 348, 360 (2005), cited in *Heirs of Ballesteros v. Apiag*, A.C. No. 5760, September 30, 2005, 471 SCRA 111, 123.

[16] A.C. No. 5760, September 30, 2005, 471 SCRA 111, 123.

[17] A.C. No. 7504, November 23, 2007, 538 SCRA 140,149.

[18] *Enriquez v. San Jose*, A.C. No. 3569**,** February 23, 2007, 516 SCRA 486, 489-490.

[19] *Id.* at 490.

Accordingly, competence, not only in the knowledge of law, but also in the management of the cases by giving these cases appropriate attention and due preparation, is expected from a lawyer.[20]

The records in this case tell us that Atty. Macalalad failed to act as he committed when he failed to file the required petition. He cannot now shift the blame to his clients since it was his duty as a lawyer to communicate with them. At any rate, we reject Atty. Macalalad's defense that it was his clients who failed to contact him. Although no previous communication transpired between Atty. Macalalad and his clients, the records nevertheless show that Atty. Solidon, who contracted Atty. Macalalad's services in behalf of his relatives, tried his best to reach him prior to the filing of the present disbarment case. Atty. Solidon even enlisted the aid of Ms. Cabo-Borata to follow-up on the status of the registration application with Atty. Macalalad.

As narrated by Ms. Cabo-Borata in her affidavit,[21] she succeeded several times in getting in touch with Atty. Macalalad and on those occasions asked him about the progress of the case. To use Ms. Cabo-Borata's own words, she received "no clear-cut answers from him"; he just informed her that everything was "on process." We give credence to these narrations considering Atty. Macalalad's failure to contradict them or deny their veracity, in marked contrast with his vigorous denial of Atty. Solidon's allegations.

We consider, too, that other motivating factors – specifically, the monetary consideration and the fixed period of performance – should have made it more imperative for Atty. Macalalad to promptly take action and initiate communication with his clients. He had been given initial payment and should have at least undertaken initial delivery of his part of the engagement.

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[20] *Ibid.*

[21] *Rollo,* pp. 82-83.

We further find that Atty. Macalalad's conduct refutes his claim of willingness to perform his obligations. If Atty. Macalalad truly wanted to file the petition, he could have acquired the necessary information from Atty. Solidon to enable him to file the petition even pending the IBP Commission on Bar Discipline investigation. As matters now stand, he did not take any action to initiate communication. **These omissions unequivocally point to Atty. Macalalad's lack of due care that now warrants disciplinary action.**

In addition to the above finding of negligence, we also find Atty. Macalalad guilty of violating Rule 16.01 of the Code of Professional Responsibility which requires a lawyer to account for all the money received from the client. In this case, Atty. Macalalad did not immediately account for and promptly return the money he received from Atty. Solidon even after he failed to render any legal service within the contracted time of the engagement.[22]

The Penalty

Based on these considerations, we modify the IBP Commission on Bar Discipline's recommended penalty by increasing the period of Atty. Macalalad's suspension from the practice of law from three (3) months, to six (6) months.[23] In this regard, we follow the Court's lead in *Pariñas v. Paguinto*[24] where we imposed on the respondent lawyer suspension of six (6) months from the practice of law for violations of Rule 16.01 and Rule 18.03 of the Code of Professional Responsibility.

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[22] *Villanueva v. Atty. Gonzales*, A.C. No. 7657, February 12, 2008, 544 SCRA 410, 415.

[23] *Dizon v. Laurente*, A.C. No. 6597, September 23, 2005, 470 SCRA 595, 603; *Villaflores v. Limos, supra* note 17, p. 52; *Reyes v. Vitan, supra* note 12, p. 6; *Heirs of Ballesteros v. Apiag, supra* note 16, p. 128; *Enriquez v. San Jose, supra* note 18, p. 492; *In re: Atty. David Briones, supra* note 10, p. 7.

[24] 478 Phil. 239, 247 (2004).

WHEREFORE, premises considered, we hereby *AFFIRM WITH MODIFICATION* Resolution No. XVIII-2008-336 dated July 17, 2008 of the Board of Governors of the IBP Commission on Bar Discipline. We impose on Atty. Ramil E. Macalalad the penalty of *SIX (6) MONTHS SUSPENSION* from the practice of law for violations of Rule 16.03 and Rule 18.03 of the Code of Professional Responsibility, effective upon finality of this Decision. Atty. Macalalad is *STERNLY WARNED* that a repetition of the same or similar acts will be dealt with more severely.

Atty. Macalalad is also *ORDERED* to *RETURN* to Atty. Elmer C. Solidon the amount of Fifty Thousand Pesos (₱50,000.00) with interest of twelve percent (12%) *per annum* from the date of promulgation of this Decision until the full is returned.

Let copies of the Decision be furnished the Office of the Bar Confidant and noted in Atty. Macalalad's record as a member of the Bar.

SO ORDERED.

Carpio (Chairperson), Del Castillo, Abad, and *Perez, JJ.*, concur.

FIRST DIVISION

[G.R. No. 148306. February 24, 2010]

TERESITA DE MESA REFORZADO, *petitioner, vs.* **SPOUSES NAZARIO C. LOPEZ and PRECILA LOPEZ,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; JUDGMENTS; *RES JUDICATA*; TWO MAIN RULES.— The doctrine of *res judicata* lays down two main rules which may be stated as follows: (1) The judgment or decree of a court of competent jurisdiction on the merits concludes the litigation between the parties and their privies and constitutes a bar to a new action or suit involving the same cause of action either before the same or any other tribunal; and (2) any right, fact, or matter in issue directly adjudicated or necessarily involved in the determination of an action before a competent court in which a judgment or decree is rendered on the merits is conclusively settled by the judgment therein and cannot again be litigated between the parties and their privies whether or not the claims or demands, purposes, or subject matters of the two suits are the same. These two main rules mark the distinction between the principles governing the two typical cases in which a judgment may operate as evidence. In speaking of these cases, **the first general rule above stated**, and which corresponds to the afore-quoted paragraph (b) of Section 47, Rule 39 of the Rules of Court, is referred to as **"bar by former judgment"**; **while the second general rule,** which is embodied in paragraph (c) of the same section and rule, is known as **"conclusiveness of judgment."**

2. ID.; ID.; ID.; ID.; IDENTITY OF PARTIES AND SUBJECT MATTER; PRESENT IN CASE AT BAR.— In CA-G.R. SP No. 33118 (the petition for *certiorari* assailing the probate court's order for respondent Nazario to turn over possession of the property to petitioner), the therein petitioner was herein respondent Nazario, and the therein private respondent was herein petitioner. The issue presented in that petition for *certiorari* was whether the probate court validly ordered the

issuance of a writ of possession over the property in favor of herein petitioner, whose legal capacity and cause of action stemmed from her being the co-special administratrix of the estate of Fr. Balbino. From the earlier-stated allegations gathered from petitioner's complaint subject of the present petition, she is suing respondents for the annulment of the title to the property issued to them and for the reconveyance of the property to Fr. Balbino's estate. There is thus identity of parties and subject matter in the two cases.

3. ID.; ID.; ID.; ID.; IDENTITY OF CAUSES OF ACTION; ABSOLUTE IDENTITY, NOT NECESSARY.— As to identity of causes of action, it is hornbook rule that identity of causes of action does not mean absolute identity, otherwise, a party could easily escape the operation of *res judicata* by changing the form of the action or the relief sought. CA-G.R. SP No. 33118 which emanated from SP. Proc. No. B-894 involved estate proceedings, while Civil Case No. 67043 subject of the present petition is for Annulment of Title, Reconveyance, Recovery of Possession and Ownership and Damages. These two cases differ in the form of action, but they raise the same issue – ownership and possession of the same property, and they invoke the same relief – for Fr. Balbino's estate to be declared the owner of the property and for it reconveyed to his estate, and for the TCT in the name of herein respondents to be annulled. And the evidence required to substantiate the respective claims of the parties is substantially the same.

4. ID.; ID.; ID.; ID.; RULING IN CA-G.R. NO. 33118 IS NOT A DECISION ON THE MERITS; PRESENT ACTION IS NOT BARRED BY *RES JUDICATA*; EXPLAINED.— x x x [A]n important requisite for the principle of ***res judicata*** is wanting. The appellate court's ruling in CA-G.R. SP No. 33118 **was not a final and executory decision on the merits** to put the present case within the ambit of *res judicata*. Thus the dispositive portion of the decision in CA-G.R. SP No. 33118 reads: IN VIEW OF ALL THE FOREGOING, the orders of respondent court dated June 30, 1993 and January 6, 1994, **are hereby set aside insofar as they direct petitioner[-herein respondent Nazario C. Lopez] to turn-over to private respondent[-herein petitioner Teresita de Mesa Reforzado] the property located at 140 Lagmay St., San Juan, Metro Manila, through a writ of execution, the authority of respondent court in determining the ownership**

of said property merely being *provisional*. Private respondent, as co-special administratrix, should file a separate action for the recovery thereof, if she has strong reasons to believe that the same belongs to the estate of Fr. Balbino Caparas. SO ORDERED. The ruling in CA-G.R. No. 33118, relied upon by the appellate court in holding that *res judicata* bars petitioner's present complaint for annulment of title and reconveyance, is not a decision on the merits on the ***ownership*** of the property, the appellate court in said case having merely resolved the propriety of the probate court's issuance of a writ of possession in favor of herein petitioner. The appellate court in fact declared in CA-G.R. SP No. 33118 that herein petitioner had the remedy of filing a separate action for recovery of the property – a recourse she availed of when she filed the complaint for annulment of title and reconveyance subject of the present petition. Contrary then to the ruling of the appellate court, the present action is not barred by *res judicata*.

APPEARANCES OF COUNSEL

Manuel V. Regondola for petitioner.
Benigno M. Puno for respondents.

D E C I S I O N

CARPIO MORALES, *J.*:

Teresita de Mesa Reforzado (petitioner), duly appointed co-special administratrix of the estate of her father, Fr. Balbino Caparas (Fr. Balbino), subject of SP. Proc. No. B-894 pending before Branch 31 of the Regional Trial Court (RTC) of Laguna in San Pedro, included in the Partial Inventory of properties of the estate a 999 square meter parcel of land situated in San Juan, Metro Manila (the property). As the property was in the possession of herein respondents Nazario C. Lopez (Nazario) and his wife Precila, the probate court, on motion of herein petitioner, directed the issuance of a writ of possession for respondents to turn over the possession of the property to petitioner.

Respondent Nazario assailed the probate court's Order via *Certiorari* before the Court of Appeals where it was docketed as CA-G.R. SP No. 33118, "*Nazario C. Lopez v. Teresita de Mesa Reforzado*."

In the meantime, petitioner filed a complaint[1] against herein respondent spouses before the Pasig RTC, docketed as Civil Case No. 67043, to annul TCT No. 5918-R (the title) issued by the San Juan, Metro Manila Registry of Deeds on July 22, 1993 over the property which title respondents caused to be issued in their name, and to reconvey the property to her father's estate.

From petitioner's allegation in her complaint,[2] it is gathered that the property was formerly covered by TCT No. 217042 in the name of Fr. Balbino's brother Fr. Anastacio Caparas (Fr. Anastacio) who had predeceased Fr. Balbino; that one Alfonso Santos allegedly purchased the property via "Deed of Sale with Right of Repurchase" from Nazario, as attorney-in-fact of Fr. Anastacio who allegedly executed in Nazario's favor a Special Power of Attorney (SPA), but that Nazario failed to repurchase the property, drawing Santos to file a complaint, before the Pasig RTC docketed as Civil Case No. 408, for "Surrender and Consolidation of Title"; that a judgment based on a compromise agreement was rendered in said Civil Case No. 408 by Branch 155 of the Pasig RTC, pursuant to which respondents transferred the property in their name; that Santos was, however, a non-existent person; that at the time of the filing of Civil Case No. 408 on July 22, 1993, Fr. Anastacio was already dead, a fact known to respondent Nazario, hence, whatever SPA Fr. Anastacio had executed in favor of respondent Nazario had at that time automatically been revoked; and that the Deed of Sale with Right of Repurchase and SPA which were submitted before the Pasig RTC are spurious.

In their Answer to herein petitioner's complaint in Civil Case No. 67043 which the Pasig RTC treated as a Motion to Dismiss,

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[1] *Rollo,* pp. 60-68.

[2] CA *rollo,* pp. 36-45.

the defendants-herein respondents raised the following affirmative defenses: lack of jurisdiction, petitioner's lack of legal capacity, *res judicata*, prescription and lack of cause of action.

By Order of September 24, 1999, Branch 71 of the Pasig RTC to which petitioner's complaint was raffled denied respondents' motion to dismiss, holding that petitioner has a cause of action in filing her complaint. Respondents' motion for reconsideration having been denied, they assailed the Order via petition for *certiorari* to the Court of Appeals which received the petition on January 15, 2000.

By the assailed Decision[3] of February 2, 2001, the appellate court granted respondents' petition for *certiorari* and dismissed petitioner's complaint in Civil Case No. 67043. It held that petitioner's allegations in her complaint were without factual bases; that the issuance by the San Juan Register of Deeds of TCT No. 5918-R in the name of respondents was on account of the exercise of his ministerial duty pursuant to a validly issued final and executory decision of the Pasig RTC; and that assuming *arguendo* that petitioner has a cause of action, it is "insufficient to hold the case for further determination," noting that the same issues and disputed property are involved in CA-G.R. SP No. 33118, *"Nazario C. Lopez v. Teresita de Mesa Reforzado"* (the petition for *certiorari* of herein respondent Nazario assailing the order issued by the probate court granting the issuance of a writ of possession over the property), which the appellate court decided on May 31, 1994 in favor of herein respondent Nazario, hence, petitioner's complaint is barred by *res judicata*.

As to petitioner's legal capacity to sue, the appellate court noted that while she was appointed as co-special administratrix of Fr. Balbino's estate on June 10, 1983, the appointment was revoked by the probate court in its Decision of July 14, 2000, hence, during the pendency of respondents' appeal from the

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[3] *Rollo*, pp. 83-97. Penned by Associate Justice Bernardo P. Abesamis and concurred in by Associate Justices Godardo A. Jacinto and Eliezer R. de los Santos.

Pasig RTC Order denying respondents' motion to dismiss petitioner's complaint subject of the present decision, petitioner no longer had the legal personality to continue the action. Petitioner's motion for reconsideration having been denied by the appellate court by Resolution[4] of May 25, 2001, she filed the present petition for review on *certiorari*.

Petitioner contends that the appellate court erred in granting respondents' petition for *certiorari* because it was decided in light of Rule 16, Sec. 1 of the Revised Rules of Court[5] which was already superseded by the 1997 Rules of Civil Procedure,[6] the prevailing rule when respondents' petition for *certiorari* was

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[4] *Id.* at 82. Penned by Associate Justice Bernardo P. Abesamis and concurred in by Associate Justices Godardo A. Jacinto and Elvijohn S. Asuncion.

[5] SECTION 1. *Grounds.* – Within the time for but before filing the answer to the complaint or pleading asserting a claim, a motion to dismiss may be made on any of the following grounds:

(a) That the court has no jurisdiction over the person of the defending party;

(b) That the court has no jurisdiction over the subject matter of the claim;

(c) The venue is improperly laid;

(d) That the plaintiff has no legal capacity to sue;

(e) That there is another action pending between the same parties for the same cause;

(f) That the cause of action is barred by a prior judgment or by statute of limitations;

(g) That the pleading asserting the claim states no cause of action;

(h) That the claim on which the action or demand set forth in the plaintiff's pleading has been paid, waived, abandoned, or otherwise extinguished;

(i) That the claim on which the action is founded is unenforceable under the provisions of the statute of frauds; and

(j) That a condition precedent for filing the claim has not been complied with.

[6] SECTION 1. *Grounds.* – Within the time for pleading a motion to dismiss the action may be made on any of the following grounds:

filed before the appellate court on September 28, 1998; that respondents' alleged repurchase of the lot in question is contrary to Article 1491 of the Civil Code which prohibits agents from purchasing the property whose sale or administration had been entrusted to them; that although her appointment as co-special administratrix of the estate of Fr. Balbino was revoked, the same is not yet final, hence, she still has the legal personality to continue the action; and that as the lone surviving heir of the late Fr. Anastacio who predeceased his brother Fr. Balbino, she has the capacity to sue.

As to the appellate court's ruling that the judgment based on a compromise agreement in Civil Case No. 408 had become final and executory, hence, no longer questionable, petitioner contends that the Compromise Agreement–basis of the judgment being spurious, the doctrine that a void judgment never acquires finality applies.

Finally, petitioner avers that *res judicata* cannot be invoked because although CA-G.R. SP No. 33118 involved the same property as that involved in the present case, the issues and reliefs therein sought are not the same as those obtaining in the present case, the issue in the first being possession of the property, whereas that in the present case is ownership.

The petition is impressed with merit.

Whether the principle of *res judicata* applies and whether petitioner has the legal capacity to maintain the action despite the

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(a) That the court has no jurisdiction over the person of the defendant or over the subject of the action or suit;

(b) That the court has no jurisdiction over the nature of the action or suit;

(c) The venue is improperly laid;

(d) That the plaintiff has no legal capacity to sue;

(e) That there is another action pending between the same parties for the same cause;

(f) That the cause of action is barred by a prior judgment or by statute of limitations;

(g) That the complaint states no cause of action;

revocation of her appointment as co-administratrix of Fr. Balbino's estate are the core issues in the present case.

The doctrine of *res judicata* lays down two main rules which may be stated as follows: (1) The judgment or decree of a court of competent jurisdiction on the merits concludes the litigation between the parties and their privies and constitutes a bar to a new action or suit involving the same cause of action either before the same or any other tribunal; and (2) any right, fact, or matter in issue directly adjudicated or necessarily involved in the determination of an action before a competent court in which a judgment or decree is rendered on the merits is conclusively settled by the judgment therein and cannot again be litigated between the parties and their privies whether or not the claims or demands, purposes, or subject matters of the two suits are the same. These two main rules mark the distinction between the principles governing the two typical cases in which a judgment may operate as evidence. In speaking of these cases, **the first general rule above stated**, and which corresponds to the afore-quoted paragraph (b) of Section 47, Rule 39 of the Rules of Court, is referred to as **"bar by former judgment"**; **while the second general rule,** which is embodied in paragraph (c) of the same section and rule, is known as **"conclusiveness of judgment."**[7] (emphasis supplied)

In CA-G.R. SP No. 33118 (the petition for *certiorari* assailing the probate court's order for respondent Nazario to turn over possession of the property to petitioner), the therein petitioner was herein respondent Nazario, and the therein private respondent was herein petitioner. The issue presented in that petition for *certiorari* was whether the probate court validly ordered the issuance of a writ of possession over the property in favor of herein petitioner, whose legal capacity and cause of action stemmed from her being the co-special administratrix of the estate of Fr. Balbino.

(h) That the claim or demand set forth in the plaintiff's pleading has been paid, waived, abandoned, or otherwise extinguished;

(i) That the claim on which the action or suit is founded is unenforceable under the provisions of the statute of frauds; [and]

(j) That the suit is between members of the same family and no earnest efforts towards a compromise have been made.

[7] *Layos v. Fil-Estate Golf and Development, Inc.*, G.R. No. 150470, August 6, 2008, 561 SCRA 75-76.

From the earlier-stated allegations gathered from petitioner's complaint subject of the present petition, she is suing respondents for the annulment of the title to the property issued to them and for the reconveyance of the property to Fr. Balbino's estate. There is thus identity of parties and subject matter in the two cases.

As to identity of causes of action, it is hornbook rule that identity of causes of action does not mean absolute identity, otherwise, a party could easily escape the operation of *res judicata* by changing the form of the action or the relief sought.

CA-G.R. SP No. 33118 which emanated from SP. Proc. No. B-894 involved estate proceedings, while Civil Case No. 67043 subject of the present petition is for Annulment of Title, Reconveyance, Recovery of Possession and Ownership and Damages. These two cases differ in the form of action, but they raise the same issue – ownership and possession of the same property, and they invoke the same relief – for Fr. Balbino's estate to be declared the owner of the property and for it reconveyed to his estate, and for the TCT in the name of herein respondents to be annulled. And the evidence required to substantiate the respective claims of the parties is substantially the same.

Be that as it may, however, an important requisite for the principle of ***res judicata*** is wanting. The appellate court's ruling in CA-G.R. SP No. 33118 **was not a final and executory decision on the merits** to put the present case within the ambit of *res judicata*. Thus the dispositive portion of the decision in CA-G.R. SP No. 33118 reads:

> IN VIEW OF ALL THE FOREGOING, the orders of respondent court dated June 30, 1993 and January 6, 1994, **are hereby set aside insofar as they direct petitioner[-herein respondent Nazario C. Lopez] to turn-over to private respondent[-herein petitioner Teresita de Mesa Reforzado] the property located at 140 Lagmay St., San Juan, Metro Manila, through a writ of execution, the authority of respondent court in determining the ownership of said property merely being *provisional*. Private respondent, as co-special administratrix, should file a separate action for the recovery thereof, if she has strong reasons to believe that the same belongs to the estate of Fr. Balbino Caparas**.
>
> SO ORDERED. (italics, emphasis and underscoring supplied)

The ruling in CA-G.R. No. 33118, relied upon by the appellate court in holding that *res judicata* bars petitioner's present complaint for annulment of title and reconveyance, is not a decision on the merits on the ***ownership*** of the property, the appellate court in said case having merely resolved the propriety of the probate court's issuance of a writ of possession in favor of herein petitioner. The appellate court in fact declared in CA-G.R. SP No. 33118 that herein petitioner had the remedy of filing a separate action for recovery of the property – a recourse she availed of when she filed the complaint for annulment of title and reconveyance subject of the present petition.

Contrary then to the ruling of the appellate court, the present action is not barred by *res judicata*.

Respecting petitioner's legal capacity to maintain the present action, if petitioner's removal as co-special administratrix has become final, she has indeed lost the right to maintain the present action; otherwise, such capacity remains.

WHEREFORE, the petition is *GRANTED*. The February 2, 2001 Decision of the Court of Appeals in CA-G.R. SP No. 59211 is *REVERSED* and *SET ASIDE*.

Let the original records of Civil Case No. 67043 be *REMANDED* to the court of origin, Regional Trial Court of Pasig, Branch 71, which is *DIRECTED* to calendar Civil Case No. 67043, determine whether petitioner's removal as co-special administratrix of the estate of Fr. Balbino Caparas has become final, and to take appropriate action thereon with dispatch.

SO ORDERED.

Leonardo-de Castro, Bersamin, and *Villarama, Jr., JJ.,* concur.

Puno, C.J. (Chairperson), no part.

FIRST DIVISION

[G.R. No. 168169. February 24, 2010]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **ALBERTO TABARNERO and GARY TABARNERO,** *accused-appellants.*

SYLLABUS

1. CRIMINAL LAW; CIRCUMSTANCES WHICH AFFECT CRIMINAL LIABILITY; JUSTIFYING CIRCUMSTANCES; SELF-DEFENSE; REQUISITES; NOT ESTABLISHED IN CASE AT BAR.— The requisites for self-defense are: 1) unlawful aggression on the part of the victim; 2) lack of sufficient provocation on the part of the accused; and 3) employment of reasonable means to prevent and repel aggression. x x x The Court of Appeals noted that the only evidence presented by the defense to prove the alleged unlawful aggression was Gary's own testimony. Citing *Casitas v. People*, the Court of Appeals held that the nine stab wounds inflicted upon Ernesto indicate Gary's intent to kill, and not merely an intent to defend himself. The number of wounds also negates the claim that the means used by Gary to defend himself was reasonable. We agree with the Court of Appeals. Unlawful aggression is an indispensable requirement of self-defense. As ruled by the Court of Appeals, the evidence presented by Gary to prove the alleged unlawful aggression, namely, his own testimony, is insufficient and self-serving. The alleged sudden appearance of Ernesto and his first attack with the lead pipe the very moment Gary decided to leave seems to this Court to be all too convenient, considering that there was no one around to witness the start of the fight.

2. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; FACTUAL FINDINGS OF THE TRIAL COURT, ESPECIALLY WHEN AFFIRMED BY THE COURT OF APPEALS, ARE BINDING ON THE SUPREME COURT.— The RTC, which had the opportunity to observe the demeanor of the witnesses, found Gary's account concerning the alleged unlawful aggression on the part of Ernesto to be unconvincing. Factual findings of the trial court, especially when affirmed by the Court of Appeals,

as in this case, are binding on this Court and are entitled to great respect.

3. ID.; ID.; BURDEN OF PROOF; THE PARTY INVOKING SELF-DEFENSE HAS THE BURDEN OF EVIDENCE TO PROVE THE ELEMENTS OF SAID JUSTIFYING CIRCUMSTANCE.— x x x It also bears to emphasize that by invoking self-defense, Gary, in effect, admitted killing Ernesto, thus, shifting upon him the burden of evidence to prove the elements of the said justifying circumstance. A plea of self-defense cannot be justifiably appreciated where it is not only uncorroborated by independent and competent evidence, but also extremely doubtful in itself.

4. CRIMINAL LAW; CIRCUMSTANCES WHICH AFFECT CRIMINAL LIABILITY; MITIGATING CIRCUMSTANCES; INCOMPLETE SELF-DEFENSE; UNLAWFUL AGGRESSION IS A CONDITION *SINE QUA NON*; NOT PRESENT IN CASE AT BAR.— x x x Unlawful aggression is a condition *sine qua non*, without which there can be no self-defense, whether complete or incomplete. There is incomplete self-defense when the *element of unlawful aggression* by the victim is present, *and any of the other two essential requisites* for self-defense. Having failed to prove the indispensable element of unlawful aggression, Gary is not entitled to the mitigating circumstance, even assuming the presence of the other two elements of self-defense.

5. ID.; ID.; ID.; VOLUNTARY SURRENDER; REQUISITES; NOT ESTABLISHED IN CASE AT BAR.— In order that the mitigating circumstance of voluntary surrender may be credited to the accused, the following requisites should be present: (a) the offender has not actually been arrested; (b) the offender surrendered himself to a person in authority; and (c) the surrender must be voluntary. A surrender, to be voluntary, must be spontaneous, *i.e.*, there must be an intent to submit oneself to authorities, either because he acknowledges his guilt or because he wishes to save them the trouble and expenses in capturing him. In *People v. Barcimo, Jr.*, the pending warrant for the arrest of the accused and the latter's surrender more than one year after the incident were considered by the Court as damaging to the plea that voluntary surrender be considered a mitigating circumstance. x x x The records show that Gary

surrendered on April 22, 2001. The commitment order commanding that he be detained was issued on April 24, 2001. The surrender was made **almost one year and six months from the October 23, 1999 incident, and almost one year and one month from the issuance of the warrant of arrest against him on March 27, 2000**. We, therefore, rule that the mitigating circumstance of voluntary surrender cannot be credited to Gary.

6. ID.; PERSONS CRIMINALLY LIABLE FOR FELONIES; PRINCIPAL BY DIRECT PARTICIPATION; HAVING ACTUALLY PARTICIPATED IN THE STABBING OF THE VICTIM, IT WAS ADEQUATELY PROVEN THAT ALBERTO IS A PRINCIPAL BY DIRECT PARTICIPATION.— In insisting upon Alberto's innocence, the defense claims that there was no conspiracy between him and his son, Gary. The defense asserts that Alberto just happened to be near the scene of the crime as he was looking for his son, whom he saw only after the altercation. The basis of Alberto's conviction, however, is not solely conspiracy. A review of the proven facts shows that conspiracy need not even be proven by the prosecution in this case, since Alberto was categorically pointed by the eyewitness, Emerito, as one of the assailants who actively and directly participated in the killing of Ernesto x x x Having actually participated in the stabbing of Ernesto, it was adequately proven that Alberto is a principal by direct participation.

7. REMEDIAL LAW; EVIDENCE; ADMISSIBILITY; EXCEPTIONS TO THE HEARSAY RULE; DYING DECLARATION; CASE AT BAR.— Even more persuasive is the statement of the victim himself, Ernesto, as testified to by SPO2 Morales, that it was "the father and son, Gary and Alberto Tabarnero from Longos, Bulacan" who stabbed him. While Ernesto was not able to testify in court, his statement is considered admissible under Section 37, Rule 130 of the Rules of Court, which provides: Sec. 37. *Dying declaration.* — The declaration of a dying person, made under the consciousness of an impending death, may be received in any case wherein his death is the subject of inquiry, as evidence of the cause and surrounding circumstances of such death. In applying this exception to the hearsay rule, we held as follows: "It must be shown that a dying declaration was made under a realization by the decedent that his demise or at least, its imminence — not so much the rapid eventuation of death — is at hand. This may be proven by

the statement of the deceased himself or it may be inferred from the nature and extent of the decedent's wounds, or other relevant circumstances." In the case at bar, Ernesto had nine stab wounds which caused his death within the next 48 hours. At the time he uttered his statement accusing Gary and Alberto of stabbing him, his body was already very rapidly deteriorating, as shown by his inability to speak and write towards the end of the questioning. We have considered that a dying declaration is entitled to the highest credence, for no person who knows of his impending death would make a careless or false accusation. When a person is at the point of death, every motive of falsehood is silenced and the mind is induced by the most powerful consideration to speak the truth. It is hard to fathom that Ernesto, very weak as he was and with his body already manifesting an impending demise, would summon every remaining strength he had just to lie about his true assailants, whom he obviously would want to bring to justice.

8. CRIMINAL LAW; CIRCUMSTANCES WHICH AFFECT CRIMINAL LIABILITY; AGGRAVATING CIRCUMSTANCES; TREACHERY; PRESENT IN CASE AT BAR.— Treachery is defined under Article 14(16) of the Revised Penal Code, which provides: There is treachery when the offender commits any of the crimes against the person, employing means, methods, or forms in the execution thereof which tend directly and specially to insure its execution, without risk to himself arising from the defense which the offended party might make. The Solicitor General argues that treachery was amply demonstrated by the restraint upon Ernesto, which effectively rendered him defenseless and unable to effectively repel, much less evade, the assault. We agree with the Solicitor General. In the cases cited by the appellants, the eyewitnesses were not able to observe any means, method or form in the execution of the killing which rendered the victim defenseless. In *Amamangpang*, the first thing the witness saw was the victim already prostrate on the bamboo floor, blood oozing from his neck and about to be struck by the accused. In *Icalla*, the witnesses merely saw the accused fleeing from the scene of the crime with a knife in his hand. In *Sambulan*, the witness saw the two accused hacking the victim with a bolo. Since, in these cases, there was no restraint upon the victims or any other circumstance which would have rendered them defenseless, the Court ruled

that it should look into the commencement of the attack in order to determine whether the same was done swiftly and unexpectedly. However, the swiftness and unexpectedness of an attack are not the only means by which the defenselessness of the victim can be ensured. In *People v. Montejo*, the prosecution witnesses testified that after challenging the victim to a fight, the accused stabbed the victim in the chest while he was held in the arms by the accused and a companion. Not requiring a swift and unexpected commencement to the attack, the Court held: Thus, there is treachery where the victim was stabbed in a defenseless situation, as when he was being held by the others while he was being stabbed, as the accomplishment of the accused's purpose was ensured without risk to him from any defense the victim may offer [*People v. Condemena*, G.R. No. L-22426, May 29, 1968, 23 SCRA 910; *People v. Lunar*, G.R. No. L-15579, May 29, 1972, 45 SCRA 119.] In the instant case, it has been established that the accused-appellant stabbed the victim on the chest while his companions held both of the victim's arms. In *People v. Alvarado*, the accused and his companions shouted to the victim: "*Lumabas ka kalbo, kung matapang ka*." When the victim went out of the house, the accused's companions held the victim's hands while the accused stabbed him. Despite the yelling which should have warned the victim of a possible attack, the mere fact that the accused's companions held the hands of the victim while the accused stabbed him was considered by this Court to constitute *alevosia*. We, therefore, rule that the killing of Ernesto was attended by treachery.

9. ID.; ID.; ID.; ABUSE OF SUPERIOR STRENGTH; QUALIFIED THE KILLING TO MURDER.— x x x However, even assuming for the sake of argument that treachery should not be appreciated, the qualifying circumstance of abuse of superior strength would nevertheless qualify the killing to murder. Despite being alleged in the Information, this circumstance was not considered in the trial court as the same is already absorbed in treachery. The act of the accused in stabbing Ernesto while two persons were holding him clearly shows the deliberate use of excessive force out of proportion to the defense available to the person attacked. In *People v. Gemoya*, we held: **Abuse of superior strength is considered whenever there is a notorious inequality of forces between the victim and the aggressor**, assessing a superiority

of strength notoriously advantageous for the aggressor which is selected or taken advantage of in the commission of the crime (*People vs. Bongadillo*, 234 SCRA 233 [1994]). When four armed assailants, two of whom are accused-appellants in this case, gang up on one unarmed victim, it can only be said that excessive force was purposely sought and employed. In all, there is no doubt that the offense committed by the accused is murder.

10. CIVIL LAW; DAMAGES; AWARD OF ACTUAL DAMAGES, PROPER; EXPLAINED.— The Solicitor General claims that the award of ₱55,600.00 in actual damages is not proper, considering the lack of receipts supporting the same. However, we held in *People v. Torio* that: Ordinarily, receipts should support claims of actual damages, but where the defense does not contest the claim, it should be granted. Accordingly, there being no objection raised by the defense on Alma Paulo's lack of receipts to support her other claims, **all the amounts testified to are accepted**. In the case at bar, Teresita Acibar's testimony was dispensed with on account of the admission by the defense that she incurred ₱55,600.00 in relation to the death of Ernesto. This admission by the defense is even more binding to it than a failure on its part to object to the testimony. We therefore sustain the award of actual damages by the RTC, as affirmed by the Court of Appeals.

11. ID.; ID.; AWARD OF CIVIL INDEMNITY *EX DELICTO*; MANDATORY WITHOUT NEED OF PROOF OTHER THAN THE COMMISSION OF THE CRIME.— The Solicitor General likewise alleges that a civil indemnity *ex delicto* in the amount of ₱50,000.00 should be awarded. Article 2206 of the Civil Code authorizes the award of civil indemnity for death caused by a crime. The award of said civil indemnity is mandatory, and is granted to the heirs of the victim without need of proof other than the commission of the crime. However, current jurisprudence have already increased the award of civil indemnity *ex delicto* to ₱75,000.00. We, therefore, award this amount to the heirs of Ernesto.

12. ID.; ID.; AWARD OF EXEMPLARY DAMAGES; PROPER WHEN THE CRIME WAS COMMITTED WITH ONE OR MORE AGGRAVATING CIRCUMSTANCES.— x x x [T]he Court of Appeals was correct in awarding exemplary damages in the amount of ₱25,000.00. An aggravating circumstance, whether

ordinary or qualifying, should entitle the offended party to an award of exemplary damages within the unbridled meaning of Article 2230 of the Civil Code.

APPEARANCES OF COUNSEL

The Solicitor General for plaintiff-appellee.
Public Attorney's Office for accused-appellants.

D E C I S I O N

LEONARDO-DE CASTRO, *J.*:

This is an appeal from the Decision[1] of the Court of Appeals in CA-G.R. CR.-H.C. No. 00027 dated April 29, 2005. In said Decision, the Court of Appeals affirmed with modification the August 29, 2002 Decision[2] of the Regional Trial Court (RTC), Branch 78 of Malolos, Bulacan, in Crim. Case No. 888-M-2000, convicting herein appellants Alberto Tabarnero (Alberto) and Gary Tabarnero (Gary) of the crime of Murder.

The factual and procedural antecedents of the case are as follows:

Late at night on October 23, 1999, Gary went to the house of the deceased Ernesto Canatoy (Ernesto), where the former used to reside as the live-in partner of Mary Jane Acibar (Mary Jane), Ernesto's stepdaughter. Gary and Ernesto had a confrontation during which the latter was stabbed nine times, causing his death. The versions of the prosecution and the defense would later diverge as regards the presence of other persons at the scene and other circumstances concerning Ernesto's death.

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[1] Penned by Associate Justice Andres B. Reyes, Jr. with Associate Justices Lucas P. Bersamin (now a member of this Court) and Celia C. Librea-Leagogo, concurring; *rollo,* pp. 3-27.

[2] Records, pp. 139-150.

On March 3, 2000, Gary and his father, Alberto, were charged with the crime of Murder in an Information which read:

> That on or about the 23rd day of October, 1999, in the municipality of Malolos, province of Bulacan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating together and mutually helping each other, armed with bladed instrument and with intent to kill one Ernesto Canatoy, did then and there willfully, unlawfully, and feloniously, with evident premeditation, abuse of superior strength and treachery, attack, assault and stab with the said bladed instrument the said Ernesto Canatoy, hitting the latter on the different parts of his body, thereby causing him serious physical injuries which directly caused his death.[3]

On 27 March 2000, warrants for the arrest of Gary and Alberto were issued by the RTC of Malolos, Bulacan.[4]

On April 22, 2001, Gary surrendered to Barangay Tanod Edilberto Alarma.[5] When he was arraigned on April 30, 2001, Gary pleaded NOT GUILTY to the crime charged.[6] During this time, Alberto remained at large.

On May 21, 2001, a pre-trial conference was conducted. Therein, Gary admitted having killed Ernesto, but claimed that it was an act of self-defense. Thus, pursuant to Section 11(e), Rule 119 of the Rules of Court, a reverse trial ensued.

Gary, a 22-year-old construction worker at the time of his testimony in June 2001, testified that he stayed in Ernesto's house from 1997 to 1999, as he and Mary Jane were living together. Mary Jane is the daughter of Teresita Acibar, the wife[7] of Ernesto. However, Gary left the house shortly before

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[3] *Id.* at 2.

[4] *Id.* at 8-9.

[5] TSN, Aug. 20, 2001, p. 5.

[6] Records, pp. 18-19.

[7] Gary testified that Ernesto was Teresita's husband (TSN, June 4, 2001, p. 4), but Teresita's testimony for the prosecution would later be dispensed with on the admission by the defense that Teresita is Ernesto's *common-law wife*.

the October 23, 1999 incident because of a misunderstanding with Ernesto when the latter allegedly stopped the planned marriage of Gary and Mary Jane, who was pregnant at that time.

On October 23, 1999, Gary was allegedly in his house in Longos, Malolos, Bulacan at around 11:40 p.m. with his friend, Richard Ulilian; his father, co-appellant Alberto; his mother, Elvira; and his brother, Jeffrey. Overcome with emotion over being separated from Mary Jane, Gary then went to Ernesto's house, but was not able to enter as no one went out of the house to let him in. He instead shouted his pleas from the outside, asking Ernesto what he had done wrong that caused Ernesto to break him and Mary Jane up, and voicing out several times that he loved Mary Jane and was ready to marry her. When Gary was about to leave, the gate opened and Ernesto purportedly struck him with a lead pipe. Ernesto was aiming at Gary's head, but the latter blocked the blow with his hands, causing his left index finger to be broken. Gary embraced Ernesto, but the latter strangled him. At that point, Gary felt that there was a bladed weapon tucked at Ernesto's back. Losing control of himself, Gary took the bladed weapon and stabbed Ernesto, although he cannot recall how many times he did so.[8]

According to Gary, Ernesto fell to the ground, and pleaded, "*saklolo, tulungan niyo po ako*" three times. Gary was stunned, and did not notice his father, co-appellant Alberto, coming. Alberto asked Gary, "*anak, ano ang nangyari*?" To which Gary responded "*nasaksak ko po yata si Ka Erning*," referring to Ernesto. Gary and Alberto fled, allegedly out of fear.[9]

Gary denied that he and Alberto conspired to kill Ernesto. Gary claims that it was he and Ernesto who had a fight, and that he had no choice but to stab Ernesto, who was going to kill him.[10]

Gary's sister, Gemarie Tabarnero, testified that she was a childhood friend of Mary Jane. Gemarie attested that Mary

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[8] TSN, June 4, 2001, pp. 2-9.

[9] *Id.* at 9.

[10] *Id.* at 9-10.

Jane was Gary's girlfriend from 1995 to 1999. Sometime in 1999, however, Gary and Mary Jane were prevented from talking to each other. During that time, Gary was always sad and appeared catatonic, sometimes mentioning Mary Jane's name and crying.[11]

On the night of the incident on October 23, 1999, Gemarie observed that Gary was crying and seemed perplexed. Gary told Gemarie that he was going to Ernesto's house to talk to Ernesto about Mary Jane. Gary allegedly did not bring anything with him when he went to Ernesto's house.[12]

In the meantime, on August 5, 2001, Alberto was apprehended.[13] On August 20, 2001, he pleaded NOT GUILTY to the charge.[14] However, while Alberto's defense is denial and not self-defense like Gary's, the court decided to proceed with the reverse trial, as it had already started that way.[15]

Next on the witness stand was Edilberto Alarma (Alarma), who was a *barangay tanod* of Longos, Malolos, Bulacan since February 2000. Alarma testified that while he was in a meeting at around 4:00 p.m. on April 22, 2001, Gary arrived and told him of his intention to surrender to him. Gary told him that he was responsible for the "incident [that] happened at Daang Riles." Together with his fellow *barangay tanod* Zaldy Garcia, Alarma brought Gary to the Malolos Police Station, where the surrender was entered in the blotter report.[16]

Appellant Alberto, a construction worker employed as leadman/foreman of Alicia Builders, was 45 years old at the time of his testimony in September 2001. He testified that at the time of the incident, he was living in Norzagaray, Bulacan. On October 23, 1999, however, he went to visit his children, Gary and Gemarie,

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[11] TSN, July 23, 2001, pp. 4-5.

[12] *Id.* at 5-6.

[13] TSN, August 20, 2001, p. 2; TSN, September 3, 2001, p. 5.

[14] TSN, August 20, 2001, p. 2.

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

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

in Barangay Longos, Malolos, Bulacan. Before going to sleep at 11:00 p.m., he realized that Gary was not in the place where he would usually sleep. He went downstairs, thinking that Gary was just urinating. He waited for five minutes; when Gary did not show up, he proceeded to Daang Bakal, where Gary had many friends. He walked for about 10 minutes. About 400 meters from the site of the incident, he saw Gary and asked him what happened and why he was in a hurry, to which Gary replied: "*Wag na kayong magtanong, umalis na tayo, napatay ko po yata si Kuya Erning*." Alberto and Gary ran in different directions. Alberto passed through the railways and exited in front of the capitol compound to wait for a jeepney going to Sta. Maria, his route toward his home in Norzagaray.[17]

Alberto claims that he had no knowledge of the accusation that he conspired with Gary in killing Ernesto. It was three months after the incident that he came to know that he was being charged for a crime. At this time, he was already residing in Hensonville Plaza, Angeles City, Pampanga, where he was assigned when his engineer, Efren Cruz, secured a project in said place.[18]

During cross-examination, Alberto repeated that he did not return to Gary's house after the incident. He said that it did not occur to him to inform the authorities about the killing of Ernesto. Later, Alberto learned from his sibling, whom he talked to by phone, that Gary had already surrendered. He did not consider surrendering because, although he wanted to clear his name, nobody would work to support his family. He said that he had no previous misunderstanding with Ernesto.[19]

Answering questions from the court, Alberto stated that he immediately went home to Norzagaray because he was afraid to be implicated in the stabbing of Ernesto. It did not occur to him to stay and help Gary because he did not know where

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[17] TSN, September 3, 2001, pp. 2-4.

[18] *Id.* at 4-6.

[19] *Id.* at 7-10.

Gary proceeded after they ran away. The next time he saw Gary was three months after the incident, when Gary went to Norzagaray.[20]

The first to testify for the prosecution was its eyewitness, Emerito Acibar (Emerito). Emerito, the brother of Mary Jane,[21] was inside their house in Daang Bakal, Longos, Malolos, Bulacan with his brother and his stepfather, Ernesto, at around eleven o'clock on the night of the incident on October 23, 1999. He heard somebody calling for Ernesto, but ignored it. He then heard a "*kalabog*," followed by Ernesto's plea for help. Emerito was about to go outside, but, while he was already at the door of their one-room[22] house, he saw Ernesto being held by a certain Toning "Kulit" and another person, while Gary and Alberto were stabbing Ernesto with fan knives. Emerito lost count of the number of thrusts made by Gary and Alberto, but each inflicted more than one, and the last stab was made by Alberto. Emerito shouted for help. The four assailants left when somebody arrived, allowing Emerito to approach Ernesto and bring him to the Bulacan Provincial Hospital.[23]

On cross-examination, Emerito confirmed that Gary and Mary Jane used to reside in Ernesto's house. On the date of the incident, however, Gary had already left the house, while Mary Jane had moved to Abra with Teresita (the mother of Emerito and Mary Jane). According to Emerito, his family did not know that Mary Jane and Gary had a relationship because they treated Gary like a member of the family. Ernesto got mad when his wife, Teresita, found out about Gary and Mary Jane's relationship. On the night of the incident, at past 11:00 p.m., Emerito was fixing his things inside their house, when he heard someone calling from outside, but was not sure if it was Gary. Emerito neither saw Ernesto leaving the room, nor the fight between Ernesto and Gary. All he saw was the stabbing, which

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[20] *Id.* at 10-11.

[21] TSN, November 5, 2001, p. 2.

[22] *Id.* at 2.

[23] TSN, October 8, 2001, pp. 2-7.

happened seven to eight meters away from the doorway where he was standing. He was sure that there were four assailants, two of whom went to a bridge 8 to 10 meters from the incident, where they boarded a yellow XLT-type car.[24]

Senior Police Officer 2 (SPO2) Ronnie Morales of the Malolos Philippine National Police testified that he was on duty at the police station on the night of October 23, 1999. During that night, Emerito reported at the police station that Ernesto had been stabbed. SPO2 Morales and Emerito proceeded to the Bulacan Provincial Hospital, where SPO2 Morales saw Ernesto in the operating room, very weak due to multiple injuries. While in the presence of two doctors on duty, SPO2 Morales asked Ernesto who stabbed him. Ernesto answered that the assailants were the father and son, Gary and Alberto Tabarnero from Longos, Bulacan.[25]

Cross-examined, SPO2 Morales clarified that it was already 1:00 a.m. of the following day when he and Emerito proceeded to the hospital. As they went to the hospital, Emerito did not inform SPO2 Morales that he witnessed the incident. SPO2 Morales did not find it odd that Emerito did not tell him who the suspects were when Emerito reported the incident, because they immediately proceeded to the hospital, considering that the victim, Ernesto, was still alive. Ernesto was not able to affix his signature on the *Sinumpaang Salaysay*[26] because he could no longer talk after the fourth question. Answering questions from the court, SPO2 Morales further stated that he could not remember talking to Emerito on their way to the hospital, since they were in a hurry.[27]

The government physician at the Bulacan Provincial Hospital who prepared Ernesto's death certificate, Dr. Apollo Trinidad, clarified that Ernesto died on October 25, 1999. However,

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[24] TSN, November 5, 2001, pp. 2-9.

[25] TSN, December 3, 2001, pp. 2-6.

[26] Exhibit C; records, p. 125.

[27] *Id.* at 7-13.

considering the admission by the defense of the fact of death, the cause thereof, and the execution of the death certificate, the prosecution no longer questioned Dr. Trinidad on these matters.[28]

Teresita's testimony was likewise dispensed with, in light of the admission by the defense that she was the common-law wife of Ernesto, and that she incurred ₱55,600.00 in expenses in relation to Ernesto's death.[29]

On August 29, 2002, the RTC rendered its Decision convicting Gary and Alberto of the crime of murder. The decretal portion of the Decision reads:

> WHEREFORE, the foregoing considered, this Court hereby finds accused Alberto Tabarnero and Gary Tabarnero GUILTY beyond reasonable doubt of the Crime of Murder defined and penalized under Art. 248 of the Revised Penal Code, as amended, and sentences them to suffer the penalty of *Reclusion Perpetua* and to pay private complainant Teresita Acibar the amount of ₱55,600.000 (sic) as actual damages[,] ₱50,000.00 as indemnity for the death of Ernesto Canatoy[,] ₱50,000.00 as moral damages, and the costs of suit.[30]

Gary and Alberto appealed to this Court. After the parties had filed their respective briefs, this Court, in *People v. Mateo*,[31] modified the Rules of Court in so far as it provides for direct appeals from the RTC to this Court in cases where the penalty imposed is death, *reclusion perpetua* or life imprisonment. Pursuant thereto, this Court referred[32] the case to the Court of Appeals, where it was docketed as CA-G.R. CR.-H.C. No. 00027.

On April 29, 2005, the Court of Appeals affirmed the conviction with modification as regards exemplary damages, disposing of the case in the following manner:

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[28] TSN, January 7, 2002, pp. 1-4.

[29] Records, p. 145.

[30] *Id.* at 150.

[31] G.R. Nos. 147678-87, July 7, 2004, 433 SCRA 640.

[32] *Rollo*, p. 2.

WHEREFORE, the decision of the Regional Trial Court of Malolos, Bulacan, Branch 78 dated 29 August 2002 is hereby AFFIRMED with the modification that exemplary damages in the amount of ₱25,000.00 is awarded because of the presence of treachery.[33]

From the Court of Appeals, the case was elevated to this Court anew when Gary and Alberto filed a Notice of Appeal on May 13, 2005.[34] In its Resolution on August 1, 2005, this Court required both parties to submit their respective supplemental briefs, if they so desire. Both parties manifested that they were adopting the briefs they had earlier filed with this Court.

Gary and Alberto, in their brief filed in this Court before the referral of the case to the Court of Appeals, assigned the following errors to the RTC:

I.

THE COURT *A QUO* GRAVELY ERRED IN NOT CONSIDERING THE JUSTIFYING CIRCUMSTANCE OF SELF-DEFENSE AND THE MITIGATING CIRCUMSTANCE OF VOLUNTARY SURRENDER INTERPOSED BY ACCUSED-APPELLANT GARY TABARNERO

II.

THE COURT *A QUO* GRAVELY ERRED IN FINDING THAT THERE WAS CONSPIRACY IN THE CASE AT BAR

III.

ASSUMING *ARGUENDO* THAT ACCUSED-APPELLANTS ARE CULPABLE, THE COURT *A QUO* GRAVELY ERRED IN APPRECIATING THE QUALIFYING CIRCUMSTANCE OF TREACHERY[35]

The justifying circumstance of self-defense on the part of Gary cannot be considered

The requisites for self-defense are: 1) unlawful aggression on the part of the victim; 2) lack of sufficient provocation on

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[33] *Id.* at 27.

[34] CA *rollo*, p. 153.

[35] *Id.* at 51-52.

the part of the accused; and 3) employment of reasonable means to prevent and repel aggression.[36]

The defense invokes the said justifying circumstance, claiming that all of the above three elements are present in the case at bar. There was allegedly unlawful aggression on the part of Ernesto when the latter delivered the first blow with the lead pipe. According to the defense, the means Gary used to defend himself was reasonable, and the shouted professions of his feelings for Mary Jane could not be considered provocation sufficient for Ernesto to make the unlawful aggression.

The Court of Appeals noted that the only evidence presented by the defense to prove the alleged unlawful aggression was Gary's own testimony. Citing *Casitas v. People*,[37] the Court of Appeals held that the nine stab wounds inflicted upon Ernesto indicate Gary's intent to kill, and not merely an intent to defend himself. The number of wounds also negates the claim that the means used by Gary to defend himself was reasonable.

We agree with the Court of Appeals. Unlawful aggression is an indispensable requirement of self-defense.[38] As ruled by the Court of Appeals, the evidence presented by Gary to prove the alleged unlawful aggression, namely, his own testimony, is insufficient and self-serving. The alleged sudden appearance of Ernesto and his first attack with the lead pipe the very moment Gary decided to leave seems to this Court to be all too convenient, considering that there was no one around to witness the start of the fight.

The RTC, which had the opportunity to observe the demeanor of the witnesses, found Gary's account concerning the alleged unlawful aggression on the part of Ernesto to be unconvincing. Factual findings of the trial court, especially when affirmed by the Court of Appeals, as in this case, are binding on this Court

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[36] *Baxinela v. People*, G.R. No. 149652, March 24, 2006, 485 SCRA 331, 342.

[37] 466 Phil. 861, 870 (2004).

[38] *Baxinela v. People*, *supra* note 36.

and are entitled to great respect.[39] It also bears to emphasize that by invoking self-defense, Gary, in effect, admitted killing Ernesto, thus, shifting upon him the burden of evidence to prove the elements of the said justifying circumstance.[40] A plea of self-defense cannot be justifiably appreciated where it is not only uncorroborated by independent and competent evidence, but also extremely doubtful in itself.[41]

The defense further argues that assuming that Gary is not qualified to avail of the justifying circumstance of self-defense, he would nevertheless be entitled to the mitigating circumstance of incomplete self-defense under Article 13(1) of the Revised Penal Code, which provides:

> Art. 13. *Mitigating circumstances*. — The following are mitigating circumstances:
>
> 1. Those mentioned in the preceding chapter, when all the requisites necessary to justify the act or to exempt from criminal liability in the respective cases are not attendant.

We disagree. Unlawful aggression is a condition *sine qua non*, without which there can be no self-defense, whether complete or incomplete.[42] There is incomplete self-defense when the *element of unlawful aggression* by the victim is present, *and any of the other two essential requisites* for self-defense.[43] Having failed to prove the indispensable element of unlawful aggression, Gary is not entitled to the mitigating circumstance, even assuming the presence of the other two elements of self-defense.

Gary is not entitled to the mitigating circumstance of voluntary surrender

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[39] *Garcia v. Court of Appeals*, 441 Phil. 323, 332 (2002).

[40] *Baxinela v. People*, *supra* note 36.

[41] *People v. De la Cruz*, 353 Phil. 363, 381 (1998).

[42] *Baxinela v. People*, *supra* note 36.

[43] *Senoja v. People*, 483 Phil. 716, 724 (2004).

The first assignment of error presents another issue for the consideration of this Court. The defense argues that Gary's yielding to Alarma should be credited as a mitigating circumstance of voluntary surrender. The Solicitor General agreed with the defense on this point. The Court of Appeals, however, disagreed, and held that the delay of **six months**[44] before surrendering negates spontaneity,[45] a requisite for voluntary surrender to be considered mitigating.

We agree with the Court of Appeals.

In order that the mitigating circumstance of voluntary surrender may be credited to the accused, the following requisites should be present: (a) the offender has not actually been arrested; (b) the offender surrendered himself to a person in authority; and (c) the surrender must be voluntary. A surrender, to be voluntary, must be spontaneous, *i.e.*, there must be an intent to submit oneself to authorities, either because he acknowledges his guilt or because he wishes to save them the trouble and expenses in capturing him.[46]

In *People v. Barcimo, Jr.*,[47] the pending warrant for the arrest of the accused and the latter's surrender more than one year after the incident were considered by the Court as damaging to the plea that voluntary surrender be considered a mitigating circumstance. Thus:

> The trial court did not err in disregarding the mitigating circumstance of voluntary surrender. To benefit an accused, the following requisites must be proven, namely: (1) the offender has not actually been arrested; (2) the offender surrendered himself to a person in authority; and (3) the surrender was voluntary. A surrender to be voluntary must be spontaneous, showing the intent of the accused to submit himself unconditionally to the authorities, either because he

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[44] The Court of Appeals and the Solicitor General miscomputed the length of time before Gary surrendered himself.

[45] CA *rollo*, p. 129.

[46] *People v. Saul*, 423 Phil. 924, 936 (2001).

[47] 467 Phil. 709, 720-721 (2004).

acknowledges his guilt, or he wishes to save them the trouble and expense necessarily incurred in his search and capture. Voluntary surrender presupposes repentance. In *People v. Viernes* [G.R. No. 136733-35, 13 December 2001], we held that going to the police station to clear one's name does not show any intent to surrender unconditionally to the authorities.

In the case at bar, appellant surrendered to the authorities after more than one year had lapsed since the incident and in order to disclaim responsibility for the killing of the victim. This neither shows repentance or acknowledgment of the crime nor intention to save the government the trouble and expense necessarily incurred in his search and capture. Besides, at the time of his surrender, there was a pending warrant of arrest against him. Hence, he should not be credited with the mitigating circumstance of voluntary surrender.

The records show that Gary surrendered on April 22, 2001.[48] The commitment order commanding that he be detained was issued on April 24, 2001.[49] The surrender was made **almost one year and six months from the October 23, 1999 incident, and almost one year and one month from the issuance of the warrant of arrest against him on March 27, 2000**.[50] We, therefore, rule that the mitigating circumstance of voluntary surrender cannot be credited to Gary.

Alberto is a principal by direct participation in the killing of Ernesto

In insisting upon Alberto's innocence, the defense claims that there was no conspiracy between him and his son, Gary. The defense asserts that Alberto just happened to be near the scene of the crime as he was looking for his son, whom he saw only after the altercation.

The basis of Alberto's conviction, however, is not solely conspiracy. A review of the proven facts shows that conspiracy need not even be proven by the prosecution in this case, since

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[48] TSN, Aug. 20, 2001, p. 5.

[49] Records, p. 13.

[50] *Id.* at 11.

Alberto was categorically pointed by the eyewitness, Emerito, as one of the assailants who actively and directly participated in the killing of Ernesto:

Q Those 2 persons whom you saw and who stabbed your stepfather in the evening of October 23, 1999, if they are now in court, will you be able to identify them?
A Yes, sir.

Q Would you please point to those 2 persons?
A (Witness pointing to the persons who, when asked answered to the name of Alberto Tabarnero and Gary Tabarnero)

Q What was the position of Alberto Tabarnero in that stabbing incident?
A He was the one whom I saw stabbed last my stepfather.

xxx xxx xxx

COURT (TO THE WITNESS):

Q How many times did you see Gary stabbed your father?
A I cannot count how many stabs Gary made.

PROS. SANTIAGO:

Q Was it many times or just once?
A I cannot count but more than 1.

Q How about Alberto Tabarnero, how many times did you see him stabbing your stepfather?
A I cannot count also but he was the last one who stabbed my stepfather.[51]

Having actually participated in the stabbing of Ernesto, it was adequately proven that Alberto is a principal by direct participation.

Even more persuasive is the statement of the victim himself, Ernesto, as testified to by SPO2 Morales, that it was "the father

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[51] TSN, October 8, 2001, pp. 4-6.

and son, Gary and Alberto Tabarnero from Longos, Bulacan" who stabbed him.[52] While Ernesto was not able to testify in court, his statement is considered admissible under Section 37, Rule 130 of the Rules of Court, which provides:

> Sec. 37. *Dying declaration*. — The declaration of a dying person, made under the consciousness of an impending death, may be received in any case wherein his death is the subject of inquiry, as evidence of the cause and surrounding circumstances of such death.

In applying this exception to the hearsay rule, we held as follows:

> "It must be shown that a dying declaration was made under a realization by the decedent that his demise or at least, its imminence — not so much the rapid eventuation of death — is at hand. This may be proven by the statement of the deceased himself or it may be inferred from the nature and extent of the decedent's wounds, or other relevant circumstances."[53]

In the case at bar, Ernesto had nine stab wounds which caused his death within the next 48 hours. At the time he uttered his statement accusing Gary and Alberto of stabbing him, his body was already very rapidly deteriorating, as shown by his inability to speak and write towards the end of the questioning.

We have considered that a dying declaration is entitled to the highest credence, for no person who knows of his impending death would make a careless or false accusation. When a person is at the point of death, every motive of falsehood is silenced and the mind is induced by the most powerful consideration to speak the truth.[54] It is hard to fathom that Ernesto, very weak as he was and with his body already manifesting an impending demise, would summon every remaining strength he had just to lie about his true assailants, whom he obviously would want to bring to justice.

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[52] TSN, December 3, 2001, p. 5.

[53] *People v. Santos*, 337 Phil. 334, 349 (1997).

[54] *People v. Lamasan*, 451 Phil. 308, 321 (2003).

The killing of Ernesto is qualified by treachery

Emerito had testified that he saw Ernesto being held by two persons, while Gary and Alberto were stabbing him with fan knives:

Q When you said "*lalabas po sana*," what do you mean by that?
A I am at the door and saw what happened.

Q What did you see?
A I saw my stepfather being held by two persons and being stabbed.

Q Will you describe the appearance of your stepfather and the 2 persons whom according to you were stabbing your stepfather at that time?
A My stepfather is "*lupaypay*" and he was being stabbed.

Q When you said "*lupaypay*," will you describe to this Honorable Court his position and appearance?
A When I saw my stepfather he was about to fall on the ground.

Q Could you describe their appearance?
A They were helping each other in stabbing my grandfather. (sic)

Q Those two persons whom you saw and who stabbed your stepfather in the evening of October 23, 1999 if they are now in Court, will you be able to identify them?
A Yes, sir.

Q Could you please point to those 2 persons?
A (Witness pointing to the persons who, when asked answered to the name of Alberto Tabarnero and Gary Tabarnero)

Q What was the position of Alberto Tabarnero in that stabbing incident?
A He was the one whom I saw stabbed last my stepfather.

Q What about Gary, what is his position?
A He was helping in the stabbing.

xxx xxx xxx

Q What kind of weapon or instrument were used by Gary and Alberto?
A Fan knife, sir.

Q Both of them were armed by a knife?
A Yes, sir.[55]

From said testimony, it seems uncertain whether Emerito saw the very first stabbing being thrust. Thus, the defense asseverates that since Emerito failed to see how the attack commenced, the qualifying circumstance of treachery cannot be considered, citing *People v. Amamangpang*,[56] *People v. Icalla*,[57] and *People v. Sambulan*.[58] In said three cases, this Court held that treachery cannot be appreciated as the lone eyewitness did not see the commencement of the assault.

Treachery is defined under Article 14(16) of the Revised Penal Code, which provides:

> There is treachery when the offender commits any of the crimes against the person, employing means, methods, or forms in the execution thereof which tend directly and specially to insure its execution, without risk to himself arising from the defense which the offended party might make.

The Solicitor General argues that treachery was amply demonstrated by the restraint upon Ernesto, which effectively rendered him defenseless and unable to effectively repel, much less evade, the assault.[59]

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[55] TSN, October 8, 2001, pp. 4-6.

[56] 353 Phil. 815, 832 (1998).

[57] 406 Phil. 380, 394 (2001).

[58] 352 Phil. 336, 350 (1998).

[59] *Rollo,* p. 103.

We agree with the Solicitor General.

In the cases cited by the appellants, the eyewitnesses were not able to observe any means, method or form in the execution of the killing which rendered the victim defenseless. In *Amamangpang*, the first thing the witness saw was the victim already prostrate on the bamboo floor, blood oozing from his neck and about to be struck by the accused. In *Icalla*, the witnesses merely saw the accused fleeing from the scene of the crime with a knife in his hand. In *Sambulan*, the witness saw the two accused hacking the victim with a bolo. Since, in these cases, there was no restraint upon the victims or any other circumstance which would have rendered them defenseless, the Court ruled that it should look into the commencement of the attack in order to determine whether the same was done swiftly and unexpectedly. However, the swiftness and unexpectedness of an attack are not the only means by which the defenselessness of the victim can be ensured.

In *People v. Montejo*,[60] the prosecution witnesses testified that after challenging the victim to a fight, the accused stabbed the victim in the chest while he was held in the arms by the accused and a companion. Not requiring a swift and unexpected commencement to the attack, the Court held:

> Thus, there is treachery where the victim was stabbed in a defenseless situation, as when he was being held by the others while he was being stabbed, as the accomplishment of the accused's purpose was ensured without risk to him from any defense the victim may offer [*People v. Condemena*, G.R. No. L-22426, May 29, 1968, 23 SCRA 910; *People v. Lunar*, G.R. No. L-15579, May 29, 1972, 45 SCRA 119.] In the instant case, it has been established that the accused-appellant stabbed the victim on the chest while his companions held both of the victim's arms.

In *People v. Alvarado*,[61] the accused and his companions shouted to the victim: "*Lumabas ka kalbo, kung matapang*

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[60] G.R. No. 68857, November 21, 1988, 167 SCRA 506, 515.

[61] 341 Phil. 725, 737 (1997).

ka." When the victim went out of the house, the accused's companions held the victim's hands while the accused stabbed him. Despite the yelling which should have warned the victim of a possible attack, the mere fact that the accused's companions held the hands of the victim while the accused stabbed him was considered by this Court to constitute *alevosia*.

We, therefore, rule that the killing of Ernesto was attended by treachery. However, even assuming for the sake of argument that treachery should not be appreciated, the qualifying circumstance of abuse of superior strength would nevertheless qualify the killing to murder. Despite being alleged in the Information, this circumstance was not considered in the trial court as the same is already absorbed in treachery. The act of the accused in stabbing Ernesto while two persons were holding him clearly shows the deliberate use of excessive force out of proportion to the defense available to the person attacked. In *People v. Gemoya*,[62] we held:

> **Abuse of superior strength is considered whenever there is a notorious inequality of forces between the victim and the aggressor**, assessing a superiority of strength notoriously advantageous for the aggressor which is selected or taken advantage of in the commission of the crime (*People vs. Bongadillo*, 234 SCRA 233 [1994]). When four armed assailants, two of whom are accused-appellants in this case, gang up on one unarmed victim, it can only be said that excessive force was purposely sought and employed. (Emphasis ours.)

In all, there is no doubt that the offense committed by the accused is murder.

The award of damages should be modified to include civil indemnity ex delicto

In the Decision of the RTC convicting Gary and Alberto, it awarded the amount of ₱55,600.00 as actual damages, ₱50,000.00

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[62] 396 Phil. 213, 221-222 (2000).

as indemnity for the death of Ernesto, ₱50,000.00 as moral damages and an unidentified amount as costs of suit.[63] The Court of Appeals modified the RTC Decision by awarding an additional amount of ₱25,000.00 as exemplary damages on account of the presence of treachery.[64]

The Solicitor General claims that the award of ₱55,600.00 in actual damages is not proper, considering the lack of receipts supporting the same. However, we held in *People v. Torio*[65] that:

> Ordinarily, receipts should support claims of actual damages, but where the defense does not contest the claim, it should be granted. Accordingly, there being no objection raised by the defense on Alma Paulo's lack of receipts to support her other claims, **all the amounts testified to are accepted**. (Emphasis supplied.)

In the case at bar, Teresita Acibar's testimony was dispensed with on account of the admission by the defense that she incurred ₱55,600.00 in relation to the death of Ernesto.[66] This admission by the defense is even more binding to it than a failure on its part to object to the testimony. We therefore sustain the award of actual damages by the RTC, as affirmed by the Court of Appeals.

The Solicitor General likewise alleges that a civil indemnity *ex delicto* in the amount of ₱50,000.00 should be awarded. Article 2206[67] of the Civil Code authorizes the award of civil

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[63] Records, p. 150.

[64] CA *rollo*, p. 147.

[65] 452 Phil. 777, 800 (2003).

[66] Records, p. 145.

[67] 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. In addition:

> (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

indemnity for death caused by a crime.The award of said civil indemnity is mandatory, and is granted to the heirs of the victim without need of proof other than the commission of the crime.[68] However, current jurisprudence have already increased the award of civil indemnity *ex delicto* to ₱75,000.00.[69] We, therefore, award this amount to the heirs of Ernesto.

Finally, the Court of Appeals was correct in awarding exemplary damages in the amount of ₱25,000.00. An aggravating circumstance, whether ordinary or qualifying, should entitle the offended party to an award of exemplary damages within the unbridled meaning of Article 2230[70] of the Civil Code.[71]

WHEREFORE, the Decision of the Court of Appeals in CA-G.R. CR.-H.C. No. 00027 dated April 29, 2005 is hereby *AFFIRMED*, with the *MODIFICATION* that appellants Alberto and Gary Tabarnero are further ordered to pay the

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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;

(2) If the deceased was obliged to give support according to the provisions of Article 291, the recipient who is not an heir called to the decedent's inheritance by the law of testate or intestate succession, may demand support from the person causing the death, for a period not exceeding five years, the exact duration to be fixed by the court;

(3) The spouse, legitimate and illegitimate descendants and ascendants of the deceased may demand moral damages for mental anguish by reason of the death of the deceased.

[68] *People v. Honor*, G.R. No. 175945, April 7, 2009, 584 SCRA 546, 560.

[69] *People v. Amodia,* G.R. No. 173791, April 7, 2009, 584 SCRA 518, 545; *People v. De Guzman,* G.R. No. 173477, February 4, 2009, 578 SCRA 54.

[70] Art. 2230. In criminal offenses, exemplary damages as a part of the civil liability may be imposed when the crime was committed with one or more aggravating circumstances. Such damages are separate and distinct from fines and shall be paid to the offended party.

[71] *People v. Catubig*, 416 Phil. 102, 120 (2001); see *People v. Beltran, Jr.*, G.R. No. 168051, 27 September 2006, 503 SCRA 715, 741.

heirs of Ernesto Canatoy the amount of ₱75,000.00 as civil indemnity.

SO ORDERED.

Puno, C.J. (Chairperson), Carpio Morales, Brion,[*] and *Villarama, Jr., JJ.,* concur.

FIRST DIVISION

[G.R. No. 175241. February 24, 2010]

INTEGRATED BAR OF THE PHILIPPINES represented by its National President, Jose Anselmo I. Cadiz, H. HARRY L. ROQUE, and JOEL RUIZ BUTUYAN, *petitioners, vs.* **HONORABLE MANILA MAYOR JOSE "LITO" ATIENZA,** *respondent.*

SYLLABUS

1. POLITICAL LAW; CONSTITUTIONAL LAW; JUDICIAL DEPARTMENT; POWER OF JUDICIAL REVIEW; RULE ON MOOTNESS; EXCEPTION; CASE AT BAR.— 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, 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. Moreover, as an exception to the rule on mootness, courts will decide a question otherwise moot if it is capable of

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[*] Associate Justice Arturo D. Brion was designated to sit as additional member replacing Associate Justice Lucas P. Bersamin per Raffle dated 18 January 2010.

repetition, yet evading review. In the present case, the question of the legality of a modification of a permit to rally will arise each time the terms of an intended rally are altered by the concerned official, yet it evades review, owing to the limited time in processing the application where the shortest allowable period is five days prior to the assembly. The susceptibility of recurrence compels the Court to definitively resolve the issue at hand.

2. REMEDIAL LAW; CRIMINAL PROCEDURE; PROSECUTION OF CIVIL ACTION; SUSPENSION BY REASON OF PREJUDICIAL QUESTION; DETERMINATION OF PREJUDICIAL QUESTION SHOULD BE MADE AT THE FIRST INSTANCE IN THE CRIMINAL ACTION, NOT BEFORE THE SUPREME COURT IN AN APPEAL FROM THE CIVIL ACTION.— Respecting petitioners' argument that the issues presented in CA-G.R. SP No. 94949 pose a prejudicial question to the criminal case against Cadiz, the Court finds it improper to resolve the same in the present case. Under the Rules, the existence of a prejudicial question is a ground in a petition to suspend proceedings in a criminal action. Since suspension of the proceedings in the criminal action may be made only upon petition and not at the instance of the judge or the investigating prosecutor, the latter cannot take cognizance of a claim of prejudicial question without a petition to suspend being filed. Since a petition to suspend can be filed only in the criminal action, the determination of the pendency of a prejudicial question should be made at the first instance in the criminal action, and not before this Court in an appeal from the civil action.

3. POLITICAL LAW; CONSTITUTIONAL LAW; PUBLIC ASSEMBLY ACT; ACTION ON THE APPLICATION FOR A PERMIT; RESPONDENT MAYOR GRAVELY ABUSED HIS DISCRETION WHEN HE DID NOT IMMEDIATELY INFORM THE APPLICANT OF HIS PERCEIVED IMMINENT AND GRAVE DANGER OF A SUBSTANTIAL EVIL THAT MAY WARRANT CHANGING OF VENUE.— The Court in *Bayan* stated that the provisions of the Public Assembly Act of 1985 practically codified the 1983 ruling in *Reyes v. Bagatsing.* In juxtaposing Sections 4 to 6 of the Public Assembly Act with the pertinent portion of the *Reyes* case, the Court elucidated as follows: x x x [The public official concerned shall] appraise

whether there may be valid objections to the grant of the permit or to its grant but at another public place. It is an indispensable condition to such refusal or *modification* that the clear and present danger test be the standard for the decision reached. If he is of the view that there is such an imminent and grave danger of a substantive evil, the applicants must be heard on the matter. Thereafter, his decision, whether favorable or adverse, must be transmitted to them at the earliest opportunity. Thus if so minded, they can have recourse to the proper judicial authority. In modifying the permit outright, respondent gravely abused his discretion when he did not immediately inform the IBP who should have been heard first on the matter of his perceived imminent and grave danger of a substantive evil that may warrant the changing of the venue. The opportunity to be heard precedes the action on the permit, since the applicant may directly go to court after an unfavorable action on the permit. Respondent failed to indicate how he had arrived at modifying the terms of the permit against the standard of a clear and present danger test which, it bears repeating, is an indispensable condition to such modification. Nothing in the issued permit adverts to an imminent and grave danger of a substantive evil, which "blank" denial or modification would, when granted imprimatur as the appellate court would have it, render illusory any judicial scrutiny thereof. It is true that the licensing official, here respondent Mayor, is not devoid of discretion in determining whether or not a permit would be granted. It is not, however, unfettered discretion. While prudence requires that there be a realistic appraisal not of what may possibly occur but of what may *probably* occur, given all the relevant circumstances, still the assumption – especially so where the assembly is scheduled for a specific public place – is that the permit must be for the assembly being held there. **The exercise of such a right, in the language of Justice Roberts, speaking for the American Supreme Court, is not to be "abridged on the plea that it may be exercised in some other place."** Notably, respondent failed to indicate in his Comment any basis or explanation for his action. It smacks of whim and caprice for respondent to just impose a change of venue for an assembly that was slated for a specific public place. It is thus reversible error for the appellate court not to have found such grave abuse of discretion and, under specific statutory provision, not to have modified the permit "in terms satisfactory to the applicant."

APPEARANCES OF COUNSEL

Cadiz & Tabayoyong for petitioners.
Renato G. De La Cruz for respondent.

D E C I S I O N

CARPIO MORALES, *J.*:

Petitioners Integrated Bar of the Philippines[1] (IBP) and lawyers H. Harry L. Roque and Joel R. Butuyan appeal the June 28, 2006 Decision[2] and the October 26, 2006 Resolution[3] of the Court of Appeals that found no grave abuse of discretion on the part of respondent Jose "Lito" Atienza, the then mayor of Manila, in granting a permit to rally in a venue other than the one applied for by the IBP.

On June 15, 2006, the IBP, through its then National President Jose Anselmo Cadiz (Cadiz), filed with the Office of the City Mayor of Manila a letter application[4] for a permit to rally at the foot of Mendiola Bridge on June 22, 2006 from 2:30 p.m. to 5:30 p.m. to be participated in by IBP officers and members, law students and multi-sectoral organizations.

Respondent issued a permit[5] dated June 16, 2006 allowing the IBP to stage a rally on given date but indicated therein Plaza Miranda as the venue, instead of Mendiola Bridge, which permit the IBP received on June 19, 2006.

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[1] Represented by its National President Jose Anselmo Cadiz.

[2] Penned by Justice Myrna Dimaranan Vidal with Justice Eliezer R. De Los Santos and Justice Fernanda Lampas Peralta concurring; *rollo*, pp. 50-54.

[3] Penned by Justice Myrna Dimaranan Vidal with Justice Amelita G. Tolentino and Justice Fernanda Lampas Peralta concurring; *id.* at 56.

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

[5] *Id.* at 64. It was signed by Business Promotion and Development Office Director Gerino Tolentino, Jr. by authority of the Mayor.

Aggrieved, petitioners filed on June 21, 2006 before the Court of Appeals a petition for *certiorari* docketed as CA-G.R. SP No. 94949.[6] The petition having been unresolved within 24 hours from its filing, petitioners filed before this Court on June 22, 2006 a petition for *certiorari* docketed as G.R. No. 172951 which assailed the appellate court's inaction or refusal to resolve the petition within the period provided under the Public Assembly Act of 1985.[7]

The Court, by Resolutions of July 26, 2006, August 30, 2006 and November 20, 2006, respectively, denied the petition for being moot and academic, denied the relief that the petition be heard on the merits in view of the pendency of CA-G.R. SP No. 94949, and denied the motion for reconsideration.

The rally pushed through on June 22, 2006 at Mendiola Bridge, after Cadiz discussed with P/Supt. Arturo Paglinawan whose contingent from the Manila Police District (MPD) earlier barred petitioners from proceeding thereto. Petitioners allege that the participants voluntarily dispersed after the peaceful conduct of the program.

The MPD thereupon instituted on June 26, 2006 a criminal action,[8] docketed as I.S. No. 06I-12501, against Cadiz for violating the Public Assembly Act in staging a rally at a venue not indicated in the permit, to which charge Cadiz filed a Counter-Affidavit of August 3, 2006.

In the meantime, the appellate court ruled, in CA-G.R. SP No. 94949, by the first assailed issuance, that the petition became moot and lacked merit. The appellate court also denied petitioners' motion for reconsideration by the second assailed issuance.

Hence, the filing of the present petition for review on *certiorari*, to which respondent filed his Comment of November 18, 2008 which merited petitioners' Reply of October 2, 2009.

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[6] *Id.* at 65-74.

[7] BATAS PAMBANSA BLG. 880 (October 22, 1985), Sec. 6(g).

[8] *Rollo*, pp. 81-82. The Complaint-Affidavit filed with the Manila City Prosecutor's Office was signed by Police Superintendents Teodorico Perez, Danilo Estapon and Jose Asayo.

The main issue is whether the appellate court erred in holding that the modification of the venue in IBP's rally permit does not constitute grave abuse of discretion.

Petitioners assert that the partial grant of the application runs contrary to the Pubic Assembly Act and violates their constitutional right to freedom of expression and public assembly.

The Court shall first resolve the preliminary issue of mootness.

Undoubtedly, the petition filed with the appellate court on June 21, 2006 became moot upon the passing of the date of the rally on June 22, 2006.

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, 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. Moreover, as an exception to the rule on mootness, courts will decide a question otherwise moot if it is capable of repetition, yet evading review.[9]

In the present case, the question of the legality of a modification of a permit to rally will arise each time the terms of an intended rally are altered by the concerned official, yet it evades review, owing to the limited time in processing the application where the shortest allowable period is five days prior to the assembly. The susceptibility of recurrence compels the Court to definitively resolve the issue at hand.

Respecting petitioners' argument that the issues presented in CA-G.R. SP No. 94949 pose a prejudicial question to the criminal case against Cadiz, the Court finds it improper to resolve the same in the present case.

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[9] *Funa v. Ermita*, G.R. No. 184740, February 11, 2010.

Under the Rules,[10] the existence of a prejudicial question is a ground in a petition to suspend proceedings in a criminal action. Since suspension of the proceedings in the criminal action may be made only upon petition and not at the instance of the judge or the investigating prosecutor,[11] the latter cannot take cognizance of a claim of prejudicial question without a petition to suspend being filed. Since a petition to suspend can be filed only in the criminal action,[12] the determination of the pendency of a prejudicial question should be made at the first instance in the criminal action, and not before this Court in an appeal from the civil action.

In proceeding to resolve the petition on the merits, the appellate court found no grave abuse of discretion on the part of respondent because the Public Assembly Act does not categorically require respondent to specify in writing the imminent and grave danger of a substantive evil which warrants the denial or modification of the permit and merely mandates that the action taken shall be in writing and shall be served on respondent within 24 hours. The appellate court went on to hold that respondent is authorized to regulate the exercise of the freedom of expression and of public assembly which are not absolute, and that the challenged permit is consistent with Plaza Miranda's designation as a freedom park where protest rallies are allowed without permit.

The Court finds for petitioners.

Section 6 of the Public Assembly Act reads:

Section 6. *Action to be taken on the application* -

(a) It shall be the duty of the mayor or any official acting in his behalf to issue or grant a permit unless there is clear and convincing evidence

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[10] RULES OF COURT, Rule 111, Secs. 6-7.

[11] *Philippine Agila Satellite, Inc. v. Lichauco*, G.R. 134887, July 27, 2006, 496 SCRA 588, 598; *Yap v. Paras*, G.R. No. 101236, January 30, 1992, 205 SCRA 625, 629.

[12] Vide *Yap v. Paras*, *id.* at 630, holding that it is the issue in the civil action that is prejudicial to the continuation of the criminal action, not the criminal action that is prejudicial to the civil action.

that the public assembly will create a clear and present danger to public order, public safety, public convenience, public morals or public health.

(b) The mayor or any official acting in his behalf shall act on the application within two (2) working days from the date the application was filed, failing which, the permit shall be deemed granted. Should for any reason the mayor or any official acting in his behalf refuse to accept the application for a permit, said application shall be posted by the applicant on the premises of the office of the mayor and shall be deemed to have been filed.

(c) If the mayor is of the view that there is imminent and grave danger of a substantive evil warranting the denial or modification of the permit, he shall immediately inform the applicant who must be heard on the matter.

(d) The action on the permit shall be in writing and served on the application [*sic*] within twenty-four hours.

(e) If the mayor or any official acting in his behalf denies the application or modifies the terms thereof in his permit, the applicant may contest the decision in an appropriate court of law.

(f) In case suit is brought before the Metropolitan Trial Court, the Municipal Trial Court, the Municipal Circuit Trial Court, the Regional Trial Court, or the Intermediate Appellate Court, its decisions may be appealed to the appropriate court within forty-eight (48) hours after receipt of the same. No appeal bond and record on appeal shall be required. A decision granting such permit or modifying it in terms satisfactory to the applicant shall, be immediately executory.

(g) All cases filed in court under this Section shall be decided within twenty-four (24) hours from date of filing. Cases filed hereunder shall be immediately endorsed to the executive judge for disposition or, in his absence, to the next in rank.

(h) In all cases, any decision may be appealed to the Supreme Court.

(i) Telegraphic appeals to be followed by formal appeals are hereby allowed. (underscoring supplied)

In *Bayan, Karapatan, Kilusang Magbubukid ng Pilipinas (KMP) v. Ermita*,[13] the Court reiterated:

[13] G.R. No. 169838, April 25, 2006, 488 SCRA 226.

x x x Freedom of assembly connotes the right of the people to meet peaceably for consultation and discussion of matters of public concern. It is entitled to be accorded the utmost deference and respect. **It is not to be limited, much less denied, except on a showing, as is the case with freedom of expression, of a clear and present danger of a substantive evil that the state has a right to prevent**. Even prior to the 1935 Constitution, Justice Malcolm had occasion to stress that it is a necessary consequence of our republican institutions and complements the right of free speech. To paraphrase the opinion of Justice Rutledge, speaking for the majority of the American Supreme Court in *Thomas v. Collins*, it was not by accident or coincidence that the rights to freedom of speech and of the press were coupled in a single guarantee with the rights of the people peaceably to assemble and to petition the government for redress of grievances. All these rights, while not identical, are inseparable. In every case, therefore, where there is a limitation placed on the exercise of this right, the judiciary is called upon to examine the effects of the challenged governmental actuation. **The sole justification for a limitation on the exercise of this right, so fundamental to the maintenance of democratic institutions, is the danger, of a character both grave and imminent, of a serious evil to public safety, public morals, public health, or any other legitimate public interest**.[14] (emphasis supplied)

The Court in *Bayan* stated that the provisions of the Public Assembly Act of 1985 practically codified the 1983 ruling in *Reyes v. Bagatsing*.[15] In juxtaposing Sections 4 to 6 of the Public Assembly Act with the pertinent portion of the *Reyes* case, the Court elucidated as follows:

x x x [The public official concerned shall] appraise whether there may be valid objections to the grant of the permit or to its grant but at another public place. It is an indispensable condition to such refusal or *modification* that the clear and present danger test be the standard for the decision reached. If he is of the view that there is such an imminent and grave danger of a substantive evil, the applicants must be heard on the matter. Thereafter, his decision, whether favorable

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[14] *Id.* at 251.

[15] *Reyes v. Bagatsing*, G.R. No. 65366, November 9, 1983, 125 SCRA 553.

or adverse, must be transmitted to them at the earliest opportunity. Thus if so minded, they can have recourse to the proper judicial authority.[16] (italics and underscoring supplied)

In modifying the permit outright, respondent gravely abused his discretion when he did not immediately inform the IBP who should have been heard first on the matter of his perceived imminent and grave danger of a substantive evil that may warrant the changing of the venue. The opportunity to be heard precedes the action on the permit, since the applicant may directly go to court after an unfavorable action on the permit.

Respondent failed to indicate how he had arrived at modifying the terms of the permit against the standard of a clear and present danger test which, it bears repeating, is an indispensable condition to such modification. Nothing in the issued permit adverts to an imminent and grave danger of a substantive evil, which "blank" denial or modification would, when granted imprimatur as the appellate court would have it, render illusory any judicial scrutiny thereof.

It is true that the licensing official, here respondent Mayor, is not devoid of discretion in determining whether or not a permit would be granted. It is not, however, unfettered discretion. While prudence requires that there be a realistic appraisal not of what may possibly occur but of what may *probably* occur, given all the relevant circumstances, still the assumption – especially so where the assembly is scheduled for a specific public place – is that the permit must be for the assembly being held there. **The exercise of such a right, in the language of Justice Roberts, speaking for the American Supreme Court, is not to be "abridged on the plea that it may be exercised in some other place."**[17] (emphasis and underscoring supplied)

Notably, respondent failed to indicate in his Comment any basis or explanation for his action. It smacks of whim and caprice for respondent to just impose a change of venue for an assembly that was slated for a specific public place. It is thus reversible error for the appellate court not to have found such grave

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[16] *Supra* note 13 at 256.

[17] *Id.* at 254-255.

abuse of discretion and, under specific statutory provision, not to have modified the permit "in terms satisfactory to the applicant."[18]

WHEREFORE, the assailed Decision and Resolution of the Court of Appeals in CA-G.R. SP No. 94949 are *REVERSED*. The Court *DECLARES* that respondent committed grave abuse of discretion in modifying the rally permit issued on June 16, 2006 insofar as it altered the venue from Mendiola Bridge to Plaza Miranda.

SO ORDERED.

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

EN BANC

[G.R. No. 182382-83. February 24, 2010]

JAIME S. DOMDOM, *petitioner, vs.* **HON. THIRD AND FIFTH DIVISIONS OF THE SANDIGANBAYAN, COMMISSION ON AUDIT and THE PEOPLE OF THE PHILIPPINES,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; A MOTION FOR RECONSIDERATION IS A CONDITION *SINE QUA NON*; EXCEPTIONS; CASE AT BAR.— x x x [T]he settled rule is that a motion for reconsideration is a condition *sine qua non* for the filing of a petition for *certiorari*, its purpose being to grant an opportunity for the court *a quo* to correct any actual or perceived error attributed to it by a re-examination of the legal and factual circumstances of the case. The rule is, however, circumscribed by well-defined exceptions, such as

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[18] *Vide supra* note 7 at Sec. 6(f).

where the order is a patent nullity because the court *a quo* had no jurisdiction; where **the questions raised in the *certiorari* proceeding have been duly raised and passed upon by the lower court**, or are the same as those raised and passed upon in the lower court; where **there is an urgent necessity for the resolution of the question, and any further delay would prejudice the interests** of the Government or **of the petitioner,** or the subject matter of the action is perishable; where, under the circumstances, a motion for reconsideration would be useless; where the petitioner was deprived of due process and there is extreme urgency for relief; where, in a criminal case, relief from an order of arrest is urgent and the grant of such relief by the trial court is improbable; where the proceedings in the lower court are a nullity for lack of due process; where the proceedings were *ex parte* or in which the petitioner had no opportunity to object; and where **the issue raised is one purely of law** or where public interest is involved. The Court finds that **the issue raised by petitioner had been duly raised and passed upon by the Sandiganbayan Third Division**, it having denied consolidation in two resolutions; that the issue calls for **resolution and any further delay would prejudice the interests of petitioner**; and that **the issue raised is one purely of law,** the facts not being contested. There is thus ample justification for relaxing the rule requiring the prior filing of a motion for reconsideration.

2. ID.; ID.; ID.; A MOTION FOR EXTENSION OF TIME TO FILE THE PETITION IS ALLOWED SUBJECT TO THE COURT'S SOUND DISCRETION.— On the People's argument that a motion for extension of time to file a petition for *certiorari* is no longer allowed, the same rests on shaky grounds. Supposedly, the deletion of the following provision in Section 4 of Rule 65 by A.M. No. 07-7-12-SC evinces an intention to absolutely prohibit motions for extension: "No extension of time to file the petition shall be granted except for the most compelling reason and in no case exceeding fifteen (15) days." That no mention is made in the x x x amended Section 4 of Rule 65 of a motion for extension, unlike in the previous formulation, does not make the filing of such pleading absolutely prohibited. If such were the intention, the deleted portion could just have simply been reworded to state that "no extension of time to file the petition shall be granted." Absent such a prohibition, motions for extension are allowed, subject to the Court's sound

discretion. The present petition may thus be allowed, having been filed within the extension sought and, at all events, given its merits.

3. ID.; CIVIL PROCEDURE; CONSOLIDATION; REQUISITES; OBJECTIVES; CASE AT BAR.— In *Teston v. Development Bank of the Philippines*, the Court laid down the requisites for the consolidation of cases, *viz*: A court may order several actions pending before it to be tried together where they arise from **the same act, event or transaction, involve the same or like issues, and depend largely or substantially on the same evidence**, provided that the court has jurisdiction over the cases to be consolidated and that a joint trial will not give one party an undue advantage or prejudice the substantial rights of any of the parties. The rule allowing consolidation is designed to avoid multiplicity of suits, to guard against oppression or abuse, to prevent delays, to clear congested dockets, and to simplify the work of the trial court – in short, the attainment of justice with the least expense and vexation to the parties-litigants. Thus, in *Philippine Savings Bank v. Mañalac, Jr.*, the Court disregarded the technical difference between an action and a proceeding, and upheld the consolidation of a petition for the issuance of a writ of possession with an ordinary civil action in order to achieve a more expeditious resolution of the cases. In the present case, it would be more in keeping with law and equity if all the cases filed against petitioner were consolidated with that having the lowest docket number pending with the Third Division of the Sandiganbayan. The only notable differences in these cases lie in the date of the transaction, the entity transacted with and amount involved. The charge and core element are the same – *estafa* through falsification of documents based on alleged overstatements of claims for miscellaneous and extraordinary expenses. Notably, the main witness is also the same – Hilconeda P. Abril. It need not be underscored that consolidation of cases, when proper, results in the simplification of proceedings which saves time, the resources of the parties and the courts, and a possible major abbreviation of trial. It contributes to the swift dispensation of justice, and is in accord with the aim of affording the parties a just, speedy and inexpensive determination of their cases before the courts. Above all, consolidation avoids the possibility of rendering conflicting decisions in two or more cases which would otherwise require a single judgment.

APPEARANCES OF COUNSEL

Gregorio D. Cañeda, Jr. and *Melchor V. Mibolos* for petitioner.

D E C I S I O N

CARPIO MORALES, *J.*:

By Affidavit of February 15, 2002, Hilconeda P. Abril, State Auditor V of the Commission on Audit (COA) assigned at the Philippine Crop Insurance Corporation (PCIC), requested the Office of the Ombudsman to conduct a preliminary investigation on the transactions-bases of the claims of Jaime S. Domdom (petitioner) for miscellaneous and extraordinary expenses as a Director of PCIC, the receipts covering which were alleged to be tampered.[1]

After preliminary investigation, the Office of the Ombudsman found probable cause to charge petitioner with nine counts of *estafa* through falsification of documents in view of irregularities in nine supporting receipts for his claims for miscellaneous and extraordinary expenses, after verification with the establishments he had transacted with. It thus directed the filing of the appropriate Informations with the Sandiganbayan.[2]

The Informations were separately raffled and lodged among the five divisions of the Sandiganbayan. The First, Second and Fifth Divisions granted petitioner's Motions for Consolidation of the cases raffled to them with that having the lowest docket number, SB-07-CRM-0052, which was raffled to the Third Division.[3]

The Sandiganbayan Third Division disallowed the consolidation, however, by Resolutions dated February 12 and May 8, 2008, it holding mainly that the evidence in the cases sought to be

[1] *Rollo,* pp. 22-23.

[2] *Id.* at 52-66.

[3] *Id.* at 96-102, 122, 213-214.

consolidated differed[4] from that to be presented in the one which bore the lowest docket number. It is gathered from the records that the Sandiganbayan Fourth Division also denied petitioner's Motion for Consolidation.[5]

Petitioner thus seeks relief from this Court via the present Petition for *Certiorari*, with prayer for temporary restraining order (TRO) and/or writ of preliminary injunction, to enjoin the different divisions of the Sandiganbayan from further proceeding with the cases against him during the pendency of this petition.[6]

Petitioner argues that, among other things, all the cases against him arose from substantially identical series of transactions involving alleged overstatements of miscellaneous and extraordinary expenses.

Respondent People of the Philippines (People), in its Comment,[7] counters that petitioner failed to file a motion for reconsideration which is a condition precedent to the filing of a petition for *certiorari*; that the petition was filed out of time since a motion for extension to file such kind of a petition is no longer allowed; that consolidation is a matter of judicial discretion; and that the proceedings in the different divisions of the Sandiganbayan may proceed independently as the Informations charged separate crimes committed on separate occasions.

In the meantime, the Court issued a TRO[8] enjoining all divisions of the Sandiganbayan from further proceeding with the trial of the cases against petitioner until further orders.

Prefatorily, the People raises procedural questions which the Court shall first address.

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[4] *Id.* at 112, 232.

[5] *Id.* at 313-314.

[6] *Id.* at 9-21, 124-142.

[7] *Id.* at 272-291.

[8] Resolutions of September 2, 2008 and February 24, 2009; *rollo*, pp. 298-300, 315.

Concededly, the settled rule is that a motion for reconsideration is a condition *sine qua non* for the filing of a petition for *certiorari*, its purpose being to grant an opportunity for the court *a quo* to correct any actual or perceived error attributed to it by a re-examination of the legal and factual circumstances of the case.[9]

The rule is, however, circumscribed by well-defined exceptions, such as where the order is a patent nullity because the court *a quo* had no jurisdiction; where **the questions raised in the *certiorari* proceeding have been duly raised and passed upon by the lower court**, or are the same as those raised and passed upon in the lower court; where **there is an urgent necessity for the resolution of the question, and any further delay would prejudice the interests** of the Government or **of the petitioner,** or the subject matter of the action is perishable; where, under the circumstances, a motion for reconsideration would be useless; where the petitioner was deprived of due process and there is extreme urgency for relief; where, in a criminal case, relief from an order of arrest is urgent and the grant of such relief by the trial court is improbable; where the proceedings in the lower court are a nullity for lack of due process; where the proceedings were *ex parte* or in which the petitioner had no opportunity to object; and where **the issue raised is one purely of law** or where public interest is involved.[10]

The Court finds that **the issue raised by petitioner had been duly raised and passed upon by the Sandiganbayan Third Division**, it having denied consolidation in two resolutions; that the issue calls for **resolution and any further delay would prejudice the interests of petitioner**; and that **the issue raised is one purely of law,** the facts not being contested. There is thus ample justification for relaxing the rule requiring the prior filing of a motion for reconsideration.

On the People's argument that a motion for extension of time to file a petition for *certiorari* is no longer allowed, the

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[9] *Estate of Salvador Serra Serra v. Heirs of Primitivo Hernaez,* G.R. No. 142913, August 9, 2005, 466 SCRA 120, 127.

[10] *Tan v. Court of Appeals*, 341 Phil. 570, 576-578 (1997).

same rests on shaky grounds. Supposedly, the deletion of the following provision in Section 4 of Rule 65 by A.M. No. 07-7-12-SC[11] evinces an intention to absolutely prohibit motions for extension:

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

The full text of Section 4 of Rule 65, *as amended* by A.M. No. 07-7-12-SC, reads:

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

If the petition relates to an act or an omission of a municipal trial court or of a corporation, a board, an officer or a person, it shall be filed with the Regional Trial Court exercising jurisdiction over the territorial area as defined by the Supreme Court. It may also be filed with the Court of Appeals or with the Sandiganbayan, whether or not the same is in aid of the court's appellate jurisdiction. If the petition involves an act or an omission of a quasi-judicial agency, unless otherwise provided by law or these rules, the petition shall be filed with and be cognizable only by the Court of Appeals.

In election cases involving an act or an omission of a municipal or a regional trial court, the petition shall be filed exclusively with the Commission on Elections, in aid of its appellate jurisdiction. (underscoring supplied)

That no mention is made in the above-quoted amended Section 4 of Rule 65 of a motion for extension, unlike in the previous formulation, does not make the filing of such pleading absolutely prohibited. If such were the intention, the deleted portion could just have simply been reworded to state that "no

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[11] Amendments to Rules 41, 45, 58 and 65 of the Rules of Court; adopted on December 4, 2007.

extension of time to file the petition shall be granted." Absent such a prohibition, motions for extension are allowed, subject to the Court's sound discretion. The present petition may thus be allowed, having been filed within the extension sought and, at all events, given its merits.

In *Teston v. Development Bank of the Philippines*,[12] the Court laid down the requisites for the consolidation of cases, *viz*:

> A court may order several actions pending before it to be tried together where they arise from **the same act, event or transaction, involve the same or like issues, and depend largely or substantially on the same evidence**, provided that the court has jurisdiction over the cases to be consolidated and that a joint trial will not give one party an undue advantage or prejudice the substantial rights of any of the parties. (emphasis and underscoring supplied.)

The rule allowing consolidation is designed to avoid multiplicity of suits, to guard against oppression or abuse, to prevent delays, to clear congested dockets, and to simplify the work of the trial court – in short, the attainment of justice with the least expense and vexation to the parties-litigants.

Thus, in *Philippine Savings Bank v. Mañalac, Jr.*,[13] the Court disregarded the technical difference between an action and a proceeding, and upheld the consolidation of a petition for the issuance of a writ of possession with an ordinary civil action in order to achieve a more expeditious resolution of the cases.

In the present case, it would be more in keeping with law and equity if all the cases filed against petitioner were consolidated with that having the lowest docket number pending with the Third Division of the Sandiganbayan. The only notable differences in these cases lie in the date of the transaction, the entity transacted with and amount involved. The charge and core element are the same – *estafa* through falsification of documents based on alleged overstatements of claims for miscellaneous

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[12] G.R. No. 144374, November 11, 2005, 474 SCRA 597, 605.

[13] G.R. No. 145441, April 26, 2005, 457 SCRA 203, 213-214.

and extraordinary expenses. Notably, the main witness is also the same – Hilconeda P. Abril.

It need not be underscored that consolidation of cases, when proper, results in the simplification of proceedings which saves time, the resources of the parties and the courts, and a possible major abbreviation of trial. It contributes to the swift dispensation of justice, and is in accord with the aim of affording the parties a just, speedy and inexpensive determination of their cases before the courts. Above all, consolidation avoids the possibility of rendering conflicting decisions in two or more cases which would otherwise require a single judgment.[14]

WHEREFORE, the petition is *GRANTED*. The Third Division of the *Sandiganbayan* is *DIRECTED* to allow the consolidation of the cases against petitioner for *estafa* through falsification of documents with SB-07-CRM-0052, which has the lowest docket number pending with it. All other Divisions of the Sandiganbayan are accordingly *ORDERED* to forward the subject cases to the Third Division.

SO ORDERED.

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

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

FIRST DIVISION

[G.R. No. 183063. February 24, 2010]

REPUBLIC OF THE PHILIPPINES, *petitioner, vs.* **CAYETANO L. SERRANO,**[1] **and HEIRS OF CATALINO M. ALAAN, represented by PAULITA P. ALAAN,** *respondents.*

SYLLABUS

1. CIVIL LAW; LAND REGISTRATION; PROPERTY REGISTRATION DECREE (P.D. NO. 1529); REQUISITES FOR APPLICATION FOR REGISTRATION OF TITLE.— The requisites for the filing of an application for registration of title under Section 14(1) of the *Property Registration Decree* are: that the property is alienable and disposable land of the public domain; that the applicants by themselves or through their predecessors-in-interest have been in open, continuous, exclusive and notorious possession and occupation thereof; and that such possession is under a *bona fide* claim of ownership since June 12, 1945 or earlier.

2. ID.; ID.; ID.; ID.; THAT THE PROPERTY IS ALIENABLE AND DISPOSABLE LAND OF THE PUBLIC DOMAIN, CONSTRUED.— The Court reiterates the doctrine which more accurately construes Section 14(1) in *Republic of the Philippines v. Court of Appeals and Naguit, viz*: . . . the more reasonable interpretation of Section 14(1) is that **it merely requires the property sought to be registered as already alienable and disposable at the time the application for registration of title is filed.** If the State, at the time the application is made, has not yet deemed it proper to release the property for alienation or disposition, the presumption is that the government is still reserving the right to utilize the property; hence, the need to preserve its ownership in the State irrespective of the length of adverse possession even if in good faith. However, **if the property has already been classified as alienable and disposable, as it is in this case, then there is**

[1] Also referred to in the records as Cayetano L. Serrano, Sr.

already an intention on the part of the State to abdicate its exclusive prerogative over the property. This reading aligns conformably with our holding in *Republic v. Court of Appeals*. Therein, the Court noted that "to prove that the land subject of an application for registration is alienable, an applicant must establish the existence of a positive act of the government such as a presidential proclamation or an executive order; an administrative action; investigation reports of Bureau of Lands investigators; and a legislative act or a statute." **In that case, the subject land had been certified by the DENR as alienable and disposable in 1980, thus the Court concluded that the alienable status of the land, compounded by the established fact that therein respondents had occupied the land even before 1927, sufficed to allow the application for registration of the said property. In the case at bar, even the petitioner admits that the subject property was released and certified as within alienable and disposable zone in 1980 by the DENR**.

3. ID.; ID.; ID.; ID.; ID.; CERTIFICATION BY THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES CONSTITUTES SUBSTANTIAL COMPLIANCE; CASE AT BAR.— While Cayetano failed to submit any certification which would formally attest to the alienable and disposable character of the land applied for, the Certification by DENR Regional Technical Director Celso V. Loriega, Jr., as annotated on the subdivision plan submitted in evidence by Paulita, constitutes substantial compliance with the legal requirement. It clearly indicates that Lot 249 had been verified as belonging to the alienable and disposable area as early as **July 18, 1925**. The DENR certification enjoys the presumption of regularity absent any evidence to the contrary. It bears noting that no opposition was filed or registered by the Land Registration Authority or the DENR to contest respondents' applications on the ground that their respective shares of the lot are inalienable. There being no substantive rights which stand to be prejudiced, the benefit of the Certification may thus be equitably extended in favor of respondents.

4. ID.; ID.; ID.; ID.; ID.; POSSESSION AND OCCUPATION; ELUCIDATED; ESTABLISHED IN CASE AT BAR.— Petitioner's contention that respondents failed to adduce sufficient proof of possession and occupation as required under Section 14(1) of the *Property Registration Decree* does not lie. Undeniably,

respondents and/or their predecessors-in-interest must be shown to have exercised acts of dominion over the lot under a *bona fide* claim of ownership since June 12, 1945 or earlier. On what constitutes open, continuous, exclusive and notorious possession and occupation as required by statute, *Republic v. Alconaba* teaches: The law speaks of possession and occupation. Since these words are separated by the conjunction and, the clear intention of the law is not to make one synonymous with the other. Possession is broader than occupation because it includes constructive possession. When, therefore, the law adds the word occupation, it seeks to delimit the all encompassing effect of constructive possession. **Taken together with the words open, continuous, exclusive and notorious, the word occupation serves to highlight the fact that for an applicant to qualify, his possession must not be a mere fiction. Actual possession of a land consists in the manifestation of acts of dominion over it of such a nature as a party would naturally exercise over his own property**. Leonardo clearly established the character of the possession of Cayetano and his predecessors-in-interest over the lot. Thus he declared that the lot was first owned by Lazaro Rañada who sold the same to Julian Ydulzura in 1917 who in turn sold it to his and Cayetano's father Simeon in 1923; that Simeon built a house thereon after its acquisition, which fact is buttressed by entries in Tax Declaration No. 18,587 in the name of Simeon for the year 1924 indicating the existence of a 40-sq. meter residential structure made of *nipa* and mixed materials, and of coconut trees planted thereon; and that after Simeon's demise in 1931, Cayetano built his own house beside the old *nipa* house before the war, and a *bodega* after the war, which claims find support in Tax Declarations made in 1948-1958. When pressed during the request for written interrogatories if Leonardo had any other pre-war tax declarations aside from Tax Declaration No. 18,587, he explained that all available records may have been destroyed or lost during the last war but that after the war, the lot was reassessed in his father's name. The Court finds Leonardo's explanation plausible and there is nothing in the records that detracts from its probative value.

5. ID.; ID.; ID.; ID.; ID.; ID.; OFFICIAL RECEIPTS OF REALTY TAX PAYMENTS SERVE AS CREDIBLE INDICIA OF ACTS OF DOMINION.— x x x [T]he official receipts of realty tax

payments religiously made by Cayetano from 1948 to 1997 further serve as credible indicia that Cayetano, after his father's death in 1931, continued to exercise acts of dominion over the lot. The totality of the evidence thus points to the unbroken chain of acts exercised by Cayetano to demonstrate his occupation and possession of the land in the concept of owner, to the exclusion of all others.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.
Rogelio P. Dagani for Heirs of Catalino M. Alaan.
Danny C. Serrano for Cayetano L. Serrano.

D E C I S I O N

CARPIO MORALES, *J.*:

Respondent Cayetano L. Serrano (Cayetano) filed on September 21, 1988 before the Regional Trial Court (RTC) of Butuan City an application for registration,[2] docketed as LRC Case No. 270, over a 533-square meter parcel of commercial land known as Lot 249 ([on Plan Psu-157485] the lot), located in Poblacion Cabadbaran, Agusan del Norte.

Cayetano claimed to have acquired the lot by inheritance from his deceased parents, Simeon Serrano (Simeon) and Agustina Luz; by virtue of a Deed of Exchange[3] dated February 10, 1961; and by a private deed of partition and extrajudicial settlement forged by him and his co-heirs.

Invoking the applicability of *Presidential Decree No. 1529* or the *Property Registration Decree* or, in the alternative, the provisions of Chapter VIII, Section 48(b) of *Commonwealth Act No. 141*,[4] Cayetano also claimed to have been in open,

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[2] Records, pp. 1-3.

[3] *Id.* at 8-9.

[4] Also known as the Public Land Act.

continuous, exclusive and notorious possession of the lot under a claim of ownership before 1917 by himself and through his deceased parents–predecessors-in-interest or for more than 70 years.

The Heirs of Catalino Alaan, represented by Paulita Alaan (Paulita),[5] intervened and filed an application for registration,[6] their predecessor-in-interest Catalino Alaan (Catalino) having purchased[7] a 217.45-square meter undivided portion of the lot from Cayetano on February 27, 1989 during the pendency of Cayetano's application for registration.

The intervenor-heirs of Catalino, also invoking the provisions of the *Property Registration Decree* or, alternatively, of Chapter VIII, Section 48(b) of *Commonwealth Act No. 141*, prayed that their application for confirmation of title be considered jointly with that of Cayetano's, and that, thereafter, original certificates of title be issued in both their names.

Cayetano raised no objection or opposition to the intervenor-Heirs of Catalino's application for registration.[8]

Cayetano's brother-attorney-in-fact Leonardo Serrano (Leonardo) represented him at the hearings of the application. During the pendency of the case, Cayetano passed away[9] and was substituted by his heirs.

At the trial, the following pieces of documentary evidence, *inter alia*, were presented to support Cayetano's claim of ownership over the lot: original survey plan dated January 3, 1957 and certified by the Department of Environment and Natural Resources (DENR), and Bureau of Lands Director Zoilo

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[5] Catalino Alaan died on February 11, 1990; records, p. 76.

[6] *Id.* at 83-85.

[7] Pursuant to an "Absolute Sale of Commercial Lot Psu-157485 Portion Situated in Cabadbaran, Agusan del Norte"; records, pp. 78-79.

[8] *Vide* Order dated June 11, 2002; *id.* at 343.

[9] *Vide* Certificate of Death, *id.* at 167.

Castrillo,[10] technical description of the lot (Psu-157485),[11] Tax Declarations for the years 1924 (in the name of Simeon) and 1948-1997 (in the name of either Simeon [deceased] or Cayetano),[12] official receipts showing real estate tax payments (from 1948-1997),[13] and Surveyor's Certificate No. 157485 dated January 1957.[14]

As Cayetano's sole witness Leonardo was already physically infirm (hard of hearing and due to old age) at the time trial commenced, his testimony was taken by deposition on written interrogatories.[15]

In answer to the interrogatories,[16] Leonardo declared that his family had lived on the lot since pre-war time, his father Simeon having built a house on it following his acquisition from Julian Ydulzura in 1923[17] who had purchased it from Lazaro Rañada in 1917;[18] that the construction of a family home in 1923 was reflected in Tax Declaration No. 18,587 in the name of Simeon for the year 1924;[19] that after his father's death in 1931, his mother and his brother Cayetano continued to possess the lot in the concept of owners and Cayetano in fact built his own house and a *bodega* thereon; that Cayetano religiously paid real estate taxes from 1951 up to the current year 1997;[20] that the lot was assigned to him and Cayetano as their share of the inheritance by virtue of a private document, "*Kaligonan*,"

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[10] Exhibit "I", *id.* at 175.

[11] Exhibit "J", *id.* at 176.

[12] Exhibits "K" "O" to "P-12", *id.* at 177, 182-194.

[13] Exhibits "Q" to "Q-24", *id.* at 195-204.

[14] Exhibit "V", *id.* at 6.

[15] *Vide* Order dated April 24, 1996; *id.* at 114.

[16] *Id.* at 122-132.

[17] Spanish Deed of Sale dated September 3, 1923; Exhibit "M"; *id.* at 179.

[18] Spanish Deed of Sale dated May 15, 1917; Exhibit "L", *id.* at 178.

[19] *Vide* Exhibit "K", note 12.

[20] *Vide* note 13.

dated June 16, 1951,[21] which was executed by all of the heirs, the contents of which document were subsequently confirmed in a Deed of Extrajudicial Settlement dated August 24, 1988;[22] and that on February 10, 1961, Cayetano exchanged a titled lot in Butuan City for his (Leonardo's) half-share in the lot, thereby making Cayetano the sole and exclusive owner thereof.[23]

On the other hand, Paulita, wife of Catalino who represented the heirs of Catalino, declared that in February 1989, Cayetano sold to her husband a 217.45-sq. meter portion of the 533-sq. meter lot subject of the present case as embodied in a deed of absolute sale;[24] and that Catalino religiously paid real estate taxes therefor. And she presented an approved Subdivision Plan of Lot 249,[25] Cad-866 indicating therein the respective shares of Cayetano and Catalino based on a survey undertaken by Geodetic Engineer Armando Diola on May 9, 1997.[26]

The above-said Subdivision Plan of the lot, duly approved by Celso V. Loriega, Jr., Regional Technical Director of the DENR, Lands Management Services, Region Office XIII for Butuan City, carries the following annotation:

> Surveyed in accordance with survey authority no. (X-2A) 77 issued by CENRO.
>
> **This survey is inside the alienable and disposable area as per project no. 5 L.C Map No. 550 certified on July 18, 1925.**
>
> Lot 249-A, Lot 9090, Lot 249-B, Lot 9091, CAD 866 Cabadbaran Cadastre. (emphasis and underscoring supplied)

Herein petitioner Republic of the Philippines, represented by Butuan provincial prosecutor Ambrosio Gallarde, did not present any evidence to oppose the applications.

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[21] Exhibit "R", records, pp. 205-206.

[22] Exhibit "RR," *id*. at 207-208.

[23] *Vide* Deed of Exchange, Exhibits "S" to "S-1"; *id*. at 209.

[24] *Vide* Exhibit "1" for Intervenor, Records, pp. 322-323.

[25] Exhibit "2"; *id.* at 325.

[26] TSN, May 28, 2002, pp. 18-25.

By Decision of November 3, 2003,[27] the RTC granted respondents' applications, disposing as follows:

> WHEREFORE, conformably with existing laws and jurisprudence, DECISION is hereby rendered:
>
> 1. Awarding a portion of Lot 249, Psu-15(5)7485 (now known as Lot 249-B, Csd-13-000443-D) containing an area of 316 sq. meters to applicant Cayetano L. Serrano, Sr., represented by his heirs;
>
> 2. Awarding a portion of Lot 249, Psu-157485 (now known as Lot 249-A, Csd-1-000443-D) containing an area of 217 sq. meters to applicant Catalina M. Alaan, represented by Paulita P. Alaan;
>
> IT IS SO ORDERED.

The Office of the Solicitor General, on behalf of herein petitioner, appealed the RTC decision before the Court of Appeals on the grounds that respondents failed to present evidence that the property was alienable or that they possessed the same in the manner and duration required by the provisions of the *Property Registration Decree*.[28]

By Decision of May 13, 2008,[29] the appellate court *affirmed* the decision of the RTC in this wise:

> x x x x x x x x x
>
> . . . [F]rom the aforequoted annotation, the OSG's assertion that there was no competent evidence that would clearly show the subject land was released as alienable and disposable land is unavailing. On the contrary, We HOLD that the said annotation would suffice to comply with the requirement of certification as the same is competent enough to show that the disputed land or the parcels of land (now Lot Nos. 249-A, Cad-866 and 249-B Cad-866, respectively) applied for by the applicants (Cayetano and Alaan) were **already reclassified as alienable and disposable as early as 18 July 1925,** under Project No. 5, L.C. Map No. 550.

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[27] Records, pp. 357-361.

[28] CA *rollo*, pp. 98-109.

[29] Penned by Associate Justice Jane Aurora Lantion with the concurrence of Associate Justices Edgardo Camello and Edgardo Lloren; *id* at 140-150.

xxx xxx xxx

Records show that the subject land was first owned and possessed by Lazaro Rañada and the same was sold to Julian Ydulzura per untitled document executed on 15 May 1917. On 3 September 1923, Ydulzura sold the subject land for one hundred fifty pesos (Php150.00) to Simeon M. Serrano per untitled document, father of Cayetano. Simeon M. Serrano then had the subject land tax declared in his name in 1924 per *Declaration of Real Property (Urban) No. 18,587*. Upon the demise of Simeon Serrano on 9 January 1931, his heirs, including herein applicant Cayetano, partitioned by way of an *Agreement* on 16 June 1951 the properties of their deceased father. On 24 August 1988, the heirs of Simeon M. Serrano executed a *Deed of Extrajudicial Settlement* confirming further the *Agreement* executed on 16 June 1954 (sic). **It is worth noting that from 1955 up to the filing of the *Application for Registration* in 21 June 1988 and until 1997, Cayetano religiously paid the real estate taxes of the said subject property. As held in a long line of cases, *tax declarations or realty tax payments of property are not conclusive evidence of ownership, nevertheless, they are good indicia of possession in the concept of owner.*** Undoubtedly, applicant Cayetano, through his predecessors-in-interest, having been in open, continuous, exclusive and notorious possession and occupation over the subject property under a *bona fide* claim of ownership since June 12, 1945, or earlier had met the requirements set forth in Section 14(1) of the *Property Registration Decree.*

In fine, We FIND and so HOLD that applicant Cayetano L. Serrano and intervenor-appellee heirs of Catalino M. Alaan, have registrable title to the aforesaid subject lands, Lot 249-B, Csd-13-000443-D and Lot 249-A, Csd-1-000443-D, respectively, as they were able to prove that they are qualified and had complied with the requirements set forth by the provisions of *P.D. No. 1529* which amended *Commonwealth Act 141, as amended* and *Presidential Decree No. 1073*, which to Our mind merited the allowance of the application for registration of the said property by the trial court.[30] (italics in the original; emphasis and underscoring supplied)

Hence, the present petition which raises the same grounds as those raised by petitioner before the appellate court.

The petition fails.

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[30] CA *rollo*, pp. 147-149.

The requisites for the filing of an application for registration of title under Section 14(1) of the *Property Registration Decree* are: that the property is alienable and disposable land of the public domain; that the applicants by themselves or through their predecessors-in-interest have been in open, continuous, exclusive and notorious possession and occupation thereof; and that such possession is under a *bona fide* claim of ownership since June 12, 1945 or earlier.[31]

The Court reiterates the doctrine which more accurately construes Section 14(1) in *Republic of the Philippines v. Court of Appeals and Naguit*,[32] *viz*:

> . . . the more reasonable interpretation of Section 14(1) is that **it merely requires the property sought to be registered as already alienable and disposable at the time the application for registration of title is filed.** If the State, at the time the application is made, has not yet deemed it proper to release the property for alienation or disposition, the presumption is that the government is still reserving the right to utilize the property; hence, the need to preserve its ownership in the State irrespective of the length of adverse possession even if in good faith. However**, if the property has already been classified as alienable and disposable, as it is in this case, then there is already an intention on the part of the State to abdicate its exclusive prerogative over the property.**

This reading aligns conformably with our holding in *Republic v. Court of Appeals*. Therein, the Court noted that "to prove that the land subject of an application for registration is alienable, an applicant must establish the existence of a positive act of the government such

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[31] SEC. 14. Who may apply.— The following persons may file in the proper Court of First Instance an application for registration of title to land, whether personally or through their duly authorized representatives:

(1) Those who by themselves or through their predecessors-in-interest have been in open, continuous, exclusive and notorious possession and occupation of alienable and disposable lands of the public domain under a *bona fide* claim of ownership since June 12, 1945, or earlier.

x x x x x x x x x

[32] G.R. No. 144507, January 17, 2005, 448 SCRA 442.

as a presidential proclamation or an executive order; an administrative action; investigation reports of Bureau of Lands investigators; and a legislative act or a statute." **In that case, the subject land had been certified by the DENR as alienable and disposable in 1980, thus the Court concluded that the alienable status of the land, compounded by the established fact that therein respondents had occupied the land even before 1927, sufficed to allow the application for registration of the said property. In the case at bar, even the petitioner admits that the subject property was released and certified as within alienable and disposable zone in 1980 by the DENR**.[33] (Citations omitted; emphasis and underscoring supplied)

While Cayetano failed to submit any certification which would formally attest to the alienable and disposable character of the land applied for, the Certification by DENR Regional Technical Director Celso V. Loriega, Jr., as annotated on the subdivision plan submitted in evidence by Paulita, constitutes substantial compliance with the legal requirement. It clearly indicates that Lot 249 had been verified as belonging to the alienable and disposable area as early as **July 18, 1925**.

The DENR certification enjoys the presumption of regularity absent any evidence to the contrary. It bears noting that no opposition was filed or registered by the Land Registration Authority or the DENR to contest respondents' applications on the ground that their respective shares of the lot are inalienable. There being no substantive rights which stand to be prejudiced, the benefit of the Certification may thus be equitably extended in favor of respondents.

Petitioner's contention that respondents failed to adduce sufficient proof of possession and occupation as required under Section 14(1) of the *Property Registration Decree* does not lie.

Undeniably, respondents and/or their predecessors-in-interest must be shown to have exercised acts of dominion over the lot under a *bona fide* claim of ownership since June 12, 1945 or earlier. On what constitutes open, continuous, exclusive and

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[33] *Id.* at 448-449.

notorious possession and occupation as required by statute, *Republic v. Alconaba*[34] teaches:

> The law speaks of possession and occupation. Since these words are separated by the conjunction and, the clear intention of the law is not to make one synonymous with the other. Possession is broader than occupation because it includes constructive possession. When, therefore, the law adds the word occupation, it seeks to delimit the all encompassing effect of constructive possession. **Taken together with the words open, continuous, exclusive and notorious, the word occupation serves to highlight the fact that for an applicant to qualify, his possession must not be a mere fiction. Actual possession of a land consists in the manifestation of acts of dominion over it of such a nature as a party would naturally exercise over his own property**. (emphasis and underscoring supplied)

Leonardo clearly established the character of the possession of Cayetano and his predecessors-in-interest over the lot. Thus he declared that the lot was first owned by Lazaro Rañada who sold the same to Julian Ydulzura in 1917 who in turn sold it to his and Cayetano's father Simeon in 1923; that Simeon built a house thereon after its acquisition, which fact is buttressed by entries in Tax Declaration No. 18,587 in the name of Simeon for the year 1924 indicating the existence of a 40-sq. meter residential structure made of *nipa* and mixed materials, and of coconut trees planted thereon; and that after Simeon's demise in 1931, Cayetano built his own house beside the old *nipa* house before the war, and a *bodega* after the war, which claims find support in Tax Declarations made in 1948-1958.[35]

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[34] G.R. No. 155012, April 14, 2004, 427 SCRA 611, 619-620 citing *Director of Lands v. IAC*, G.R. No. 68946, 209 SCRA 214 (1992), *Ramos v. Director of Lands*, 39 Phil. 175 (1918) and *Republic v. Court of Appeals*, G.R. Nos. 115747 and 116658, 345 SCRA 104 (2000).

[35] *Vide* Exhibits "O" to "P-8", at note 12. Exhibit "P-8" contains an entry in the dorsal portion thereof that "The *bodega* was burned on July 4, 1957 when Cabadbaran was on fire."

When pressed during the request for written interrogatories if Leonardo had any other pre-war tax declarations aside from Tax Declaration No. 18,587, he explained that all available records may have been destroyed or lost during the last war but that after the war, the lot was reassessed in his father's name.[36] The Court finds Leonardo's explanation plausible and there is nothing in the records that detracts from its probative value.

Finally, the official receipts of realty tax payments[37] religiously made by Cayetano from 1948 to 1997 further serve as credible indicia that Cayetano, after his father's death in 1931, continued to exercise acts of dominion over the lot.

The totality of the evidence thus points to the unbroken chain of acts exercised by Cayetano to demonstrate his occupation and possession of the land in the concept of owner, to the exclusion of all others.

WHEREFORE, the petition is *DENIED*.

No costs.

SO ORDERED.

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

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[36] *Vide* note 16 at 128.

[37] *Vide* note 13.

FIRST DIVISION

[G.R. No. 183507. February 24, 2010]

OFFICE OF THE OMBUDSMAN (MINDANAO), *petitioner, vs.* **ASTERIA E. CRUZABRA,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; WEIGHT AND SUFFICIENCY OF EVIDENCE; SUBSTANTIAL EVIDENCE; QUANTUM OF PROOF REQUIRED FOR A FINDING OF GUILT IN ADMINISTRATIVE AND QUASI-JUDICIAL PROCEEDINGS; ESTABLISHED IN CASE AT BAR.— In administrative and quasi-judicial proceedings, the quantum of proof required for a finding of guilt is only substantial evidence, "that amount of relevant evidence that a reasonable mind might accept as adequate to support a conclusion, even if other minds, equally reasonable, might conceivably opine otherwise." In the present case, petitioner's Order of May 18, 2004 finding respondent administratively liable for neglect of duty, which "implies the failure to give proper attention to a task expected of an employee arising from either carelessness or indifference," was adequately established by substantial evidence.

2. POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC OFFICERS AND EMPLOYEES; NEGLECT OF DUTY; A CASE OF.— That it is the duty and responsibility of respondent, as register of deeds, to **direct and supervise the activities of her office** can never be overemphasized. Whether respondent exercised prudence and vigilance in discharging her duties, she has not shown. Respondent's guilt of neglect of duty becomes more pronounced as note is taken of her admitted inaction upon learning of the irregularity. Her justification for such inaction — that to do so would subject her to a charge of falsification — reflects her indifference, to say the least, to her duties and functions.

3. ID.; CONSTITUTIONAL LAW; ACCOUNTABILITY OF PUBLIC OFFICERS; DECISION OF THE OFFICE OF THE OMBUDSMAN IMPOSING THE PENALTY OF SUSPENSION OF NOT MORE THAN ONE MONTH IS FINAL AND

UNAPPEALABLE; BASIS.— x x x [T]he May 18, 2004 Order of petitioner which imposed upon respondent the penalty of suspension for one month without pay for neglect of duty is final, executory and unappealable pursuant to Section 27, R.A. No. 6770, *viz*: SEC. 27. ***Effectivity and finality of Decisions.***– x x x **Findings of fact** by the Office of the Ombudsman **when supported by substantial evidence** are **conclusive**. Any order, directive or decision imposing the penalty of a public censure or reprimand, **suspension of not more than one month's salary shall be *final and unappealable***. Corollarily, Section 7, Rule III of Administrative Order (A.O.) No. 7 (the "Rules of Procedure of the Office of the Ombudsman"), as amended by A.O. No. 17 dated September 7, 2003, provides: Section 7. *Finality and execution of decision*. – Where the respondent is absolved of the charge, and **in case of conviction where the penalty imposed is** public censure or reprimand, **suspension of not more than one month**, or a fine equivalent to one month salary, **the decision shall be final, executory and unappealable**. In all other cases, the decision may be appealed to the Court of Appeals on a verified petition for review under the requirements and conditions set forth in Rule 43 of the Rules of Court, within fifteen (15) days from receipt of the written Notice of the Decision or Order denying the Motion for Reconsideration. x x x Given the provisions of law and the Rules of Procedure of the Office of the Ombudsman, petitioner's Order faulting respondent for neglect of duty for which it imposed the penalty of one month suspension without pay is "final, executory and unappealable." It follows that the Court of Appeals had no appellate jurisdiction to review, rectify or reverse the Order.

APPEARANCES OF COUNSEL

Office of the Legal Affairs (Ombudsman) for petitioner.
Clemencia E. Dinopol-Cataluña for respondent.

D E C I S I O N

CARPIO MORALES, *J.*:

Anwar Mohamad Abdurasak and Jovina Tama Mohamad Abdurasak via a petition filed before the Office of the Register

of Deeds of General Santos City sought the inclusion of the name "Ali Mohamad Abdurasak" in Transfer Certificates of Title Nos. T-89456 and T-89458.

Without authority from General Santos City Register of Deeds Asteria E. Cruzabra (respondent), land registration examiner Bienvenido Managuit (Managuit) acted on the petition by instructing the office clerk to type the name "Ali Mohamad Abdurasak" on the face of the titles.

Due to the unauthorized intercalation, one Datu Sarip E. Andang[1] filed a *criminal* complaint against respondent, as register of deeds, for falsification of public documents and usurpation of official functions before the Office of the Ombudsman for Mindanao (petitioner).

In her Counter-Affidavit, respondent alleged that, *inter alia*, the intercalation was without her authority and it occurred outside her cubicle; that upon learning about it, she did not correct the same for to do so would subject her or the author thereof to a charge of falsification of public documents; and that the proper parties to question the intercalation are those whose interests on the titles were prejudiced thereby.[2]

Ombudsman Prosecutor Liza C. Tan found no probable cause to charge respondent with usurpation of official functions and accordingly ordered the withdrawal of the Information for falsification of public documents which apparently had been filed earlier. On her recommendation, however, an *administrative* case for simple misconduct was filed against respondent.[3]

The Office of the Ombudsman for Mindanao (petitioner), through Deputy Ombudsman's Antonio E. Valenzuela's Order[4] of May 18, 2004, found respondent liable for neglect of duty

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[1] There is no indication in the Court's *rollo* of the case and that of the Court of Appeals who he is or in what capacity he filed the complaint.

[2] Cited in petitioner's Order of May 18, 2004; *rollo*, pp. 37-38, 40.

[3] *Id.* at 35, 37.

[4] *Id.* at 35-41.

and accordingly imposed on her the penalty of **suspension for one (1) month without pay**, pursuant to Section 46, Book V, Title I of Executive Order No. 292 (the Administrative Code of 1987).

On appeal by respondent, the Court of Appeals, by Decision[5] of December 14, 2007, reversed petitioner's decision, it finding that respondent was not negligent. It admonished her, however. Thus the appellate court ratiocinated:

> As Registrar of Deeds, the primary duties and responsibilities, among other things, of [respondent] are: *(1) directs and supervises the activities of the Registry of Deeds Office; (2) reviews deeds and other documents for conformance with legal requirements for registration; and (3) approves registration of documents and justifies disapproved cases.* x x x.
>
> x x x The land registration examiner, Bienvenido Managuit himself admitted that . . . he personally ordered the typing of the name "Ali Mohamad Abdurasak" on the face of the titles, without referring the said petition to [respondent] for review and proper disposition being the head of office. This fact **negates** the imputation of neglect of duty which, as defined, is the failure of an employee to give proper attention to a task expected of him, signifying "disregard of a duty resulting from carelessness or indifference (*Office of the Ombudsman v. Court of Appeals*, G.R. No. 167844, Nov. 22, 2006)."
>
> xxx xxx xxx
>
> While We are convinced that [respondent] is **not negligent** in the performance of her official duties and responsibilities as Registrar of Deeds, We however **admonish** her to be very careful, using prudence and caution in the management of the affairs in her Office in order to preserve the public's faith and confidence in the government. (emphasis and underscoring supplied)

Its motion for reconsideration having been denied, petitioner filed the present Petition for Review on *Certiorari*, maintaining that it did not err in finding respondent administratively guilty of neglect of duty and that its Order "imposing upon respondent

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[5] Penned by Associate Justice Mario V. Lopez and concurred in by Associate Justices Romulo V. Borja and Elihu A. Ybanez; *id.* at 21-29.

the penalty of suspension for one (1) month without pay is **final, executory and unappealable**."[6]

The Court finds for petitioner.

In administrative and quasi-judicial proceedings, the quantum of proof required for a finding of guilt is only substantial evidence, "that amount of relevant evidence that a reasonable mind might accept as adequate to support a conclusion, even if other minds, equally reasonable, might conceivably opine otherwise."[7]

In the present case, petitioner's Order of May 18, 2004 finding respondent administratively liable for neglect of duty, which "implies the failure to give proper attention to a task expected of an employee arising from either carelessness or indifference,"[8] was adequately established by substantial evidence.

That it is the duty and responsibility of respondent, as register of deeds, to **direct and supervise the activities of her office** can never be overemphasized. Whether respondent exercised prudence and vigilance in discharging her duties, she has not shown.

Respondent's guilt of neglect of duty becomes more pronounced as note is taken of her admitted inaction upon learning of the irregularity. Her justification for such inaction — that to do so would subject her to a charge of falsification [9]— reflects her indifference, to say the least, to her duties and functions.

AT ALL EVENTS, the May 18, 2004 Order of petitioner which imposed upon respondent the penalty of suspension for one month without pay for neglect of duty is final, executory and unappealable pursuant to Section 27, R.A. No. 6770, *viz*:

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[6] *Id.* at 9.

[7] *Bascos, Jr. v. Taganahan*, G.R. No. 180666, February 18, 2009, 579 SCRA 653, 674.

[8] *Office of the Ombudsman v. Court of Appeals*, G.R. No. 167844, November 22, 2006, 507 SCRA 593, 611.

[9] Assailed CA Decision, *rollo*, p. 26.

SEC. 27. ***Effectivity and finality of Decisions.***– x x x

xxx xxx xxx

Findings of fact by the Office of the Ombudsman **when supported by substantial evidence** are **conclusive**. Any order, directive or decision imposing the penalty of a public censure or reprimand, **suspension of not more than one month's salary shall be *final and unappealable***. (emphasis, italics and underscoring supplied)

Corollarily, Section 7, Rule III of Administrative Order (A.O.) No. 7 (the "Rules of Procedure of the Office of the Ombudsman"), as amended by A.O. No. 17 dated September 7, 2003, provides:

Section 7. *Finality and execution of decision*. – Where the respondent is absolved of the charge, and **in case of conviction where the penalty imposed is** public censure or reprimand, **suspension of not more than one month**, or a fine equivalent to one month salary, **the decision shall be final, executory and unappealable**. In all other cases, the decision may be appealed to the Court of Appeals on a verified petition for review under the requirements and conditions set forth in Rule 43 of the Rules of Court, within fifteen (15) days from receipt of the written Notice of the Decision or Order denying the Motion for Reconsideration.

x x x (emphasis and underscoring supplied)

Given the provisions of law and the Rules of Procedure of the Office of the Ombudsman, petitioner's Order faulting respondent for neglect of duty for which it imposed the penalty of one month suspension without pay is "final, executory and unappealable." It follows that the Court of Appeals had no appellate jurisdiction to review, rectify or reverse the Order.[10]

WHEREFORE, the petition is *GRANTED*. The December 14, 2007 Decision and June 17, 2008 Resolution of the Court of Appeals are *REVERSED* and *SET ASIDE*. No costs.

SO ORDERED.

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

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[10] *Republic v. Basjao*, G.R. No. 160596, March 20, 2009, 582 SCRA 53, 65.

FIRST DIVISION

[G.R. No. 187070. February 24, 2010]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **ROLANDO TAMAYO *y* TENA,** *accused-appellant.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; PRESUMPTIONS; POLICE OFFICERS ARE PRESUMED TO HAVE PERFORMED THEIR DUTIES IN THE REGULAR MANNER, UNLESS THERE IS EVIDENCE TO THE CONTRARY.— It is a settled rule that in cases involving violations of the Comprehensive Dangerous Drugs Act, credence is given to prosecution witnesses who are police officers for they are presumed to have performed their duties in a regular manner, unless there is evidence to the contrary. In this case, no evidence was adduced showing any irregularity in any material aspect of the conduct of the buy-bust operation. Neither was there any proof that the prosecution witnesses who were members of the buy-bust operation team, particularly those whose testimonies were in question, were impelled by any ill-feeling or improper motive against the appellant which would raise a doubt as to their credibility.

2. CRIMINAL LAW; ILLEGAL SALE OF AND ILLEGAL POSSESSION OF DANGEROUS DRUGS; ELEMENTS; ESTABLISHED IN CASE AT BAR.— In a prosecution for illegal *sale* of dangerous drugs, the following elements must first be established: (1) proof that the transaction or sale took place and (2) the presentation in court of the *corpus delicti* or the illicit drug as evidence. In a prosecution for illegal *possession* of a dangerous drug, it must be shown that (1) the accused was in possession of an item or an object identified to be a prohibited or regulated drug, (2) such possession is not authorized by law, and (3) the accused was freely and consciously aware of being in possession of the drug. Here, the prosecution was able to prove the existence of all the elements of the illegal sale and illegal possession of marijuana. The appellant was positively identified by the prosecution witnesses as the person who possessed and sold the marijuana

presented in court. In his testimony, PO3 Sy categorically stated that he bought the marijuana from the appellant. In addition, it was duly established that the sale actually took place and more marijuana was discovered in appellant's possession pursuant to a lawful arrest. The marked money used in the buy-bust operation was likewise duly presented. Furthermore, the marijuana seized from the appellant was positively and categorically identified in open court.

3. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; FACTUAL FINDINGS OF TRIAL COURTS ARE ACCORDED GREAT WEIGHT ESPECIALLY IF UPHELD BY THE COURT OF APPEALS.— The RTC, as upheld by the Court of Appeals, found that the testimonies of the prosecution witnesses were unequivocal, definite and straightforward. More importantly, their testimonies were consistent in material respects with each other and with other testimonies and physical evidence. We have held that trial courts have the distinct advantage of observing the demeanor and conduct of 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.

4. CRIMINAL LAW; REPUBLIC ACT NO. 9165; ILLEGAL SALE AND ILLEGAL POSSESSION OF DANGEROUS DRUGS; PENALTIES.— With respect to the penalty, we affirm the penalties imposed by the RTC and the Court of Appeals for the illegal sale and illegal possession of dangerous drugs, as the penalties are fully in accord with the provisions of Sections 5 and 11 of Rep. Act No. 9165, which provide: SEC. 5. *Sale, Trading, Administration, Dispensation, Delivery, Distribution and Transportation of Dangerous Drugs and/or Controlled Precursors and Essential Chemicals*.—The penalty of life imprisonment to death and a fine ranging from Five hundred thousand pesos (₱500,000.00) to Ten million pesos (₱10,000,000.00) shall be imposed upon any person, who, unless authorized by law, shall sell, trade, administer, dispense, deliver, give away to another, distribute, dispatch in transit or transport any dangerous drug, including any and all species of opium poppy regardless of the quantity and purity involved, or shall act as a broker in any of such transactions. x x x SEC. 11. *Possession of Dangerous Drugs*.—The penalty of life

imprisonment to death and a fine ranging from Five hundred thousand pesos (₱500,000.00) to Ten million pesos (₱10,000,000.00) shall be imposed upon any person, who, unless authorized by law, shall possess any dangerous drug in the following quantities, regardless of the degree of purity thereof: x x x (7) 500 grams or more of marijuana; and x x x x x x x x x .

APPEARANCES OF COUNSEL

The Solicitor General for plaintiff-appellee.
Public Attorney's Office for accused-appellant.

D E C I S I O N

VILLARAMA, JR., *J.*:

For review is the Decision[1] dated April 21, 2008 of the Court of Appeals in CA-G.R. CR-H.C. No. 01850, which affirmed the Joint Decision[2] dated December 27, 2005 of the Regional Trial Court (RTC) of Quezon City, Branch 103 in *Criminal Case Nos. Q-03-117407* and *Q-03-117408*. The trial court convicted appellant Rolando Tamayo *y* Tena of violation of Sections 5[3] and 11[4] of Article II of Republic Act No.

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[1] CA *rollo*, pp. 73-85. Penned by Associate Justice Monina Arevalo-Zenarosa, with Associate Justices Edgardo F. Sundiam and Sixto C. Marella, Jr. concurring.

[2] *Id.* at 19-22. Penned by Presiding Judge Jaime N. Salazar, Jr.

[3] SEC. 5. *Sale, Trading, Administration, Dispensation, Delivery, Distribution and Transportation of Dangerous Drugs and/or Controlled Precursors and Essential Chemicals*.—The penalty of life imprisonment to death and a fine ranging from Five hundred thousand pesos (₱500,000.00) to Ten million pesos (₱10,000,000.00) shall be imposed upon any person, who, unless authorized by law, shall sell, trade, administer, dispense, deliver, give away to another, distribute, dispatch in transit or transport any dangerous drug, including any and all species of opium poppy regardless of the quantity and purity involved, or shall act as a broker in any of such transactions.

x x x x x x x x x

[4] SEC. 11. *Possession of Dangerous Drugs*.—The penalty of life imprisonment to death and a fine ranging from Five hundred thousand pesos

9165[5] and sentenced him to suffer the penalty of life imprisonment and to pay the fine of ₱500,000.00 in *Criminal Case No. Q-03-117407*, and to suffer the penalty of life imprisonment and to pay the fine of ₱500,000.00 in *Criminal Case No. Q-03-117408*.

The appellant was charged in two (2) Informations,[6] which read as follows:

Crim. Case No. Q-03-117407

That on or about the 17th day of May, 2003, in Quezon City, Philippines, the said accused, not being authorized by law to sell, dispense, deliver, transport or distribute any dangerous drug, did, then and there, wilfully and unlawfully sell, dispense, deliver, transport, distribute or act as broker in the said transaction, twelve point seventeen (12.17) grams of dried marijuana leaves a dangerous drug.

CONTRARY TO LAW.

Crim. Case No. Q-03-117408

That on or about the 17th day of May, 2003, in Quezon City, Philippines, the said accused not being authorized by law to possess or use any dangerous drug, did then and there, wilfully, unlawfully and knowingly have in her/his/their possession and control, one thousand four hundred ninety one point five (1,491.5) grams of marijuana fruiting tops, a dangerous drug.

CONTRARY TO LAW.

(₱500,000.00) to Ten million pesos (₱10,000,000.00) shall be imposed upon any person, who, unless authorized by law, shall possess any dangerous drug in the following quantities, regardless of the degree of purity thereof:

x x x x x x x x x

(7) 500 grams or more of marijuana; and

x x x x x x x x x

[5] AN ACT INSTITUTING THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002, REPEALING REPUBLIC ACT NO. 6425, OTHERWISE KNOWN AS THE DANGEROUS DRUGS ACT OF 1972, AS AMENDED, PROVIDING FUNDS THEREFOR, AND FOR OTHER PURPOSES. Also known as the "Comprehensive Dangerous Drugs Act of 2002." Approved on June 7, 2002.

[6] Records, pp. 2-5.

Upon arraignment on June 30, 2003, the appellant pleaded not guilty to the charges against him.[7] Thereafter, trial ensued.

The prosecution presented as witnesses Police Officers Andres Nelson Sy and Cesar C. Collado of Police Station 4, Novaliches, Quezon City. They testified that on May 17, 2003 at around 5:30 p.m., a confidential informant arrived at the station and reported that a certain "Ronnie" was selling marijuana at Pilarin Street, Barangay Gulod, Novaliches, Quezon City. At once, a team was created to conduct a buy-bust operation in the reported area. PO3 Sy was designated as the poseur-buyer, while PO2 Collado, Police Superintendent Noli Wong and one (1) other police officer were assigned as back-ups. PO3 Sy placed his initials "ANS" on a one hundred peso (₱100.00) bill, which would be used as the buy-bust money. Then the team and the confidential informant proceeded to the target area.[8]

At around 7:00 p.m., PO3 Sy and the confidential informant went to the appellant's house, while PO2 Collado and the other officers remained inside their vehicle, about ten (10) to fifteen (15) meters away from the house. After the informant introduced PO3 Sy to the appellant, PO3 Sy was allowed to enter the house. Once inside, PO3 Sy told the appellant that he is interested in buying marijuana. The appellant asked PO3 Sy to wait. The appellant then went to the stairs and took a bag which was colored blue, green and pink. The appellant placed the bag on a table and took out a tea bag supposedly containing dried marijuana. PO3 Sy gave the ₱100.00 buy-bust money to the appellant, who in turn handed him the tea bag. Right after the exchange, PO3 Sy introduced himself as a police officer and placed the appellant under arrest. Thereafter, the confidential informant went out of the house, which was the pre-arranged signal that the sale of illegal drugs was already consummated.[9]

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[7] *Id.* at 18-19.

[8] TSN, March 16, 2004, pp. 2-5; TSN, September 7, 2004, pp. 2-4.

[9] *Id.* at 6-9; *Id.* at 5-8.

PO3 Sy likewise testified that at the time he was transacting with the appellant, there were people playing video *karera* inside the house and that those people scampered away when he arrested the appellant.[10]

PO2 Collado testified that as soon as he saw the confidential informant go out of the house, he approached PO3 Sy who was already holding the appellant. PO2 Collado examined the bag and discovered dried marijuana leaves inside, but it was PO3 Sy who recovered the buy-bust money and other plastic sachets containing dried marijuana fruiting tops from the appellant. Afterwards, the appellant was brought to the police station together with the confiscated dried marijuana fruiting tops. There were eight (8) plastic sachets containing marijuana fruiting tops recovered from the appellant aside from the dried marijuana contents of the bag.[11]

On cross-examination, PO3 Sy testified that it was his first time to meet the appellant. He likewise testified that during the time he was dealing with the appellant, there were other people inside the house.[12] On the other hand, PO2 Collado testified that he was at a distance of about fifteen (15) meters from the appellant's house when the illegal sale took place. Right after he saw the confidential informant running out of the house, he immediately approached PO3 Sy.[13] PO3 Sy and PO2 Collado positively identified the appellant and the dried marijuana leaves in open court.[14] PO3 Sy identified the tea bag containing marijuana through his initials, "ANS."[15]

The testimony of Forensic Chemist Yelah C. Manaog, who examined the substance and prepared the report, was dispensed

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[10] TSN, September 7, 2004, pp. 12-13.

[11] TSN, March 16, 2004, pp. 9-12.

[12] TSN, September 7, 2004, p. 12.

[13] TSN, May 4, 2004, pp. 2-3.

[14] TSN, September 7, 2004, pp. 7-8, 13-14; TSN, March 16, 2004, pp. 11-14.

[15] *Id.* at 8.

with, considering that the parties had stipulated that the report was duly accomplished after the substance examined by the crime laboratory yielded "positive" to the test for marijuana, a dangerous drug.[16]

The defense, for its part, presented the appellant as its sole witness. He testified that he was with his daughter inside his house at No. 18 Pilarin Street, Barangay Gulod, Novaliches, Quezon City at around 3:00 to 4:00 in the afternoon of May 17, 2003, when someone barged into his house and pointed a gun at him. He asked the person, who later turned out to be a police officer, what was going on but he did not get any answer. He was then forcibly dragged out of his house, made to board a van, and brought to Police Station 4 in Novaliches, Quezon City. He further testified that at the police station, he was put inside a detention cell. He denied the allegations of the prosecution.[17]

On cross-examination, the appellant testified that he worked as a mason while his wife is a manicurist. They have two (2) children who are still toddlers. He also narrated that at the time he was arrested, his wife was not in their house and he sought the help of his sister, Baby, who lives right beside them. According to him, Baby did not ask the police officers the reason for his arrest.[18]

On December 27, 2005, the trial court found the evidence of the prosecution sufficient to prove the appellant's guilt beyond reasonable doubt and rendered a decision of conviction in *Criminal Case Nos. Q-03-117407* and *Q-03-117408*.

The dispositive portion of the trial court's joint decision reads:

WHEREFORE, in view of the foregoing disquisitions, judgment is hereby rendered finding accused **Rolando Tamayo *y* Tena GUILTY**

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[16] Records, pp. 7-9.

[17] TSN, February 21, 2005, pp. 3-6.

[18] *Id.* at 6-9.

beyond reasonable doubt of the crimes of drug pushing and of drug possession and he is hereby sentenced, as follows:

1. In Criminal Case No. Q-03-117407, accused **Rolando Tamayo *y* Tena** is hereby sentenced to suffer **Life Imprisonment** and to pay a fine of ₱500,000.00.

2. In Criminal Case No. Q-03-117408, accused **Rolando Tamayo *y* Tena** is hereby likewise sentenced to suffer **Life Imprisonment** and to pay a fine of ₱500,000.00 in view of the large quantity of marijuana involved.

The drugs involved in this case are hereby ordered transmitted to the PDEA thru DDB for proper disposition.

SO ORDERED.[19]

The appellant appealed to the Court of Appeals,[20] which, however, sustained the trial court's judgment of conviction.

Hence, the present appeal.

On June 10, 2009, we required the parties to submit their supplemental briefs if they so desired. The Office of the Solicitor General (OSG), however, opted not to file its supplemental brief, while the appellant adopted his brief filed with the Court of Appeals. In his brief, the appellant interposed the following arguments:

I.

THE COURT *A QUO* GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT OF THE CRIMES CHARGED DESPITE THE FACT THAT HIS GUILT WAS NOT PROVEN BEYOND REASONABLE DOUBT.

II.

THE COURT *A QUO* GRAVELY ERRED IN NOT GIVING WEIGHT AND CREDENCE TO THE EVIDENCE ADDUCED BY THE DEFENSE.[21]

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[19] CA *rollo*, pp. 21-22.

[20] Records, pp. 103-104.

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

Simply stated, the issue is whether the appellant is guilty beyond reasonable doubt of violating Rep. Act No. 9165.

Appellant denies the charges against him and insists that he was merely inside his house with his three (3)-year old daughter and doing nothing illegal when the alleged buy-bust operation happened. He suggests that he was the victim of a frame-up as it is well known that some law enforcers engage in anomalous practices such as planting evidence, physical torture and extortion to extract information from suspected drug dealers or even to harass civilians. He laments the fact that his testimony was not given weight and that the trial court found his version difficult to accept. He insists that the presumption of innocence prevails over the presumption of regularity in the performance of duty and contends that his guilt was not proven beyond reasonable doubt.[22]

For the State, the OSG maintains that the prosecution had established all the elements of an illegal sale of prohibited drugs, *viz*: (1) the appellant sold and delivered a prohibited drug to another, and (2) he knew that what he had sold and delivered was a dangerous drug. The facts show that the appellant sold and delivered marijuana to PO3 Sy who posed as a buyer. The marijuana that was seized and identified as a prohibited drug was subsequently presented in evidence. Moreover, the OSG maintains that witnesses PO2 Collado and PO3 Sy positively identified the appellant as the perpetrator of the crime. The records do not disclose any ill-motive on their part to falsely accuse the appellant of an atrocious crime.[23]

We affirm the appellant's conviction.

It is a settled rule that in cases involving violations of the Comprehensive Dangerous Drugs Act, credence is given to prosecution witnesses who are police officers for they are presumed to have performed their duties in a regular manner,

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[22] *Id.* at 38-42.

[23] *Id.* at 61-62.

unless there is evidence to the contrary.[24] In this case, no evidence was adduced showing any irregularity in any material aspect of the conduct of the buy-bust operation. Neither was there any proof that the prosecution witnesses who were members of the buy-bust operation team, particularly those whose testimonies were in question, were impelled by any ill-feeling or improper motive against the appellant which would raise a doubt as to their credibility.

In a prosecution for illegal *sale* of dangerous drugs, the following elements must first be established: (1) proof that the transaction or sale took place and (2) the presentation in court of the *corpus delicti* or the illicit drug as evidence. In a prosecution for illegal *possession* of a dangerous drug, it must be shown that (1) the accused was in possession of an item or an object identified to be a prohibited or regulated drug, (2) such possession is not authorized by law, and (3) the accused was freely and consciously aware of being in possession of the drug.[25]

Here, the prosecution was able to prove the existence of all the elements of the illegal sale and illegal possession of marijuana. The appellant was positively identified by the prosecution witnesses as the person who possessed and sold the marijuana presented in court. In his testimony, PO3 Sy categorically stated that he bought the marijuana from the appellant. In addition, it was duly established that the sale actually took place and more marijuana was discovered in appellant's possession pursuant to a lawful arrest. The marked money used in the buy-bust operation was likewise duly presented. Furthermore, the marijuana seized from the appellant was positively and categorically identified in open court.[26]

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[24] *People v. Navarro*, G.R. No. 173790, October 11, 2007, 535 SCRA 644, 649, citing *People v. Saludes*, G.R. No. 144157, June 10, 2003, 403 SCRA 590, 595.

[25] *People v. Hajili*, 447 Phil. 283, 295 (2003).

[26] TSN, September 7, 2004, pp. 8-14.

We give credence to the straightforward testimony of prosecution witness PO3 Andres Nelson Sy, which clearly established that an illegal sale of marijuana actually took place and that the appellant was the seller, thus:

FIS. ARAULA;

> You said that you are a police officer, do you remember where were you sometime in M[a]y 17, 2003, mr. witness?

WITNESS:

> At police station 4, Novaliches, Quezon City sir.

FIS. ARAULA;

> What time you reported to Police station 4 on May 17, 2003, mr. witness?

WITNESS:

> I reported for work at about 8:00 in the morning sir.

FIS. ARAULA;

> While at the police station, what happened, mr. witness?

WITNESS:
> An informant arrived about 5:30 in the afternoon sir.

FIS. ARAULA;

> What was the informant relayed, mr. witness?

WITNESS:

> There was somebody selling marijuana at Pilarin Street, Brgy. Gulod, Novaliches, Quezon City through our Superior Wong sir.

FIS. ARAULA;

Was this confidential informant male or female, mr. witness?

WITNESS:

Male sir.

FIS. ARAULA;

After receiving that information of illegal activities, what action did your office take, mr. witness?

WITNESS:

Our chief call us to conduct a buy bust operation, Wong, De Guzman, Collado and I sir.

FIS. ARAULA;

After you were called, what happened next, mr. witness?

WITNESS:

I was told that I am the one who will buy marijuana sir.

FIS. ARAULA;

How much marijuana, mr. witness?

WITNESS:
One hundred peso sir.

FIS. ARAULA;

Where did you get the money to buy marijuana, mr. witness?

WITNESS:

From our Superior Wong sir.

FIS. ARAULA;

How about the other police officers, what is their role in that buy bust operation, mr. witness?

WITNESS:

They were my back up sir.

FIS. ARAULA;

Where you informed who was the subject of the buy bust operation, mr. witness?

WITNESS:

Yes sir.

FIS. ARAULA;

What is the name, mr. witness?

WITNESS:

He was called as Ronnie, but later we came to know him as Rolando Tamayo sir.

FIS. ARAULA;

After you were tasked as the poseur buyer and received the one hundred peso bill as buy bust money, what happened next, mr. witness?

WITNESS:

I first placed my initial ANS on top of the date 2001 sir.

FIS. ARAULA;

To that one hundred peso bill, mr. witness?

WITNESS:

Yes sir.

FIS. ARAULA;

You said you placed your initial on top of the date 2001, showing to you this one hundred peso bill can you show to us where is that marking that you are telling, now. Mr. witness?

WITNESS:

Here under 2001, ANS sir.

FIS. ARAULA;

May we request that this one hundred peso bill with serial no. BH359720 which was already marked as Exhibit G and we request that the marking placed by this witness as Exhibit G-1 your honor.
After you placed your markings, what happened next, mr. witness?

WITNESS:

We went to the place the confidential informant was with me in the vehicle and my companions were boarded in the van following us sir.

FIS. ARAULA;

What time you reached this Barangay Gulod, mr. witness?

WITNESS:

7:00 in the evening sir.

FIS. ARAULA;

Can you tell us what particular place at Barangay Gulod that you went to, mr. witness?

WITNESS:

Pilarin Street, Brgy. Gulod, Novaliches, Quezon City sir.

FIS. ARAULA;

What happened when you reached that placed, mr. witness?

WITNESS:

We alighted from the motorcycle and we went to the compound with open gate, we proceeded to the place that was "tuktuk" that can be seen by my companions sir.

FIS. ARAULA;

What happened when you entered the compound mr. witness?

WITNESS:

We enter the house of Rolando Tamayo sir.

FIS. ARAULA;

How were you able to enter the house, mr. witness?

WITNESS:

My confidential informant introduced me to the subject and I was allowed to enter the house sir.

FIS. ARAULA;

Where was Rolando Tamayo whom you mentioned when you were introduced, mr. witness?

WITNESS:

I saw Rolando Tamayo at the sala it so happened there was a video carera inside sir.

FIS. ARAULA;

Where were you when you were introduced to Rolando Tamayo, mr. witness?

WITNESS:

I was beside the front door the[n] I came in later sir.

FIS. ARAULA;

Where was Tamayo, mr. witness?

WITNESS:

He was at the sala of the house sir.

FIS. ARAULA:

You were in the door of the house of Tamayo while Tamayo was inside the house at the living room, mr. witness?

WITNESS:

Yes sir.

FIS. ARAULA;

When you entered the house, what happened, mr. witness?

WITNESS:

After I was introduced, I told him I will buy marijuana, Sir.

FIS. ARAULA;

What was the answer of Tamayo after informing him that you are interested in buying marijuana, mr. witness?

WITNESS:

He told me *sige*, wait for me sir.

FIS. ARAULA;

Where was your confidential informant, mr. witness?

WITNESS:

He was there also sir.

FIS. ARAULA;

You testified that Tamayo said wait for me, what happened next, mr. witness?

WITNESS:

He went to the stairs of the house he got [the] bag pack colored blue green and pink sir.

FIS. ARAULA;

How far were you from Tamayo, mr. witness?

WITNESS:

2 to 4 meters sir

FIS. ARAULA;

After that T[a]mayo able to get that bag, what did he do with that bag, mr. witness?

WITNESS:

I he put down on the table and got a tea bag sir.

FIS. ARAULA;

What did he with that tea bag, mr. witness?

WITNESS:

I gave one hundred peso bill and I got the tea bag sir.

FIS. ARAULA;

Can you described that tea bag, mr. witness?

WITNESS:

Small only sir.

COURT

We are presenting to you bag, see inside, what tea bag you are referring to?

FIS. ARAULA;

Witness is searching the bag

COURT;

Officer Sy searched the bag inside and he could not find tea bag, he found big marijuana but not tea bag.
The court interpreter found 8 tea bags.

WITNESS:

This is the tea bag I bought from Rolando Tamayo sir.

FIS. ARAULA;

How did you know that is the same tea bag, mr. witness?

WITNESS:

Because of the initial that I placed sir, ANS.

FIS. ARAULA;

May we request your honor that said initial be marked as Exhibit E-2 your honor.
After you received that tea bag in exchanged to one hundred peso bill, what happened next, mr. witness?

WITNESS:

That is the time I arrested him and introduced as police officer sir.

FIS. ARAULA;

How [about] the bag that you testified under the stairs from where he got the tea bag, mr. witness?

WITNESS:

In the sala sir.

FIS. ARAULA;

What did you do next, mr. witness?

WITNESS:

After I arrested him my companions who were outside the house at that time rush toward the house sir.

FIS. ARAULA;

Who were your companions, mr. witness?

WITNESS:

Collado was the first who entered and got the bag pack sir.

FIS. ARAULA;

What happened next, mr. witness?

WITNESS:

When I arrested Tamayo, my companions get the bag pack and get the one hundred peso bill that I gave him earlier sir.[27]

[27] *Id.* at 2-9.

The RTC, as upheld by the Court of Appeals, found that the testimonies of the prosecution witnesses were unequivocal, definite and straightforward. More importantly, their testimonies were consistent in material respects with each other and with other testimonies and physical evidence.

We have held that trial courts have the distinct advantage of observing the demeanor and conduct of 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.[28]

With respect to the penalty, we affirm the penalties imposed by the RTC and the Court of Appeals for the illegal sale and illegal possession of dangerous drugs, as the penalties are fully in accord with the provisions of Sections 5 and 11 of Rep. Act No. 9165, which provide:

> SEC. 5. *Sale, Trading, Administration, Dispensation, Delivery, Distribution and Transportation of Dangerous Drugs and/or Controlled Precursors and Essential Chemicals.*—The penalty of life imprisonment to death and a fine ranging from Five hundred thousand pesos (₱500,000.00) to Ten million pesos (₱10,000,000.00) shall be imposed upon any person, who, unless authorized by law, shall sell, trade, administer, dispense, deliver, give away to another, distribute, dispatch in transit or transport any dangerous drug, including any and all species of opium poppy regardless of the quantity and purity involved, or shall act as a broker in any of such transactions.
>
> xxx xxx xxx
>
> SEC. 11. *Possession of Dangerous Drugs.*—The penalty of life imprisonment to death and a fine ranging from Five hundred thousand pesos (₱500,000.00) to Ten million pesos (₱10,000,000.00) shall be imposed upon any person, who, unless authorized by law, shall possess any dangerous drug in the following quantities, regardless of the degree of purity thereof:

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[28] *People v. Nicolas*, G.R. No. 170234, February 8, 2007, 515 SCRA 187, 204.

xxx xxx xxx

(7) 500 grams or more of marijuana; and

xxx xxx xxx

WHEREFORE, the Decision dated April 21, 2008 of the Court of Appeals in CA-G.R. CR-H.C. No. 01850 finding appellant Rolando Tamayo *y* Tena guilty beyond reasonable doubt of the crimes charged in *Criminal Case Nos. Q-03-117407* and *Q-03-117408* for violation of Sections 5 and 11 of Rep. Act No. 9165 is *AFFIRMED.*

With costs against the accused-appellant.

SO ORDERED.

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

EN BANC

[G.R. No. 188671. February 24, 2010]

MOZART P. PANLAQUI, *petitioner, vs.* **COMMISSION ON ELECTIONS and NARDO M. VELASCO,** *respondents.*

SYLLABUS

1. POLITICAL LAW; ELECTIONS; THE DISTINCTION BETWEEN A PETITION FOR INCLUSION OF VOTERS IN THE LIST AND A PETITION TO DENY DUE COURSE TO OR CANCEL A CERTIFICATE OF CANDIDACY HAS ALREADY BEEN DEFINED IN *VELASCO V. COMMISSION ON ELECTIONS*.— Unwrapping the present petition, the Court finds that the true color of the issue of distinction between a petition for inclusion of voters in the list and a petition to deny due course to or cancel a certificate of candidacy has already been defined in *Velasco v. Commission on Elections* where the Court held that

the two proceedings may ultimately have common factual bases but they are poles apart in terms of the issues, reliefs and remedies involved, thus: In terms of purpose, voters' inclusion/exclusion and COC denial/cancellation are different proceedings; one refers to the application to be registered as a voter to be eligible to vote, while the other refers to the application to be a candidate. Because of their differing purposes, they also involve different issues and entail different reliefs, although the facts on which they rest may have commonalities where they may be said to converge or interface. x x x

2. ID.; ID.; ID.; VOTERS' INCLUSION/EXCLUSION PROCEEDINGS ESSENTIALLY INVOLVE THE ISSUE OF WHETHER A PETITIONER SHALL BE INCLUDED IN OR EXCLUDED FROM THE LIST OF VOTERS BASED ON THE QUALIFICATIONS REQUIRED BY LAW.— Voters' inclusion/exclusion proceedings, on the one hand, essentially involve the issue of whether a petitioner shall be included in or excluded from the list of voters based on the qualifications required by law and the facts presented to show possession of these qualifications.

3. ID.; ID.; ID.; COC DENIAL/CANCELLATION PROCEEDINGS INVOLVE THE ISSUE OF WHETHER THERE IS A FALSE REPRESENTATION OF A MATERIAL FACT THAT REFERS TO A CANDIDATE'S QUALIFICATIONS FOR ELECTIVE OFFICE.— On the other hand, COC denial/cancellation proceedings involve the issue of whether there is a false representation of a material fact. The false representation must necessarily pertain not to a mere innocuous mistake but to a material fact or those that refer to a candidate's qualifications for elective office. Apart from the requirement of materiality, the false representation must consist of a deliberate attempt to mislead, misinform, or hide a fact which would otherwise render a candidate ineligible or, otherwise stated, with the intention to deceive the electorate as to the would-be candidate's qualifications for public office.

4. ID.; ID.; ID.; ID.; THE FINDING THAT VELASCO WAS NOT QUALIFIED TO VOTE DUE TO LACK OF RESIDENCY REQUIREMENT DOES NOT TRANSLATE INTO A FINDING OF A DELIBERATE ATTEMPT TO MISLEAD, MISINFORM, OR HIDE A FACT WHICH DECEIVE THE ELECTORATE IN

TERMS OF ONE'S QUALIFICATIONS FOR PUBLIC OFFICE.— It is not within the province of the RTC in a voter's inclusion/exclusion proceedings to take cognizance of and determine the presence of a false representation of a material fact. It has no jurisdiction to try the issues of whether the misrepresentation relates to material fact and whether there was an intention to deceive the electorate in terms of one's qualifications for public office. The finding that Velasco was not qualified to vote due to lack of residency requirement does not translate into a finding of a deliberate attempt to mislead, misinform, or hide a fact which would otherwise render him ineligible.

5. ID.; ID.; ID.; ID.; WHEN THE RTC ISSUED ITS MARCH 1, 2007 DECISION, THERE WAS YET NO COC TO CANCEL BECAUSE VELASCO'S COC WAS FILED ONLY ON MARCH 28, 2007.— Panlaqui asserts that the RTC March 1, 2007 Decision in the voter's inclusion proceedings must be considered as the final judgment of disqualification against Velasco, which decision was issued more than two months prior to the elections. Panlaqui posits that when Velasco's petition for inclusion was denied, he was also declared as disqualified to run for public office. x x x Assuming *arguendo* the plausibility of Panlaqui's theory, the Comelec correctly observed that when the RTC issued its March 1, 2007 Decision, there was yet no COC to cancel because Velasco's COC was filed only on March 28, 2007. Indeed, not only would it be in excess of jurisdiction but also beyond the realm of possibility for the RTC to rule that there was deliberate concealment on the part of Velasco when he stated under oath in his COC that he is a registered voter of Sasmuan despite his knowledge of the RTC decision which was yet forthcoming.

6. ID.; ID.; SINCE VELASCO'S DISQUALIFICATION AS A CANDIDATE HAD NOT BECOME FINAL *BEFORE* THE ELECTIONS, THE COMELEC PROPERLY APPLIED THE RULE ON SUCCESSION.— IN FINE, the Comelec did not gravely abuse its discretion when it denied Panlaqui's motion for proclamation. Since Velasco's disqualification as a candidate had not become final *before* the elections, the Comelec properly applied the rule on succession: "x x x To simplistically assume that the second placer would have received the other votes would be to substitute our judgment for the mind of the

> voter. The second placer is just that, a second placer. He lost the elections. He was repudiated by either a majority or plurality of voters. He could not be considered the first among qualified candidates because in a field which excludes the disqualified candidate, the conditions would have substantially changed. We are not prepared to extrapolate the results under such circumstances. To allow the defeated and repudiated candidate to take over the mayoralty despite his rejection by the electorate is to disenfranchise them through no fault on their part, and to undermine the importance and the meaning of democracy and the right of the people to elect officials of their choice. Theoretically, the second placer could receive just one vote. In such a case, it would be absurd to proclaim the totally repudiated candidate as the voters' choice. x x x

APPEARANCES OF COUNSEL

Villacorta Law Office for petitioner.
The Solicitor General for public respondent.
Romulo B. Macalintal for private respondent.

D E C I S I O N

CARPIO MORALES, *J.*:

The present petition is one for *certiorari*.

Petitioner Mozart Panlaqui (Panlaqui) assails the Commission on Elections (Comelec) *En Banc* Resolution of June 17, 2009 denying his motion for proclamation, which he filed after this Court affirmed in G.R. No. 180051[1] the nullification of the proclamation of private respondent Nardo Velasco (Velasco) as mayor of Sasmuan, Pampanga.

Velasco was born in Sasmuan on June 22, 1952 to Filipino parents. He married Evelyn Castillo on June 29, 1975. In 1983, he moved to the United States where he subsequently became a citizen.

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[1] *Velasco v. Commission on Elections*, G.R. No. 180051, December 24, 2008, 575 SCRA 590.

Upon Velasco's application for dual citizenship under Republic Act No. 9225[2] was approved on July 31, 2006, he took on even date his oath of allegiance to the Republic of the Philippines and returned to the Philippines on September 14, 2006.

On October 13, 2006, Velasco applied for registration as a voter of Sasmuan, which application was denied by the Election Registration Board (ERB). He thus filed a petition for the inclusion of his name in the list of voters before the Municipal Trial Court (MTC) of Sasmuan which, by Decision of February 9, 2007, reversed the ERB's decision and ordered his inclusion in the list of voters of Sasmuan.

On appeal, the Regional Trial Court (RTC) of Guagua, Pampanga, by Decision of March 1, 2007, ***reversed***[3] the MTC Decision, drawing Velasco to elevate the matter via Rule 42 to the Court of Appeals which, by Amended Decision[4] of August 19, 2008, dismissed the appeal for lack of jurisdiction.

In the meantime, Velasco filed on March 28, 2007 his Certificate of Candidacy (COC) for mayor of Sasmuan, therein claiming his status as a registered voter. Panlaqui, who vied for the same position, thereupon filed before the Comelec a Petition to Deny Due Course To and/or To Cancel Velasco's COC based on gross material misrepresentation as to his residency and, consequently, his qualification to vote.

In the electoral bout of May 2007, Velasco won over Panlaqui as mayor of Sasmuan. As the Comelec failed to resolve Panlaqui's petition prior to the elections, Velasco took his oath of office and assumed the duties of the office.

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[2] Citizenship Retention and Re-Acquisition Act of 2003 (August 29, 2003).

[3] The RTC found that Velasco was ineligible to vote since he failed to comply with the residency requirement, citing the rule that naturalization in a foreign country results in the abandonment of the domicile in the Philippines.

[4] The appellate court reversed its March 13, 2008 Decision granting Velasco's appeal.

Finding material misrepresentation on the part of Velasco, the Comelec cancelled his COC and nullified his proclamation, by Resolutions of July 6, 2007 and October 15, 2007, which this Court affirmed in G.R. No. 180051.

Panlaqui thereafter filed a motion for proclamation which the Comelec denied by the assailed Resolution, pointing out that the rule on succession does not operate in favor of Panlaqui as the second placer because Velasco was not disqualified by final judgment *before* election day.

Hence, the present petition which imputes grave abuse of discretion on the part of the Comelec for not regarding the RTC March 1, 2007 Decision as the final judgment of disqualification against Velasco prior to the elections, so as to fall within the ambit of *Cayat v. Commission on Elections*[5] on the exception to the doctrine on the rejection of the second placer.

Velasco filed his Comment of September 18, 2009 with motion to consolidate the present case with G.R. No. 189336, his petition challenging the Comelec's September 8, 2009 Order which directed him to vacate his mayoralty post for the incumbent vice-mayor to assume office as mayor. A perusal of the records of the petition shows, however, that it had already been dismissed by the Court by Resolution of October 6, 2009.[6]

In his present petition, Panlaqui implores this Court to apply in his favor the case of *Cayat* where the Court affirmed, *inter alia*, the Comelec Order directing the proclamation of the second placer as Mayor of Buguias, Benguet in this wise:

There is no doubt as to the propriety of Palileng's proclamation for two basic reasons.

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[5] G.R. No. 163776, April 24, 2007, 522 SCRA 23, where the doctrine on the rejection of the second placer found no application.

[6] The Court likewise denied the motion for reconsideration, by Resolution of December 15, 2009.

First, the COMELEC First Division's Resolution of 12 April 2004 cancelling Cayat's certificate of candidacy due to disqualification became **final and executory on 17 April 2004** when Cayat failed to pay the prescribed filing fee. Thus, Palileng was the **only** candidate for Mayor of Buguias, Benguet in the 10 May 2004 elections. Twenty–three days before election day, Cayat was already **disqualified by final judgment** to run for Mayor in the 10 May 2004 elections. As the only candidate, Palileng was not a second placer. On the contrary, Palileng was the sole and only placer, **second to none**. The doctrine on the rejection of the second placer, which triggers the rule on succession, does not apply in the present case because Palileng is not a second-placer but the only placer. Consequently, Palileng's proclamation as Mayor of Buguias, Benguet is beyond question.

Second, there are specific requirements for the application of the doctrine on the rejection of the second placer. The doctrine will apply in Bayacsan's favor, regardless of his intervention in the present case, if two conditions concur: (1) the decision on Cayat's disqualification **remained pending on election day**, 10 May 2004, resulting in the presence of two mayoralty candidates for Buguias, Benguet in the elections; and (2) the decision on Cayat's disqualification became final only **after** the elections.[7] (emphasis and italics in the original; underscoring supplied)

Repackaging the present petition in *Cayat*'s fashion, Panlaqui asserts that the RTC March 1, 2007 Decision in the voter's inclusion proceedings must be considered as the final judgment of disqualification against Velasco, which decision was issued more than two months prior to the elections. Panlaqui posits that when Velasco's petition for inclusion was denied, he was also declared as disqualified to run for public office.

Unwrapping the present petition, the Court finds that the true color of the issue of distinction between a petition for inclusion of voters in the list and a petition to deny due course to or cancel a certificate of candidacy has already been defined in *Velasco v. Commission on Elections*[8] where the Court held

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[7] *Cayat v. Commission on Elections, supra* note 5 at 43.

[8] *Supra* note 1.

that the two proceedings may ultimately have common factual bases but they are poles apart in terms of the issues, reliefs and remedies involved, thus:

> In terms of purpose, voters' inclusion/exclusion and COC denial/ cancellation are different proceedings; one refers to the application to be registered as a voter to be eligible to vote, while the other refers to the application to be a candidate. Because of their differing purposes, they also involve different issues and entail different reliefs, although the facts on which they rest may have commonalities where they may be said to converge or interface. x x x[9] (underscoring supplied)

Voters' inclusion/exclusion proceedings, on the one hand, essentially involve the issue of whether a petitioner shall be included in or excluded from the list of voters based on the qualifications required by law and the facts presented to show possession of these qualifications.[10]

On the other hand, COC denial/cancellation proceedings involve the issue of whether there is a false representation of a material fact. The false representation must necessarily pertain not to a mere innocuous mistake but to a material fact or those that refer to a candidate's qualifications for elective office. Apart from the requirement of materiality, the false representation must consist of a deliberate attempt to mislead, misinform, or hide a fact which would otherwise render a candidate ineligible or, otherwise stated, with the intention to deceive the electorate as to the would-be candidate's qualifications for public office.[11]

In *Velasco*, the Court rejected Velasco's contention that the Comelec improperly ruled on the right to vote when it cancelled his COC. The Court stated that the Comelec merely relied on or recognized the RTC's final and executory decision on the matter of the right to vote in the precinct within its territorial jurisdiction.

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[9] *Id.* at 606

[10] *Ibid.*

[11] *Id.* at 602-604.

In the present petition, it is Panlaqui's turn to proffer the novel interpretation that the RTC properly cancelled Velasco's COC when it ruled on his right to vote. The Court rejects the same.

It is not within the province of the RTC in a voter's inclusion/exclusion proceedings to take cognizance of and determine the presence of a false representation of a material fact. It has no jurisdiction to try the issues of whether the misrepresentation relates to material fact and whether there was an intention to deceive the electorate in terms of one's qualifications for public office. The finding that Velasco was not qualified to vote due to lack of residency requirement does not translate into a finding of a deliberate attempt to mislead, misinform, or hide a fact which would otherwise render him ineligible.

Assuming *arguendo* the plausibility of Panlaqui's theory, the Comelec correctly observed that when the RTC issued its March 1, 2007 Decision, there was yet no COC to cancel because Velasco's COC was filed only on March 28, 2007. Indeed, not only would it be in excess of jurisdiction but also beyond the realm of possibility for the RTC to rule that there was deliberate concealment on the part of Velasco when he stated under oath in his COC that he is a registered voter of Sasmuan despite his knowledge of the RTC decision which was yet forthcoming.

IN FINE, the Comelec did not gravely abuse its discretion when it denied Panlaqui's motion for proclamation. Since Velasco's disqualification as a candidate had not become final *before* the elections, the Comelec properly applied the rule on succession.

> x x x To simplistically assume that the second placer would have received the other votes would be to substitute our judgment for the mind of the voter. The second placer is just that, a second placer. He lost the elections. He was repudiated by either a majority or plurality of voters. He could not be considered the first among qualified candidates because in a field which excludes the disqualified candidate, the conditions

would have substantially changed. We are not prepared to extrapolate the results under such circumstances.

To allow the defeated and repudiated candidate to take over the mayoralty despite his rejection by the electorate is to disenfranchise them through no fault on their part, and to undermine the importance and the meaning of democracy and the right of the people to elect officials of their choice.

Theoretically, the second placer could receive just one vote. In such a case, it would be absurd to proclaim the totally repudiated candidate as the voters' choice. x x x [12]

WHEREFORE, the petition is *DISMISSED*. The assailed June 17, 2009 Resolution of the Commission on Elections is *AFFIRMED*.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 162218. February 25, 2010]

METROPOLITAN BANK AND TRUST COMPANY, *petitioner, vs.* **EDGARDO D. VIRAY,** *respondent.*

SYLLABUS

1. CIVIL LAW; LAND TITLES AND DEEDS; LANDS ACQUIRED UNDER FREE PATENT SHALL NOT BE ENCUMBERED OR ALIENATED WITHIN FIVE YEARS FROM THE DATE OF ISSUANCE OF THE PATENT.— Section 118 of CA 141 clearly

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[12] *Kare v. Commission on Elections*, G.R. No. 157526, April 28, 2004, 428 SCRA 264, 274.

provides that lands which have been acquired under free patent or homestead shall not be encumbered or alienated within five years from the date of issuance of the patent or be liable for the satisfaction of any debt contracted prior to the expiration of the period.

2. ID.; ID.; ID.; THE EXECUTION SALE AT PUBLIC AUCTION OF THE PETITIONER'S FREE PATENTS LESS THAN TWO YEARS AFTER ISSUANCE THEREOF CLEARLY VIOLATES THE FIVE-YEAR PROHIBITION PERIOD PROVIDED BY LAW; CASE AT BAR.— In the present case, the three loans were obtained on separate dates – 7 July 1979, 5 June 1981 and 3 September 1981, or several years before the free patents on the lots were issued by the government to respondent on 29 December 1982. The RTC of Manila, in a Decision dated 28 April 1983, ruled in favor of petitioner ordering the debtors, including respondent, to pay jointly and severally certain amounts of money. The public auction conducted by the sheriff on the lots owned by respondent occurred on 12 October 1984. For a period of five years or from 29 December 1982 up to 28 December 1987, Section 118 of CA 141 provides that the lots comprising the free patents shall not be made liable for the payment of any debt until the period of five years expires. In this case, the execution sale of the lots occurred less than two years after the date of the issuance of the patents. This clearly falls within the five-year prohibition period provided in the law, regardless of the dates when the loans were incurred.

3. ID.; ID.; ID.; MAIN PURPOSE AND POLICY OF THE STATE IN GRANTING FREE PATENTS OR HOMESTEADS TO ITS CITIZENS.— It must be emphasized that the main purpose in the grant of a free patent or homestead is to preserve and keep in the family of the homesteader that portion of public land which the State has given to him so he may have a place to live with his family and become a happy citizen and a useful member of the society.

4. ID.; ID.; ID.; ID.; NO CITIZEN CAN BARTER AWAY WHAT PUBLIC POLICY SEEKS, BY LAW, TO PRESERVE.— Section 118 of CA 141, therefore, is predicated on public policy. Its violation gives rise to the cancellation of the grant and the reversion of the land and its improvements to the government at the instance of the latter. The provision that "nor shall they

become liable to the satisfaction of any debt contracted prior to the expiration of the five-year period" is mandatory and any sale made in violation of such provision is void and produces no effect whatsoever, just like what transpired in this case. Clearly, it is not within the competence of any citizen to barter away what public policy by law seeks to preserve.

APPEARANCES OF COUNSEL

Perez Calima Law Offices for petitioner.
Llego and Llego Law Office for respondent.

D E C I S I O N

CARPIO, *J.*:

The Case

Before the Court is a petition for review on *certiorari*[1] assailing the Decision[2] dated 21 August 2003 and Resolution[3] dated 13 February 2004 of the Court of Appeals (CA) in CA-G.R. CV No. 43926, which reversed the Decision[4] dated 21 September 2003 of the Regional Trial Court (RTC) of Cagayan de Oro City, Misamis Oriental, Branch 23, in Civil Case No. 91-309.

The Facts

On 7 July 1979, Rico Shipping, Inc., represented by its President, Erlinda Viray-Jarque, together with respondent Edgardo D. Viray (Viray), in their own personal capacity and as solidary obligors (the three parties collectively known as the debtors), obtained two separate loans from petitioner Metropolitan Bank and Trust Company (MBTC) in the total

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

[2] *Rollo*, pp. 33-42. Penned by Justice Buenaventura J. Guerrero with Justices Renato C. Dacudao and Mario L. Guariña III, concurring.

[3] *Id.* at 43-44.

[4] *Id.* at 63-65. Penned by Judge Jose L. Sabio, Jr.

amount of ₱250,000. The debtors executed a promissory note promising to pay in four semi-annual installments of ₱62,500 starting on 23 January 1980, with 15% interest and 2% credit evaluation and supervision fee per *annum*. The two loans were subsequently renewed and secured by one promissory note. Under the note, the debtors made a total payment of ₱134,054 leaving a balance of ₱115,946 which remained unpaid despite demands by MBTC.

On 5 June 1981, the debtors executed another promissory note and obtained a loan from MBTC in the amount of ₱50,000, payable on 2 November 1981, with 16% interest and 2% credit evaluation and supervision fee per *annum*. On the due date, the debtors again failed to pay the loan despite demands to pay by MBTC.

On 3 September 1981, the debtors obtained a third loan from MBTC in the amount of ₱50,000 payable on 14 November 1981, with 16% interest and 2% credit evaluation and supervision fee per *annum*. Again, the debtors failed and refused to pay on due date.

MBTC filed a complaint for sum of money against the debtors with the RTC of Manila, Branch 4.[5] On 28 April 1983, the RTC of Manila rendered a judgment in favor of MBTC.[6] The dispositive portion of the decision states:

> WHEREFORE, judgment is hereby rendered ordering defendants to pay jointly and severally plaintiff the following:
>
> I – On the first cause of action:
>
> (a) The sum of ₱50,000 with interest thereon at the rate of 16% per *annum* from date of filing of the complaint until fully paid;
>
> (b) The sum equivalent to 1% per month of the principal obligation as penalty charge, computed likewise from the filing of the complaint;

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[5] Docketed as Civil Case No. 82-10140 and entitled "*Metropolitan Bank and Trust Company v. Rico Shipping, Inc., Erlinda Viray-Jarque and Edgardo D. Viray.*"

[6] *Rollo*, pp. 49-50.

II – On the second cause of action:

(a) The sum of ₱50,000 with interest thereon at the rate of 16% per *annum* from date of filing of the complaint until fully paid;

(b) The sum equivalent to 1% per month of the principal sum as penalty charge, computed from date of filing of the complaint;

III – On the third cause of action:

(a) The sum of ₱115,946.00 with interest thereon at the rate of 1% per *annum* from date of filing of the complaint until fully paid;

(b) The sum equivalent to 1% per month of the sum of ₱115,946.00 as penalty charge, computed from date of filing of the complaint;

IV –

(1) The sum of ₱15,000.00 as attorney's fees; and
(2) To pay the costs of suit.

SO ORDERED.

Meanwhile, on 29 December 1982, the government issued Free Patents in favor of Viray over three parcels of land (lots) designated as (1) Lot No. 26275, Cad-237 with an area of 500 square meters; (2) Lot No. 26276, Cad-237, with an area of 888 square meters; and (3) Lot No. 26277, Cad-237 with an area of 886 square meters, all situated in Barangay Bulua, Cagayan de Oro City, Misamis Oriental. Original Certificate of Title (OCT) Nos. P-2324, P-2325 and P-2326 were issued covering Free Patent Nos. [X-1] 10525, [X-1] 10526 and [X-1] 10527, respectively.

The OCT's containing the free patents were registered with the Registry of Deeds of Cagayan de Oro City on 18 January 1983. Written across the face of the OCT's were the following:

x x x To have and to hold said tract of land, with the appurtenances thereunto of right belonging unto the said EDGARDO D. VIRAY and to his heirs and assigns forever, subject to the provisions of Sections

118, 119, 121 as amended by P.D. No. 763, 122 and 124 of Commonwealth Act No. 141, as amended, which provide that except in favor of the Government or any of its branches, units or institutions, the land thereby acquired shall be inalienable and shall not be subject to encumbrance for a period of five (5) years from the date of this patent, and shall not be liable for the satisfaction of any debt contracted prior to the expiration of said period x x x.[7]

On 6 March 1984, the RTC of Manila issued a writ of execution over the lots owned by Viray. On 12 October 1984, pursuant to the writ of execution, the City Sheriff of Cagayan de Oro sold the lots at public auction in favor of MBTC as the winning bidder. The next day, the sheriff issued a Certificate of Sale to MBTC.[8]

On 23 August 1990, the sheriff executed a Deed of Final Conveyance to MBTC. The Register of Deeds of Cagayan de Oro City cancelled OCT Nos. P-2324, P-2325 and P-2326 and issued in MBTC's name Transfer Certificate of Title (TCT) Nos. T-59171, T-59172 and T-59173,[9] respectively.

On 30 July 1991, Viray filed an action for annulment of sale against the sheriff and MBTC with the RTC of Cagayan de Oro City, Misamis Oriental, Branch 23.[10] Viray sought the declaration of nullity of the execution sale, the sheriff's certificate of sale, the sheriff's deed of final conveyance and the TCT's issued by the Register of Deeds.

On 21 September 1993, the RTC of Cagayan de Oro City rendered its decision in favor of MBTC.[11] The dispositive portion states:

Wherefore, based on facts and jurisprudence, the Auction Sale by the Sheriff of the then lots of plaintiff covered by [free] patents to satisfy the judgment in favor of Defendant Bank is considered

[7] *Id.* at 46-48.

[8] *Id.* at 51-52.

[9] *Id.* at 53-55.

[10] *Id.* at 56-60. Docketed as Civil Case No. 91-309.

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

valid. While plaintiff had until April 2, 1991 to redeem the property, the former never attempted to show interest in redeeming the properties, and therefore such right has prescribed. Defendant Bank therefore is declared as the lawful transferee of the three (3) lots now covered by Titles in the name of Defendant Bank.

SO ORDERED.[12]

Viray filed an appeal with the CA alleging that the RTC of Cagayan de Oro City committed reversible error in ruling solely on the issue of redemption instead of the issue of validity of the auction sale, being the *lis mota*[13] of the action.

The Ruling of the Court of Appeals

On 21 August 2003, the appellate court reversed the decision of the RTC of Cagayan de Oro City. The CA ruled that the auction sale conducted by the sheriff was null and void *ab initio* since the sale was made during the five-year prohibition period in violation of Section 118 of Commonwealth Act No. 141 (CA 141) or the Public Land Act. The dispositive portion states:

WHEREFORE, in view of the foregoing considerations, the decision appealed from is hereby REVERSED, and plaintiff-appellant Edgardo Viray is declared entitled to the return and possession of the three (3) parcels of land covered by O.C.T. Nos. P-2324, P-2325 and P-2326, without prejudice to his continuing obligation to pay the judgment debt, and expenses connected therewith.

Accordingly, the Register of Deeds of Cagayan de Oro City is ordered to cancel TCT Nos. T-59171, T-59172 and T-59173 in the name of defendant-appellee Metrobank, and to restore O.C.T. Nos. P-2324, P-2325 and P-2326 in the name of plaintiff-appellant Edgardo Viray.

No pronouncement as to costs.

SO ORDERED.[14]

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[12] *Id.* at 65.

[13] The cause of the suit or action. It is understood to be the commencement of the controversy, and the beginning of the suit.

[14] *Rollo*, p. 41.

MBTC filed a Motion for Reconsideration which was denied in a Resolution dated 13 February 2004.

Hence, the instant petition.

The Issue

The main issue is whether the auction sale falls within the five-year prohibition period laid down in Section 118 of CA 141.

The Court's Ruling

The petition lacks merit.

Petitioner MBTC insists that the five-year prohibition period against the alienation or sale of the property provided in Section 118 of CA 141 does not apply to an obligation contracted before the grant or issuance of the free patent or homestead. The alienation or sale stated in the law pertains to voluntary sales and not to "forced" or execution sales.

Respondent Viray, on the other hand, maintains that the express prohibition in Section 118 of CA 141 does not qualify or distinguish whether the debt was contracted prior to the date of the issuance of the free patent or within five years following the date of such issuance. Further, respondent asserts that Section 118 of CA 141 absolutely prohibits any and all sales, whether voluntary or not, of lands acquired under free patent or homestead, made within the five-year prohibition period.

Section 118 of CA 141 states:

SECTION 118. Except in favor of the Government or any of its branches, units, or institutions, lands acquired under free patent or homestead provisions shall not be subject to encumbrance or alienation from the date of the approval of the application and for a term of five years from and after the date of issuance of the patent and grant, nor shall they become liable to the satisfaction of any debt contracted prior to the expiration of said period, but the improvements or crops on the land may be mortgaged or pledged to qualified persons, associations, or corporations.

No alienation, transfer, or conveyance of any homestead after five years and before twenty-five years after issuance of title shall be valid without the approval of the Secretary of Agriculture and Natural Resources, which approval shall not be denied except on constitutional and legal grounds.

The law clearly provides that lands which have been acquired under free patent or homestead shall not be encumbered or alienated within five years from the date of issuance of the patent or be liable for the satisfaction of any debt contracted prior to the expiration of the period.

In the present case, the three loans were obtained on separate dates – 7 July 1979, 5 June 1981 and 3 September 1981, or several years before the free patents on the lots were issued by the government to respondent on 29 December 1982. The RTC of Manila, in a Decision dated 28 April 1983, ruled in favor of petitioner ordering the debtors, including respondent, to pay jointly and severally certain amounts of money. The public auction conducted by the sheriff on the lots owned by respondent occurred on 12 October 1984.

For a period of five years or from 29 December 1982 up to 28 December 1987, Section 118 of CA 141 provides that the lots comprising the free patents shall not be made liable for the payment of any debt until the period of five years expires. In this case, the execution sale of the lots occurred less than two years after the date of the issuance of the patents. This clearly falls within the five-year prohibition period provided in the law, regardless of the dates when the loans were incurred.

In *Artates v. Urbi*,[15] we held that a civil obligation cannot be enforced against, or satisfied out of, the sale of the homestead lot acquired by the patentee less than five years before the obligation accrued even if the sale is involuntary. For purposes of complying with the law, it is immaterial that the satisfaction of the debt by the encumbrance or alienation of the land grant was made voluntarily, as in the case of an ordinary sale, or involuntarily, such as that effected through levy on the property

[15] 147 Phil. 334 (1971).

and consequent sale at public auction. In both instances, the law would have been violated.

Likewise, in *Beach v. Pacific Commercial Company and Sheriff of Nueva Ecija*,[16] we held that to subject the land to the satisfaction of debts would violate Section 116 of Act No. 2874 (now Section 118 of CA 141).

As correctly observed by the CA in the present case:

> It is argued by defendant-appellee, however, that the debt referred to in the law must have been contracted within the five-year prohibitory period; any debt contracted before or after the five-year prohibitory period is definitely not covered by the law. This argument is weakest on two points. Firstly, because the provision of law does not say that the debt referred to therein should be contracted before the five-year prohibitory period but before the "expiration" of the five-year prohibitory period. (Defendant-appellee deliberately omitted the word "expiration" to suit its defense.) This simply means that it is not material whether the debt is contracted before the five-year prohibitory period; what is material is that the debt must be contracted before or prior to the expiration of the five-year prohibitory period from the date of the issuance and approval of the patent or grant. x x x
>
> And secondly, while it is true that the debt in this case was contracted prior to the five-year prohibitory period, the same is of no consequence, for as held in *Artates vs. Urbi, supra*, such indebtedness has to be reckoned from the date said obligation was adjudicated and decreed by the court. x x x[17]

It must be emphasized that the main purpose in the grant of a free patent or homestead is to preserve and keep in the family of the homesteader that portion of public land which the State has given to him so he may have a place to live with his family and become a happy citizen and a useful member of the society.[18]

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[16] 49 Phil. 365, 369 (1926).

[17] *Rollo*, pp. 39-40.

[18] *Philippine National Bank v. De Los Reyes,* G.R. Nos. 46898-99, 28 November 1989, 179 SCRA 619, 628; *Gonzaga v. Court of Appeals*, 151-A Phil. 834 (1973); *Cadiz v. Nicolas*, 102 Phil. 1039 (1958); *De Los Santos v. Roman Catholic Church of Midsayap*, 94 Phil. 405 (1954); *Pascua v. Talens*, 80 Phil. 792 (1948); *Jocson v. Soriano*, 45 Phil. 375 (1923).

In *Jocson v. Soriano*,[19] we held that the conservation of a family home is the purpose of homestead laws. The policy of the state is to foster families as the foundation of society, and thus promote general welfare. The sentiment of patriotism and independence, the spirit of free citizenship, the feeling of interest in public affairs, are cultivated and fostered more readily when the citizen lives permanently in his own home, with a sense of its protection and durability.

Section 118 of CA 141, therefore, is predicated on public policy. Its violation gives rise to the cancellation of the grant and the reversion of the land and its improvements to the government at the instance of the latter.[20] The provision that "nor shall they become liable to the satisfaction of any debt contracted prior to the expiration of the five-year period" is mandatory[21] and any sale made in violation of such provision is void[22] and produces no effect whatsoever, just like what transpired in this case. Clearly, it is not within the competence of any citizen to barter away what public policy by law seeks to preserve.[23]

WHEREFORE, we *DENY* the petition. We *AFFIRM* the Decision dated 21 August 2003 and Resolution dated 13 February 2004 of the Court of Appeals in CA-G.R. CV No. 43926.

SO ORDERED.

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

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[19] *Supra* note 18.

[20] *Gonzalo Puyat & Sons, Inc. v. De Las Ama*, 74 Phil. 3, 4 (1942).

[21] *Beniga v. Bugas*, 146 Phil. 118 (1970); *Republic of the Philippines v. Ruiz*, 131 Phil. 870 (1968).

[22] *Ortega v. Tan*, G.R. No. 44617, 23 January 1990, 181 SCRA 350; *Acierto v. De Los Santos*, 95 Phil. 887 (1954).

[23] *Saltiga de Romero v. Court of Appeals*, 377 Phil. 189, 201 (1999); *Ortega v. Tan*, *supra* note 22; *Gayotin v. Tolentino*, 169 Phil. 559, 569 (1977); *Gonzalo Puyat & Sons, Inc. v. De Las Ama*, *supra* note 20.

SECOND DIVISION

[G.R. No. 167139. February 25, 2010]

SUSIE CHAN-TAN, *petitioner, vs.* **JESSE C. TAN,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; ALLEGED NEGLIGENCE OF COUNSEL RESULTING IN PETITIONER'S LOSS OF THE RIGHT TO APPEAL IS NOT A GROUND FOR VACATING THE TRIAL COURT'S JUDGMENTS; CASE AT BAR.— In the present case, the 30 March 2004 decision and the 17 May 2004 resolution of the trial court had become final and executory upon the lapse of the reglementary period to appeal. Petitioner's motion for reconsideration of the 17 May 2004 resolution, which the trial court received on 28 June 2004, was clearly filed out of time. Applying the doctrine laid down in *Tuason*, the alleged negligence of counsel resulting in petitioner's loss of the right to appeal is not a ground for vacating the trial court's judgments.

2. POLITICAL LAW; CONSTITUTIONAL LAW; BILL OF RIGHTS; DUE PROCESS; NO DENIAL THEREOF WHERE PETITIONER SHOWED UTTER DISINTEREST IN THE HEARINGS ON RESPONDENT'S OMNIBUS MOTION SEEKING, AMONG OTHERS, CUSTODY OF THE CHILDREN.— Further, petitioner cannot claim that she was denied due process. While she may have lost her right to present evidence due to the supposed negligence of her counsel, she cannot say she was denied her day in court. Records show petitioner, through counsel, actively participated in the proceedings below, filing motion after motion. Contrary to petitioner's allegation of negligence of her counsel, we have reason to believe the negligence in pursuing the case was on petitioner's end, as may be gleaned from her counsel's manifestation dated 3 May 2004: Undersigned Counsel, who appeared for petitioner, in the nullity proceedings, respectfully informs the Honorable Court that she has not heard from petitioner since Holy Week. Attempts to call petitioner have failed. Undersigned counsel regrets therefore

that she is unable to respond in an intelligent manner to the Motion (Omnibus Motion) filed by respondent. Clearly, despite her counsel's efforts to reach her, petitioner showed utter disinterest in the hearings on respondent's omnibus motion seeking, among others, custody of the children. The trial judge was left with no other recourse but to proceed with the hearings and rule on the motion based on the evidence presented by respondent. Petitioner cannot now come to this Court crying denial of due process.

3. REMEDIAL LAW; RULE ON THE DECLARATION OF ABSOLUTE NULLITY OF VOID MARRIAGES AND ANNULMENT OF VOIDABLE MARRIAGES; SECTION 7 THEREOF; DOES NOT APPLY TO A MOTION TO DISMISS FILED BY THE PARTY WHO INITIATED THE PETITION FOR THE DECLARATION OF ABSOLUTE NULLITY OF VOID MARRIAGE OR THE ANNULMENT OF VOIDABLE MARRIAGE.— Section 7 of the Rule on the Declaration of Absolute Nullity of Void Marriages and Annulment of Voidable Marriages provides: SEC. 7. Motion to dismiss. – No motion to dismiss the petition shall be allowed except on the ground of lack of jurisdiction over the subject matter or over the parties; provided, however, that **any other ground that might warrant a dismissal of the case may be raised as an affirmative defense in an answer**. The clear intent of the provision is to allow the respondent to ventilate all possible defenses in an answer, instead of a mere motion to dismiss, so that judgment may be made on the merits. In construing a statute, the purpose or object of the law is an important factor to be considered. Further, the letter of the law admits of no other interpretation but that the provision applies only to a respondent, not a petitioner. Only a respondent in a petition for the declaration of absolute nullity of void marriage or the annulment of voidable marriage files an answer where any ground that may warrant a dismissal may be raised as an affirmative defense pursuant to the provision. The only logical conclusion is that Section 7 of the Rule does not apply to a motion to dismiss filed by the party who initiated the petition for the declaration of absolute nullity of void marriage or the annulment of voidable marriage.

4. ID.; ID.; ID.; ID.; JUDGMENTS, FINALITY THEREOF; RATIONALE; CASE AT BAR.— When petitioner filed the motion to dismiss on 4 November 2004, the 30 March 2004

decision and the 17 May 2004 resolution of the trial court had long become final and executory upon the lapse of the 15-day reglementary period without any timely appeal having been filed by either party. The 30 March 2004 decision and the 17 May 2004 resolution may no longer be disturbed on account of the belated motion to dismiss filed by petitioner. The trial court was correct in denying petitioner's motion to dismiss. Nothing is more settled in law than that when a judgment becomes final and executory, it becomes immutable and unalterable. The same may no longer be modified in any respect, even if the modification is meant to correct what is perceived to be an erroneous conclusion of fact or law. The reason is grounded on the fundamental considerations of public policy and sound practice that, at the risk of occasional error, the judgments or orders of courts must be final at some definite date fixed by law. Once a judgment has become final and executory, the issues there should be laid to rest.

APPEARANCES OF COUNSEL

Charlie Cirilito Juloya for petitioner.

Aguirre Abaño Pamfilo Paras Pineda & Agustin Law Offices for respondent.

D E C I S I O N

CARPIO, *J.*:

The Case

This is a petition for review[1] of (i) the 17 May 2004 Resolution[2] amending the 30 March 2004 Decision[3] and (ii) the 15 February 2005 Resolution[4] of the Regional Trial Court of Quezon City, Branch 107, in Civil Case No. Q-01-45743. In its 30 March 2004 Decision, the trial court declared the marriage between

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

[2] Records, pp. 261-269.

[3] *Id.* at 235-251.

[4] *Id.* at 499-505.

petitioner Susie Chan-Tan and respondent Jesse Tan void under Article 36 of the Family Code. Incorporated as part of the decision was the 31 July 2003 Partial Judgment[5] approving the Compromise Agreement[6] of the parties. In its 17 May 2004 Resolution, the trial court granted to respondent custody of the children, ordered petitioner to turn over to respondent documents and titles in the latter's name, and allowed respondent to stay in the family dwelling. In its 15 February 2005 Resolution, the trial court denied petitioner's motion for reconsideration of the 28 December 2004 Resolution[7] denying petitioner's motion to dismiss and motion for reconsideration of the 12 October 2004 Resolution,[8] which in turn denied for late filing petitioner's motion for reconsideration of the 17 May 2004 resolution.

The Facts

Petitioner and respondent were married in June of 1989 at Manila Cathedral in Intramuros, Manila.[9] They were blessed with two sons: Justin, who was born in Canada in 1990 and Russel, who was born in the Philippines in 1993.[10]

In 2001, twelve years into the marriage, petitioner filed a case for the annulment of the marriage under Article 36 of the Family Code. The parties submitted to the court a compromise agreement, which we quote in full:

1. The herein parties mutually agreed that the two (2) lots located at Corinthian Hills, Quezon City and more particularly described in the Contract to Sell, marked in open court as Exhibits "H" to "H-3" shall be considered as part of the presumptive legitimes of their two (2) minor children namely, Justin Tan born on October 12, 1990 and Russel Tan born on November 28, 1993. Copies of the Contract to Sell are hereto attached as Annexes "A" and "B" and made integral parts hereof.

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[5] *Id.* at 141-147.

[6] *Id.* at 124-129.

[7] *Id.* at 482-490.

[8] *Id.* at 393-403.

[9] *Id.* at 11.

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

2. Susie Tan hereby voluntarily agrees to exclusively shoulder and pay out of her own funds/assets whatever is the remaining balance or unpaid amounts on said lots mentioned in paragraph 1 hereof directly with Megaworld Properties, Inc., until the whole purchase or contract amounts are fully paid.

3. Susie Tan is hereby authorized and empowered to directly negotiate, transact, pay and deal with the seller/developer Megaworld Properties, Inc., in connection with the Contract to Sell marked as Annexes "A" and "B" hereof.

4. The property covered by CCT No. 3754 of the Registry of Deeds of Quezon City and located at Unit O, Richmore Town Homes 12-B Mariposa St., Quezon City shall be placed in co-ownership under the name of Susie Tan (1/3), Justin Tan (1/3) and Russel Tan (1/3) to the exclusion of Jesse Tan.

5. The property covered by TCT No. 48137 of the Registry of Deeds of Quezon City and located at View Master Town Homes, 1387 Quezon Avenue, Quezon City shall be exclusively owned by Jesse Tan to the exclusion of Susie Tan.

6. The undivided interest in the Condominium Unit in Cityland Shaw. Jesse Tan shall exclusively own blvd. to the exclusion of Susie Tan.

7. The shares of stocks, bank accounts and other properties presently under the respective names of Jesse Tan and Susie Tan shall be exclusively owned by the spouse whose name appears as the registered/account owner or holder in the corporate records/stock transfer books, passbooks and/or the one in possession thereof, including the dividends/fruits thereof, to the exclusion of the other spouse.

Otherwise stated, all shares, bank accounts and properties registered and under the name and/or in the possession of Jesse Tan shall be exclusively owned by him only and all shares, accounts and properties registered and/or in the possession and under the name of Susie Tan shall be exclusively owned by her only.

However, as to the family corporations of Susie Tan, Jesse Tan shall execute any and all documents transferring the shares of stocks registered in his name in favor of Susie Tan, or Justin Tan/Russel Tan. A copy of the list of the corporation owned by the family of Susie Tan is hereto attached as Annex "C" and made an integral part hereof.

The parties shall voluntarily and without need of demand turn over to the other spouse any and all original documents, papers, titles, contracts registered in the name of the other spouse that are in their respective possessions and/or safekeeping.

8. Thereafter and upon approval of this Compromise Agreement by the Honorable Court, the existing property regime of the spouses shall be dissolved and shall now be governed by "Complete Separation of Property." Parties expressly represent that there are no known creditors that will be prejudiced by the present compromise agreement.

9. The parties shall have joint custody of their minor children. However, the two (2) minor children shall stay with their mother, Susie Tan at 12-B Mariposa St., Quezon City.

The husband, Jesse Tan, shall have the right to bring out the two (2) children every Sunday of each month from 8:00 AM to 9:00 PM. The minor children shall be returned to 12-B Mariposa Street, Quezon City on or before 9:00 PM of every Sunday of each month.

The husband shall also have the right to pick up the two (2) minor children in school/or in the house every Thursday of each month. The husband shall ensure that the children be home by 8:00 PM of said Thursdays.

During the summer vacation/semestral break or Christmas vacation of the children, the parties shall discuss the proper arrangement to be made regarding the stay of the children with Jesse Tan.

Neither party shall put any obstacle in the way of the maintenance of the love and affection between the children and the other party, or in the way of a reasonable and proper companionship between them, either by influencing the children against the other, or otherwise; nor shall they do anything to estrange any of them from the other.

The parties agreed to observe civility, courteousness and politeness in dealing with each other and shall not insult, malign or commit discourteous acts against each other and shall endeavor to cause their other relatives to act similarly.

10. Likewise, the husband shall have the right to bring out and see the children on the following additional dates, provided that the same will not impede or disrupt their academic schedule in Xavier School, the dates are as follows:

a. Birthday of Jesse Tan
b. Birthday of Grandfather and Grandmother, first cousins and uncles and aunties
c. Father's Day
d. Death Anniversaries of immediate members of the family of Jesse Tan
e. During the Christmas seasons/vacation the herein parties will agree on such dates as when the children can stay with their

father. Provided that if the children stay with their father on Christmas Day from December 24th to December 25th until 1:00 PM the children will stay with their mother on December 31 until January 1, 1:00 PM, or vice versa.

The husband shall always be notified of all school activities of the children and shall see to it that he will exert his best effort to attend the same.

11. During the birthdays of the two (2) minor children, the parties shall as far as practicable have one celebration.

Provided that if the same is not possible, the Husband (Jesse Tan) shall have the right to see and bring out the children for at least four (4) hours during the day or the day immediately following/ or after the birthday, if said visit or birthday coincides with the school day.

12. The existing Educational Plans of the two children shall be used and utilized for their High School and College education, in the event that the Educational Plans are insufficient to cover their tuition, the Husband shall shoulder the tuition and other miscellaneous fees, costs of books and educational materials, uniform, school bags, shoes and similar expenses like summer workshops which are taken in Xavier School, which will be paid directly by Jesse Tan to the children's school when the same fall due. Jesse Tan, if necessary, shall pay tutorial expenses, directly to the tutor concerned.

The husband further undertake to pay ₱10,000.00/monthly support *pendente lite* to be deposited in the ATM Account of SUSIE CHAN with account no. 3-189-53867-8 Boni Serrano Branch effective on the 15th of each month. In addition Jesse Tan undertakes to give directly to his two (2) sons every Sunday, the amount needed and necessary for the purpose of the daily meals of the two (2) children in school.

13. This Compromise Agreement is not against the law, customs, public policy, public order and good morals. Parties hereby voluntarily agree and bind themselves to execute and sign any and all documents to give effect to this Compromise Agreement.[11]

On 31 July 2003, the trial court issued a partial judgment[12] approving the compromise agreement. On 30 March 2004, the trial court rendered a decision declaring the marriage void under

[11] *Id.* at 124-128.

[12] *Id.* at 141-147.

Article 36 of the Family Code on the ground of mutual psychological incapacity of the parties. The trial court incorporated in its decision the compromise agreement of the parties on the issues of support, custody, visitation of the children, and property relations.

Meanwhile, petitioner cancelled the offer to purchase the Corinthian Hills Subdivision Lot No. 12, Block 2. She authorized Megaworld Corp. to allocate the amount of ₱11,992,968.32 so far paid on the said lot in the following manner:

(a) ₱3,656,250.04 shall be transferred to fully pay the other lot in Corinthian Hills on Lot 11, Block 2;

(b) ₱7,783,297.56 shall be transferred to fully pay the contract price in Unit 9H of the 8 Wack Wack Road Condominium project; and

(c) ₱533,420.72 shall be forfeited in favor of Megaworld Corp. to cover the marketing and administrative costs of Corinthian Hills Subdivision Lot 12, Block 2.[13]

Petitioner authorized Megaworld Corp. to offer Lot 12, Block 2 of Corinthian Hills to other interested buyers. It also appears from the records that petitioner left the country bringing the children with her.

Respondent filed an omnibus motion seeking in the main custody of the children. The evidence presented by respondent established that petitioner brought the children out of the country without his knowledge and without prior authority of the trial court; petitioner failed to pay the ₱8,000,000 remaining balance for the Megaworld property which, if forfeited would prejudice the interest of the children; and petitioner failed to turn over to respondent documents and titles in the latter's name.

Thus, the trial court, in its 17 May 2004 resolution, awarded to respondent custody of the children, ordered petitioner to turn over to respondent documents and titles in the latter's name, and allowed respondent to stay in the family dwelling in Mariposa, Quezon City.

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[13] *Id.* at 427.

Petitioner filed on 28 June 2004 a motion for reconsideration[14] alleging denial of due process on account of accident, mistake, or excusable negligence. She alleged she was not able to present evidence because of the negligence of her counsel and her own fear for her life and the future of the children. She claimed she was forced to leave the country, together with her children, due to the alleged beating she received from respondent and the pernicious effects of the latter's supposed gambling and womanizing ways. She prayed for an increase in respondent's monthly support obligation in the amount of ₱150,000.

Unconvinced, the trial court, in its 12 October 2004 Resolution,[15] denied petitioner's motion for reconsideration, which was filed beyond the 15-day reglementary period. It also declared petitioner in contempt of court for non-compliance with the partial judgment and the 17 May 2004 resolution. The trial court also denied petitioner's prayer for increase in monthly support. The trial court reasoned that since petitioner took it upon herself to enroll the children in another school without respondent's knowledge, she should therefore defray the resulting increase in their expenses.

On 4 November 2004, petitioner filed a motion to dismiss[16] and a motion for reconsideration[17] of the 12 October 2004 Resolution. She claimed she was no longer interested in the suit. Petitioner stated that the circumstances in her life had led her to the conclusion that withdrawing the petition was for the best interest of the children. She prayed that an order be issued vacating all prior orders and leaving the parties at the *status quo ante* the filing of the suit.

In its 28 December 2004 Resolution,[18] the trial court denied both the motion to dismiss and the motion for reconsideration

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[14] *Id.* at 319-326.

[15] *Id.* at 393-403.

[16] *Id.* at 414-416.

[17] *Id.* at 418-423.

[18] *Id.* at 482-490.

filed by petitioner. It held that the 30 March 2004 decision and the 17 May 2004 resolution had become final and executory upon the lapse of the 15-day reglementary period without any timely appeal having been filed by either party.

Undeterred, petitioner filed a motion for reconsideration of the 28 December 2004 resolution, which the trial court denied in its 15 February 2005 resolution.[19] The trial court then issued a Certificate of Finality[20] of the 30 March 2004 decision and the 17 May 2004 resolution.

The Trial Court's Rulings

The 30 March 2004 Decision[21] declared the marriage between the parties void under Article 36 of the Family Code on the ground of mutual psychological incapacity. It incorporated the 31 July 2003 Partial Judgment[22] approving the Compromise Agreement[23] between the parties. The 17 May 2004 Resolution[24] amended the earlier partial judgment in granting to respondent custody of the children, ordering petitioner to turn over to respondent documents and titles in the latter's name, and allowing respondent to stay in the family dwelling in Mariposa, Quezon City. The 15 February 2005 Resolution[25] denied petitioner's motion for reconsideration of the 28 December 2004 Resolution[26] denying petitioner's motion to dismiss and motion for reconsideration of the 12 October 2004 Resolution,[27] which in turn denied for late filing petitioner's motion for reconsideration of the 17 May 2004 resolution.

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[19] *Id.* at 499-505.

[20] *Rollo*, pp. 246-248.

[21] Records, pp. 235-251.

[22] *Id.* at 141-147.

[23] *Id.* at 124-129.

[24] *Id.* at 261-269.

[25] *Id.* at 499-505.

[26] *Id.* at 482-490.

[27] *Id.* at 393-403.

The Issue

Petitioner raises the question of whether the 30 March 2004 decision and the 17 May 2004 resolution of the trial court have attained finality despite the alleged denial of due process.

The Court's Ruling

The petition has no merit.

Petitioner contends she was denied due process when her counsel failed to file pleadings and appear at the hearings for respondent's omnibus motion to amend the partial judgment as regards the custody of the children and the properties in her possession. Petitioner claims the trial court issued the 17 May 2004 resolution relying solely on the testimony of respondent. Petitioner further claims the trial court erred in applying to her motion to dismiss Section 7 of the Rule on the Declaration of Absolute Nullity of Void Marriages and Annulment of Voidable Marriages. Petitioner argues that if indeed the provision is applicable, the same is unconstitutional for setting an obstacle to the preservation of the family.

Respondent maintains that the 30 March 2004 decision and the 17 May 2004 resolution of the trial court are now final and executory and could no longer be reviewed, modified, or vacated. Respondent alleges petitioner is making a mockery of our justice system in disregarding our lawful processes. Respondent stresses neither petitioner nor her counsel appeared in court at the hearings on respondent's omnibus motion or on petitioner's motion to dismiss.

The issue raised in this petition has been settled in the case of *Tuason v. Court of Appeals*.[28] In *Tuason*, private respondent therein filed a petition for the annulment of her marriage on the ground of her husband's psychological incapacity. There, the trial court rendered judgment declaring the nullity of the marriage and awarding custody of the children to private respondent therein. No timely appeal was taken from the trial court's judgment.

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[28] 326 Phil. 169 (1996).

We held that the decision annulling the marriage had already become final and executory when the husband failed to appeal during the reglementary period. The husband claimed that the decision of the trial court was null and void for violation of his right to due process. He argued he was denied due process when, after failing to appear on two scheduled hearings, the trial court deemed him to have waived his right to present evidence and rendered judgment based solely on the evidence presented by private respondent. We upheld the judgment of nullity of the marriage even if it was based solely on evidence presented by therein private respondent.

We also ruled in *Tuason* that notice sent to the counsel of record is binding upon the client and the neglect or failure of the counsel to inform the client of an adverse judgment resulting in the loss of the latter's right to appeal is not a ground for setting aside a judgment valid and regular on its face.[29]

In the present case, the 30 March 2004 decision and the 17 May 2004 resolution of the trial court had become final and executory upon the lapse of the reglementary period to appeal.[30] Petitioner's motion for reconsideration of the 17 May 2004 resolution, which the trial court received on 28 June 2004, was clearly filed out of time. Applying the doctrine laid down in *Tuason*, the alleged negligence of counsel resulting in petitioner's loss of the right to appeal is not a ground for vacating the trial court's judgments.

Further, petitioner cannot claim that she was denied due process. While she may have lost her right to present evidence due to the supposed negligence of her counsel, she cannot say she was denied her day in court. Records show petitioner, through counsel, actively participated in the proceedings below, filing motion after motion. Contrary to petitioner's allegation of negligence of her counsel, we have reason to believe the negligence in pursuing the case was on petitioner's end, as may be gleaned from her counsel's manifestation dated 3 May 2004:

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[29] *Id*.

[30] *Perez v. Zulueta*, 106 Phil. 264 (1959).

Undersigned Counsel, who appeared for petitioner, in the nullity proceedings, respectfully informs the Honorable Court that she has not heard from petitioner since Holy Week. Attempts to call petitioner have failed.

Undersigned counsel regrets therefore that she is unable to respond in an intelligent manner to the Motion (Omnibus Motion) filed by respondent.[31]

Clearly, despite her counsel's efforts to reach her, petitioner showed utter disinterest in the hearings on respondent's omnibus motion seeking, among others, custody of the children. The trial judge was left with no other recourse but to proceed with the hearings and rule on the motion based on the evidence presented by respondent. Petitioner cannot now come to this Court crying denial of due process.

As for the applicability to petitioner's motion to dismiss of Section 7 of the Rule on the Declaration of Absolute Nullity of Void Marriages and Annulment of Voidable Marriages, petitioner is correct. Section 7 of the Rule on the Declaration of Absolute Nullity of Void Marriages and Annulment of Voidable Marriages provides:

SEC. 7. Motion to dismiss. – No motion to dismiss the petition shall be allowed except on the ground of lack of jurisdiction over the subject matter or over the parties; provided, however, that **any other ground that might warrant a dismissal of the case may be raised as an affirmative defense in an answer**. (Emphasis supplied)

The clear intent of the provision is to allow the respondent to ventilate all possible defenses in an answer, instead of a mere motion to dismiss, so that judgment may be made on the merits. In construing a statute, the purpose or object of the law is an important factor to be considered.[32] Further, the letter of the law admits of no other interpretation but that the provision applies only to a respondent, not a petitioner. Only a respondent

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[31] Records, p. 259.

[32] *Philippine Sugar Central Agency v. Collector of Customs*, 51 Phil. 131 (1927).

in a petition for the declaration of absolute nullity of void marriage or the annulment of voidable marriage files an answer where any ground that may warrant a dismissal may be raised as an affirmative defense pursuant to the provision. The only logical conclusion is that Section 7 of the Rule does not apply to a motion to dismiss filed by the party who initiated the petition for the declaration of absolute nullity of void marriage or the annulment of voidable marriage.

Since petitioner is not the respondent in the petition for the annulment of the marriage, Section 7 of the Rule does not apply to the motion to dismiss filed by her. Section 7 of the Rule not being applicable, petitioner's claim that it is unconstitutional for allegedly setting an obstacle to the preservation of the family is without basis.

Section 1 of the Rule states that the Rules of Court applies suppletorily to a petition for the declaration of absolute nullity of void marriage or the annulment of voidable marriage. In this connection, Rule 17 of the Rules of Court allows dismissal of the action upon notice or upon motion of the plaintiff, to wit:

> Section 1. *Dismissal upon notice by plaintiff*. – A complaint may be dismissed by the plaintiff by filing a notice of dismissal **at any time before service of the answer or of a motion for summary judgment**. Upon such notice being filed, the court shall issue an order confirming the dismissal. x x x
>
> Section 2. *Dismissal upon motion of plaintiff*. – Except as provided in the preceding section, a complaint shall not be dismissed at the plaintiff's instance save **upon approval of the court and upon such terms and conditions as the court deems proper**. x x x (Emphasis supplied)

However, when petitioner filed the motion to dismiss on 4 November 2004, the 30 March 2004 decision and the 17 May 2004 resolution of the trial court had long become final and executory upon the lapse of the 15-day reglementary period without any timely appeal having been filed by either party. The 30 March 2004 decision and the 17 May 2004 resolution may no longer be disturbed on account of the belated motion

to dismiss filed by petitioner. The trial court was correct in denying petitioner's motion to dismiss. Nothing is more settled in law than that when a judgment becomes final and executory, it becomes immutable and unalterable. The same may no longer be modified in any respect, even if the modification is meant to correct what is perceived to be an erroneous conclusion of fact or law.[33] The reason is grounded on the fundamental considerations of public policy and sound practice that, at the risk of occasional error, the judgments or orders of courts must be final at some definite date fixed by law. Once a judgment has become final and executory, the issues there should be laid to rest.[34]

WHEREFORE, we *DENY* the petition for review. We *AFFIRM* the (i) 17 May 2004 Resolution amending the 30 March 2004 Decision and (ii) the 15 February 2005 Resolution of the Regional Trial Court of Quezon City, Branch 107, in Civil Case No. Q-01-45743.

Costs against petitioner.

SO ORDERED.

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

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[33] *Nuñal v. Court of Appeals*, G.R. No. 94005, 6 April 1993, 221 SCRA 26.

[34] *Enriquez v. Court of Appeals*, G.R. No. 83720, 4 October 1991, 202 SCRA 487.

SECOND DIVISION

[G.R. No. 169467. February 25, 2010]

ALFREDO P. PACIS and CLEOPATRA D. PACIS, *petitioners, vs.* **JEROME JOVANNE MORALES,** *respondent.*

SYLLABUS

1. CIVIL LAW; DAMAGES; DEATH CAUSED BY ACCIDENTAL SHOOTING; CLAIM MAY BE ENFORCED BASED ON THE CIVIL LIABILITY ARISING FROM THE CRIME OR ON AN INDEPENDENT CIVIL ACTION FOR DAMAGES UNDER THE CIVIL CODE; CASE AT BAR.— This case for damages arose out of the accidental shooting of petitioners' son. Under Article 1161 of the Civil Code, petitioners may enforce their claim for damages based on the civil liability arising from the crime under Article 100 of the Revised Penal Code or they may opt to file an independent civil action for damages under the Civil Code. In this case, instead of enforcing their claim for damages in the homicide case filed against Matibag, petitioners opted to file an independent civil action for damages against respondent whom they alleged was Matibag's employer. Petitioners based their claim for damages under Articles 2176 and 2180 of the Civil Code.

2. ID.; QUASI-DELICTS; LIABILITY OF EMPLOYER, OR ANY PERSON FOR THAT MATTER, IS PRIMARY AND DIRECT, BASED ON A PERSON'S OWN NEGLIGENCE.— Unlike the subsidiary liability of the employer under Article 103 of the Revised Penal Code, the liability of the employer, or any person for that matter, under Article 2176 of the Civil Code is primary and direct, based on a person's own negligence. Article 2176 states: Art. 2176. Whoever by act or omission causes damage to another, there being fault or negligence, is obliged to pay for the damage done. Such fault or negligence, if there is no pre-existing contractual relation between the parties, is called quasi-delict and is governed by the provisions of this Chapter.

3. ID.; ID.; ACCIDENTAL DISCHARGE OF A FIREARM INSIDE A GUN STORE; HIGHER DEGREE OF CARE REQUIRED OF SOMEONE DEALING WITH DANGEROUS WEAPONS OR

SUBSTANCES; CASE AT BAR.— This case involves the accidental discharge of a firearm inside a gun store. Under PNP Circular No. 9, entitled the "Policy on Firearms and Ammunition Dealership/Repair," a person who is in the business of purchasing and selling of firearms and ammunition must maintain basic security and safety requirements of a gun dealer, otherwise his License to Operate Dealership will be suspended or canceled. Indeed, a higher degree of care is required of someone who has in his possession or under his control an instrumentality extremely dangerous in character, such as dangerous weapons or substances. Such person in possession or control of dangerous instrumentalities has the duty to take exceptional precautions to prevent any injury being done thereby. Unlike the ordinary affairs of life or business which involve little or no risk, a business dealing with dangerous weapons requires the exercise of a higher degree of care. As a gun store owner, respondent is presumed to be knowledgeable about firearms safety and should have known never to keep a loaded weapon in his store to avoid unreasonable risk of harm or injury to others. x x x For failing to insure that the gun was not loaded, respondent himself was negligent. Furthermore, it was not shown in this case whether respondent had a License to Repair which authorizes him to repair defective firearms to restore its original composition or enhance or upgrade firearms.

APPEARANCES OF COUNSEL

Fortun Narvasa & Salazar for petitioners.
Federico J. Mandapat, Jr. for respondent.

D E C I S I O N

CARPIO, *J.*:

The Case

This petition for review[1] assails the 11 May 2005 Decision[2] and the 19 August 2005 Resolution of the Court of Appeals in CA-G.R. CV No. 60669.

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

[2] Penned by Associate Justice Jose Catral Mendoza (now Supreme Court Justice) with Associate Justices Romeo A. Brawner and Edgardo P. Cruz, concurring.

The Facts

On 17 January 1995, petitioners Alfredo P. Pacis and Cleopatra D. Pacis (petitioners) filed with the trial court a civil case for damages against respondent Jerome Jovanne Morales (respondent). Petitioners are the parents of Alfred Dennis Pacis, Jr. (Alfred), a 17-year old student who died in a shooting incident inside the Top Gun Firearms and Ammunitions Store (gun store) in Baguio City. Respondent is the owner of the gun store.

The facts as found by the trial court are as follows:

> On January 19, 1991, Alfred Dennis Pacis, then 17 years old and a first year student at the Baguio Colleges Foundation taking up BS Computer Science, died due to a gunshot wound in the head which he sustained while he was at the Top Gun Firearm[s] and Ammunition[s] Store located at Upper Mabini Street, Baguio City. The gun store was owned and operated by defendant Jerome Jovanne Morales.
>
> With Alfred Pacis at the time of the shooting were Aristedes Matibag and Jason Herbolario. They were sales agents of the defendant, and at that particular time, the caretakers of the gun store.
>
> The bullet which killed Alfred Dennis Pacis was fired from a gun brought in by a customer of the gun store for repair.
>
> The gun, an AMT Automag II Cal. 22 Rimfire Magnum with Serial No. SN-H34194 (Exhibit "Q"), was left by defendant Morales in a drawer of a table located inside the gun store.
>
> Defendant Morales was in Manila at the time. His employee Armando Jarnague, who was the regular caretaker of the gun store was also not around. He left earlier and requested sales agents Matibag and Herbolario to look after the gun store while he and defendant Morales were away. Jarnague entrusted to Matibag and Herbolario a bunch of keys used in the gun store which included the key to the drawer where the fatal gun was kept.
>
> It appears that Matibag and Herbolario later brought out the gun from the drawer and placed it on top of the table. Attracted by the sight of the gun, the young Alfred Dennis Pacis got hold of the same. Matibag asked Alfred Dennis Pacis to return the gun. The latter followed and handed the gun to Matibag. It went off, the bullet hitting the young Alfred in the head.

A criminal case for homicide was filed against Matibag before Branch VII of this Court. Matibag, however, was acquitted of the charge against him because of the exempting circumstance of "accident" under Art. 12, par. 4 of the Revised Penal Code.

By agreement of the parties, the evidence adduced in the criminal case for homicide against Matibag was reproduced and adopted by them as part of their evidence in the instant case.[3]

On 8 April 1998, the trial court rendered its decision in favor of petitioners. The dispositive portion of the decision reads:

WHEREFORE, premises considered, judgment is hereby rendered in favor of the plaintiffs [Spouses Alfredo P. Pacis and Cleopatra D. Pacis] and against the defendant [Jerome Jovanne Morales] ordering the defendant to pay plaintiffs —

(1) ₱30,000.00 as indemnity for the death of Alfred Pacis;
(2) ₱29,437.65 as actual damages for the hospitalization and burial expenses incurred by the plaintiffs;
(3) ₱100,000.00 as compensatory damages;
(4) ₱100,000.00 as moral damages;
(5) ₱50,000.00 as attorney's fees.

SO ORDERED.[4]

Respondent appealed to the Court of Appeals. In its Decision[5] dated 11 May 2005, the Court of Appeals reversed the trial court's Decision and absolved respondent from civil liability under Article 2180 of the Civil Code.[6]

Petitioners filed a motion for reconsideration, which the Court of Appeals denied in its Resolution dated 19 August 2005.

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[3] *Rollo,* pp. 43-44.

[4] *Id.* at 50.

[5] *Id.* at 29-39.

[6] The dispositive portion of the Court of Appeals' decision reads:

WHEREFORE, the April 8, 1998 Decision of the Regional Trial Court, Branch 59, Baguio City, is REVERSED and SET ASIDE and a new one entered dismissing the defendant-appellant from civil liability under Article 2180 of the Civil Code.

SO ORDERED.

Hence, this petition.

The Trial Court's Ruling

The trial court held respondent civilly liable for the death of Alfred under Article 2180 in relation to Article 2176 of the Civil Code.[7] The trial court held that the accidental shooting of Alfred which caused his death was partly due to the negligence of respondent's employee Aristedes Matibag (Matibag). Matibag and Jason Herbolario (Herbolario) were employees of respondent even if they were only paid on a commission basis. Under the Civil Code, respondent is liable for the damages caused by Matibag on the occasion of the performance of his duties, unless respondent proved that he observed the diligence of a good father of a family to prevent the damage. The trial court held that respondent failed to observe the required diligence when he left the key to the drawer containing the loaded defective gun without instructing his employees to be careful in handling the loaded gun.

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[7] Articles 2176 and 2180 of the Civil Code provide:

Art. 2176. Whoever by act or omission causes damage to another, there being fault or negligence, is obliged to pay for the damage done. Such fault or negligence, if there is no pre-existing contractual relation between the parties, is called quasi-delict and is governed by the provisions of this Chapter.

Art. 2180. The obligation imposed by Article 2176 is demandable not only for one's own acts or omissions, but also of those persons for whom one is responsible.

x x x x x x x x x

The owners and managers of an establishment or enterprise are likewise responsible for damages caused by their employees in the service of the branches in which the latter are employed or on the occasion of their functions.

x x x x x x x x x

The responsibility treated of in this article shall cease when the persons herein mentioned prove that they observed all the diligence of a good father of a family to prevent damage.

The Court of Appeals' Ruling

The Court of Appeals held that respondent cannot be held civilly liable since there was no employer-employee relationship between respondent and Matibag. The Court of Appeals found that Matibag was not under the control of respondent with respect to the means and methods in the performance of his work. There can be no employer-employee relationship where the element of control is absent. Thus, Article 2180 of the Civil Code does not apply in this case and respondent cannot be held liable.

Furthermore, the Court of Appeals ruled that even if respondent is considered an employer of Matibag, still respondent cannot be held liable since no negligence can be attributed to him. As explained by the Court of Appeals:

> Granting *arguendo* that an employer-employee relationship existed between Aristedes Matibag and the defendant-appellant, we find that no negligence can be attributed to him.
>
> Negligence is best exemplified in the case of *Picart vs. Smith* (37 Phil. 809). The test of negligence is this:
>
> > "x x x. Could a prudent man, in the position of the person to whom negligence is attributed, foresee harm to the person injured as a reasonable consequence of the course about to be pursued? If so, the law imposes a duty on the actor to refrain from that course or take precaution against its mischievous results, and the failure to do so constitutes negligence. x x x."
>
> Defendant-appellant maintains that he is not guilty of negligence and lack of due care as he did not fail to observe the diligence of a good father of a family. He submits that he kept the firearm in one of his table drawers, which he locked and such is already an indication that he took the necessary diligence and care that the said gun would not be accessible to anyone. He puts [sic] that his store is engaged in selling firearms and ammunitions. Such items which are *per se* dangerous are kept in a place which is properly secured in order that the persons coming into the gun store would not be able to take hold of it unless it is done intentionally, such as when a customer is interested to purchase any of the firearms, ammunitions and other related items, in which case, he may be allowed to handle the same.

We agree. Much as We sympathize with the family of the deceased, defendant-appellant is not to be blamed. He exercised due diligence in keeping his loaded gun while he was on a business trip in Manila. He placed it inside the drawer and locked it. It was taken away without his knowledge and authority. Whatever happened to the deceased was purely accidental.[8]

The Issues

Petitioners raise the following issues:

I. THE APPELLATE COURT COMMITTED SERIOUS ERROR IN RENDERING THE DECISION AND RESOLUTION IN QUESTION IN DISREGARD OF LAW AND JURISPRUDENCE BY REVERSING THE ORDER OF THE REGIONAL TRIAL COURT (BRANCH 59) OF BAGUIO CITY NOTWITHSTANDING CLEAR, AUTHENTIC RECORDS AND TESTIMONIES PRESENTED DURING THE TRIAL WHICH NEGATE AND CONTRADICT ITS FINDINGS.

II. THE APPELLATE COURT COMMITTED GRAVE, REVERSIBLE ERROR IN RENDERING THE DECISION AND RESOLUTION IN QUESTION BY DEPARTING FROM THE ACCEPTED AND USUAL COURSE OF JUDICIAL PROCEEDINGS THEREBY IGNORING THE FACTUAL FINDINGS OF THE REGIONAL TRIAL COURT (BRANCH 59) OF BAGUIO CITY SHOWING PETITIONER'S CLEAR RIGHTS TO THE AWARD OF DAMAGES.[9]

The Ruling of the Court

We find the petition meritorious.

This case for damages arose out of the accidental shooting of petitioners' son. Under Article 1161[10] of the Civil Code,

[8] *Rollo,* pp. 38-39.

[9] *Id.* at 15.

[10] Article 1161 of the Civil Code provides: "Civil obligations arising from criminal offenses shall be governed by the penal laws, subject to the

petitioners may enforce their claim for damages based on the civil liability arising from the crime under Article 100[11] of the Revised Penal Code or they may opt to file an independent civil action for damages under the Civil Code. In this case, instead of enforcing their claim for damages in the homicide case filed against Matibag, petitioners opted to file an independent civil action for damages against respondent whom they alleged was Matibag's employer. Petitioners based their claim for damages under Articles 2176 and 2180 of the Civil Code.

Unlike the subsidiary liability of the employer under Article 103[12] of the Revised Penal Code,[13] the liability of the employer, or any person for that matter, under Article 2176 of the Civil Code is primary and direct, based on a person's own negligence. Article 2176 states:

> Art. 2176. Whoever by act or omission causes damage to another, there being fault or negligence, is obliged to pay for the damage done. Such fault or negligence, if there is no pre-existing contractual relation between the parties, is called quasi-delict and is governed by the provisions of this Chapter.

This case involves the accidental discharge of a firearm inside a gun store. Under PNP Circular No. 9, entitled the "Policy on Firearms and Ammunition Dealership/Repair," a person who is in the business of purchasing and selling of firearms and ammunition must maintain basic security and safety requirements

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provisions of Article 2177, and of the pertinent provisions of Chapter 2, Preliminary Title, on Human Relations, and Title XVIII of this Book regulating damages."

[11] Article 100 of the Revised Penal Code provides that "[e]very person criminally liable for a felony is also civilly liable."

[12] Article 103 of the Revised Penal Code states that "[t]he subsidiary liability in the next preceding article shall also apply to employers, teachers, persons, and corporations engaged in any kind of industry for felonies committed by their servants, pupils, workmen, apprentices, or employees in the discharge of their duties."

[13] *Maniago v. Court of Appeals*, 324 Phil. 34 (1996).

of a gun dealer, otherwise his License to Operate Dealership will be suspended or canceled.[14]

Indeed, a higher degree of care is required of someone who has in his possession or under his control an instrumentality extremely dangerous in character, such as dangerous weapons or substances. Such person in possession or control of dangerous instrumentalities has the duty to take exceptional precautions to prevent any injury being done thereby.[15] Unlike the ordinary affairs of life or business which involve little or no risk, a business dealing with dangerous weapons requires the exercise of a higher degree of care.

As a gun store owner, respondent is presumed to be knowledgeable about firearms safety and should have known never to keep a loaded weapon in his store to avoid unreasonable risk of harm or injury to others. Respondent has the duty to

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[14] See *PNP Circular No. 9, Policy on Firearms and Ammunition Dealership/Repair*, <http://www.fed.org.ph/fed/download/PNP Circulars/PNP Circular No. 9.pdf> (visited 18 February 2010). The pertinent provision of the PNP Circular No. 9 reads:

Administrative Sanction

a. There shall be an Administrative Sanction of suspension or cancellation of license depending on the gravity and nature of the offense on the following prohibited acts:

1) Selling of ammunition to unauthorized persons, entities, security agencies, *etc.*

2) Selling of display firearm without authority.

3) Failure to maintain the basic security and safety requirements of a gun dealer and gun repair shop such as vault, fire fighting equipment and maintenance of security guards from a licensed security agency.

4) Failure to submit monthly sales report on time to FED, CSG [Firearms and Explosives Division of the PNP Civil Security Group].

5) Unauthorized disposition or selling of firearms intended for demonstration/test/evaluation and display during gun show purposes.

6) Submission of spurious documents in the application for licenses.

7) Other similar offenses. (Emphasis supplied)

[15] 1 J.C. Sanco, *TORTS AND DAMAGES* 24-25 (5th ed., 1994).

ensure that all the guns in his store are not loaded. Firearms should be stored unloaded and separate from ammunition when the firearms are not needed for ready-access defensive use.[16] With more reason, guns accepted by the store for repair should not be loaded precisely because they are defective and may cause an accidental discharge such as what happened in this case. Respondent was clearly negligent when he accepted the gun for repair and placed it inside the drawer without ensuring first that it was not loaded. In the first place, the defective gun should have been stored in a vault. Before accepting the defective gun for repair, respondent should have made sure that it was not loaded to prevent any untoward accident. Indeed, respondent should never accept a firearm from another person, until the cylinder or action is open and he has personally checked that the weapon is completely unloaded.[17] For failing to insure that the gun was not loaded, respondent himself was negligent. Furthermore, it was not shown in this case whether respondent had a License to Repair which authorizes him to repair defective firearms to restore its original composition or enhance or upgrade firearms.[18]

Clearly, respondent did not exercise the degree of care and diligence required of a good father of a family, much less the degree of care required of someone dealing with dangerous weapons, as would exempt him from liability in this case.

WHEREFORE, we *GRANT* the petition. We *SET ASIDE* the 11 May 2005 Decision and the 19 August 2005 Resolution of the Court of Appeals in CA-G.R. CV No. 60669. We *REINSTATE* the trial court's Decision dated 8 April 1998.

SO ORDERED.

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

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[16] See *The Fundamentals of Firearms Safety* by the Firearms and Explosives Division of the PNP Civil Security Group, <http://www.fed.org.ph/gunsafety.html> (visited 18 February 2010).

[17] *Id.*

[18] See *PNP Circular No. 9, Policy on Firearms and Ammunition Dealership/Repair, <http://www.fed.org.ph/fed/download/PNP Circulars/PNP Circular No. 9.pdf>* (visited 18 February 2010).

EN BANC

[G.R. No. 176625. February 25, 2010]

MACTAN-CEBU INTERNATIONAL AIRPORT AUTHORITY and AIR TRANSPORTATION OFFICE, *petitioners, vs.* **BERNARDO L. LOZADA, SR., and the HEIRS OF ROSARIO MERCADO, namely, VICENTE LOZADA, MARIO M. LOZADA, MARCIA L. GODINEZ, VIRGINIA L. FLORES, BERNARDO LOZADA, JR., DOLORES GACASAN, SOCORRO CAFARO and ROSARIO LOZADA, represented by MARCIA LOZADA GODINEZ,** *respondents.*

SYLLABUS

1. POLITICAL LAW; CONSTITUTIONAL LAW; BILL OF RIGHTS; POWER OF EMINENT DOMAIN; TWO MANDATORY REQUIREMENTS FOR PROPER EXERCISE THEREOF.— It is well settled that the taking of private property by the Government's power of eminent domain is subject to two mandatory requirements: (1) that it is for a particular public purpose; and (2) that just compensation be paid to the property owner. These requirements partake of the nature of implied conditions that should be complied with to enable the condemnor to keep the property expropriated.

2. ID.; ID.; ID.; ID.; ID.; WITH RESPECT TO THE ELEMENT OF PUBLIC USE, THE EXPROPRIATOR SHOULD COMMIT TO USE THE PROPERTY PURSUANT TO THE PURPOSE STATED IN THE PETITION FOR EXPROPRIATION FILED.— More particularly, with respect to the element of public use, the expropriator should commit to use the property pursuant to the purpose stated in the petition for expropriation filed, failing which, it should file another petition for the new purpose. If not, it is then incumbent upon the expropriator to return the said property to its private owner, if the latter desires to reacquire the same. Otherwise, the judgment of expropriation suffers an intrinsic flaw, as it would lack one indispensable element for the proper exercise of the power of eminent domain,

namely, the particular public purpose for which the property will be devoted. Accordingly, the private property owner would be denied due process of law, and the judgment would violate the property owner's right to justice, fairness, and equity.

3. ID.; ID.; ID.; ID.; ID.; THE PROPERTY EXPROPRIATED MUST BE DEVOTED TO THE SPECIFIC PUBLIC PURPOSE FOR WHICH IT WAS TAKEN.— In light of these premises, we now expressly hold that the taking of private property, consequent to the Government's exercise of its power of eminent domain, is always subject to the condition that the property be devoted to the specific public purpose for which it was taken. Corollarily, if this particular purpose or intent is not initiated or not at all pursued, and is peremptorily abandoned, then the former owners, if they so desire, may seek the reversion of the property, subject to the return of the amount of just compensation received. In such a case, the exercise of the power of eminent domain has become improper for lack of the required factual justification.

4. ID.; ID.; ID.; ID.; ID.; ID.; RESPONDENTS' RIGHT TO REPURCHASE PROPERTY MAY BE ENFORCED BASED ON A CONSTRUCTIVE TRUST; CASE AT BAR.— The right of respondents to repurchase Lot No. 88 may be enforced based on a constructive trust constituted on the property held by the government in favor of the former. x x x On the matter of the repurchase price, while petitioners are obliged to reconvey Lot No. 88 to respondents, the latter must return to the former what they received as just compensation for the expropriation of the property, plus legal interest to be computed from default, which in this case runs from the time petitioners comply with their obligation to respondents. Respondents must likewise pay petitioners the necessary expenses they may have incurred in maintaining Lot No. 88, as well as the monetary value of their services in managing it to the extent that respondents were benefited thereby. Following Article 1187 of the Civil Code, petitioners may keep whatever income or fruits they may have obtained from Lot No. 88, and respondents need not account for the interests that the amounts they received as just compensation may have earned in the meantime. In accordance with Article 1190 of the Civil Code *vis-à-vis* Article 1189, which provides that "(i)f a thing is improved by its nature, or by time, the improvement shall inure to the benefit of the creditor x x x,"

respondents, as creditors, do not have to pay, as part of the process of restitution, the appreciation in value of Lot No. 88, which is a natural consequence of nature and time.

5. REMEDIAL LAW; APPEALS; FACTUAL FINDINGS OF THE TRIAL COURT; WHEN AFFIRMED BY THE CA, BINDING AND CONCLUSIVE ON THIS COURT; CASE AT BAR.— It bears stressing that both the RTC, Branch 57, Cebu and the CA have passed upon this factual issue and have declared, in no uncertain terms, that a compromise agreement was, in fact, entered into between the Government and respondents, with the former undertaking to resell Lot No. 88 to the latter if the improvement and expansion of the Lahug Airport would not be pursued. x x x Verily, factual findings of the trial court, especially when affirmed by the CA, are binding and conclusive on this Court and may not be reviewed. A petition for *certiorari* under Rule 45 of the Rules of Court contemplates only questions of law and not of fact. Not one of the exceptions to this rule is present in this case to warrant a reversal of such findings.

6. CIVIL LAW; OBLIGATIONS AND CONTRACTS; STATUTE OF FRAUDS; DOES NOT APPLY TO CONTRACTS WHICH HAVE BEEN COMPLETELY OR PARTIALLY PERFORMED; CASE AT BAR.— As regards the position of petitioners that respondents' testimonial evidence violates the Statute of Frauds, suffice it to state that the Statute of Frauds operates only with respect to executory contracts, and does not apply to contracts which have been completely or partially performed, the rationale thereof being as follows: In executory contracts there is a wide field for fraud because unless they be in writing there is no palpable evidence of the intention of the contracting parties. The statute has precisely been enacted to prevent fraud. However, if a contract has been totally or partially performed, the exclusion of parol evidence would promote fraud or bad faith, for it would enable the defendant to keep the benefits already delivered by him from the transaction in litigation, and, at the same time, evade the obligations, responsibilities or liabilities assumed or contracted by him thereby. In this case, the Statute of Frauds, invoked by petitioners to bar the claim of respondents for the reacquisition of Lot No. 88, cannot apply, the oral compromise settlement having been partially performed. By reason of such assurance made in their favor, respondents relied on the same by not pursuing their appeal before the CA.

Moreover, contrary to the claim of petitioners, the fact of Lozada's eventual conformity to the appraisal of Lot No. 88 and his seeking the correction of a clerical error in the judgment as to the true area of Lot No. 88 do not conclusively establish that respondents absolutely parted with their property. To our mind, these acts were simply meant to cooperate with the government, particularly because of the oral promise made to them.

APPEARANCES OF COUNSEL

The Solicitor General for petitioners.
Diores Law Offices for respondents.

D E C I S I O N

NACHURA, *J.*:

This is a petition for review on *certiorari* under Rule 45 of the Rules of Court, seeking to reverse, annul, and set aside the Decision[1] dated February 28, 2006 and the Resolution[2] dated February 7, 2007 of the Court of Appeals (CA) (Cebu City), Twentieth Division, in CA-G.R. CV No. 65796.

The antecedent facts and proceedings are as follows:

Subject of this case is Lot No. 88-SWO-25042 (Lot No. 88), with an area of 1,017 square meters, more or less, located in Lahug, Cebu City. Its original owner was Anastacio Deiparine when the same was subject to expropriation proceedings, initiated by the Republic of the Philippines (Republic), represented by the then Civil Aeronautics Administration (CAA), for the expansion and improvement of the Lahug Airport. The case was filed with the then Court of First Instance of Cebu, Third Branch, and docketed as Civil Case No. R-1881.

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[1] Penned by Associate Justice Enrico A. Lanzanas, with Associate Justices Pampio A. Abarintos and Apolinario D. Bruselas, Jr., concurring; *rollo*, pp. 46-65.

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

As early as 1947, the lots were already occupied by the U.S. Army. They were turned over to the Surplus Property Commission, the Bureau of Aeronautics, the National Airport Corporation and then to the CAA.

During the pendency of the expropriation proceedings, respondent Bernardo L. Lozada, Sr. acquired Lot No. 88 from Deiparine. Consequently, Transfer Certificate of Title (TCT) No. 9045 was issued in Lozada's name.

On December 29, 1961, the trial court rendered judgment in favor of the Republic and ordered the latter to pay Lozada the fair market value of Lot No. 88, adjudged at ₱3.00 per square meter, with consequential damages by way of legal interest computed from November 16, 1947—the time when the lot was first occupied by the airport. Lozada received the amount of ₱3,018.00 by way of payment.

The affected landowners appealed. Pending appeal, the Air Transportation Office (ATO), formerly CAA, proposed a compromise settlement whereby the owners of the lots affected by the expropriation proceedings would either not appeal or withdraw their respective appeals in consideration of a commitment that the expropriated lots would be resold at the price they were expropriated in the event that the ATO would abandon the Lahug Airport, pursuant to an established policy involving similar cases. Because of this promise, Lozada did not pursue his appeal. Thereafter, Lot No. 88 was transferred and registered in the name of the Republic under TCT No. 25057.

The projected improvement and expansion plan of the old Lahug Airport, however, was not pursued.

Lozada, with the other landowners, contacted then CAA Director Vicente Rivera, Jr., requesting to repurchase the lots, as per previous agreement. The CAA replied that there might still be a need for the Lahug Airport to be used as an emergency DC-3 airport. It reiterated, however, the assurance that "should this Office dispose and resell the properties which may be found to be no longer necessary as an airport, then the policy of this

Office is to give priority to the former owners subject to the approval of the President."

On November 29, 1989, then President Corazon C. Aquino issued a Memorandum to the Department of Transportation, directing the transfer of general aviation operations of the Lahug Airport to the Mactan International Airport before the end of 1990 and, upon such transfer, the closure of the Lahug Airport.

Sometime in 1990, the Congress of the Philippines passed Republic Act (R.A.) No. 6958, entitled "An Act Creating the Mactan-Cebu International Airport Authority, Transferring Existing Assets of the Mactan International Airport and the Lahug Airport to the Authority, Vesting the Authority with Power to Administer and Operate the Mactan International Airport and the Lahug Airport, and For Other Purposes."

From the date of the institution of the expropriation proceedings up to the present, the public purpose of the said expropriation (expansion of the airport) was never actually initiated, realized, or implemented. Instead, the old airport was converted into a commercial complex. Lot No. 88 became the site of a jail known as *Bagong Buhay Rehabilitation Complex*, while a portion thereof was occupied by squatters.[3] The old airport was converted into what is now known as the Ayala I.T. Park, a commercial area.

Thus, on June 4, 1996, petitioners initiated a complaint for the recovery of possession and reconveyance of ownership of Lot No. 88. The case was docketed as Civil Case No. CEB-18823 and was raffled to the Regional Trial Court (RTC), Branch 57, Cebu City. The complaint substantially alleged as follows:

(a) Spouses Bernardo and Rosario Lozada were the registered owners of Lot No. 88 covered by TCT No. 9045;

(b) In the early 1960's, the Republic sought to acquire by expropriation Lot No. 88, among others, in connection with its program for the improvement and expansion of the Lahug Airport;

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[3] TSN, June 25, 1998, p. 7.

(c) A decision was rendered by the Court of First Instance in favor of the Government and against the land owners, among whom was Bernardo Lozada, Sr. appealed therefrom;

(d) During the pendency of the appeal, the parties entered into a compromise settlement to the effect that the subject property would be resold to the original owner at the same price when it was expropriated in the event that the Government abandons the Lahug Airport;

(e) Title to Lot No. 88 was subsequently transferred to the Republic of the Philippines (TCT No. 25057);

(f) The projected expansion and improvement of the Lahug Airport did not materialize;

(g) Plaintiffs sought to repurchase their property from then CAA Director Vicente Rivera. The latter replied by giving as assurance that priority would be given to the previous owners, subject to the approval of the President, should CAA decide to dispose of the properties;

(h) On November 29, 1989, then President Corazon C. Aquino, through a Memorandum to the Department of Transportation and Communications (DOTC), directed the transfer of general aviation operations at the Lahug Airport to the Mactan-Cebu International Airport Authority;

(i) Since the public purpose for the expropriation no longer exists, the property must be returned to the plaintiffs.[4]

In their Answer, petitioners asked for the immediate dismissal of the complaint. They specifically denied that the Government had made assurances to reconvey Lot No. 88 to respondents in the event that the property would no longer be needed for airport operations. Petitioners instead asserted that the judgment of condemnation was unconditional, and respondents were, therefore, not entitled to recover the expropriated property notwithstanding non-use or abandonment thereof.

After pretrial, but before trial on the merits, the parties stipulated on the following set of facts:

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[4] *Rollo,* pp. 20-21.

(1) The lot involved is Lot No. 88-SWO-25042 of the Banilad Estate, situated in the City of Cebu, containing an area of One Thousand Seventeen (1,017) square meters, more or less;

(2) The property was expropriated among several other properties in Lahug in favor of the Republic of the Philippines by virtue of a Decision dated December 29, 1961 of the CFI of Cebu in Civil Case No. R-1881;

(3) The public purpose for which the property was expropriated was for the purpose of the Lahug Airport;

(4) After the expansion, the property was transferred in the name of MCIAA; [and]

(5) On November 29, 1989, then President Corazon C. Aquino directed the Department of Transportation and Communication to transfer general aviation operations of the Lahug Airport to the Mactan-Cebu International Airport Authority and to close the Lahug Airport after such transfer[.][5]

During trial, respondents presented Bernardo Lozada, Sr. as their lone witness, while petitioners presented their own witness, Mactan-Cebu International Airport Authority legal assistant Michael Bacarisas.

On October 22, 1999, the RTC rendered its Decision, disposing as follows:

WHEREFORE, in the light of the foregoing, the Court hereby renders judgment in favor of the plaintiffs, Bernardo L. Lozada, Sr., and the heirs of Rosario Mercado, namely, Vicente M. Lozada, Marcia L. Godinez, Virginia L. Flores, Bernardo M. Lozada, Jr., Dolores L. Gacasan, Socorro L. Cafaro and Rosario M. Lozada, represented by their attorney-in-fact Marcia Lozada Godinez, and against defendants Cebu-Mactan International Airport Authority (MCIAA) and Air Transportation Office (ATO):

1. ordering MCIAA and ATO to restore to plaintiffs the possession and ownership of their land, Lot No. 88 Psd-821 (SWO-23803), upon payment of the expropriation price to plaintiffs; and

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[5] *Id.* at 22-23.

2. ordering the Register of Deeds to effect the transfer of the Certificate of Title from defendant[s] to plaintiffs on Lot No. [88], cancelling TCT No. 20357 in the name of defendant MCIAA and to issue a new title on the same lot in the name of Bernardo L. Lozada, Sr. and the heirs of Rosario Mercado, namely: Vicente M. Lozada, Mario M. Lozada, Marcia L. Godinez, Virginia L. Flores, Bernardo M. Lozada, Jr., Dolores L. Gacasan, Socorro L. Cafaro and Rosario M. Lozada.

No pronouncement as to costs.

SO ORDERED.[6]

Aggrieved, petitioners interposed an appeal to the CA. After the filing of the necessary appellate briefs, the CA rendered its assailed Decision dated February 28, 2006, denying petitioners' appeal and affirming *in toto* the Decision of the RTC, Branch 57, Cebu City. Petitioners' motion for reconsideration was, likewise, denied in the questioned CA Resolution dated February 7, 2007.

Hence, this petition arguing that: (1) the respondents utterly failed to prove that there was a repurchase agreement or compromise settlement between them and the Government; (2) the judgment in Civil Case No. R-1881 was absolute and unconditional, giving title in fee simple to the Republic; and (3) the respondents' claim of verbal assurances from government officials violates the Statute of Frauds.

The petition should be denied.

Petitioners anchor their claim to the controverted property on the supposition that the Decision in the pertinent expropriation proceedings did not provide for the condition that should the intended use of Lot No. 88 for the expansion of the Lahug Airport be aborted or abandoned, the property would revert to respondents, being its former owners. Petitioners cite, in support of this position, *Fery v. Municipality of Cabanatuan*,[7] which

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[6] Records, p. 178.

[7] 42 Phil. 28 (1921).

declared that the Government acquires only such rights in expropriated parcels of land as may be allowed by the character of its title over the properties—

> If x x x land is expropriated for a particular purpose, with the condition that when that purpose is ended or abandoned the property shall return to its former owner, then, of course, when the purpose is terminated or abandoned the former owner reacquires the property so expropriated. If x x x land is expropriated for a public street and the expropriation is granted upon condition that the city can *only* use it for a public street, then, of course, when the city abandons its use as a public street, it returns to the former owner, unless there is some statutory provision to the contrary. x x x. If, upon the contrary, however, the decree of expropriation gives to the entity a fee simple title, then, of course, the land becomes the absolute property of the expropriator, whether it be the State, a province, or municipality, and in that case the non-user does not have the effect of defeating the title acquired by the expropriation proceedings. x x x.
>
> When land has been acquired for public use in *fee simple, unconditionally*, either by the exercise of eminent domain or by purchase, the former owner retains no right in the land, and the public use may be abandoned, or the land may be devoted to a different use, without any impairment of the estate or title acquired, or any reversion to the former owner. x x x.[8]

Contrary to the stance of petitioners, this Court had ruled otherwise in *Heirs of Timoteo Moreno and Maria Rotea v. Mactan-Cebu International Airport Authority*,[9] thus—

> Moreover, respondent MCIAA has brought to our attention a significant and telling portion in the *Decision* in Civil Case No. R-1881 validating our discernment that the expropriation by the predecessors of respondent was ordered under the running impression that Lahug Airport would continue in operation—
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> > As for the public purpose of the expropriation proceeding, it cannot now be doubted. Although Mactan Airport is being constructed, it does not take away the actual usefulness and importance of the Lahug Airport: it is handling the air traffic

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[8] *Id.* at 29-30.

[9] G.R. No. 156273, October 15, 2003, 413 SCRA 502.

> both civilian and military. From it aircrafts fly to Mindanao and Visayas and pass thru it on their flights to the North and Manila. *Then, no evidence was adduced to show how soon is the Mactan Airport to be placed in operation and whether the Lahug Airport will be closed immediately thereafter.* It is up to the other departments of the Government to determine said matters. The Court cannot substitute its judgment for those of the said departments or agencies. *In the absence of such showing, the Court will presume that the Lahug Airport will continue to be in operation (emphasis supplied).*

While in the trial in Civil Case No. R-1881 [we] could have simply acknowledged the presence of public purpose for the exercise of eminent domain regardless of the survival of Lahug Airport, the trial court in its *Decision* chose not to do so but instead prefixed its finding of public purpose upon its understanding that *"Lahug Airport will continue to be in operation."* Verily, these meaningful statements in the body of the *Decision* warrant the conclusion that the expropriated properties would remain to be so until it was confirmed that Lahug Airport was no longer *"in operation."* This inference further implies two (2) things: (a) after the Lahug Airport ceased its undertaking as such and the expropriated lots were not being used for any airport expansion project, the rights *vis-à-vis* the expropriated Lots Nos. 916 and 920 as between the State and their former owners, petitioners herein, must be equitably adjusted; and (b) the foregoing unmistakable declarations in the body of the *Decision* should merge with and become an intrinsic part of the *fallo* thereof which under the premises is clearly inadequate since the dispositive portion is not in accord with the findings as contained in the body thereof.[10]

Indeed, the Decision in Civil Case No. R-1881 should be read in its entirety, wherein it is apparent that the acquisition by the Republic of the expropriated lots was subject to the condition that the Lahug Airport would continue its operation. The condition not having materialized because the airport had been abandoned, the former owner should then be allowed to reacquire the expropriated property.[11]

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[10] *Id.* at 509-510.

[11] Ruling on the Motion for Reconsideration affirming the Decision; *Heirs of Timoteo Moreno and Maria Rotea v. Mactan-Cebu International Airport Authority*, G.R. No. 156273, August 9, 2005, 466 SCRA 288, 305.

On this note, we take this opportunity to revisit our ruling in *Fery*, which involved an expropriation suit commenced upon parcels of land to be used as a site for a public market. Instead of putting up a public market, respondent Cabanatuan constructed residential houses for lease on the area. Claiming that the municipality lost its right to the property taken since it did not pursue its public purpose, petitioner Juan Fery, the former owner of the lots expropriated, sought to recover his properties. However, as he had admitted that, in 1915, respondent Cabanatuan acquired a fee simple title to the lands in question, judgment was rendered in favor of the municipality, following American jurisprudence, particularly *City of Fort Wayne v. Lake Shore & M.S. RY. Co.*,[12] *McConihay v. Theodore Wright*,[13] and *Reichling v. Covington Lumber Co.*,[14] all uniformly holding that the transfer to a third party of the expropriated real property, which necessarily resulted in the abandonment of the particular public purpose for which the property was taken, is not a ground for the recovery of the same by its previous owner, the title of the expropriating agency being one of fee simple.

Obviously, *Fery* was not decided pursuant to our now sacredly held constitutional right that private property shall not be taken for public use without just compensation.[15] It is well settled that the taking of private property by the Government's power of eminent domain is subject to two mandatory requirements: (1) that it is for a particular public purpose; and (2) that just compensation be paid to the property owner. These requirements partake of the nature of implied conditions that should be complied with to enable the condemnor to keep the property expropriated.[16]

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[12] 132 Ind. 558, November 5, 1892.

[13] 121 U.S. 932, April 11, 1887.

[14] 57 Wash. 225, February 4, 1910.

[15] CONSTITUTION, Art. III, Sec. 9.

[16] *Supra* note 11, at 302; *Vide Republic v. Lim*, G.R. No. 161656, June 29, 2005, 462 SCRA 265.

More particularly, with respect to the element of public use, the expropriator should commit to use the property pursuant to the purpose stated in the petition for expropriation filed, failing which, it should file another petition for the new purpose. If not, it is then incumbent upon the expropriator to return the said property to its private owner, if the latter desires to reacquire the same. Otherwise, the judgment of expropriation suffers an intrinsic flaw, as it would lack one indispensable element for the proper exercise of the power of eminent domain, namely, the particular public purpose for which the property will be devoted. Accordingly, the private property owner would be denied due process of law, and the judgment would violate the property owner's right to justice, fairness, and equity.

In light of these premises, we now expressly hold that the taking of private property, consequent to the Government's exercise of its power of eminent domain, is always subject to the condition that the property be devoted to the specific public purpose for which it was taken. Corollarily, if this particular purpose or intent is not initiated or not at all pursued, and is peremptorily abandoned, then the former owners, if they so desire, may seek the reversion of the property, subject to the return of the amount of just compensation received. In such a case, the exercise of the power of eminent domain has become improper for lack of the required factual justification.[17]

Even without the foregoing declaration, in the instant case, on the question of whether respondents were able to establish the existence of an oral compromise agreement that entitled them to repurchase Lot No. 88 should the operations of the Lahug Airport be abandoned, we rule in the affirmative.

It bears stressing that both the RTC, Branch 57, Cebu and the CA have passed upon this factual issue and have declared, in no uncertain terms, that a compromise agreement was, in fact, entered into between the Government and respondents, with the former undertaking to resell Lot No. 88 to the latter

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[17] *Vide* the Separate Concurring Opinion of Associate Justice Presbitero J. Velasco, Jr.

if the improvement and expansion of the Lahug Airport would not be pursued. In affirming the factual finding of the RTC to this effect, the CA declared—

> Lozada's testimony is cogent. An octogenarian widower-retiree and a resident of Moon Park, California since 1974, he testified that government representatives verbally promised him and his late wife while the expropriation proceedings were on-going that the government shall return the property if the purpose for the expropriation no longer exists. This promise was made at the premises of the airport. As far as he could remember, there were no expropriation proceedings against his property in 1952 because the first notice of expropriation he received was in 1962. Based on the promise, he did not hire a lawyer. Lozada was firm that he was promised that the lot would be reverted to him once the public use of the lot ceases. He made it clear that the verbal promise was made in Lahug with other lot owners before the 1961 decision was handed down, though he could not name the government representatives who made the promise. It was just a verbal promise; nevertheless, it is binding. The fact that he could not supply the necessary details for the establishment of his assertions during cross-examination, but that "When it will not be used as intended, it will be returned back, we just believed in the government," does not dismantle the credibility and truthfulness of his allegation. This Court notes that he was 89 years old when he testified in November 1997 for an incident which happened decades ago. Still, he is a competent witness capable of perceiving and making his perception known. The minor lapses are immaterial. The decision of the competency of a witness rests primarily with the trial judge and must not be disturbed on appeal unless it is clear that it was erroneous. The objection to his competency must be made before he has given any testimony or as soon as the incompetency becomes apparent. Though Lozada is not part of the compromise agreement,[18] he nevertheless adduced sufficient evidence to support his claim.[19]

As correctly found by the CA, unlike in *Mactan Cebu International Airport Authority v. Court of Appeals*,[20] cited

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[18] Petitioners' witness Michael Bacarisas testified that three other lot owners entered into a written compromise agreement with the government but Lozada was not part of it.

[19] *Rollo*, pp. 58-59.

[20] G.R. No. 121506, October 30, 1996, 263 SCRA 736.

by petitioners, where respondent therein offered testimonies which were hearsay in nature, the testimony of Lozada was based on personal knowledge as the assurance from the government was personally made to him. His testimony on cross-examination destroyed neither his credibility as a witness nor the truthfulness of his words.

Verily, factual findings of the trial court, especially when affirmed by the CA, are binding and conclusive on this Court and may not be reviewed. A petition for *certiorari* under Rule 45 of the Rules of Court contemplates only questions of law and not of fact.[21] Not one of the exceptions to this rule is present in this case to warrant a reversal of such findings.

As regards the position of petitioners that respondents' testimonial evidence violates the Statute of Frauds, suffice it to state that the Statute of Frauds operates only with respect to executory contracts, and does not apply to contracts which have been completely or partially performed, the rationale thereof being as follows:

> In executory contracts there is a wide field for fraud because unless they be in writing there is no palpable evidence of the intention of the contracting parties. The statute has precisely been enacted to prevent fraud. However, if a contract has been totally or partially performed, the exclusion of parol evidence would promote fraud or bad faith, for it would enable the defendant to keep the benefits already delivered by him from the transaction in litigation, and, at the same time, evade the obligations, responsibilities or liabilities assumed or contracted by him thereby.[22]

In this case, the Statute of Frauds, invoked by petitioners to bar the claim of respondents for the reacquisition of Lot No.

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[21] *Caluag v. People*, G.R. No. 171511, March 4, 2009, 580 SCRA 575, 583; *Gregorio Araneta University Foundation v. Regional Trial Court of Kalookan City, Br. 120,* G.R. No. 139672, March 4, 2009, 580 SCRA 532, 544; *Heirs of Jose T. Calo v. Calo,* G.R. No. 156101, February 10, 2009, 578 SCRA 226, 232.

[22] *Mactan-Cebu International Airport Authority v. Tudtud,* G.R. No. 174012, November 14, 2008, 571 SCRA 165, 175.

88, cannot apply, the oral compromise settlement having been partially performed. By reason of such assurance made in their favor, respondents relied on the same by not pursuing their appeal before the CA. Moreover, contrary to the claim of petitioners, the fact of Lozada's eventual conformity to the appraisal of Lot No. 88 and his seeking the correction of a clerical error in the judgment as to the true area of Lot No. 88 do not conclusively establish that respondents absolutely parted with their property. To our mind, these acts were simply meant to cooperate with the government, particularly because of the oral promise made to them.

The right of respondents to repurchase Lot No. 88 may be enforced based on a constructive trust constituted on the property held by the government in favor of the former. On this note, our ruling in *Heirs of Timoteo Moreno* is instructive, *viz.*:

> *Mactan-Cebu International Airport Authority* is correct in stating that one would not find an express statement in the Decision in Civil Case No. R-1881 to the effect that *"the [condemned] lot would return to [the landowner] or that [the landowner] had a right to repurchase the same if the purpose for which it was expropriated is ended or abandoned or if the property was to be used other than as the Lahug Airport."* This omission notwithstanding, and while the inclusion of this pronouncement in the judgment of condemnation would have been ideal, such precision is not absolutely necessary nor is it fatal to the cause of petitioners herein. No doubt, the return or repurchase of the condemned properties of petitioners could be readily justified as the manifest legal effect or consequence of the trial court's underlying presumption that *"Lahug Airport will continue to be in operation"* when it granted the complaint for eminent domain and the airport discontinued its activities.
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> The predicament of petitioners involves a constructive trust, one that is akin to the implied trust referred to in Art. 1454 of the *Civil Code, "If an absolute conveyance of property is made in order to secure the performance of an obligation of the grantor toward the grantee, a trust by virtue of law is established. If the fulfillment of the obligation is offered by the grantor when it becomes due, he may demand the reconveyance of the property to him."* In the case at bar, petitioners conveyed Lots No. 916 and 920 to the government

with the latter obliging itself to use the realties for the expansion of Lahug Airport; failing to keep its bargain, the government can be compelled by petitioners to reconvey the parcels of land to them, otherwise, petitioners would be denied the use of their properties upon a state of affairs that was not conceived nor contemplated when the expropriation was authorized.

Although the symmetry between the instant case and the situation contemplated by Art. 1454 is not perfect, the provision is undoubtedly applicable. For, as explained by an expert on the law of trusts: *"The only problem of great importance in the field of constructive trust is to decide whether in the numerous and varying fact situations presented to the courts there is a wrongful holding of property and hence a threatened unjust enrichment of the defendant."* Constructive trusts are fictions of equity which are bound by no unyielding formula when they are used by courts as devices to remedy any situation in which the holder of legal title may not in good conscience retain the beneficial interest.

In constructive trusts, the arrangement is temporary and passive in which the trustee's sole duty is to transfer the title and possession over the property to the plaintiff-beneficiary. Of course, the *"wronged party seeking the aid of a court of equity in establishing a constructive trust must himself do equity."* Accordingly, the court will exercise its discretion in deciding what acts are required of the plaintiff-beneficiary as conditions precedent to obtaining such decree and has the obligation to reimburse the trustee the consideration received from the latter just as the plaintiff-beneficiary would if he proceeded on the theory of rescission. In the good judgment of the court, the trustee may also be paid the necessary expenses he may have incurred in sustaining the property, his fixed costs for improvements thereon, and the monetary value of his services in managing the property to the extent that plaintiff-beneficiary will secure a benefit from his acts.

The rights and obligations between the constructive trustee and the beneficiary, in this case, respondent MCIAA and petitioners over Lots Nos. 916 and 920, are echoed in Art. 1190 of the *Civil Code*, *"When the conditions have for their purpose the extinguishment of an obligation to give, the parties, upon the fulfillment of said conditions, shall return to each other what they have received x x x In case of the loss, deterioration or improvement of the thing, the provisions which, with respect to the debtor, are laid down in*

the preceding article shall be applied to the party who is bound to return x x x."[23]

On the matter of the repurchase price, while petitioners are obliged to reconvey Lot No. 88 to respondents, the latter must return to the former what they received as just compensation for the expropriation of the property, plus legal interest to be computed from default, which in this case runs from the time petitioners comply with their obligation to respondents.

Respondents must likewise pay petitioners the necessary expenses they may have incurred in maintaining Lot No. 88, as well as the monetary value of their services in managing it to the extent that respondents were benefited thereby.

Following Article 1187[24] of the Civil Code, petitioners may keep whatever income or fruits they may have obtained from Lot No. 88, and respondents need not account for the interests that the amounts they received as just compensation may have earned in the meantime.

In accordance with Article 1190[25] of the Civil Code *vis-à-vis* Article 1189, which provides that "(i)f a thing is improved by its nature, or by time, the improvement shall inure to the benefit of the creditor x x x," respondents, as creditors, do not have to pay, as part of the process of restitution, the appreciation in value of Lot No. 88, which is a natural consequence of nature and time.[26]

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[23] *Supra* note 9, at 512-514.

[24] Art. 1187. The effects of a conditional obligation to give, once the condition has been fulfilled, shall retroact to the day of the constitution of the obligation. Nevertheless, when the obligation imposes reciprocal prestations upon the parties, the fruits and interests during the pendency of the condition shall be deemed to have been mutually compensated. x x x.

[25] Art. 1190. When the conditions have for their purpose the extinguishment of an obligation to give, the parties, upon the fulfillment of said conditions, shall return to each other what they have received.

In case of the loss, deterioration or improvement of the thing, the provisions which, with respect to the debtor, are laid down in the preceding article (Article 1189) shall be applied to the party who is bound to return.

[26] *Mactan-Cebu International Airport Authority v. Tudtud*, *supra* note 22, at 177.

WHEREFORE, the petition is *DENIED*. The February 28, 2006 Decision of the Court of Appeals, affirming the October 22, 1999 Decision of the Regional Trial Court, Branch 87, Cebu City, and its February 7, 2007 Resolution are *AFFIRMED* with *MODIFICATION* as follows:

1. Respondents are *ORDERED* to return to petitioners the just compensation they received for the expropriation of Lot No. 88, plus legal interest, in the case of default, to be computed from the time petitioners comply with their obligation to reconvey Lot No. 88 to them;

2. Respondents are *ORDERED* to pay petitioners the necessary expenses the latter incurred in maintaining Lot No. 88, plus the monetary value of their services to the extent that respondents were benefited thereby;

3. Petitioners are *ENTITLED* to keep whatever fruits and income they may have obtained from Lot No. 88; and

4. Respondents are also *ENTITLED* to keep whatever interests the amounts they received as just compensation may have earned in the meantime, as well as the appreciation in value of Lot No. 88, which is a natural consequence of nature and time;

In light of the foregoing modifications, the case is *REMANDED* to the Regional Trial Court, Branch 57, Cebu City, only for the purpose of receiving evidence on the amounts that respondents will have to pay petitioners in accordance with this Court's decision. No costs.

SO ORDERED.

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

Peralta, J., on official leave.

FIRST DIVISION

[G.R. No. 184398. February 25, 2010]

SILKAIR (SINGAPORE) PTE. LTD., *petitioner, vs.* **COMMISSIONER OF INTERNAL REVENUE,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; ADMISSIBILITY; EVIDENCE ADMITTED BY THE COURT IN A PREVIOUS CASE CANNOT BE ADOPTED IN A SEPARATE CASE PENDING BEFORE THE SAME COURT WITHOUT THE SAME BEING OFFERED AND IDENTIFIED ANEW; IT IS NOT MANDATORY FOR THE COURT TO TAKE JUDICIAL NOTICE OF THE SAID EVIDENCE.— We quote with approval the disquisition of the CTA *En Banc* in its Decision dated May 27, 2008 on the non-admission of petitioner's Exhibits "A", "P", "Q", and "R," to wit: x x x "Each and every case is distinct and separate in character and matter although similar parties may have been involved. Thus, in a pending case, it is not mandatory upon the courts to take judicial notice of pieces of evidence which have been offered in other cases even when such cases have been tried or pending in the same court. **Evidence already presented and admitted by the court in a previous case cannot be adopted in a separate case pending before the same court without the same being offered and identified anew.** The cases cited by petitioner concerned similar parties before the same court but do not cover the same claim. **A court is not compelled to take judicial notice of pieces of evidence offered and admitted in a previous case unless the same are properly offered or have accordingly complied with the requirements on the rules of evidence. In other words, the evidence presented in the previous cases cannot be considered in this instant case without being offered in evidence.** x x x [P]etitioner admitted that Exhibit 'A' have *(sic)* been offered and admitted in evidence in similar cases involving the same subject matter filed before this Court. Thus, petitioner is and should have been aware of the rules regarding the offering of any documentary evidence before the same can be admitted in court.

2. ID.; ID.; ID.; MERE COPIES OF DOCUMENTS SHALL NOT BE ADMITTED UNLESS THE ORIGINAL COPIES ARE PRESENTED IN COURT FOR VERIFICATION.— As regards Exhibit[s] 'P', 'Q' and 'R', the original copies of these documents were not presented for comparison and verification in violation of Section 3 of Rule 130 of the 1997 Revised Rules of Court. The said section specifically provides that 'when the subject of inquiry is the contents of a document, no evidence shall be admissible other than the original document itself x x x'. **It is an elementary rule in law that documents shall not be admissible in evidence unless and until the original copies itself are offered or presented for verification in cases where mere copies are offered, save for the exceptions provided for by law. Petitioner thus cannot hide behind the veil of judicial notice so as to evade its responsibility of properly complying with the rules of evidence. For failure of herein petitioner to compare the subject documents with its originals, the same may not be admitted.**" x x x This Court finds no reason to depart from the foregoing findings of the CTA *En Banc* as petitioner itself admitted on page 9 of its petition for review that "[i]t was through inadvertence that only photocopies of Exhibits 'P', 'Q' and 'R' were introduced during the hearing" and that it was "rather unfortunate that petitioner failed to produce the original copy of its SEC Registration (Exhibit 'A') for purposes of comparison with the photocopy that was originally presented." Evidently, said documents cannot be admitted in evidence by the court as the original copies were neither offered nor presented for comparison and verification during the trial. Mere identification of the documents and the markings thereof as exhibits do not confer any evidentiary weight on them as said documents have not been formally offered by petitioner and have been denied admission in evidence by the CTA.

3. ID.; ID.; JUDICIAL NOTICE; SUBJECT DOCUMENTS FALL NEITHER ON THE MATTERS WHICH THE LAW MANDATORILY REQUIRES THE COURT TO TAKE JUDICIAL NOTICE OF, NOR DOCUMENTS WHICH THE LAW ALLOWS THE COURT TO TAKE DISCRETIONARY JUDICIAL NOTICE.— [T]he documents are not among the matters which the law mandatorily requires the Court to take judicial notice of, without any introduction of evidence, as petitioner would have the CTA do. x x x Neither could it be

said that petitioner's SEC Registration and operating permits from the CAB are documents which are of public knowledge, capable of unquestionable demonstration, or ought to be known to the judges because of their judicial functions, in order to allow the CTA to take discretionary judicial notice of the said documents.

4. TAXATION; TAXES; DISTINCTION BETWEEN DIRECT TAX AND INDIRECT TAX, REITERATED IN VIEW OF ITS RELEVANCE TO THE ISSUE IN CASE AT BAR.— The distinction between a direct tax and an indirect tax is relevant to this issue. In *Commissioner of Internal Revenue v. Philippine Long Distance Telephone Company*, this Court explained: Based on the possibility of shifting the incidence of taxation, or as to who shall bear the burden of taxation, taxes may be classified into either direct tax or indirect tax. In context, direct taxes are those that are exacted from the very person who, it is intended or desired, should pay them; they are impositions for which a taxpayer is directly liable on the transaction or business he is engaged in. On the other hand, indirect taxes are those that are demanded, in the first instance, from, or are paid by, one person in the expectation and intention that he can shift the burden to someone else. Stated elsewise, indirect taxes are taxes wherein the liability for the payment of the tax falls on one person but the burden thereof can be shifted or passed on to another person, such as when the tax is imposed upon goods before reaching the consumer who ultimately pays for it. When the seller passes on the tax to his buyer, he, in effect, shifts the tax burden, not the liability to pay it, to the purchaser as part of the purchase price of goods sold or services rendered.

5. ID.; ID.; EXCISE TAXES; NATURE, EXPLAINED.— [E]xcise taxes refer to taxes applicable to certain specified or selected goods or articles manufactured or produced in the Philippines for domestic sale or consumption or for any other disposition and to things imported into the Philippines. These excise taxes may be considered taxes on production as they are collected only from manufacturers and producers. Basically an indirect tax, excise taxes are directly levied upon the manufacturer or importer upon removal of the taxable goods from its place of production or from the customs custody. These taxes, however, may be actually passed on to the end consumer as part of the transfer value or selling price of the goods sold, bartered or exchanged.

6. ID.; ID.; ID.; THE PROPER PARTY TO CLAIM REFUND OR TAX CREDIT OF ERRONEOUS PAYMENT OF EXCISE TAXES PAID ON AVIATION FUEL PURCHASE IS THE COMPANY ON WHICH THE TAX IS IMPOSED AND WHICH PAID THE SAME.— [U]nder Section 130(A) (2) of the NLRC, it is Petron, the taxpayer, which has the legal personality to claim the refund or tax credit of any erroneous payment of excise taxes. Section 130(A) (2) states: SEC. 130. Filing of Return and Payment of Excise Tax on Domestic Products. – (A) *Persons Liable to File a Return, Filing of Return on Removal and Payment of Tax*. – (1) *Persons Liable to File a Return*. – x x x (2) *Time for Filing of Return and Payment of the Tax*. – Unless otherwise specifically allowed, **the return shall be filed and the excise tax paid by the manufacturer or producer before removal of domestic products from place of production**. x x x From the foregoing discussion, it is clear that the proper party to question, or claim a refund or tax credit of an indirect tax is the statutory taxpayer, which is Petron in this case, as it is the company on which the tax is imposed by law and which paid the same even if the burden thereof was shifted or passed on to another. It bears stressing that even if Petron shifted or passed on to petitioner the burden of the tax, the additional amount which petitioner paid is not a tax but a part of the purchase price which it had to pay to obtain the goods.

7. ID.; TAX REFUND; NATURE.— Time and again, we have held that tax refunds are in the nature of tax exemptions which represent a loss of revenue to the government. These exemptions, therefore, must not rest on vague, uncertain or indefinite inference, but should be granted only by a clear and unequivocal provision of law on the basis of language too plain to be mistaken. Such exemptions must be strictly construed against the taxpayer, as taxes are the lifeblood of the government.

APPEARANCES OF COUNSEL

Pastrana Fallar for petitioner.
The Solicitor General for respondent.

D E C I S I O N

LEONARDO-DE CASTRO, *J.*:

Before the Court is a Petition for Review on *Certiorari*, assailing the May 27, 2008 Decision[1] and the subsequent September 5, 2008 Resolution[2] of the Court of Tax Appeals (CTA) *En Banc* in C.T.A. E.B. No. 267. The decision dated May 27, 2008 denied the petition for review filed by petitioner Silkair (Singapore) Pte. Ltd., on the ground, among others, of failure to prove that it was authorized to operate in the Philippines for the period June to December 2000, while the Resolution dated September 5, 2008 denied petitioner's motion for reconsideration for lack of merit.

The antecedent facts are as follows:

Petitioner, a foreign corporation organized under the laws of Singapore with a Philippine representative office in Cebu City, is an online international carrier plying the Singapore-Cebu-Singapore and Singapore-Cebu-Davao-Singapore routes.

Respondent Commissioner of Internal Revenue is impleaded herein in his official capacity as head of the Bureau of Internal Revenue (BIR), an attached agency of the Department of Finance which is duly authorized to decide, approve, and grant refunds and/or tax credits of erroneously paid or illegally collected internal revenue taxes.[3]

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[1] Penned by Associate Justice Erlinda P. Uy with Presiding Justice Ernesto D. Acosta (with a Concurring and Dissenting Opinion), Associate Justices Juanito C. Castañeda, Jr., Lovell R. Bautista, Caesar A. Casanova (concurred with the Concurring and Dissenting Opinion) and Olga Palanca-Enriquez, concurring; *rollo*, pp. 33-50.

[2] *Id.* at 54-60.

[3] Pursuant to Section 4 of the National Internal Revenue Code of 1997 which states:

SEC. 4. *Power of the Commissioner to Interpret Tax Laws and to Decide Tax Cases*. – The power to interpret the provisions of this Code and other tax laws shall be under the exclusive and original jurisdiction of the Commissioner, subject to review by the Secretary of Finance.

On June 24, 2002, petitioner filed with the BIR an administrative claim for the refund of Three Million Nine Hundred Eighty-Three Thousand Five Hundred Ninety Pesos and Forty-Nine Centavos (₱3,983,590.49) in excise taxes which it allegedly erroneously paid on its purchases of aviation jet fuel from Petron Corporation (Petron) from June to December 2000. Petitioner used as basis therefor BIR Ruling No. 339-92 dated December 1, 1992, which declared that the petitioner's Singapore-Cebu-Singapore route is an international flight by an international carrier and that the petroleum products purchased by the petitioner should not be subject to excise taxes under Section 135 of Republic Act No. 8424 or the 1997 National Internal Revenue Code (NIRC).

Since the BIR took no action on petitioner's claim for refund, petitioner sought judicial recourse and filed on June 27, 2002, a petition for review with the CTA (docketed as CTA Case No. 6491), to prevent the lapse of the two-year prescriptive period within which to judicially claim a refund under Section 229[4] of the NIRC. Petitioner invoked its exemption from payment of excise taxes in accordance with the provisions of Section

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The power to decide disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto, or other matters arising under this Code or other laws or portions thereof administered by the Bureau of Internal Revenue is vested in the Commissioner, subject to the exclusive appellate jurisdiction of the Court of Tax Appeals.

[4] SEC. 229. *Recovery of Tax Erroneously or Illegally Collected.* – No suit or proceeding shall be maintained in any court for the recovery of any national internal revenue tax hereafter alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessively or in any manner wrongfully collected, until a claim for refund or credit has been duly filed with the Commissioner; but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress.

In any case, no such suit or proceeding shall be filed after the expiration of two (2) years from the date of payment of the tax or penalty regardless of any supervening cause that may arise after payment: *Provided, however*, That the Commissioner may, even without a written claim therefor, refund or credit any tax, where on the face of the return upon which payment was made, such payment appears clearly to have been erroneously paid.

135(b) of the NIRC, which exempts from excise taxes the entities covered by tax treaties, conventions and other international agreements; provided that the country of said carrier or exempt entity likewise exempts from similar taxes the petroleum products sold to Philippine carriers or entities. In this regard, petitioner relied on the reciprocity clause under Article 4(2) of the Air Transport Agreement entered between the Republic of the Philippines and the Republic of Singapore.

Section 135(b) of the NIRC provides:

SEC. 135. *Petroleum Products Sold to International Carriers and Exempt Entities or Agencies.* – Petroleum products sold to the following are exempt from excise tax:

x x x x x x x x x

(b) Exempt entities or agencies covered by tax treaties, conventions and other international agreements for their use or consumption: *Provided*, *however*, That the country of said foreign international carrier or exempt entities or agencies exempts from similar taxes petroleum products sold to Philippine carriers, entities or agencies; x x x.

Article 4(2) of the Air Transport Agreement between the Philippines and Singapore, in turn, provides:

ART. 4. x x x.

x x x x x x x x x

(2) Fuel, lubricants, spare parts, regular equipment and aircraft stores introduced into, or taken on board aircraft in the territory of one Contracting Party by, or on behalf of, a designated airline of the other Contracting Party and intended solely for use in the operation of the agreed services shall, with the exception of charges corresponding to the service performed, be exempt from the same customs duties, inspection fees and other duties or taxes imposed in the territory of the first Contracting Party, even when these supplies are to be used on the parts of the journey performed over the territory of the Contracting Party in which they are introduced into or taken on board. The materials referred to above may be required to be kept under customs supervision and control.

In a Decision[5] dated July 27, 2006, the CTA First Division found that petitioner was qualified for tax exemption under Section 135(b) of the NIRC, as long as the Republic of Singapore exempts from similar taxes petroleum products sold to Philippine carriers, entities or agencies under Article 4(2) of the Air Transport Agreement quoted above. However, it ruled that petitioner was not entitled to the excise tax exemption for failure to present proof that it was authorized to operate in the Philippines during the period material to the case due to the non-admission of some of its exhibits, which were merely photocopies, including Exhibit "A" which was petitioner's Certificate of Registration with the Securities and Exchange Commission (SEC) and Exhibits "P", "Q" and "R" which were its operating permits issued by the Civil Aeronautics Board (CAB) to fly the Singapore-Cebu-Singapore and Singapore-Cebu-Davao-Singapore routes for the period October 1999 to October 2000.

Petitioner filed a motion for reconsideration but the CTA First Division denied the same in a Resolution[6] dated January 17, 2007.

Thereafter, petitioner elevated the case before the CTA *En Banc via* a petition for review, which was initially denied in a Resolution[7] dated May 17, 2007 for failure of petitioner to establish its legal authority to appeal the Decision dated July 27, 2006 and the Resolution dated January 17, 2007 of the CTA First Division.

Undaunted, petitioner moved for reconsideration. In the Resolution[8] dated September 19, 2007, the CTA *En Banc* set aside its earlier resolution dismissing the petition for review and reinstated the same. It also required respondent to file his comment thereon.

On May 27, 2008, the CTA *En Banc* promulgated the assailed Decision and denied the petition for review, thus:

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[5] *Rollo,* pp. 61-71.
[6] *Id.* at 78-81.
[7] *Id.* at 82-84.
[8] *Id.* at 85-89.

WHEREFORE, premises considered, the instant petition is hereby **DENIED** for lack of merit. The assailed Decision dated July 27, 2006 dismissing the instant petition on ground of failure of petitioner to prove that it was authorized to operate in the Philippines for the period from June to December 2000, is hereby **AFFIRMED WITH MODIFICATION** that petitioner is further not found to be the proper party to file the instant claim for refund.[9]

In a separate Concurring and Dissenting Opinion,[10] CTA Presiding Justice Ernesto D. Acosta opined that petitioner was exempt from the payment of excise taxes based on Section 135 of the NIRC and Article 4 of the Air Transport Agreement between the Philippines and Singapore. However, despite said exemption, petitioner's claim for refund cannot be granted since it failed to establish its authority to operate in the Philippines during the period subject of the claim. In other words, Presiding Justice Acosta voted to uphold *in toto* the Decision of the CTA First Division.

Petitioner again filed a motion for reconsideration which was denied in the Resolution dated September 5, 2008. Hence, the instant petition for review on *certiorari*, which raises the following issues:

I

Whether or not petitioner has substantially proven its authority to operate in the Philippines.

II

Whether or not petitioner is the proper party to claim for the refund/ tax credit of excise taxes paid on aviation fuel.

Petitioner maintains that it has proven its authority to operate in the Philippines with the admission of its Foreign Air Carrier's Permit (FACP) as Exhibit "B" before the CTA, which, in part, reads:

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[9] *Id.* at 50.

[10] With the concurrence of Associate Justice Caesar A. Casanova; *rollo*, pp. 51-53.

[T]his Board RESOLVED, as it hereby resolves to APPROVE the petition of SILKAIR (SINGAPORE) PTE LTD., for issuance of a regular operating permit (Foreign Air Carrier's Permit), subject to the approval of the President, pursuant to Sec. 10 of R.A. 776, as amended by P.D. 1462.[11]

Moreover, petitioner argues that Exhibits "P", "Q" and "R", which it previously filed with the CTA, were merely flight schedules submitted to the CAB, and were not its operating permits. Petitioner adds that it was through inadvertence that only photocopies of these exhibits were introduced during the hearing.

Petitioner also asserts that despite its failure to present the original copy of its SEC Registration during the hearings, the CTA should take judicial notice of its SEC Registration since the same was already offered and admitted in evidence in similar cases pending before the CTA.

Petitioner further claims that the instant case involves a clear grant of tax exemption to it by law and by virtue of an international agreement between two governments. Consequently, being the entity which was granted the tax exemption and which made the erroneous tax payment of the excise tax, it is the proper party to file the claim for refund.

In his Comment[12] dated March 26, 2009, respondent states that the admission in evidence of petitioner's FACP does not change the fact that petitioner failed to formally offer in evidence the original copies or certified true copies of Exhibit "A", its SEC Registration; and Exhibits "P", "Q" and "R", its operating permits issued by the CAB to fly its Singapore-Cebu-Singapore and Singapore-Cebu-Davao-Singapore routes for the period October 1999 to October 2000. Respondent emphasizes that petitioner's failure to present these pieces of evidence amounts to its failure to prove its authority to operate in the Philippines.

Likewise, respondent maintains that an excise tax, being an indirect tax, is the direct liability of the manufacturer or producer.

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[11] *Rollo*, p. 16.

[12] *Id.* at 236-262.

Respondent reiterates that when an excise tax on petroleum products is added to the cost of goods sold to the buyer, it is no longer a tax but becomes part of the price which the buyer has to pay to obtain the article. According to respondent, petitioner cannot seek reimbursement for its alleged erroneous payment of the excise tax since it is neither the entity required by law nor the entity statutorily liable to pay the said tax.

After careful examination of the records, we resolve to deny the petition.

Petitioner's assertion that the CTA may take judicial notice of its SEC Registration, previously offered and admitted in evidence in similar cases before the CTA, is untenable.

We quote with approval the disquisition of the CTA *En Banc* in its Decision dated May 27, 2008 on the non-admission of petitioner's Exhibits "A", "P", "Q" and "R", to wit:

> Anent petitioner's argument that the Court in Division should have taken judicial notice of the existence of Exhibit "A" (petitioner's SEC Certificate of Registration), although not properly identified during trial as this has previously been offered and admitted in evidence in similar cases involving the subject matter between the same parties before this Court, We are in agreement with the ruling of the Court in Division, as discussed in its Resolution dated April 12, 2005 resolving petitioner's Motion for Reconsideration on the court's non-admission of Exhibits "A", "P", "Q" and "R", wherein it said that:
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> > "Each and every case is distinct and separate in character and matter although similar parties may have been involved. Thus, in a pending case, it is not mandatory upon the courts to take judicial notice of pieces of evidence which have been offered in other cases even when such cases have been tried or pending in the same court. **Evidence already presented and admitted by the court in a previous case cannot be adopted in a separate case pending before the same court without the same being offered and identified anew.**
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> > The cases cited by petitioner concerned similar parties before the same court but do not cover the same claim. **A court is not compelled to take judicial notice of pieces of evidence offered and admitted in a previous case unless the same are properly**

offered or have accordingly complied with the requirements on the rules of evidence. In other words, the evidence presented in the previous cases cannot be considered in this instant case without being offered in evidence.

Moreover, Section 3 of Rule 129 of the Revised Rules of Court provides that hearing is necessary before judicial notice may be taken by the courts. To quote said section:

> Sec. 3. *Judicial notice, when hearing necessary.* – During the trial, the court, on its own initiative, or on request of a party, may announce its intention to take judicial notice of any matter and allow the parties to be heard thereon.
>
> After the trial, and before judgment or on appeal, the proper court, on its own initiative or on request of a party, may take judicial notice of any matter and allow the parties to be heard thereon if such matter is decisive of a material issue in the case.

Furthermore, petitioner admitted that Exhibit 'A' have *(sic)* been offered and admitted in evidence in similar cases involving the same subject matter filed before this Court. Thus, petitioner is and should have been aware of the rules regarding the offering of any documentary evidence before the same can be admitted in court.

As regards Exhibit[s] 'P', 'Q' and 'R', the original copies of these documents were not presented for comparison and verification in violation of Section 3 of Rule 130 of the 1997 Revised Rules of Court. The said section specifically provides that 'when the subject of inquiry is the contents of a document, no evidence shall be admissible other than the original document itself x x x.' **It is an elementary rule in law that documents shall not be admissible in evidence unless and until the original copies itself are offered or presented for verification in cases where mere copies are offered, save for the exceptions provided for by law. Petitioner thus cannot hide behind the veil of judicial notice so as to evade its responsibility of properly complying with the rules of evidence. For failure of herein petitioner to compare the subject documents with its originals, the same may not be admitted.**" (*Emphasis Ours*)

Likewise, in the Resolution dated July 15, 2005 of the Court in Division denying petitioner's Omnibus Motion seeking allowance to compare the denied exhibits with their certified true copies, the court *a quo* explained that:

> "Petitioner was already given enough time and opportunity to present the originals or certified true copies of the denied documents for comparison. When petitioner received the resolution denying admission of the provisionally marked exhibits, it should have submitted the originals or certified true copies for comparison, considering that these documents were accordingly available. But instead of presenting these documents, petitioner, in its Motion for Reconsideration, tried to hide behind the veil of judicial notice so as to evade its responsibility of properly applying the rules on evidence. It was even submitted by petitioner that these documents should be admitted for they were previously offered and admitted in similar cases involving the same subject matter and parties. If this was the case, then, there should have been no reason for petitioner to seasonably present the originals or certified true copies for comparison, or even, marking. x x x."

In view of the foregoing discussion, the Court *en banc* finds that indeed, petitioner indubitably failed to establish its authority to operate in the Philippines for the period beginning June to December 2000.[13]

This Court finds no reason to depart from the foregoing findings of the CTA *En Banc* as petitioner itself admitted on page 9[14] of its petition for review that "[i]t was through inadvertence that only photocopies of Exhibits 'P', 'Q' and 'R' were introduced during the hearing" and that it was "rather unfortunate that petitioner failed to produce the original copy of its SEC Registration (Exhibit 'A') for purposes of comparison with the photocopy that was originally presented."

Evidently, said documents cannot be admitted in evidence by the court as the original copies were neither offered nor presented for comparison and verification during the trial. Mere identification of the documents and the markings thereof as

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

[14] *Id.* at 17.

exhibits do not confer any evidentiary weight on them as said documents have not been formally offered by petitioner and have been denied admission in evidence by the CTA.

Furthermore, the documents are not among the matters which the law mandatorily requires the Court to take judicial notice of, without any introduction of evidence, as petitioner would have the CTA do. Section 1, Rule 129 of the Rules of Court reads:

> SECTION 1. *Judicial notice, when mandatory.* – A court shall take judicial notice, without the introduction of evidence, of the existence and territorial extent of states, their political history, forms of government and symbols of nationality, the law of nations, the admiralty and maritime courts of the world and their seals, the political constitution and history of the Philippines, the official acts of the legislative, executive and judicial departments of the Philippines, the laws of nature, the measure of time, and the geographical divisions.

Neither could it be said that petitioner's SEC Registration and operating permits from the CAB are documents which are of public knowledge, capable of unquestionable demonstration, or ought to be known to the judges because of their judicial functions, in order to allow the CTA to take discretionary judicial notice of the said documents.[15]

Moreover, Section 3 of the same Rule[16] provides that a hearing is necessary before judicial notice of any matter may be taken by the court. This requirement of a hearing is needed so that

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[15] SEC. 2. *Judicial notice, when discretionary.* – A court may take judicial notice of matters which are of public knowledge, or are capable of unquestionable demonstration, or ought to be known to judges because of their judicial functions.

[16] SEC. 3. *Judicial notice, when hearing necessary.* – During the trial, the court, on its own initiative, or on request of a party, may announce its intention to take judicial notice of any matter and allow the parties to be heard thereon.

After the trial, and before judgment or on appeal, the proper court, on its own initiative or on request of a party, may take judicial notice of any matter and allow the parties to be heard thereon if such matter is decisive of a material issue in the case.

the parties can be heard thereon if such matter is decisive of a material issue in the case.

Given the above rules, it is clear that the CTA *En Banc* correctly did not admit petitioner's SEC Registration and operating permits from the CAB which were merely photocopies, without the presentation of the original copies for comparison and verification. As aptly held by the CTA *En Banc*, petitioner cannot rely on the principle of judicial notice so as to evade its responsibility of properly complying with the rules of evidence. Indeed, petitioner's contention that the said documents were previously marked in other cases before the CTA tended to confirm that the originals of these documents were readily available and their non-presentation in these proceedings was unjustified. Consequently, petitioner's failure to compare the photocopied documents with their original renders the subject exhibits inadmissible in evidence.

Going to the second issue, petitioner maintains that it is the proper party to claim for refund or tax credit of excise taxes since it is the entity which was granted the tax exemption and which made the erroneous tax payment. Petitioner anchors its claim on Section 135(b) of the NIRC and Article 4(2) of the Air Transport Agreement between the Philippines and Singapore. Petitioner also asserts that the tax exemption, granted to it as a buyer of a certain product, is a personal privilege which may not be claimed or availed of by the seller. Petitioner submits that since it is the entity which actually paid the excise taxes, then it should be allowed to claim for refund or tax credit.

At the outset, it is important to note that on two separate occasions, this Court has already put to rest the issue of whether or not petitioner is the proper party to claim for the refund or tax credit of excise taxes it allegedly paid on its aviation fuel purchases.[17] In the earlier case of *Silkair (Singapore) Pte. Ltd. v. Commissioner of Internal Revenue*,[18] involving the

[17] *Silkair (Singapore) Pte. Ltd. v. Commissioner of Internal Revenue*, G.R. Nos. 171383 and 172379, November 14, 2008, 571 SCRA 141; and G.R. No. 173594, February 6, 2008, 544 SCRA 100.

[18] G.R. No. 173594, February 6, 2008, 544 SCRA 100, 112.

same parties and the same cause of action but pertaining to different periods of taxation, we have categorically held that Petron, not petitioner, is the proper party to question, or seek a refund of, an indirect tax, to wit:

> The proper party to question, or seek a refund of, an indirect tax is the statutory taxpayer, the person on whom the tax is imposed by law and who paid the same even if he shifts the burden thereof to another. Section 130 (A) (2) of the NIRC provides that "[u]nless otherwise specifically allowed, the return shall be filed and the excise tax paid by the manufacturer or producer before removal of domestic products from place of production." Thus, Petron Corporation, not Silkair, is the statutory taxpayer which is entitled to claim a refund based on Section 135 of the NIRC of 1997 and Article 4(2) of the Air Transport Agreement between RP and Singapore.
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> Even if Petron Corporation passed on to Silkair the burden of the tax, the additional amount billed to Silkair for jet fuel is not a tax but part of the price which Silkair had to pay as a purchaser.

In the second *Silkair*[19] case, the Court explained that an excise tax is an indirect tax where the burden can be shifted or passed on to the consumer but the tax liability remains with the manufacturer or seller. Thus, the manufacturer or seller has the option of shifting or passing on the burden of the tax to the buyer. However, where the burden of the tax is shifted, the amount passed on to the buyer is no longer a tax but a part of the purchase price of the goods sold.

Petitioner contends that the clear intent of the provisions of the NIRC and the Air Transport Agreement is to exempt aviation fuel purchased by petitioner as an exempt entity from the payment of excise tax, whether such is a direct or an indirect tax. According to petitioner, the excise tax on aviation fuel, though initially payable by the manufacturer or producer, attaches to the goods and becomes the liability of the person having possession thereof.

We do not agree. The distinction between a direct tax and an indirect tax is relevant to this issue. In *Commissioner of*

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[19] *Silkair (Singapore) Pte. Ltd. v. Commissioner of Internal Revenue* (G.R. Nos. 171383 and 172379), *supra* note 17 at 154-155.

Internal Revenue v. Philippine Long Distance Telephone Company,[20] this Court explained:

> Based on the possibility of shifting the incidence of taxation, or as to who shall bear the burden of taxation, taxes may be classified into either direct tax or indirect tax.
>
> In context, direct taxes are those that are exacted from the very person who, it is intended or desired, should pay them; they are impositions for which a taxpayer is directly liable on the transaction or business he is engaged in.
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> On the other hand, indirect taxes are those that are demanded, in the first instance, from, or are paid by, one person in the expectation and intention that he can shift the burden to someone else. Stated elsewise, indirect taxes are taxes wherein the liability for the payment of the tax falls on one person but the burden thereof can be shifted or passed on to another person, such as when the tax is imposed upon goods before reaching the consumer who ultimately pays for it. When the seller passes on the tax to his buyer, he, in effect, shifts the tax burden, not the liability to pay it, to the purchaser as part of the purchase price of goods sold or services rendered.

Title VI of the NIRC deals with excise taxes on certain goods. Section 129 reads as follows:

> SEC. 129. *Goods Subject to Excise Taxes*. – Excise taxes apply to goods manufactured or produced in the Philippines for domestic sale or consumption or for any other disposition and to things imported.
> x x x.

As used in the NIRC, therefore, excise taxes refer to taxes applicable to certain specified or selected goods or articles manufactured or produced in the Philippines for domestic sale or consumption or for any other disposition and to things imported into the Philippines. These excise taxes may be considered taxes on production as they are collected only from manufacturers and producers. Basically an indirect tax, excise taxes are directly levied upon the manufacturer or importer upon removal of the taxable goods from its place of production or from the customs

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[20] G.R. No. 140230, December 15, 2005, 478 SCRA 61, 71-72.

custody. These taxes, however, may be actually passed on to the end consumer as part of the transfer value or selling price of the goods sold, bartered or exchanged.[21]

In *Maceda v. Macaraig, Jr.*,[22] this Court declared:

"[I]ndirect taxes are taxes primarily paid by persons who can shift the burden upon someone else." For example, the excise and *ad valorem* taxes that oil companies pay to the Bureau of Internal Revenue upon removal of petroleum products from its refinery can be shifted to its buyer, like the NPC, by adding them to the "cash" and/or "selling price."

And as noted by us in the second *Silkair*[23] case mentioned above:

When Petron removes its petroleum products from its refinery in Limay, Bataan, it pays the excise tax due on the petroleum products thus removed. Petron, as manufacturer or producer, is the person liable for the payment of the excise tax as shown in the Excise Tax Returns filed with the BIR. Stated otherwise, Petron is the taxpayer that is primarily, directly and legally liable for the payment of the excise taxes. However, since an excise tax is an indirect tax, Petron can transfer to its customers the amount of the excise tax paid by treating it as part of the cost of the goods and tacking it on the selling price.

As correctly observed by the CTA, this Court held in *Philippine Acetylene Co., Inc. v. Commissioner of Internal Revenue*:

> "It may indeed be that the economic burden of the tax finally falls on the purchaser; when it does the tax becomes part of the price which the purchaser must pay."

Even if the consumers or purchasers ultimately pay for the tax, they are not considered the taxpayers. The fact that Petron, on whom the excise tax is imposed, can shift the tax burden to its purchasers does not make the latter the taxpayers and the former the withholding agent.

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[21] De Leon and De Leon, Jr., *THE NATIONAL INTERNAL REVENUE CODE ANNOTATED,* Volume 2 (2003 Edition), pp. 198-199.

[22] 274 Phil. 1060, 1092 (1991).

[23] *Silkair (Singapore) Pte. Ltd. v. Commissioner of Internal Revenue* (G.R. Nos. 171383 and 172379), *supra* note 17 at 156.

Petitioner, as the purchaser and end-consumer, ultimately bears the tax burden, but this does not transform petitioner's status into a statutory taxpayer.

Thus, under Section 130(A)(2) of the NIRC, it is Petron, the taxpayer, which has the legal personality to claim the refund or tax credit of any erroneous payment of excise taxes. Section 130(A)(2) states:

SEC. 130. Filing of Return and Payment of Excise Tax on Domestic Products. –

(A) *Persons Liable to File a Return, Filing of Return on Removal and Payment of Tax*. –

(1) *Persons Liable to File a Return*. – x x x

(2) *Time for Filing of Return and Payment of the Tax.* – Unless otherwise specifically allowed, **the return shall be filed and the excise tax paid by the manufacturer or producer before removal of domestic products from place of production**: x x x. (Emphasis supplied.)

Furthermore, Section 204(C) of the NIRC provides a two-year prescriptive period within which a taxpayer may file an administrative claim for refund or tax credit, to wit:

SEC. 204. *Authority of the Commissioner to Compromise, Abate, and Refund or Credit Taxes*. – The Commissioner may –

x x x x x x x x x

(C) Credit or refund taxes erroneously or illegally received or penalties imposed without authority, refund the value of internal revenue stamps when they are returned in good condition by the purchaser, and, in his discretion, redeem or change unused stamps that have been rendered unfit for use and refund their value upon proof of destruction. **No credit or refund of taxes or penalties shall be allowed unless the taxpayer files in writing with the Commissioner a claim for credit or refund within two (2) years after the payment of the tax or penalty**: *Provided, however*, That a return filed showing an overpayment shall be considered as a written claim for credit or refund. (Emphasis supplied.)

From the foregoing discussion, it is clear that the proper party to question, or claim a refund or tax credit of an indirect tax is the statutory taxpayer, which is Petron in this case, as it is the company on which the tax is imposed by law and which paid the same even if the burden thereof was shifted or passed on to another. It bears stressing that even if Petron shifted or passed on to petitioner the burden of the tax, the additional amount which petitioner paid is not a tax but a part of the purchase price which it had to pay to obtain the goods.

Time and again, we have held that tax refunds are in the nature of tax exemptions which represent a loss of revenue to the government. These exemptions, therefore, must not rest on vague, uncertain or indefinite inference, but should be granted only by a clear and unequivocal provision of law on the basis of language too plain to be mistaken.[24] Such exemptions must be strictly construed against the taxpayer, as taxes are the lifeblood of the government.

In fine, we quote from our ruling in the earlier *Silkair*[25] case:

> The exemption granted under Section 135 (b) of the NIRC of 1997 and Article 4(2) of the Air Transport Agreement between RP and Singapore cannot, without a clear showing of legislative intent, be construed as including indirect taxes. Statutes granting tax exemptions must be construed in *strictissimi juris* against the taxpayer and liberally in favor of the taxing authority, and if an exemption is found to exist, it must not be enlarged by construction.

This calls for the application of the doctrine, *stare decisis et non quieta movere.* Follow past precedents and do not disturb what has been settled. Once a case has been decided one way, any other case involving exactly the same point at issue, as in the case at bar, should be decided in the same manner.[26]

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[24] *Commissioner of Internal Revenue v. Solidbank Corporation*, 462 Phil. 96, 131-132 (2003).

[25] *Silkair (Singapore) Pte. Ltd. v. Commissioner of Internal Revenue* (G.R. No. 173594), *supra* note 17 at 113-114.

[26] *Commissioner of Internal Revenue v. Trustworthy Pawnshop, Inc.*, G.R. No. 149834, May 2, 2006, 488 SCRA 538, 545.

WHEREFORE, the instant petition for review is *DENIED*. We *AFFIRM* the assailed Decision dated May 27, 2008 and the Resolution dated September 5, 2008 of the Court of Tax Appeals *En Banc* in C.T.A. E.B. No. 267. No pronouncement as to costs.

SO ORDERED.

Puno, C.J. (Chairperson), Carpio Morales, Bersamin, and *Villarama, Jr., JJ.,* concur.

EN BANC

[A.M. No. 07-6-6-SC. February 26, 2010]

RE: NON-OBSERVANCE BY ATTY. EDEN T. CANDELARIA, CHIEF OF ADMINISTRATIVE SERVICES (OAS), OF EN BANC RESOLUTION A.M. NO. 05-9-29-SC DATED SEPTEMBER 27, 2005 AND EN BANC RULING IN OFFICE OF OMBUDSMAN V. CIVIL SERVICE COMMISSION (G.R. NO. 159940 DATED FEBRUARY 16, 2005).

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC OFFICERS AND EMPLOYEES; CIVIL SERVICE COMMISSION; APPOINTMENTS; WITH FEW EXCEPTIONS, ALL APPOINTMENTS TO THE CIVIL SERVICE HAVE TO BE SUBMITTED TO THE CSC FOR APPROVAL.— But, with few exceptions, all appointments to the civil service have to be submitted to the CSC for approval. Section 9(h) of the Civil Service Law bestows on the CSC the power and function to approve **all** such appointments and to disapprove the appointments of those who do not possess the required qualifications and eligibility. Section 9(h) states: **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, 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; x x x.

2. ID.; ID.; ID.; ID.; ID.; ID.; CONGRESS HAS NOT ENACTED A LAW SUPERSEDING THE SAID PROVISIONS OF THE CIVIL SERVICE LAW OR ITS IMPLEMENTING RULES AND THE SUPREME COURT HAS NOT RENDERED A DECISION ANNULLING THE SAME; CASE AT BAR.— To implement the above and in exercise of its rule-making power, the CSC requires in Section 1, Rule VI of its rules all government agencies and their personnel officer, Atty. Candelaria in the case of the Supreme Court, to submit to the CSC all appointments in the civil service under pain of administrative sanction for neglect of duty. Since Congress has enacted no law superseding the above provisions of the Civil Service Law or its implementing rules and since the Supreme Court has rendered no decision annulling the same, Atty. Candelaria, the officer charged with the duty to submit all appointments from the Court, had no choice but to abide by them and submit Mendoza's appointments to the CSC for its approval. Historically, this has been done in all past Court appointments and she received no instruction in this particular case from the Court to depart from the practice. Consequently, no ground exists for sanctioning her action. The Court did not say in *Office of the Ombudsman v. Civil Service Commission*, 491 Phil. 739, cited by Justice Carpio that appointments to the third level of the

civil service do not have to be submitted to the CSC for approval. The issue raised in that case was whether or not the CSC encroached on the Ombudsman's appointing authority when it refused to change the third level appointee's appointment from temporary to permanent just because he did not have Career Service Executive Eligibility (CSEE) or CES eligibility. Section 2(2), Article 1X-B of the Constitution provides that appointment to positions in the civil service, which are policy-determining, highly technical, or primarily confidential (classified as third level positions), are exempt from the requirement that they be made based on merit or fitness to be determined, as far as practicable, by competitive examinations. These kinds of positions are non-competitive. Merit and fitness for the same are determined by other than competitive examinations. The Court held that the CSC's authority under Section 9(h) to approve appointments in the civil service is limited to determining whether or not the appointee has the legal qualifications and the appropriate eligibility. Since the Ombudsman's appointee had all the basic qualifications for the position, except the CSEE or CES eligibility which was no longer required for a permanent appointment to third level positions, the CSC had the ministerial duty to grant the change of status of the appointee from temporary to permanent. Still, the Court's ruling implies that the CSC still has the power and the duty to pass upon the subject appointments, if only to determine whether the appointees meet the qualification standards adopted by and approved for that agency. Nothing in the decision in the *Ombudsman* case says that CSC's approval of appointments to third level positions has been dispensed with. It merely says that CSEE or CES eligibility is no longer required for those positions.

3. ID.; ID.; ID.; ID.; ID.; ID.; CASES CITED REQUIRING CSC APPROVAL OF APPOINTMENTS.— Although the law vests in the department or agency concerned the responsibility for establishing, administering, and maintaining its qualification standards, such standards have to be drawn with the assistance and approval of the CSC and in consultation with the Wage and Position Classification Office. The Court's ruling in the 2007 *Ombudsman* case affirms this. The CSC approval is still a must since it remains the government's clearing house for all appointments in the civil service. The duty to enforce the laws on the selection, promotion, and discipline of civil servants

primarily rests in the CSC. Once approved, the qualification standards serve as guide for new appointments and for adjudicating contested appointments. Contrary to the view expressed in the dissenting opinion, the 2007 *Ombudsman* case did not do away with the requirement of CSC approval of appointments. It merely said that in passing upon and approving qualification standards, the CSC should not substitute its own standards for those of the department or agency concerned. Indeed, the dispositive portion of the decision directed the CSC to approve the Ombudsman's amended qualification standards for Director II. The requirement of CSC approval of qualification standards is demonstrated in *Paredes v. Civil Service Commission,* (G.R No. 88177, December 4, 1990), where the Court held that the CSC was in error in applying qualification standards that it had not previously approved. Not even the exigencies of the service can justify the use of unapproved qualification standards.

4. ID.; ID.; ID.; ID.; ID.; PARENTHETICAL REASON FOR CSC's DENIAL OF MENDOZA'S COTERMINOUS AND TEMPORARY APPOINTMENTS AS CHIEF OF THE MANAGEMENT INFORMATION SYSTEMS OFFICE (MISO); CASE AT BAR.— The applicable qualification standards for the position of Chief of MISO at the time of Mendoza's first appointment included requirement for a Bachelor's Degree in Computer Science or any equally comparable degree with Master in Science Degree in Computer Science or Information Technology. Mendoza simply did not have this qualification. Chief Justice Panganiban thus gave him a coterminous appointment, not a permanent one, as Chief of MISO, trusting that the CSC would approve it. Chief Justice Puno followed suit, but with the further limitation that it was to last for six months. x x x These are not the circumstances contemplated by the 2007 *Ombudsman* ruling. Parenthetically, the CSC apparently did not deny Mendoza's coterminous and temporary appointments because it disagreed that the position was highly technical, which it was, by any reckoning. But the position of Chief of MISO is a permanent position, he being the head of an office that performs a vital and continuing function in the work of the Court. x x x The job of the Chief of MISO does not fit the usual descriptions of primarily confidential positions that call for trust and confidence above anything else. Yet, his appointments as recommended were to be coterminous

with the tenure of the Chief justice or for six months, whichever ended first. This uncertain or diminutive tenure does not seem to make sense in the light of the constitutionally protected right to security of tenure of government personnel under the civil service system.

5. REMEDIAL LAW; CRIMINAL PROCEDURE; DUE PROCESS; ALLEGED WRONGDOING MUST BE CHARGED SO THAT WRONGDOER MAY BE PUNISHED; CASE AT BAR.—The charge against Atty. Candelaria is about her failure to inform the Assistant Commissioner of CSC that the Court had already classified as highly technical or policy-determining the position of Chief of MISO. Justice Carpio did not charge her of improperly meeting *sub rosa* with the CSC Assistant Commissioner. The Court cannot punish Atty. Candelaria for an alleged wrong of which she has not been charged nor given the opportunity of a hearing. The dissenting opinion would have Atty. Candelaria held to answer for conduct prejudicial to the best interest of the service for having met, *sub rosa*, with the CSC Assistant Commissioner, thereby undermining the judiciary's independence. The dissenting opinion attacks Atty. Candelaria's comment as eerily silent regarding the nature and details of the meeting.

6. ID.; EVIDENCE; ADMISSION BY SILENCE; APPLICABLE ONLY WHEN A PERSON IS ACCUSED OF A WRONGDOING THAT CALLS FOR COMMENT IF NOT TRUE; CASE AT BAR.— Under the rules of evidence, a party's silence only amounts to admission when he is accused of some wrongdoing that naturally calls for comment if not true. Here, Justice Carpio censured Atty. Candelaria solely for something she failed to tell the CSC Assistant Commissioner at that meeting and she commented on this, defending her omission. The censure did not call for her to defend the meeting itself or disclose its other details. Consequently, it would not be fair to infer that Atty. Candelaria had chosen to be "eerily silent" regarding those other details. The dissenting opinion of course insists that the technical rules of procedure and evidence are not strictly applied to administrative proceedings. This may be true but only with respect to those rules that are really "technical" like a party's failure in a petition for review to state the correct evidence of the identity of the person who signed the certification of non-forum shopping. Rules of evidence that are founded on fairness,

such as the rule that a party's silence only amounts to admission when he is accused of some wrongdoing that naturally calls for comment if not true, are not technical rules that can be thrown out when convenient—even in administrative proceedings.

7. POLITICAL LAW; SUPREME COURT; ADMINISTRATIVE SUPERVISION OVER COURT PERSONNEL; COURT'S CHIEF OF ADMINISTRATIVE SERVICES; NEGLECT OF DUTY; DUTY TO INFORM THE CSC THAT THE COURT HAD ALREADY CLASSIFIED AS HIGHLY TECHNICAL THE POSITION OF THE CHIEF OF MISO RENDERED UNNECESSARY IN CASE AT BAR.— Justice Carpio claims that Atty. Candelaria failed in her duty to inform the Assistant Commissioner of CSC, whom she met shortly before that body disapproved Mendoza's appointments, that the Court had already classified as highly technical or policy-determining the position of Chief of MISO. Atty. Candelaria does not deny failing to tell the Assistant Commissioner at that meeting that the Court already classified the position of chief of MISO as policy-determining or highly technical. But, as the record shows, her office sent a copy of the Court's resolution in A.M. 05-9-29-SC embodying that classification to the CSC earlier on October 18, 2005. Indeed, the CSC wrote back to say that it had placed on record the Court's classification for guidance and reference. Further, Atty. Candelaria's office also attached to Mendoza's first appointment a certification that the Court had classified the position of Chief of MISO as highly technical. These rendered it unnecessary for Atty. Candelaria to reiterate the matter to the CSC Assistant Commissioner at their meeting.

8. ID.; ID.; ID.; CONDUCT PREJUDICIAL TO THE BEST INTEREST OF THE SERVICE AND NEGLECT OF DUTY; CHARGE OF FAILURE TO IMMEDIATELY TAKE UP WITH THE COURT THE RESULTS OF THE MEETING WITH THE ASSISTANT CIVIL SERVICE COMMISSIONER; ADMONITION PROPER IN CASE AT BAR.— Still, Atty. Candelaria should have immediately taken up with the Court the result of her meeting with the Assistant Commissioner of the CSC. It seems likely that the latter gave her an inkling of the position that the CSC might take on Mendoza's appointments. Of course, neither Atty. Candelaria nor the Assistant Commissioner had control of the actions of the CSC but, by the nature of the bureaucracy, the

outright denial of Mendoza's appointments could have been aborted and the matter negotiated to the satisfaction of the two Constitutional bodies. Since this is not a step prescribed by the rules, x x x it cannot be said that Atty. Candelaria had violated a duty enjoined on her by law. x x x The Court, however resolved to **ADMONISH** her for failing to take up with the Court the results of the meeting she had with the Assistant Commissioner of the Civil Service Commission.

9. ID.; ID.; ID.; ID.; HONEST DIFFERENCE IN OPINION NOT A CAUSE FOR UNFAVORABLE INFERENCE OR SPECULATION; CASE AT BAR.— The dissenting opinion recalls that Atty. Candelaria had disagreed with the Court's position that coterminous appointments can be made for permanent positions. The dissenting opinion speculates that her views may have, through discussions with its Assistant Commissioner, influenced the CSC's opinion regarding the propriety of Mendoza's appointments. But such speculation places an unfairly low esteem on the competence of the CSC and its head, experts in the legal requirements of all sorts of appointments. It cannot be assumed that the CSC would give more weight to the opinion of a subordinate like Atty. Candelaria than to the opinion of the Court and its Chief Justice. Besides, honest difference in opinion cannot be a cause for unfavorable inference or speculation. If this were so, the Court itself would have no reason for being. Honest disagreements are catalysts of sound ideas especially in democratic institutions like the Court.

10. ID.; ID.; ID.; GROSS INCOMPETENCE; STATEMENT IN MENDOZA'S SECOND APPOINTMENT THAT IT WAS "CO-TERMINOUS" INSTEAD OF "TEMPORARY," NOT INDICATIVE OF GROSS INCOMPETENCE; CASE AT BAR.— Justice Carpio claims that Atty. Candelaria exhibited gross incompetence when she stated in Mendoza's second appointment that it was "coterminous" with the term of the Chief Justice rather than simply that it was for a term of six months as the Chief Justice directed. But, firstly, in making that statement in the second appointment, Atty. Candelaria merely echoed the Court's stand respecting the nature of Mendoza's appointment as coterminous. The Court originally adopted this idea on recommendation of the PMO and Justice Carpio when Chief Justice Panganiban issued Mendoza's first

appointment. The Court had done nothing since then to change that stand. And, secondly, Chief Justice Puno signed the renewal of the appointment, which renewal contained the same coterminous *proviso* and his additional instruction to limit the particular appointment to six months, thus showing his acceptance of those two conditions of the appointment. The dissenting opinion suggests that Mendoza's second appointment paper could have been better facilitated had it indicated a "temporary" status rather than a "coterminous" one, especially since the Chief Justice's marginal note on Memorandum PMO-PDO 12-08-2006 directed the issuance of a "six-month appointment" to him. But in a temporary appointment, the appointee meets all the requirements for the position except the appropriate civil service eligibility. At the time of his second appointment, Mendoza did not meet even the lowered qualification standards that the Court set for his position. The lesser standards wanted a bachelor's degree holder with a major in Computer Science. Mendoza's transcript of records from the Philippine Military Academy showed that he had a bachelor's degree but not the required major. He took a master 's course in Computer Science at the Ateneo Information Technology Institute but his transcript there does not show that he finished the course or had been conferred a master's degree in Computer Science. Consequently, the Court could not give Mendoza a temporary appointment as Chief of MISO. At any rate, whether or not the CSC was correct in denying Mendoza's appointments is of course irrelevant to the charge against Atty. Candelaria. She is not answerable to the Court for the decision of the CSC no matter if that decision is perceived to be wrong. All that she did was submit those appointments to that constitutional body as the law and the rules required of her.

CARPIO MORALES, *J., separate opinion:*

1. POLITICAL LAW; ADMINISTRATIVE LAW; ADMINISTRATIVE PROCEEDINGS; COURT PERSONNEL; CALL FOR TRANSPARENCY, DISREGARDED; FAILURE TO PROVE INTO THE BOTTOM OF HOW THINGS ARE ADMINISTERED IN THE OFFICE OF THE ADMINISTRATIVE SERVICES; CASE AT BAR.— For this administrative matter to result in admonition for "fail[ure] to take up with the Court the results of the meeting" and yet project that the Court is after all disinterested in learning about the details thereof, on the justification that Justice Carpio

did not call for Atty. Candelaria to defend the meeting itself or disclose the details is befuddling. The Resolution states that Atty. Candelaria's silence about the details of the meeting does not amount to an admission, citing the requisites of the rule on admission by silence. First, it is settled that technical rules of procedure and evidence are not strictly applied to administrative proceedings. Second, the cited rule is inapplicable since the matter is already in the course of a proceeding. Finally, the non-disclosure of the "nature" of the meeting is related to the non-disclosure of the "results" of the meeting, for which Atty. Candelaria is now being admonished. If she is being held to account for concealing the results of the meeting, she likewise owes the Court a proper explanation on the specific nature of that particular meeting, which undermined the independence of the judiciary. If this case which is an "administrative matter" fails to prove into the bottom of how things are administered in the OAS, then this administrative matter is an exercise in futility for it disregards the call for transparency. Without illuminating the Court of the antecedents of the meeting, the OAS is bound to repeat the same course of action.

2. ID.; ID.; ID.; COURT OFFICIAL'S CONDUCT OF MEETING *SUB ROSA* WITH AN OFFICIAL OF THE CIVIL SERVICE COMMISSION (CSC) UNDER DUBIOUS CIRCUMSTANCES UNDERMINES INDEPENDENCE OF THE JUDICIARY AND IS PREJUDICIAL TO THE BEST INTEREST OF THE SERVICE; CASE AT BAR.— The CSC appears to have been of the impression that the coterminous appointment of Mendoza merited disapproval since the position of Chief of MISO has not been declared by it primarily confidential, highly technical or policy determining. x x x OAS' reading of the June 1, 2007 letter of the CSC indicates, however, that only positions that are primarily confidential could be extended a coterminous appointment x x x It can also be gathered that Atty. Candelaria effectively took unto herself the appointing power of the Court by making representations to the CSC in a *sub rosa* meeting that, it bears repeating, culminated in the questionable disapproval of the Court's action x x x By all indications, Atty. Candelaria disagrees with the Court's action on the matter, **despite** the Court's **August 8, 2006 Resolution in A.M. No. 06-8-03-SC** (*Re: Applicants for the Chief and Deputy Director, MISO)* x x x explaining that coterminous appointments can be

made for permanent positions x x x Notwithstanding the ratiocination that a coterminous appointment can be made for a permanent position and without going into the ramification of recent jurisprudence (which shall be discussed later), Atty. Candelaria, despite her *personal* reservations or "formal objections" to the action, could have smoothly facilitated the processing of the appointment papers of Mendoza by indicating therein a "temporary" status instead of "coterminous with the tenure of the Honorable Chief Justice x x x." This alternative course of action, I submit, could have accommodated the divergent perspectives and avoided the institutional embarrassment. After all, appointing Mendoza for a limited period was the common denominator. Contrary to the asseveration of the Resolution (which shall be discussed later), the Court could have conferred a temporary appointment upon him. Moreover, the final directive of Chief Justice Puno written as marginal notes on Memorandum PMO-PDO 12-08-2006 was not a coterminous appointment as recommended but a "6-month appointment" (from December 7, 2006 to June 7, 2007) that is clearly momentary. If Atty. Candelaria found difficulty in comprehending the Court's action, she could have sought clarification or requested further legal research on the matter. After all, in affixing her signature on the appointment papers, she certified that all the requirements and supporting papers have been complied with, reviewed and found to be in order. **At the very least, the conduct of meeting *sub rosa* with the Assistant Commissioner of the Civil Service Commission under dubious circumstances undermines the independence of the judiciary and is prejudicial to the best interest of the service.**

3. ID.; SUPREME COURT; AS AN INDEPENDENT CONSTITUTIONAL BODY, HAS POWER TO SET QUALIFICATION STANDARDS FOR COURT PERSONNEL; ROLE OF CSC LIMITED TO ASSISTING THE COURT WITH RESPECT THERETO AND *ATTESTING* THAT APPOINTEE HAS THE LEGAL QUALIFICATIONS AND APPROPRIATE ELIGIBILITY; CASE AT BAR.— The reliance on *Paredes v. Civil Service Commission* is misplaced since that case *did not involve an independent constitutional body.* x x x Following the 2007 case of *Office of the Ombudsman v. Civil Service Commission*, "[t]he CSC **cannot substitute** its own standards

for those of the department or agency, specially in a case like this in which an independent constitutional body is involved." The qualification standards are thus effective as of the respective dates of the resolutions. In other words, the effectivity of the qualification standards is *not* dependent on the CSC's approval. Thus, as of Mendoza's first appointment as MISO Chief on August 8, 2006, the academic credential required was a "Bachelor's Degree in Computer Science or any equally comparable degree, with post graduate level (at least 18 units) in Computer Science or Information Technology" and the eligibility requirement set by the Court itself is "Civil Service Professional Eligibility or equivalent IT eligibility." Mendoza satisfied the educational requirements but had no Career Service Professional Eligibility until January 17, 2007. And there was no available proof that Mendoza had passed the equivalent IT eligibility, if any has been determined by the Court. His non-fulfillment of the Court's standing eligibility requirement explains why Mendoza was not recommended for *permanent* appointment *before* May 2007. x x x *Office of the Ombudsman v. Civil Service Commission,* however, is significant in that it **affirms the independence of a constitutional body.** x x x Jurisprudence did not do away with the *submission* to the CSC of the appointment papers of third level positions. What it did away was the legal requirement of CSC *approval*. While the CSC has the **ministerial duty to accept appointments made by the CFAG member-institutions to third-level positions** that have been identified and classified, its authority is limited to *attesting* that the appointee possesses the legal qualifications and the appropriate eligibility, all of which the CFAG member-institutions have the discretion to determine. x x x The CSC has not been given the power to replace or substitute the qualification standards.

4. ID.; ID.; ID.; ID.; CSC'S PROTRACTED DELAY IN APPROVING THE QUALIFICATION STANDARDS SET BY THE COURT, A FORM OF UNREASONABLE RESTRICTION ON THE COURT'S DISCRETIONARY AUTHORITY TO SET QUALIFICATION STANDARDS; CASE AT BAR.— Contrary to the presentation in the Resolution, the CSC has not taken any action on the revised qualification standards contained in A.M. No. 06-3-07-SC, both of March 14, 2006 and of June 20, 2006. Even Atty. Candelaria manifests that, to date, no CSC

> action has been made on these revisions of the qualification standards of MISO Chief. Only A.M. No. 05-09-29-SC of September 27, 2005 had been **noted** and **reflected** in the CSC records to serve as *guide* and *reference* in **attesting appointments** to these positions and other personnel actions in the Court. x x x The CSC's protracted delay in approving the qualification standards set by the Court in various instances is a form of unwarranted and unreasonable restriction on the discretionary authority of an independent constitutional body that the Court is, for it is worse than a prompt denial of the same since it interminably suspends the exercise of the discretionary authority to set qualification standards, which is intimately connected to the power to appoint as well as to the power of administrative supervision.

D E C I S I O N

ABAD, *J.*:

This administrative matter is about the possible liability of the Court's Chief of Administrative Services as a consequence of the Civil Service Commission's (CSC's) denial on June 1, 2007 of the two coterminous appointments of Joseph Raymond Mendoza as Chief of the Management and Information Systems Office (MISO).

The Facts and the Case

On September 27, 2005 the Court *en banc* issued a resolution in A.M. 05-9-29-SC, classifying as highly technical or policy-determining the position of Chief of MISO, a permanent item in the Court's list of personnel. On March 14, 2006 the Court additionally issued a resolution in A.M. 06-3-07-SC, establishing the qualification standards for Chief of MISO, including a Bachelor's Degree in Computer Science or any equally comparable degree with Master in Science Degree in Computer Science or Information Technology. The CSC approved these standards.

Subsequently or on June 20, 2006 the Court lowered the educational requirement to Bachelor's Degree in Computer

Science or any equally comparable degree, with post-graduate level (at least 18 units) in Computer Science or Information Technology and submitted the same to the CSC for approval.

On August 8, 2006, pending CSC approval of the lowered standards, then Chief Justice Artemio V. Panganiban appointed Mendoza as MISO Chief. Since the latter did not then meet the approved March 14, 2006 qualification standards, it was thought best that his appointment be made coterminous with the Chief Justice's tenure that was to end on December 7, 2006.

With the retirement of Chief Justice Panganiban and acting on the recommendation of the Project Management Office (PMO) and Justice Antonio T. Carpio, Chair of the Computerization and Library Committee, Chief Justice Reynato S. Puno directed the preparation of the reappointment paper of Mendoza as MISO Chief. But the Chief Justice set it to last for six months.

The Office of the Administrative Services (OAS), through its Chief, Atty. Eden T. Candelaria, prepared the paper, stating in it that Mendoza's reappointment was coterminous with Chief Justice Puno but he was to serve for only six months from December 7, 2006. On January 4, 2007 the OAS submitted this and the earlier coterminous appointments of Mendoza to the CSC for approval.

Four months later or on May 8, 2007 the PMO recommended the permanent appointment of Mendoza as Chief of MISO after he passed the Career Service Professional Exams. But action on this was deferred to first await the CSC's approval of Mendoza's coterminous appointments. On June 1, 2007, however, the CSC disapproved Mendoza's coterminous appointments on the ground that the CSC had no occasion to declare the position of Chief of MISO as primarily confidential, highly technical, or policy-determining as to qualify Mendoza to a coterminous appointment. The CSC letter to the Court stated in part:

In a letter dated September 1, 2006 to CSC, [Atty. Candelaria] represented that except for the positions of Executive Assistant III

and Chauffer, all the positions in the MISO are permanent in nature.

Sec. 12 (9), Chapter 3, Book V of the Administrative Code of 1987 states in part the following:

> **Sec. 12. Powers and Functions. — The Commission shall have the following powers and functions: x x x**
>
> **(9) Declare positions in the Civil Service as may properly be primarily confidential in nature, highly technical or policy-determining.**

Item 7(a) Part I of CSC Memorandum Circular No. 12, s. 2003 likewise provides:

> **7. The Commission may allow agencies to establish qualification standards for their positions belonging to the following categories:**
>
> **a. Positions declared by the Commission as primarily confidential in nature are exempted from the qualification standards requirements prescribed in the Qualification Standards Manual x x x.**

Records are bereft of any showing that the position of Chief of MISO has been declared by the Commission as primarily confidential, highly technical or policy-determining to qualify as coterminous in nature.

In view thereof x x x the coterminous appointments of [Mendoza] are disapproved.[1]

On June 12, 2007 Justice Carpio wrote a Memorandum to Chief Justice Puno, recommending the taking of disciplinary action against Atty. Candelaria for gross neglect of duty, gross incompetence in the performance of official duties, and conduct prejudicial to the best interest of the service as follows:

(a) She violated the Court's resolution in A.M. 05-9-29-SC and its 2005 ruling in *Office of the Ombudsman v. Civil Service Commission*[2] when she submitted Mendoza's appointments and all other Supreme Court third level appointments to the CSC for approval when this was not legally required;

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[1] *Rollo,* pp. 28-29.

[2] 491 Phil. 739 (2005).

(b) She failed to inform the CSC Assistant Commissioner when she met the latter that the Court had already classified the position of Chief of MISO as highly technical or policy-determining; and

(c) She indicated in Mendoza's second appointment paper a "coterminous" appointment instead of a six-month appointment as the Chief Justice directed.

Justice Carpio points out, relying on the Court's resolution in A.M. 05-9-29-SC and its ruling in *Office of the Ombudsman v. Civil Service Commission*, that the Court *en banc*, as the appointing power under the Constitution, may appoint, without need of CSC approval, employees in the judiciary to third level positions classified as highly technical or policy-determining. Once so classified, the CSC has a ministerial duty to accept such appointments. Consequently in submitting them to the CSC for approval, she undermined the independence of the judiciary. She also embarrassed the Court when the CSC disapproved the appointments and made it appear that the Court was not following its own *en banc* resolution and ruling.

Justice Carpio also imputed the CSC's disapproval of Mendoza's appointments to Atty. Candelaria's failure to inform the CSC Assistant Commissioner that the Court had already classified the position of Chief of MISO as highly technical or policy-determining when she met with the Assistant Commissioner to discuss Mendoza's appointment papers two days before the disapproval of the appointments.

On being required, Atty. Candelaria submitted on July 10, 2007 her comment. She denied committing the offenses charged. She said that she submitted Mendoza's appointments to the CSC for approval in compliance with the Civil Service Law and implementing rules and that she would have faced administrative sanction if she had not.

Atty. Candelaria pointed out that, although the Court classified certain third level positions in its organization as highly technical or policy-determining, this merely exempted them from a Career Executive Service (CES) eligibility requirement. The status of the positions as permanent remained and did not make them

primarily confidential, resulting in the disapproval of Mendoza's appointments.

Although Atty. Candelaria does not deny that she did not tell the CSC Assistant Commissioner that the position of Chief of MISO was a highly technical or policy-determining position when they met, she pointed out that she had earlier informed the CSC about it officially and that she had attached to Mendoza's first appointment a certification that the position of MISO's Chief had been classified as highly technical.

In answer to Justice Carpio's charge of incompetence for stating in Mendoza's second appointment paper that it was a "coterminous" appointment rather than a six-month appointment as the Chief Justice directed, she pointed out that she indicated the appointment as "coterminous" based on the recommendation of the PMO and Justice Carpio himself. The first appointment was also coterminous and the reappointment could not just deviate from it.

The Issue Presented

The issue in this administrative matter is whether or not there are sufficient grounds to discipline Atty. Candelaria for gross neglect of duty, gross incompetence in the performance of official duties, and conduct prejudicial to the best interest of the service:

1. For submitting to the CSC for approval the Court's appointments to third level positions, which the Court previously determined as highly technical or policy-determining like the position of the Chief of MISO;

2. For failing to inform the Assistant Commissioner of CSC whom she met shortly before it disapproved Mendoza's appointments that the Court had already classified as highly technical or policy-determining or both the position of Chief of MISO; and

3. For grievously erring in indicating in Mendoza's second appointment that it was "coterminous" with the term of the Chief Justice rather than simply that it was for a term of six months as the Chief Justice directed.

The Court's Rulings

One. Justice Carpio points out that Atty. Candelaria should be made administratively liable for submitting to the CSC for approval appointments to third level positions when that was unnecessary since the Court had previously determined those positions as highly technical or policy-determining like the position of the Chief of MISO, thus undermining the independence of the Judiciary.

But, with few exceptions, all appointments to the civil service have to be submitted to the CSC for approval. Section 9 (h) of the Civil Service Law bestows on the CSC the power and function to approve **all** such appointments and to disapprove the appointments of those who do not possess the required qualifications and eligibility. Section 9 (h) states:

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

(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; x x x

To implement the above and in exercise of its rule-making power, the CSC requires in Section 1, Rule VI of its rules[3] all

[3] Memorandum Circular 40, series of 1998.

government agencies and their personnel officer, Atty. Candelaria in the case of the Supreme Court, to submit to the CSC all appointments in the civil service under pain of administrative sanction for neglect of duty.

Since Congress has enacted no law superseding the above provisions of the Civil Service Law or its implementing rules and since the Supreme Court has rendered no decision annulling the same, Atty. Candelaria, the officer charged with the duty to submit all appointments from the Court, had no choice but to abide by them and submit Mendoza's appointments to the CSC for its approval. Historically, this has been done in all past Court appointments and she received no instruction in this particular case from the Court to depart from the practice. Consequently, no ground exists for sanctioning her action.

The Court did not say in *Office of the Ombudsman v. Civil Service Commission* cited by Justice Carpio that appointments to the third level of the civil service do not have to be submitted to the CSC for approval. The issue raised in that case was whether or not the CSC encroached on the Ombudsman's appointing authority when it refused to change the third level appointee's appointment from temporary to permanent just because he did not have Career Service Executive Eligibility (CSEE) or CES eligibility.

Section 2 (2), Article IX-B of the Constitution provides that appointment to positions in the civil service, which are policy-determining, highly technical, or primarily confidential (classified as third level positions), are exempt from the requirement that they be made based on merit or fitness to be determined, as far as practicable, by competitive examinations. These kinds of positions are non-competitive. Merit and fitness for the same are determined by other than competitive examinations.

The Court held that the CSC's authority under Section 9 (h) to approve appointments in the civil service is limited to determining whether or not the appointee has the legal qualifications and the appropriate eligibility. Since the Ombudsman's appointee had all the basic qualifications for the

position, except the CSEE or CES eligibility which has no longer required for a permanent appointment to third level positions, the CSC had the ministerial duty to grant the change of status of the appointee from temporary to permanent.

Still, the Court's ruling implies that the CSC still has the power and the duty to pass upon the subject appointments, if only to determine whether the appointees meet the qualification standards adopted by and approved for that agency. Nothing in the decision in the *Ombudsman* case says that CSC's approval of appointments to third level positions has been dispensed with. It merely says that CSEE or CES eligibility is no longer required for those positions.

Justice Conchita Carpio Morales, who dissents from the Court's opinion, cite in support of Justice Carpio's position the 2007 identically titled case of *Office of the Ombudsman v. Civil Service Commission*.[4] In that case, the Office of the Ombudsman sought the CSC's approval of its amended qualification standards for a Director II position. The amendment reduced the requirement from CSEE or CES eligibility to that of Career Service Professional or other relevant eligibility for second level position, invoking the Court of Appeals ruling in *Inok v. Civil Service Commission*[5] that the letter and intent of the law is to restrict the CES eligibility to CES positions in the Executive Department. The CES governed by the CES Board, it was claimed, did not cover the Office of the Ombudsman. But the CSC disapproved the amendment, saying that the CES covered the Director II position being a third level position.

This Court disagreed. It reiterated that the CES covers presidential appointees only. Since Director II appointees are appointed by the Ombudsman, they are neither embraced in the CES nor do they need to possess CES eligibility. The Court upheld the Ombudsman's administrative control and supervision of its Office, including the authority to determine and establish

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[4] G.R. No. 162215, July 30, 2007, 528 SCRA 535.

[5] Cited as G.R. No. 148782, July 2, 2002.

the qualifications, duties, functions, and responsibilities of its various services. The Ombudsman, said the Court, possesses the authority to establish reasonable qualification standards for the personnel of the Office. The CSC cannot substitute its own standards for those of the department or agency, its role being limited only to assisting the department or agency with respect to these qualification standards and approving them.

The dissenting opinion interprets the above ruling as doing away with the requirement of approval by the CSC of the qualification standards set by the department or agency, concluding that the qualification standards are effective as of the date of their issuance by the department or agency.

But, although the law vests in the department or agency concerned the responsibility for establishing, administering, and maintaining its qualification standards, such standards have to be drawn with the assistance and approval of the CSC and in consultation with the Wage and Position Classification Office.[6] The Court's ruling in the 2007 *Ombudsman* case affirms this.[7] The CSC approval is still a must since it remains the government's clearing house for all appointments in the civil service. The duty to enforce the laws on the selection, promotion, and discipline of civil servants primarily rests in the CSC. Once approved, the qualification standards serve as guide for new appointments and for adjudicating contested appointments.[8]

Contrary to the view expressed in the dissenting opinion, the 2007 *Ombudsman* case did not do away with the requirement of CSC approval of appointments. It merely said that in passing upon and approving qualification standards, the CSC should not substitute its own standards for those of the department or

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[6] Sec. 22, par. 1, Ch. 5, Subtitle A, Title I, Book V, Administrative Code.

[7] *Office of the Ombudsman v. Civil Service Commission, supra* note 4, at 545.

[8] *Paredes v. Civil Service Commission*, G.R. No. 88177, December 4, 1990, 192 SCRA 84, 95.

agency concerned. Indeed, the dispositive portion of the decision directed the CSC to approve the Ombudsman's amended qualification standards for Director II.

The requirement of CSC approval of qualification standards is demonstrated in *Paredes v. Civil Service Commission*,[9] where the Court held that the CSC was in error in applying qualification standards that it had not previously approved. Not even the exigencies of the service can justify the use of unapproved qualification standards. Said the Court:

Without a duly approved Qualification Standard it would be extremely difficult if not impossible for the appointing authority to determine the qualification and fitness of the applicant for the particular position. Without an approved Qualification Standard the appointing authority would have no basis or guide in extending a promotional or original appointment in filling up vacant positions in its department or agency. Public interest therefore requires that a Qualification Standard must exist to guide the appointing authority not only in extending an appointment but also in settling contested appointments.[10]

The applicable qualification standards for the position of Chief of MISO at the time of Mendoza's first appointment included a requirement for a Bachelor's Degree in Computer Science or any equally comparable degree with Master in Science Degree in Computer Science or Information Technology. Mendoza simply did not have this qualification. Chief Justice Panganiban thus gave him a coterminous appointment, not a permanent one, as Chief of MISO, trusting that the CSC would approve it. Chief Justice Puno followed suit, but with the further limitation that it was to last for six months. These are not the circumstances contemplated by the 2007 *Ombudsman* ruling.

At any rate, whether or not the CSC was correct in denying Mendoza's appointments is of course irrelevant to the charge against Atty. Candelaria. She is not answerable to the Court for the decision of the CSC no matter if that decision is perceived

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[9] *Id*.

[10] *Id*. at 96.

to be wrong. All that she did was submit those appointments to that constitutional body as the law and the rules required of her.

Parenthetically, the CSC apparently did not deny Mendoza's coterminous and temporary appointments because it disagreed that the position was highly technical, which it was, by any reckoning. But the position of Chief of MISO is a permanent position, he being the head of an office that performs a vital and continuing function in the work of the Court. Yet, his appointments as recommended were to be coterminous with the tenure of the Chief Justice or for six months, whichever ended first. This uncertain or diminutive tenure does not seem to make sense in the light of the constitutionally protected right to security of tenure of government personnel under the civil service system.

Two. Justice Carpio claims that Atty. Candelaria failed in her duty to inform the Assistant Commissioner of CSC, whom she met shortly before that body disapproved Mendoza's appointments, that the Court had already classified as highly technical or policy-determining the position of Chief of MISO.

Atty. Candelaria does not deny failing to tell the Assistant Commissioner at that meeting that the Court already classified the position of Chief of MISO as policy-determining or highly technical. But, as the record shows, her office sent a copy of the Court's resolution in A.M. 05-9-29-SC embodying that classification to the CSC earlier on October 18, 2005. Indeed, the CSC wrote back to say that it had placed on record the Court's classification for guidance and reference. Further, Atty. Candelaria's office also attached to Mendoza's first appointment a certification that the Court had classified the position of Chief of MISO as highly technical. These rendered it unnecessary for Atty. Candelaria to reiterate the matter to the CSC Assistant Commissioner at their meeting.

Still, Atty. Candelaria should have immediately taken up with the Court the result of her meeting with the Assistant Commissioner of the CSC. It seems likely that the latter gave

her an inkling of the position that the CSC might take on Mendoza's appointments. Of course, neither Atty. Candelaria nor the Assistant Commissioner had control of the actions of the CSC but, by the nature of the bureaucracy, the outright denial of Mendoza's appointments could have been aborted and the matter negotiated to the satisfaction of the two Constitutional bodies. Since this is not a step prescribed by the rules, however, it cannot be said that Atty. Candelaria had violated a duty enjoined on her by law.

The dissenting opinion would have Atty. Candelaria held to answer for conduct prejudicial to the best interest of the service for having met, *sub rosa*, with the CSC Assistant Commissioner, thereby undermining the judiciary's independence. The dissenting opinion attacks Atty. Candelaria's comment as eerily silent regarding the nature and details of the meeting.

But, first, the charge against Atty. Candelaria is about her failure to inform the Assistant Commissioner of CSC that the Court had already classified as highly technical or policy-determining the position of Chief of MISO. Justice Carpio did not charge her of improperly meeting *sub rosa* with the CSC Assistant Commissioner. The Court cannot punish Atty. Candelaria for an alleged wrong of which she has not been charged nor given the opportunity of a hearing.

Second, under the rules of evidence, a party's silence only amounts to admission when he is accused of some wrongdoing that naturally calls for comment if not true.[11] Here, Justice Carpio censured Atty. Candelaria solely for something she failed to tell the CSC Assistant Commissioner at that meeting and she commented on this, defending her omission. The censure did not call for her to defend the meeting itself or disclose its other details. Consequently, it would not be fair to infer that Atty. Candelaria had chosen to be "eerily silent" regarding those other details.

The dissenting opinion of course insists that the technical rules of procedure and evidence are not strictly applied to

[11] Section 32, Rule 130, Revised Rules of Evidence.

administrative proceedings. This may be true but only with respect to those rules that are really "technical" like a party's failure in a petition for review to state the correct evidence of the identity of the person who signed the certification of non-forum shopping. Rules of evidence that are founded on fairness, such as the rule that a party's silence only amounts to admission when he is accused of some wrongdoing that naturally calls for comment if not true, are not technical rules that can be thrown out when convenient — even in administrative proceedings.

Third, even Justice Carpio, who appeared stunned and despaired by the CSC's disapproval of Mendoza's appointments and had information about the circumstances of the subject meeting, was critical of it only because Atty. Candelaria did not tell the CSC Assistant Commissioner that the Court had already classified the position of Chief of MISO as highly technical or policy-determining. Justice Carpio did not make out a case of treachery against her.

There is no evidence for instance that the meeting took place at the wee hours of the night behind some trees at the Luneta Park. Justice Carpio, who seems to know what the two talked about at that meeting, did not characterize it as done secretly or *sub rosa*. Many court employees are required by their jobs to meet and transact business with those from other government agencies. That these employees give no prior briefing to the Court about the purposes of such meetings cannot justify an assumption that those meetings took place *sub rosa*.

Further the dissenting opinion recalls that Atty. Candelaria had disagreed with the Court's position that coterminous appointments can be made for permanent positions. The dissenting opinion speculates that her views may have, through discussions with its Assistant Commissioner, influenced the CSC's opinion regarding the propriety of Mendoza's appointments. But such speculation places an unfairly low esteem on the competence of the CSC and its head, experts in the legal requirements of all sorts of appointments. It cannot be assumed that the CSC would give more weight to the opinion of a subordinate like

Atty. Candelaria than to the opinion of the Court and its Chief Justice.

Besides, honest difference in opinion cannot be a cause for unfavorable inference or speculation. If this were so, the Court itself would have no reason for being. Honest disagreements are catalysts of sound ideas especially in democratic institutions like the court.

Three. Justice Carpio claims that Atty. Candelaria exhibited gross incompetence when she stated in Mendoza's second appointment that it was "coterminous" with the term of the Chief Justice rather than simply that it was for a term of six months as the Chief Justice directed.

But, firstly, in making that statement in the second appointment, Atty. Candelaria merely echoed the Court's stand respecting the nature of Mendoza's appointment as coterminous. The Court originally adopted this idea on recommendation of the PMO and Justice Carpio when Chief Justice Panganiban issued Mendoza's first appointment. The Court had done nothing since then to change that stand.

And, secondly, Chief Justice Puno signed the renewal of the appointment, which renewal contained the same coterminous *proviso* and his additional instruction to limit the particular appointment to six months, thus showing his acceptance of those two conditions of the appointment.

The dissenting opinion suggests that Mendoza's second appointment paper could have been better facilitated had it indicated a "temporary" status rather than a "coterminous" one, especially since the Chief Justice's marginal note on Memorandum PMO-PDO 12-08-2006[12] directed the issuance of a "six-month appointment" to him.

But in a temporary appointment, the appointee meets all the requirements for the position except the appropriate civil service eligibility. At the time of his second appointment, Mendoza did

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[12] *Rollo*, p. 26.

not meet even the lowered qualification standards that the Court set for his position. The lesser standards wanted a bachelor's degree holder with a major in Computer Science. Mendoza's transcript of records from the Philippine Military Academy showed that he had a bachelor's degree but not the required major. He took a master's course in Computer Science at the Ateneo Information Technology Institute but his transcript there does not show that he finished the course or had been conferred a master's degree in Computer Science.[13] Consequently, the Court could not give Mendoza a temporary appointment as Chief of MISO.

The coterminous appointment that the PMO and Justice Carpio recommended for Mendoza was also apparently problematical since the Court and the CSC had always regarded his position as permanent, not dependent on the tenure of the appointing power. The job of the Chief of MISO does not fit the usual descriptions of primarily confidential positions that call for trust and confidence above anything else.

In sum, no sufficient ground exists to take disciplinary action against Atty. Candelaria for gross neglect of duty, gross incompetence in the performance of official duties, and conduct prejudicial to the best interest of the service. At most, she may be admonished in regard to the results of her meeting with the CSC Assistant Commissioner.

WHEREFORE, the Court resolves to *NOTE* Atty. Eden T. Candelaria's Comment dated July 10, 2007 and to *ADMONISH* her for failing to take up with the Court the results of the meeting she had with the Assistant Commissioner of the Civil Service Commission.

SO ORDERED.

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

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[13] *Id*. at 70.

Carpio, J., no part — *J.* Carpio is the complainant.

Corona, J., votes to exonerate Atty. Eden Candelaria. He reserves the right to write a separate opinion.

Carpio Morales, J., see separate opinion.

SEPARATE OPINION

CARPIO MORALES, *J.*:

The factual antecedents of the case relate to the appointment of Joseph Raymond Mendoza (Mendoza) as Chief of the Management Information Systems Office (MISO) made by, *first*, then Chief Justice Artemio Panganiban from August 8, 2006 to December 7, 2006, and *second*, by Chief Justice Reynato Puno from December 7, 2006 to June 7, 2007, both of which were disapproved by Civil Service Commission (CSC) Chairperson Karina Constantino David by letter of June 1, 2007.

By Resolution of June 19, 2007, the Court required the Office of the Administrative Services (OAS) to comment on the Memorandum of June 12, 2007 of Justice Antonio Carpio on the non-observance by Atty. Eden Candelaria, Chief of OAS, of certain rulings and rules issued by the Court.

The Court's Resolution penned by Justice Roberto Abad **admonishes** Atty. Candelaria for "failing to take up with the Court the results of the meeting had with the [CSC] Assistant Commissioner" two days before June 1, 2007.

It bears noting that Atty. Candelaria does not deny that she met with the CSC Assistant Commissioner two days before June 1, 2007 to discuss the appointment papers of Mendoza.

The Resolution finds it irregular for Atty. Candelaria not to have taken up with the Court the results of her meeting with the assistant commissioner.

The Resolution missed the forest for the trees.

What surfaces as more irregular is the conduct of the meeting between the Court's personnel department head — Atty.

Candelaria — and the CSC assistant commissioner. It keeps one wondering whether an agency-to-agency meeting has been the standard procedure in the consideration of appointments of key personnel of the Court. What makes the appointment papers of Mendoza so special or otherwise to merit a dialogue between the two high officials? Was the special meeting a Court-sanctioned one, in the first place? Who else attended the meeting? Did Atty. Candelaria know as early as then that a disapproval of the appointments was forthcoming? During that unique opportunity, did she explain the Court's action which she is bound to support?

In its Comment, the OAS is eerily silent on the nature and details of the meeting that culminated in the disapproval of the appointments, resulting in the embarrassment of two Chief Justices and the Court as a whole, despite such meeting or, perhaps, because of such meeting (for lack of a sufficient explanation).

The Resolution ignores the eerie silence of Atty. Candelaria on the circumstances that led to that meeting, yet it admonishes her for her failure to disclose and discuss it with the Court.

For this administrative matter to result in admonition for "fail[ure] to take up with the Court the results of the meeting" and yet project that the Court is after all disinterested in learning about the details thereof, on the justification that Justice Carpio did not call for Atty. Candelaria to defend the meeting itself or disclose the details is befuddling.

The Resolution states that Atty. Candelaria's silence about the details of the meeting does not amount to an admission, citing the requisites of the rule[1] on admission by silence.

First, it is settled that technical rules of procedure and evidence are not strictly applied to administrative proceedings.[2] Second,

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[1] RULES OF COURT, Rule 130, Sec. 32.

[2] *Office of the Court Administrator v. Canque*, A.M. No. P-04-1830, June 4, 2009.

the cited rule is inapplicable since the matter is already in the course of a proceeding. Finally, the non-disclosure of the "nature" of the meeting is related to the non-disclosure of the "results" of the meeting, for which Atty. Candelaria is now being admonished. If she is being held to account for concealing the results of the meeting, she likewise owes the Court a proper explanation on the specific nature of that particular meeting, which undermined the independence of the judiciary.

If this case which is an "administrative matter" fails to probe into the bottom of how things are administered in the OAS, then this administrative matter is an exercise in futility for it disregards the call for transparency. Without illuminating the Court of the antecedents of the meeting, the OAS is bound to repeat the same course of action.

The Reason for Disapproving the Appointment

The CSC appears to have been of the impression that the coterminous appointment of Mendoza merited disapproval since the position of Chief of MISO has not been declared by it primarily confidential, highly technical or policy determining. Thus, the pertinent portion of the CSC June 1, 2007 letter reads:

> Records are bereft of any showing that the position of Chief of MISO has been declared **by the Commission** as primarily confidential, highly technical or policy determining to qualify as coterminous in nature.
>
> In view thereof and considering that the Chief of MISO has not been declared as primarily confidential, highly technical or policy determining, the coterminous appointments of Mr. Joseph Raymond P. Mendoza issued on August 9, 2006 and December 7, 2006 are disapproved. [3] (emphasis, italics and underscoring supplied)

OAS' reading of the June 1, 2007 letter of the CSC indicates, however, that only positions that are primarily confidential could be extended a coterminous appointment. Thus it stated:

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[3] *Rollo,* p. 29.

x x x Besides, the disapproval of subject appointments was not because the appointment does not appear in the records of CSC to be highly technical or policy determining, but that the same position has not been declared as *primarily confidential.*[4] (italics in the original; underscoring supplied)

It can also be gathered that Atty. Candelaria effectively took unto herself the appointing power of the Court by making representations to the CSC in a *sub rosa* meeting that, it bears repeating, culminated in the questionable disapproval of the Court's action. Such attitude is evident from the statement in the OAS' Comment, *viz*.:

As it is, the appointment of Mr. Mendoza is a unique one, and can be equated to earlier appointments made in the PMO. OAS had earlier made **formal objections** to said PMO appointments (among others, coterminous appointments cannot be issued for permanent/ regular positions) but not favorably acted upon by the Court. So that when the appointment of Mr. Mendoza was forwarded to it, **OAS entertained second thoughts of reiterating the same objections.**[5] (emphasis and underscoring supplied)

By all indications, Atty. Candelaria disagrees with the Court's action on the matter, **despite** the Court's **August 8, 2006 Resolution in A.M. No. 06-8-03-SC** *(Re: Applicants for the Chief and Deputy Director, MISO)* quoted below, explaining that coterminous appointments can be made for permanent positions:

Under the Special Provision(s) Applicable to the Judiciary of the General Appropriations Act for FY 2005 (RA No. 9336), "the Chief Justice of the Supreme Court is authorized to formulate and implement the organizational structure of the Judiciary, to fix and determine the salaries, allowances, and other benefits of their personnel, and whenever public interest so requires, make adjustments in the personal services itemization including, but not limited to the transfer of item or creation of new positions in the Judiciary."

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[4] *Id*. at 48.

[5] *Id*. at 52.

The Chief Justice has exercised this discretionary authority several times. In Memorandum Order No. 20-2005 dated 5 May 2005, then Chief Justice Hilario G. Davide, Jr. authorized Program Management Office officials and employees who lack the approved qualifications for the positions they were holding to remain in office until the expiration of the term of the Chief Justice. In Memorandum Order No. 24-2004 dated 9 February 2006, the incumbent Chief Justice authorized the appointment of coterminous appointees to five vacant permanent items in the Judicial and Bar Council.

WHEREFORE, the Court concurs with the appointment by the Chief Justice of Mr. Raymond P. Mendoza as Chief of MISO coterminous with the term of the Chief Justice effective immediately. The position of MISO Deputy Director is declared open and the Supreme Court Selection and Promotion Board Secretariat is directed to accept applications to the said position.[6]

Notably, in her Memorandum of May 30, 2007 or two days before the CSC issued its June 1, 2007 letter, Atty. Candelaria still maintained her position and mentioned, as if reminding Chief Justice Puno, that it is "the policy of the CSC that no coterminous appointment can be issued to a permanent item such as that in the case of MISO."[7] And apparently she made her point when the CSC June 1, 2007 letter arrived two days later, without her lifting a finger to recommend the filing of a motion for reconsideration.

Notwithstanding the ratiocination that a coterminous appointment can be made for a permanent position and without going into the ramification of recent jurisprudence (which shall be discussed later), Atty. Candelaria, despite her *personal* reservations or "formal objections" to the action, could have smoothly facilitated the processing of the appointment papers of Mendoza by indicating therein a "temporary" status instead of "coterminous with the tenure of the Honorable Chief Justice x x x ." This alternative course of action, I submit, could have accommodated the divergent perspectives and avoided the institutional embarrassment. After all, appointing Mendoza for

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[6] *Id*. at 25.

[7] *Id*. at 108.

a limited period was the common denominator. Contrary to the asseveration of the Resolution (which shall be discussed later), the Court could have conferred a temporary appointment upon him.

Moreover, the final directive of Chief Justice Puno written as marginal notes on Memorandum PMO-PDO 12-08-2006[8] was not a coterminous appointment as recommended but a "6-month appointment" (from December 7, 2006 to June 7, 2007) that is clearly momentary.

If Atty. Candelaria found difficulty in comprehending the Court's action, she could have sought clarification or requested further legal research on the matter. After all, in affixing her signature on the appointment papers, she certified that all the requirements and supporting papers have been complied with, reviewed and found to be in order.

At the very least, the conduct of meeting *sub rosa* with the Assistant Commissioner of the Civil Service Commission under dubious circumstances undermines the independence of the judiciary and is prejudicial to the best interest of the service.

The Ramification of Recent Rulings and Rules

In *Office of the Ombudsman v. Civil Service Commission*,[9] the Court recognized the Constitutional Fiscal Autonomy Group (CFAG) Joint Resolution No. 62 which pronounced that all third level positions under each member agency are career positions and that "all career third level positions identified and classified by each of the member agency are *not* embraced within the Career Executive Service (CES) and as such shall not require Career Service Executive Eligibility (CSEE) or Career Executive Service (CES) Eligibility for purposes of permanent appointment." The Court added that the CSC has a ministerial duty to accept appointments to such classified positions made by a CFAG member-institution, like the Court.

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[8] *Id.* at 26.

[9] G.R. No. 159940, February 16, 2005, 451 SCRA 570.

The Court went on to explain:

Book V, Title I, Subtitle A of the Administrative Code of 1987 provides:

SECTION 7. *Career Service*. — The Career Service shall be characterized by (1) entrance based on merit and fitness to be determined as far as practicable by competitive examination, or based on highly technical qualifications; (2) opportunity for advancement to higher career positions; and (3) security of tenure.

The Career Service shall include:

(1) Open Career positions for appointment to which prior qualification in an appropriate examination is required;

(2) Closed Career positions which are scientific, or highly technical in nature; these include the faculty and academic staff of state colleges and universities, and scientific and technical positions in scientific or research institutions which shall establish and maintain their own merit systems;

(3) **Positions in the Career Executive Service; namely,** Undersecretary, Assistant Secretary, Bureau Director, Assistant Bureau Director, Regional Director, Assistant Regional Director, Chief of Department Service and **other officers of equivalent rank as may be identified by the Career Executive Service Board, all of whom are appointed by the President;**

(emphasis, italics and underscoring, in the original)

From the above-quoted provision of the Administrative Code, persons occupying positions in the CES are presidential appointees. A person occupying the position of Graft Investigation Officer III is not, however, appointed by the President but by the Ombudsman as provided in Article IX of the Constitution, to wit:

SECTION 6. THE OFFICIALS AND EMPLOYEES OF THE OMBUDSMAN, OTHER THAN THE DEPUTIES, SHALL BE APPOINTED BY THE OMBUDSMAN ACCORDING TO THE CIVIL SERVICE LAW.

To classify the position of Graft Investigation Officer III as belonging to the CES and require an appointee thereto to acquire CES or CSE eligibility before acquiring security of tenure would be

absurd as it would result either in 1) vesting the appointing power for said position in the President, in violation of the Constitution; or 2) including in the CES a position not occupied by a presidential appointee, contrary to the Administrative Code.

It bears emphasis that under P.D. No. 807, Sec. 9(h) which authorizes the CSC to approve appointments to positions in the civil service, except those specified therein, its authority is limited "only to [determine] whether or not the appointees possess the legal qualifications and the appropriate eligibility, nothing else."

It is not disputed that, except for his lack of CES or CSE eligibility, De Jesus possesses the basic qualifications of a Graft Investigation Officer III, as provided in the earlier quoted Qualification Standards. Such being the case, CSC has the ministerial duty to grant the request of the Ombudsman that appointment be made permanent effective December 18, 2002. To refuse to heed the request is a clear encroachment on the discretion vested solely on the Ombudsman as appointing authority. It goes without saying that the status of the appointments of Carandang and Clemente, who were conferred CSE eligibility pursuant to CSC Resolution No. 03-0665 dated June 6, 2003, should be changed to permanent effective December 18, 2002 too.

In a Supplemental Memorandum received by this Court on January 5, 2005, the CSC alleged that, *inter alia*:

> . . . the reclassified G[raft] I[nvestigation and] P[rosecution] O[fficer] III position is the same position which is the subject of the herein case. Suffice it to state that *the eligibility requirement under the new QS is no longer third level eligibility but RA 1080 (BAR) instead. However, notwithstanding the said approval of the new QS for GIPO III, CSC prays that the issues raised by the Office of Ombudsman relative to the authority of the CSC to administer the Civil Service Executive Examination for third level positions and to prescribe third level eligibility to third level positions in the Office of the Ombudsman be resolved.*

As the Court takes note of the information of the CSC in its Supplemental Memorandum, it holds that third level eligibility is **not** required for third level officials of petitioner appointed by the Ombudsman in light of the provisions of the Constitution *vis-à-vis* the Administrative Code of 1987 as discussed above.[10] (emphasis, italics in the original; underscoring supplied)

[10] *Id*. at 584-586.

In the subsequent case of *Office of the Ombudsman v. Civil Service Commission*,[11] the Court reiterated that the CES covers presidential appointees only.

Under the Constitution, the Ombudsman is the appointing authority for all officials and employees of the Office of the Ombudsman, except the Deputy Ombudsmen. Thus, a person occupying the position of Director II in the Central Administrative Service or Finance and Management Service of the Office of the Ombudsman is appointed by the Ombudsman, not by the President. As such, he is neither embraced in the CES nor does he need to possess CES eligibility.[12]

IN FINE, all career third level positions identified and classified by each of the member agency do not require Career Service Executive Eligibility (CSEE) or Career Executive Service (CES) Eligibility for purposes of permanent appointment.

The Court, by **Resolution of September 27, 2005**, classified "all third level positions in the Supreme Court, including those in the OCA, PHILJA, JBC, and MCLEO, below those of the Chief Justice, Associate Justices, and Regular Members of the JBC, with Salary Grade 26 and above as highly technical or policy-determining" including the Deputy Clerk of Court and Chief of the MISO.[13]

The removal of the requirement of CES eligibility requires, however, a concomitant modification of the qualification standards for such third level position. For if indeed then Judicial Reform Program Administrative Evelyn Dumdum and Justice Carpio believed that CSEE or CES eligibility is automatically no longer required for a third level position such as that of MISO Chief, why did they not recommend Mendoza for permanent appointment? This calls for the tracing of the history of the

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[11] G.R. No. 162215, July 30, 2007, 528 SCRA 535.

[12] *Id*. at 544.

[13] A.M. No. 05-9-29-SC (2005) entitled "Classifying as Highly Technical and/or Policy-Determining the Third-Level Positions Below that of Chief Justice and Associate Justices in the Supreme Court, including those in the Philippine Judicial Academy and the Judicial and Bar Council, and for other Purposes."

qualification standards of the MISO Chief that were set by the Court itself.

In the same Resolution of September 27, 2005 in A.M. No. 05-9-29-SC which classified third level positions as highly-technical in nature, the Court adopted with some modifications the qualification standards of certain third level positions. For the "Deputy Clerk of Court and Chief, MISO/SG 29," it retained the following qualifications:

> Bachelor of Laws
>
> 10 years or more of relevant supervisory work experience acquired under career service position in the Supreme Court, 3 years of which rendered under a position requiring the qualifications of a lawyer;
>
> 32 hours of relevant training in management and supervision;
>
> RA 1080 (Attorney) (Approved by the Chief Justice on 14 October 1999)

Notably, the CSC, by letter of November 25, 2005, manifested that it **noted** the Court's September 27, 2005 Resolution and "reflected the same in the records of this Commission to serve as guide and reference in **attesting** appointments to these positions and other personnel actions in the Court x x x."[14]

By Resolution of March 14, 2006 in A.M. No. 06-3-07-SC, the Court approved the revised qualification standards and terms of reference for the Chief of MISO, provided that preference shall be given to a member of the Bar:

> Bachelor's Degree in Computer Science or any equally comparable degree with Master's in Science Degree in Computer Science or Information Technology.
>
> Seven years of relevant experience on Information and Communication Technology (ICT)
>
> With at least 40 hours of relevant training
>
> With Civil Service Professional Eligibility or equivalent IT eligibility[15] (underscoring supplied)

[14] *Rollo*, pp. 123-124.

[15] *Id*. at 54-55.

The Court, by Resolution of June 20, 2006 in A.M. No. 06-3-07-SC, *amended the educational requirement* for the position of Chief of MISO, as follows:

> Bachelor's Degree in Computer Science or any equally comparable degree, with post graduate level (at least 18 units) in Computer Science or Information Technology[16]

Contrary to the presentation in the Resolution, the CSC has not taken any action on the revised qualification standards contained in A.M. No. 06-3-07-SC, both of March 14, 2006 and of June 20, 2006. Even Atty. Candelaria manifests that, to date, no CSC action has been made on these revisions of the qualification standards of MISO Chief. Only A.M. No. 05-09-29-SC of September 27, 2005 had been **noted** and **reflected** in the CSC records to serve as *guide* and *reference* in **attesting appointments** to these positions and other personnel actions in the Court.[17]

Following the 2007 case of *Office of the Ombudsman v. Civil Service Commission*, however, "[t]he CSC **cannot substitute** its own standards for those of the department or agency, specially in a case like this in which an independent constitutional body is involved." The qualification standards are thus effective as of the respective dates of the resolutions. In other words, the effectivity of the qualification standards is *not* dependent on the CSC's approval.

Thus, as of Mendoza's first appointment as MISO Chief on August 8, 2006, the academic credential required was a "Bachelor's Degree in Computer Science or any equally comparable degree, with post graduate level (at least 18 units) in Computer Science or Information Technology" and the eligibility requirement set by the Court itself is "Civil Service Professional Eligibility or equivalent IT eligibility." Mendoza satisfied the educational requirements but had no Career Service Professional

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[16] *Id*. at 56.

[17] *Vide id*. at 123-124.

Eligibility until January 17, 2007.[18] And there was no available proof that Mendoza had passed the equivalent IT eligibility, if any has been determined by the Court. His non-fulfillment of the Court's standing eligibility requirement explains why Mendoza was not recommended for *permanent* appointment *before* May 2007. Nonetheless, as earlier posited, he could have been alternatively granted a temporary appointment.

The Resolution does not agree that the revised qualification standards are already effective. It declares that unless approved by the CSC, the qualification standards set by the Court could not be implemented.

With this premise, the Resolution concludes: (1) The revised qualification standards in terms of educational background in A.M. No. 06-3-07-SC of March 14, 2006 (which allegedly was the last one approved by the CSC) were not even met by Mendoza; and (2) the Court could not have even conferred a temporary appointment upon him.

The Resolution takes exception to the proffered interpretation that under *Office of the Ombudsman v. Civil Service Commission*,[19] the CSC "cannot substitute its own standards for those of the department or agency, especially in a case like this in which an independent constitutional body is involved," and that the qualification standards are effective as of the respective dates of the resolutions. It maintains that a CSC approval is a must, implying that the CSC could disapprove the qualification standards. It thus adheres to its position that unless approved by the CSC, the qualification standards set by the Court could not be implemented.

Office of the Ombudsman v. Civil Service Commission, however, is significant in that it **affirms the independence of a constitutional body.**

Under the Constitution, the Office of the Ombudsman is an independent body. As a guaranty of this independence, the

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[18] *Id*. at 78.

[19] *Supra*.

Ombudsman has the power to appoint all officials and employees of the Office of the Ombudsman, except his deputies. This power necessarily includes the power of setting, prescribing and administering the standards for the officials and personnel of the Office.

To further ensure its independence, the Ombudsman has been vested with the *power of administrative control and supervision* of the Office. This includes the authority to organize such directorates for administration and allied services as may be necessary for the effective discharge of the functions of the Office, as well as to prescribe and approve its position structure and staffing pattern. Necessarily, it also includes the authority to determine and establish the **qualifications**, duties, functions and responsibilities of the various directorates and allied services of the Office. **This must be so if the constitutional intent to establish an independent Office of the Ombudsman is to remain meaningful and significant.**

Qualification standards are used as guides in appointment and other personnel actions, in determining training needs and as aid in the inspection and audit of the personnel work programs. They are intimately connected to the power to appoint as well as to the power of administrative supervision. Thus, as a corollary to the Ombudsman's appointing and supervisory powers, he possesses the authority to establish reasonable qualification standards for the personnel of the Office of the Ombudsman.

In this connection, Book V, Title I, Subtitle A, Chapter 5, Section 22 of the Administrative Code provides:

> SEC. 22. *Qualification Standards*. — (1) A qualification standard expresses the minimum requirements for a class of positions in terms of education, training and experience, civil service eligibility, physical fitness, and other qualities required for successful performance. The degree of qualifications of an officer or employee shall be determined by the appointing authority on the basis of the qualification standard for the particular position.
>
> Qualification standards shall be used as basis for civil service examinations for positions in the career service, as guides in appointment and other personnel actions, in the adjudication of protested appointments, in determining training needs, and

as aid in the inspection and audit of the agencies' personnel work programs.

It shall be administered in such manner as to continually provide incentives to officers and employees towards professional growth and foster the career system in the government service.

(2) **The establishment, administration and maintenance of qualification standards shall be the responsibility of the department or agency,** with the assistance and approval of the Civil Service Commission and in consultation with the Wage and Position Classification Office.

Since the responsibility for the establishment, administration and maintenance of qualification standards lies with the concerned department or agency, the role of the CSC is limited to *assisting* the department or agency with respect to these qualification standards and *approving* them. The CSC cannot substitute its own standards for those of the department or agency, specially in a case like this in which an independent constitutional body is involved.[20] (italics, emphasis and underscoring supplied)

The role of the CSC is limited to **assisting** the department or agency with respect to these qualification standards and **approving** them. It is ministerial for the CSC to approve the qualification standards, after having *presumably* assisted the agency with respect to the setting of qualification standards. The CSC has not been given the power to replace or substitute the qualification standards.

Notably, the Court's discussion in *Office of the Ombudsman v. Civil Service Commission* did *not* delve on whether the CSC's ground in disapproving the qualification standards amounted to grave abuse of discretion, for it has no discretion to exercise, in the first place. Plainly, it was constitutionally violative and legally infirm for the CSC to alter the qualification standards set by the Office of the Ombudsman.

The Office of the Ombudsman asserts that its specific, exclusive and discretionary constitutional and statutory power as an independent

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[20] *Id*. at 544-545.

constitutional body to administer and supervise its own officials and personnel, including the authority to administer competitive examinations and prescribe reasonable qualification standards for its own officials, *cannot* be curtailed by the general power of the CSC to administer the civil service system. **Any unwarranted and unreasonable restriction on its discretionary authority,** such as what the CSC did when it issued Opinion No. 44, s. 2004, **is constitutionally and legally infirm.**

We agree with the Office of the Ombudsman.[21] (emphasis and underscoring supplied)

The reliance on *Paredes v. Civil Service Commission*[22] is misplaced since that case *did not involve an independent constitutional body.*

The CSC's protracted delay in approving the qualification standards set by the Court in various instances is a form of unwarranted and unreasonable restriction on the discretionary authority of an independent constitutional body that the Court is, for it is worse than a prompt denial of the same since it interminably suspends the exercise of the discretionary authority to set qualification standards, which is intimately connected to the power to appoint as well as to the power of administrative supervision.

In fact, the CSC did not even expressly approve the September 27, 2005 qualification standards. It merely **noted** and **reflected** the same in its records to serve as guide and reference.[23] Following the Resolution's reasoning, the September 27, 2005 qualification standards could not even be implemented due to lack of approval by the CSC.

Further, the Resolution, by concluding that Mendoza did not even possess an equally comparable degree with a Bachelor's degree in Computer Science, **overrules** the ***prior*** determination

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[21] *Id*. at 541.

[22] G.R. No. 88177, December 4, 1990, 192 SCRA 84.

[23] *Vide rollo*, pp. 123-124.

made by the Court which assessed his science degree at the Philippine Military Academy before appointing him to the position. It also faults the Court of committing the mistake of using as reference the "unapproved" qualification of post graduate level (at least 18 units) in Computer Science or Information Technology. Following the Resolution's position on the effectivity of qualification standards, the Court committed a mistake in appointing a non-lawyer to the position of Chief of MISO, considering that the CSC has neither approved nor noted the last two revised qualification standards.

Jurisprudence did not do away with the *submission* to the CSC of the appointment papers of third level positions. What it did away was the legal requirement of CSC *approval*. While the CSC has the **ministerial duty to accept appointments made by the CFAG member-institutions to third-level positions** that have been identified and classified, its authority is limited to *attesting* that the appointee possesses the legal qualifications and the appropriate eligibility, all of which the CFAG member-institutions have the discretion to determine. In fact, the CSC admits that the qualification standards "serve as guide and reference in **attesting** appointments to these positions and other personnel actions in the Court."[24]

CFAG Joint Resolution No. 62 itself provides:

x x x x x x x x x

3. That all career third level positions identified and classified by each of the member agency are not embraced within the Career Executive Service (CES) and as such shall not require Career Service Executive Eligibility (CSEE) or Career Executive Service (CES) Eligibility for purposes of permanent appointment;

4. That should CFAG member agencies develop their respective eligibility requirements for the third level positions, the test of fitness shall be jointly undertaken by the CFAG member agencies in coordination with the CSC;

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[24] *Vide rollo*, pp. 123-124.

5. That in case the test of fitness shall be in written form, the CSC shall prepare the questionnaires and conduct the examinations designed to ascertain the general aptitude of the examinees while the member agency shall likewise prepare the questionnaires and conduct in conjunction with the CSC, the examinations to determine the technical capabilities and expertise of the examinees suited to its functions;

6. That the resulting eligibility acquired after passing the aforementioned examination shall appropriate for permanent appointment only to third level positions in the CFAG member agencies;

7. That the member agencies shall regularly coordinate with the CSC for the conferment of the desired eligibility in accordance with this Resolution; However this is without prejudice to those incumbents who wish to take the Career Service Executive Examination given by the Civil Service Commission or the Management Aptitude Test Battery given by the Career Executive Service Board.

The Resolution yielded to the claim that Atty. Candelaria faithfully complied with all existing rules and regulations, failing even to observe that the OAS submitted *both* appointments of Mendoza to the CSC only on January 4, 2007, which was already past the end of the first appointment[25] (from August 8, 2006-December 7, 2006).

I, therefore, vote to REPRIMAND[26] Atty. Candelaria for conduct prejudicial to the best interest of the service for meeting *sub rosa* with the Assistant Commissioner of the Civil Service Commission under dubious circumstances which undermined the independence of the judiciary, with STERN WARNING that a repetition of the same or similar act shall be dealt with more severely.

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[25] Section 1, Rule VI, CSC Memorandum Circular No. 40, series of 1998 requires the duly authorized personnel officer to submit to the CSC all appointments in the civil service within 30 days from the date of issuance. Failure to do so is a ground for administrative disciplinary action for neglect of duty.

[26] *Vide Abesa vs. Nacional*, A.M. No. MTJ-05-1605, June 8, 2006, 490 SCRA 74.

EN BANC

[A.M. No. 2009-23-SC. February 26, 2010]

RE: SMOKING AT THE FIRE EXIT AREA AT THE BACK OF THE PUBLIC INFORMATION OFFICE

SYLLABUS

1. POLITICAL LAW; STATUTES; REPUBLIC ACT (R.A.) NO. 9211 OR THE TOBACCO REGULATION ACT OF 2003, ELUCIDATED.— The statute that actually penalizes smoking is Republic Act (R.A.) No. 9211 or the Tobacco Regulation Act of 2003 which, in order to foster a healthful environment, absolutely prohibits smoking in specified public places and designates smoking and non-smoking areas in places where the absolute ban on smoking does not apply. Under this law, the Court is generally considered a place where smoking is restricted, rather than absolutely banned. Exceptions to this characterization are the Court's elevators and stairwells; the Court's medical and dental clinics; and the Court's *cafeteria* and other dining areas (including the Justices' Lounge), together with their food preparation areas, where an absolute ban applies. In the areas where smoking restriction applies, the law requires that the Court designate smoking and non-smoking areas. Significantly, the law carries specific penalties for violations, ranging from a low of a ₱500.00 fine for the first offense, to a high of not more than ₱10,000.00 fine for the third offense.

2. ID.; ID.; ID.; OFFICE ORDER NO. 06-2009; COVERAGE; DESIGNATION OF APPROPRIATE SMOKING AREAS IN THE COURT REQUIRED TO GIVE FULL EFFECT THERETO; CASE AT BAR.— In the present case, the respondents were caught smoking (as Atty. Candelaria found and we have no reason to dispute this finding) at the Court's stairwell – an area subject to an absolute ban on smoking. Thus, technically, a smoking violation under R.A. No. 9211 exists. We note, however, that the respondents were never held to account for violation of R.A. No. 9211 and, in fact, had raised the question of under which law or regulation they were being held accountable. In response, the OAS pointed to Section 6, in connection with Section 1, of Office Order No. 06-2009; and

Civil Service Commission (CSC) Memorandum Circular No. 17, series of 2009. x x x Office Order No. 06-2009, under which the respondents are charged, covers absolute smoking prohibition areas greater than those covered by R.A. 9211, which include all interior areas of the buildings of the courts and the areas immediately adjacent to these buildings. The Office Order still allows smoking within court premises (apparently referring to exterior areas), but such smoking has to be done in designated places. Sections 2 and 3 of Office Order No. 06-2009 provides for the designation of smoking areas x x x. Implicit, to our mind, in these provisions is that appropriate smoking areas should be designated to give full effect to the Office Order. The smokers within the courts must know not only where they cannot smoke, but also where they can legitimately smoke. Unfortunately, no designation of the smoking areas was immediately made. In fact, a clarificatory Memorandum dated October 6, 2009 states that *"smoking is now strictly prohibited inside the Supreme Court's premises,"* since there are no open areas that are five or more meters away from any building, enclosed area or vehicle where smoking is absolutely prohibited. After the smoking incident involving the respondents on October 27, 2009, the Court clarified the interpretation of the issuances on smoking to reflect the interpretation the Court believes to be correct. On December 15, 2009, the Court *En Banc* promulgated the Resolution directing the OAS to recommend smoking areas within the Court pursuant to Sections 2 and 3 of Memorandum Circular No. 01-2008A. In compliance with this December 15, 2009 Resolution, the OAS addressed a Memorandum to the Chief Justice recommending two areas in the Court that may be designated as smoking areas: (1) a portion of the Taft side parking area in the Old Compound; and (2) a space between the DOJ building and the front exit gate in the New Compound. *In effect, the Court invalidated the October 6, 2009 Memorandum declaring a total smoking prohibition within court premises,* but it was not until February 9, 2010 that the matter was clarified when the Court *En Banc* approved the OAS Memorandum to the Chief Justice on the designated smoking areas.

3. ID.; ID.; ID.; ID.; ID.; ID.; PARTIAL ENFORCEMENT OF OFFICE ORDER CARRIES WITH IT BADGE OF INEQUITY; CASE AT BAR.— Effectively, partial enforcement upholds that part of the Office Order that prohibits smoking in certain areas, but nullifies equally critical parts of the rule that clearly allow

smoking in designated areas. Stated differently, partial enforcement gives effect to the part of the Office Order absolutely prohibiting smoking in certain areas, without implementing the parts that call for the designation of smoking areas. An arguable objection to this manner of implementation is the badge of inequity that it carries, as it places a greater burden upon smokers than that which the Office Order intended; without any designated smoking area, they are always at risk of running afoul of the Office Order.

4. STATUTORY CONSTRUCTION; INTERPRETATION OF STATUTES; A LAW'S *RAISON D'ETRE* MUST BE ASCERTAINED FROM A CONSIDERATION OF THE RULE AS A WHOLE, NOT OF AN ISOLATED PART OF A PARTICULAR PROVISION ALONE.— When the interpretation of a statute or a rule according to the exact and literal import of its words would contravene the clear purposes of the law (in the case of the Office Order, to safeguard health and environmental concerns, while respecting the rights of the individual), such interpretation should be disregarded in favor of a construction of the law made according to its spirit and reason. A law's *raison d'etre* must be ascertained from a consideration of the rule as a whole, not of an isolated part of a particular provision alone. A word or phrase taken in isolation from its context might easily convey a meaning quite different from the one actually intended.

5. ID.; ID.; ID.; ID.; THE OFFICE ORDER IS A PENAL MEASURE BECAUSE OF THE PUNISHMENT IT IMPOSES.— Another point to consider is the reality that the Office Order imposes an administrative sanction on violating court officials and employees. Thus, strictly speaking, the Office Order is a **penal** measure because of the punishment it imposes. The penal provisions of a law or regulation are to be construed strictly – a rule of construction that emphatically forbids any attempt to hold that when the commission of an act on certain specific occasions is penalized, it should be penalized on all other occasions. It is beyond the jurisdiction of the courts to increase the restrictions provided by law. When Section 6 of Office Order No. 06-2009 sets out to penalize only the act of smoking outside the designated smoking areas, but ends up penalizing the act in all the areas within the Court because no proper smoking area has been designated, the rule is thereby expanded beyond its intended parameters.

6. ID.; ID.; ID.; ID.; IF AMBIGUOUS, THE COURT WILL LEAN MORE STRONGLY IN FAVOR OF THE RESPONDENTS THAN IT WOULD IF THE STATUTE WERE REMEDIAL.— The rule, being penal, must also be construed with such strictness as to carefully safeguard the rights of the respondents and at the same time preserve its obvious intention. If the language is plain, it will be construed as it is read, with the words of the rule given their full meaning; if ambiguous, the court will lean more strongly in favor of the respondents than it would if the statute were remedial. The strict construction of penal statutes against the state and their liberal construction in favor of an accused, defendant, or respondent are not intended to enable a guilty person to escape punishment through a technicality, but to provide a precise definition of forbidden acts. It must likewise be considered, still with respect to the penal nature of the Office Order, that not only smoking violators but even the Chief of our OAS may have technically been in violation of the Office Order when she failed to comply with the duty to designate the smoking areas within Court premises. As worded, Section 3 of the Office Order imposes this duty on the Chief Administrative Officer. Thus, the Office Order casts a net wider than that which caught the respondents. In the absence of any Court action for the omission under Section 3, so also should we not act at this point on other violations of our rule.

R E S O L U T I O N

BRION, *J.*:

We resolve in this Resolution the administrative case involving Atty. Brandon C. Domingo, Atty. Leo Felix S. Domingo, and Atty. Emiliana Helen R. Ubongen (*respondents*) for alleged violation of **(1) Section 6,**[1] **in connection with Section 1,**[2]

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[1] Section 6 of Office Order No.06-2009 reads:

Sec. 6. Administrative sanction. Non-compliance by court officials and employees with the provisions of this Memorandum Circular restricting smoking in prohibited smoking areas shall be subject to the appropriate administrative disciplinary action and sanction.

[2] Section 1 of Office Order No. 06-2009 states that:

of Office Order No. 06-2009 entitled "Reiterating the Ban on Smoking as Provided for in Administrative Circular No. 09-99 and Reiterated and Clarified in Memorandum Circular No. 01-2008A," and **(2) Civil Service Commission (CSC) Memorandum Circular No. 17, Series of 2009,** entitled "Smoking Prohibition Based on a 100% Smoke-Free Environment Policy."[3]

By 1st Indorsement dated October 29, 2009,[4] Eduardo V. Escala (Chief Judicial Staff Officer of the Security Division of this Court) forwarded to Atty. Eden T. Candelaria (Deputy Clerk of Court and Chief Administrative Officer) for her information and appropriate action, the Incident Report[5] dated October 29, 2009 of Gregorio Alvarez (*Alvarez*), Security Officer II.

Alvarez related that on October 27, 2009 at about 2:50 p.m., Roel Suyo (Watchman II) instructed him to proceed to the Public Information Office (*PIO*) because some staff members of that Office wanted to report violations of the Court's smoking ban. At the PIO, Atty. Dominadoranne Lim reported to him that she found one female and two male Supreme Court employees smoking in the fire exit at the back of the PIO. She further claimed that she recognized them as court attorneys from the

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Sec. 1. Prohibited smoking areas. Smoking will be prohibited absolutely in the following areas:

a. All interior areas (including conference rooms, utility rooms, comfort rooms, cafeterias, elevators, fire exit staircases and other stairwells) of the buildings mentioned in the preceding paragraph;

b. All areas immediately adjacent to the said buildings; and

c. All garage/parking areas within the compound of such buildings and all motor vehicles parked therein.

[3] Civil Service Commission (CSC) Memorandum Circular No. 17, series of 2009, provides that:

x x x x x x x x x

2. Smoking Prohibition. Smoking shall be prohibited in areas anywhere in or on the government premises, buildings, and grounds, except for open spaces designated as "smoking area," as herein defined.

[4] *Rollo*, p. 24.

[5] *Id.*, at 25.

Office of Associate Justice Diosdado M. Peralta, but was prevented from ascertaining their identities when one of the lawyers parried her hands as she tried to take a look at his Supreme Court identification card.

In a Memorandum dated November 13, 2009, the Office of Administrative Services (*OAS*) requested Atty. Lim to name and identify the employees she saw smoking inside the Court premises and to give additional details on the incident, so that the Office may act accordingly on the report.[6] Atty. Lim responded with a letter dated November 18, 2009[7] where she narrated that:

> On 28 October 2009, at around noon time, upon inhaling second hand smoke in the PIO coming from the fire exit, my officemates and I discreetly went to the fire exit, and upon opening the door, were met with a strong smell of cigarette smoke. I heard people conversing upstairs. I proceeded up a flight of stairs, and immediately saw outside the 4th floor door, three (3) people smoking, who were identified later as **Brandon Carlos Domingo, Leo Felix S. Domingo, and Emiliana Belen R. Ubongen**. Incidentally, they were in an area surrounded by stacks and piles of paper documents.
>
> I also called my office mate, Erika Dy, who immediately showed up at the flight of stairs and saw the smokers. Moments after, office mates Dennis Balason and Jay Rempillo also arrived and also saw them.
>
> Later in the day, the three smokers, accompanied by Atty. Josephine C. Yap, came to our office for a meeting attended by, [*sic*] all three, Brandon Carlos Domingo, Leo Felix S. Domingo, and Emiliana Belen R. Ubongen, and DCA Jose Midas P. Marquez, Atty. Yap and Erika Dy, and myself. During the meeting the three categorically admitted that they were indeed all smoking in the fire exit that afternoon.

On November 19, 2009, the OAS individually directed the respondents to submit their respective comments/explanations on why they should not be subjected to appropriate administrative disciplinary actions and sanctions for violating the ban on smoking

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[6] *Id.*, at 23.

[7] *Id.*, at 19-20.

within the Court premises.[8] The respondents collectively filed their Comment dated November 27, 2009.[9] They contended that Alvarez's report was not based on his personal knowledge of the incident; he completely relied on the account given by Atty. Lim. They also claimed that Atty. Lim uttered untruthful statements against them to retaliate for the administrative complaint lodged against her. They pointed out that while Alvarez reported that the incident occurred on October 27, 2009, Atty. Lim inconsistently maintained that it occurred on October 28, 2009.

The respondents further alleged that they were not informed of the particular memorandum or circular they were supposed to have violated. Nevertheless, they questioned the validity of the existing regulations on smoking within Court premises. They averred that the salient provisions of Memorandum Circular No. 01-2008A,[10] particularly the implementation of smoking cessation programs within the Court and the designation of smoking areas within the premises, had not yet been implemented. Similarly, they noted that Republic Act No. 9211 (otherwise known as "The Tobacco Regulation Act of 2003") likewise requires that the appropriate places for cigarette smoking be designated. Moreover, the respondents consider an absolute ban on smoking within the Court premises to be unreasonable.[11]

In the Memorandum[12] dated December 21, 2009, Atty. Candelaria reviewed the respondents' assertions regarding the inaccuracies in the reports of Alvarez and Atty. Lim, but considered it more significant that the respondents did not deny

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[8] *Id.*, at 16-18.

[9] *Id.*, at 6-14.

[10] Memorandum Circular No. 01-2008A, entitled "Enjoining All Officials and Employees of the Judiciary to Strictly Observe the Prohibition Against Smoking in the Buildings of the Supreme Court, Court of Appeals, Sandiganbayan, Court of Tax Appeals and in All Halls of Justice," was issued by Chief Justice Reynato Puno on January 22, 2008.

[11] *Rollo*, pp.12-13.

[12] *Id.*, at 1-4.

that they were the persons found smoking in the fire exit. She also clarified that the facts contained in the reports consisted of violations of reasonable office rules and regulations, particularly Office Order No. 06-2009, and Civil Service Commission (*CSC*) Memorandum Circular No. 17, Series of 2009. She likewise cited a Memorandum dated October 6, 2009, issued by the OAS through Atty. Ma. Carina M. Cunanan, declaring that smoking is now strictly prohibited inside the Supreme Court's premises.

Atty. Candelaria found that the respondents' acts constituted a violation of reasonable office rules and regulations—a light offense under Section 52(C)(3) of Rule IV on Penalties of the Uniform Rules on Administrative Cases in the Civil Service,[13] for which the penalty is Reprimand.[14] Nevertheless, she recommended that a WARNING be issued to the respondents, as well as a reminder that a repetition of the same or similar acts be dealt with more strictly in the future. In merely admonishing the respondents instead of issuing a reprimand, Atty. Candelaria considered that the respondents had never been charged with any offense prior to this incident.[15]

We agree with Atty. Candelaria's recommendation that a WARNING issued to the respondents is sufficient. We appreciate Atty. Candelaria's submitted reason that this is the respondents' first offense, and is in fact the first case in this Court involving

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[13] Resolution No. 99-1936, otherwise known as the "Uniform Rules on Administrative Cases in the Civil Service," issued by the Civil Service Commission on August 31, 1999, took effect on September 27, 1999.

[14] Section 53 (C) (3) of Uniform Rules on Administrative Cases in the Civil Service reads:

C. The following are ***Light Offenses*** with corresponding penalties:

x x x x x x x x x

3. Violation of reasonable office rules and regulations:

1st Offense – Reprimand

2nd Offense – Suspension 1-30 days

3rd Offense – Dismissal

[15] *Rollo*, p. 4.

smoking. Separately from these reasons, we take into account compelling considerations that dissuade us from imposing the full sanctions on the respondents.

The statute that actually penalizes smoking is Republic Act (R.A.) No. 9211 or the Tobacco Regulation Act of 2003[16] which, in order to foster a healthful environment, absolutely prohibits smoking in specified public places[17] and designates smoking and non-smoking areas in places where the absolute ban on smoking does not apply.[18] Under this law, the Court is generally

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[16] Effective date – June 28, 2003.

[17] Section 5, R.A. No. 9211. Smoking Ban in Public Places. — Smoking shall be absolutely prohibited in the following public places:

a. Centers of youth activity such as playschools, preparatory schools, elementary schools, high schools, colleges and universities, youth hostels and recreational facilities for persons under eighteen (18) years old;

b. Elevators and stairwells;

c. Locations in which fire hazards are present, including gas stations and storage areas for flammable liquids, gas, explosives or combustible materials;

d. Within the buildings and premises of public and private hospitals, medical, dental, and optical clinics, health centers, nursing homes, dispensaries and laboratories;

e. Public conveyances and public facilities including airport and ship terminals and train and bus stations, restaurants and conference halls, except for separate smoking areas; and

f. Food preparation areas.

[18] Section 6, R.A. No. 9211. Designated Smoking and Non-smoking Areas. — In all enclosed places that are open to the general public, private workplaces and other places not covered under the preceding section, where smoking may expose a person other than the smoker to tobacco smoke, the owner, proprietor, operator, possessor, manager or administrator of such places shall establish smoking and non-smoking areas. Such areas may include a designated smoking area within the building, which may be in an open space or separate area with proper ventilation, but shall not be located within the same room that has been designated as a non-smoking area.

All designated smoking areas shall have at least one (1) legible and visible sign posted, namely "SMOKING AREA" for the information and guidance of all concerned. In addition, the sign or notice posted shall

considered a place where smoking is restricted, rather than absolutely banned. Exceptions to this characterization are the Court's elevators and stairwells; the Court's medical and dental clinics; and the Court's *cafeteria* and other dining areas (including the Justices' Lounge), together with their food preparation areas, where an absolute ban applies. In the areas where smoking restriction applies, the law requires that the Court designate smoking and non-smoking areas. Significantly, the law carries specific penalties for violations, ranging from a low of a ₱500.00 fine for the first offense, to a high of not more than ₱10,000.00 fine for the third offense.[19]

In the present case, the respondents were caught smoking (as Atty. Candelaria found and we have no reason to dispute this finding) at the Court's stairwell – an area subject to an absolute ban on smoking. Thus, technically, a smoking violation under R.A. No. 9211 exists.

We note, however, that the respondents were never held to account for violation of R.A. No. 9211 and, in fact, had raised the question of under which law or regulation they were being held accountable. In response, the OAS pointed to Section 6, in connection with Section 1, of Office Order No. 06-2009; and Civil Service Commission (CSC) Memorandum Circular No. 17, series of 2009. [20] *Thus, the respondents never defended themselves against any charged violation of R.A. No. 9211 and cannot be held liable under this law pursuant to the present charge against them.*

Office Order No. 06-2009, under which the respondents are charged, covers absolute smoking prohibition areas greater than those covered by R.A. 9211, which include all interior areas of the buildings of the courts and the areas immediately adjacent

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include a warning about the health effects of direct or secondhand exposure to tobacco smoke. Non-Smoking areas shall likewise have at least one (1) legible and visible sign, namely: "NON-SMOKING AREA" or "NO SMOKING."

[19] R.A. No. 9211, Section 32(a).

[20] *Supra* note 3.

to these buildings. The Office Order still allows smoking within court premises (apparently referring to exterior areas), but such smoking has to be done in designated places. Sections 2 and 3 of Office Order No. 06-2009 provides for the designation of smoking areas:

> Sec. 2. Smoking Areas.– Court personnel who choose to smoke shall do so in open locations at reasonable distance (five or more meters) from any building, enclosed area, or vehicle where smoking is prohibited to ensure that environmental tobacco smoke does not enter the building, enclosed area, or vehicle through entrances, windows, ventilation or exhaust systems or any other means.
>
> Sec. 3. Designation of smoking areas. – (a) In the Supreme Court, Court of Appeals, Sandiganbayan, and Court of Tax Appeals, their respective Chief Administrative Officers shall designate the smoking areas in their compounds.

Compliance with the Office Order is enforced under its Section 6 on Administrative Sanction.[21]

Implicit, to our mind, in these provisions is that appropriate smoking areas should be designated to give full effect to the Office Order. The smokers within the courts must know not only where they cannot smoke, but also where they can legitimately smoke.

Unfortunately, no designation of the smoking areas was immediately made. In fact, a clarificatory Memorandum dated October 6, 2009 states that *"smoking is now strictly prohibited inside the Supreme Court's premises,"* since there are no open areas that are five or more meters away from any building, enclosed area or vehicle where smoking is absolutely prohibited.

After the smoking incident involving the respondents on October 27, 2009, the Court clarified the interpretation of the issuances on smoking to reflect the interpretation the Court believes to be correct. On December 15, 2009, the Court *En Banc* promulgated the Resolution directing the OAS to recommend smoking areas within the Court pursuant to Sections

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[21] *Supra* note 1.

2 and 3 of Memorandum Circular No. 01-2008A.[22] In compliance with this December 15, 2009 Resolution, the OAS addressed a Memorandum to the Chief Justice recommending two areas in the Court that may be designated as smoking areas: (1) a portion of the Taft side parking area in the Old Compound; and (2) a space between the DOJ building and the front exit gate in the New Compound. *In effect, the Court invalidated the October 6, 2009 Memorandum declaring a total smoking prohibition within court premises,* but it was not until February 9, 2010 that the matter was clarified when the Court *En Banc* approved the OAS Memorandum to the Chief Justice on the designated smoking areas.

To be sure, the stairwell where the respondents smoked is considered a completely banned area under the Office Order and does not need the issuance of any clarificatory smoking area designation. The lack of designation, however, raises questions about the status of the Office Order and the issuances it seeks to implement (specifically, Administrative Circular No. 09-99, Memorandum Circular No. 01-2008A, as well as the related Civil Service Memorandum Circular No. 17, Series of 2009). One of the questions is whether there can be a valid partial enforcement of the Office Order.

Effectively, partial enforcement upholds that part of the Office Order that prohibits smoking in certain areas, but nullifies equally critical parts of the rule that clearly allow smoking in designated areas. Stated differently, partial enforcement gives effect to the part of the Office Order absolutely prohibiting smoking in certain areas, without implementing the parts that call for the designation of smoking areas. An arguable objection to this manner of implementation is the badge of inequity that it carries, as it places a greater burden upon smokers than that which the Office Order intended; without any designated smoking area, they are always at risk of running afoul of the Office Order.

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[22] The Court issued this Resolution pursuant to a Letter-Petition dated November 5, 2009, signed by Court employees seeking the recall of the October 6, 2009 Memorandum strictly prohibiting smoking within the Court premises.

When the interpretation of a statute or a rule according to the exact and literal import of its words would contravene the clear purposes of the law (in the case of the Office Order, to safeguard health and environmental concerns, while respecting the rights of the individual), such interpretation should be disregarded in favor of a construction of the law made according to its spirit and reason.[23] A law's *raison d'etre* must be ascertained from a consideration of the rule as a whole, not of an isolated part of a particular provision alone. A word or phrase taken in isolation from its context might easily convey a meaning quite different from the one actually intended.[24]

Another point to consider is the reality that the Office Order imposes an administrative sanction on violating court officials and employees. Thus, strictly speaking, the Office Order is a **penal** measure because of the punishment it imposes. The penal provisions of a law or regulation are to be construed strictly – a rule of construction that emphatically forbids any attempt to hold that when the commission of an act on certain specific occasions is penalized, it should be penalized on all other occasions.[25] It is beyond the jurisdiction of the courts to increase the restrictions provided by law.[26] When Section 6 of Office Order No. 06-2009 sets out to penalize only the act of smoking outside the designated smoking areas, but ends up penalizing the act in all the areas within the Court because no proper smoking area has been designated, the rule is thereby expanded beyond its intended parameters.

The rule, being penal, must also be construed with such strictness as to carefully safeguard the rights of the respondents and at the same time preserve its obvious intention. If the language is plain, it will be construed as it is read, with the words of the rule given their full meaning; if ambiguous, the court will lean more strongly in favor of the respondents than

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[23] *Lopez & Sons, Inc. v. Court of Tax Appeals*, 100 Phil. 850, 856 (1957).

[24] *People v. Judge Purisima*, 176 Phil. 186, 204 (1978).

[25] *United States v. Estapia*, 37 Phil. 17, 21 (1917).

[26] *Go Chioco v. Martinez*, 45 Phil. 256, 281 (1923).

it would if the statute were remedial.[27] The strict construction of penal statutes against the state and their liberal construction in favor of an accused, defendant, or respondent are not intended to enable a guilty person to escape punishment through a technicality, but to provide a precise definition of forbidden acts.[28]

It must likewise be considered, still with respect to the penal nature of the Office Order, that not only smoking violators but even the Chief of our OAS may have technically been in violation of the Office Order when she failed to comply with the duty to designate the smoking areas within Court premises.[29] As worded, Section 3 of the Office Order imposes this duty on the Chief Administrative Officer. Thus, the Office Order casts a net wider than that which caught the respondents. In the absence of any Court action for the omission under Section 3, so also should we not act at this point on other violations of our rule.

An aspect obviously absent from this discussion is CSC Memorandum Circular No. 17, Series of 2009, that was also allegedly violated. The absence is intentional to avoid repetition, as this Memorandum is no different in its terms and effects from Office Order No. 06-2009; thus, what applies to the latter – with due adjustments owing to circumstances peculiar to the development of Office Order No. 06-2009 within the Court – similarly applies to the former.

Under the circumstances, in addition to those pointed out by Atty. Eden Candelaria and out of considerations of fairness that the Court should exemplify, we believe and so hold that we should not impose on the respondents the strict sanction the Office Order carries. The health and safety concerns that our smoking policy embodies, however, should not be lost on the respondents and on everyone within the Court, smokers and non-smokers alike. Hence, we have to give the respondents

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[27] *United v. Go Chico,* 14 Phil. 128, 140-141 (1909).

[28] *People v. Judge Purisima*, 176 Phil. 186, 208 (1978).

[29] See: Section 3(a), Office Order No. 06-2009.

the firm warning that the chief enforcer of the Office Order – the OAS, through Atty. Eden Candelaria – recommended, while at the same time also warning everyone that this initial lenient consideration is not apt to be repeated in future violations now that our smoke-free policy is complete.

WHEREFORE, in view of the foregoing, Atty. Brandon C. Domingo, Atty. Leo Felix S. Domingo, and Atty. Emiliana Helen R. Ubongen are firmly *WARNED* and *PUT ON NOTICE* that a repetition of any prohibited smoking under the law and against our internal Court policies shall be dealt with more severely.

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.

SECOND DIVISION

[G.R. No. 164141. February 26, 2010]

TIGER CONSTRUCTION AND DEVELOPMENT CORPORATION, *petitioner, vs.* **REYNALDO ABAY, RODOLFO ARCENAL, ROLANDO ARCENAL, PEDRO BALANA, JESUS DEL AYRE, ARNEL EBALE, ARNEL FRAGA, ANGEL MARAÑO, METHODEO SOTERIO, MANUEL TAROMA, PIO ZETA, ISAIAS JAMILIANO, ARNALDO RIVERO, NOEL JAMILIANO, JOEL ARTITA, DANIEL DECENA, ZENAIDA LAZALA, RONNIE RIVERO, RAMON ABAY, JOSE ABAY, HECTOR ABAY, EDISON ABAIS, DIOGENES ARTITA, FLORENTINO B. ARTITA, ROLANDO ANTONIO, JERRY ARAÑA, MAXIMENO M. BARRA, ARMANDO BAJAMUNDI, DANIEL BARRION,**

RENANTE BOALOY, ROLANDO BONOAN, FRANCISCO BAUTISTA, NOEL BENAUAN, EDGARDO BOALOY, REYNALDO BONOAN, DIONISIO BOSQUILLOS, ROGELIO B. COPINO, JR., RONNIE DELOS SANTOS, FELIX DE SILVA, REYNALDO LASALA, LARRY LEVANTINO, DOMINGO LOLINO, ROSALIO LOLINO, PERFECTO MACARIO, ROLANDO MALLANTA, ANASTACIO MARAVILLA, ROSARIO MARBELLA, GILBERTO MATUBIS, RODEL MORILLO, LORENZO PAGLINAWAN, JOSE PANES, RUBEN PANES, MATEO PANTELA, SANTOS SALIRE, GERMAN TALAGTAG, HILARIO TONAMOR, JESUS TAMAYO, JOSE TRANQUILO, EDISON VATERO, and ROBERTO VERGARA, *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; JURISDICTION; ORDERS ISSUED WITHOUT JURISDICTION ARE NULL AND VOID; EXCEPTION IN CASE AT BAR.— While it is true that orders issued without jurisdiction are considered null and void and, as a general rule, may be assailed at any time, the fact of the matter is that in this case, Director Manalo acted *within her jurisdiction*.

2. LABOR LAW AND SOCIAL WELFARE LEGISLATION; LABOR STANDARDS; VIOLATIONS; WHO HAS JURISDICTION; CASE AT BAR.— Under Article 128 (b) of the Labor Code, as amended by Republic Act (RA) No. 7730, the DOLE Secretary and her representatives, the regional directors, have jurisdiction over labor standards violations based on findings made in the course of inspection of an employer's premises. The said jurisdiction is *not* affected by the amount of claim involved, as RA 7730 had effectively removed the jurisdictional limitations found in Articles 129 and 217 of the Labor Code insofar as inspection cases, pursuant to the visitorial and enforcement powers of the DOLE Secretary, are concerned. The last sentence of Article 128(b) of the Labor Code recognizes an *exception* to the jurisdiction of the DOLE Secretary and her representatives, but such exception is neither an issue nor applicable here.

3. REMEDIAL LAW; CIVIL PROCEDURE; JURISDICTION; CONFERRED BY LAW; CASE AT BAR.— Director Manalo's initial endorsement of the case to the NLRC, on the mistaken opinion that the claim was within the latter's jurisdiction, did not oust or deprive her of jurisdiction over the case. She therefore retained the jurisdiction to decide the case when it was eventually returned to her office by the DOLE Secretary. "Jurisdiction or authority to try a certain case is conferred by law and not by the interested parties, much less by one of them, and should be exercised precisely by the person in authority or body in whose hands it has been placed by the law."

4. ID.; ID.; NOT APPLICABLE IN LABOR CASES, PROCEDURAL LAPSES MAY BE DISREGARDED IN THE INTEREST OF SUBSTANTIAL JUSTICE; CASE AT BAR.— We also cannot accept petitioner's theory that Director Manalo's initial endorsement of the case to the NLRC served as a dismissal of the case, which prevented her from subsequently assuming jurisdiction over the same. The said endorsement was evidently not meant as a final disposition of the case; it was a mere referral to another agency, the NLRC, on the mistaken belief that jurisdiction was lodged with the latter. It cannot preclude the regional director from subsequently deciding the case after the mistake was rectified and the case was returned to her by the DOLE Secretary, particularly since it was a labor case where procedural lapses may be disregarded in the interest of substantial justice.

5. POLITICAL LAW; CONSTITUTIONAL LAW; DUE PROCESS ADMINISTRATIVE DUE PROCESS.— "Procedural due process as understood in administrative proceedings follows a more flexible standard as long as the proceedings were undertaken in an atmosphere of fairness and justice." Although Director Manalo's endorsement of the complaint to the NLRC turned out to be ill-advised (because the regional director actually had jurisdiction), we note that no right of the parties was prejudiced by such action. Petitioner was properly investigated, received a Notice of Inspection Results, participated fully in the summary hearings, filed a Motion for Reconsideration, and even a Supplemental Pleading to the Motion for Reconsideration.

6. REMEDIAL LAW; RULE 142; FALSE ALLEGATIONS; IN CASE AT BAR, PETITIONER IS MERELY USING THE ALLEGED LACK OF JURISDICTION IN A BELATED ATTEMPT TO REVERSE OR MODIFY AN ORDER OR JUDGMENT THAT HAD ALREADY BECOME FINAL AND EXECUTORY.— There is also reason to doubt the good faith of petitioner in raising the alleged lack of jurisdiction. If, in all honesty and earnestness, petitioner believed that Director Manalo was acting without jurisdiction, it could have filed a petition for *certiorari* under Rule 65 *within* the proper period prescribed, which is 60 days from notice of the order. Its failure to do so, without any explanation for such failure, belies its good faith. In such circumstances, it becomes apparent that petitioner is merely using the alleged lack of jurisdiction in a belated attempt to reverse or modify an order or judgment that had already become final and executory. This cannot be done.

7. ID.; CIVIL PROCEDURE; JUDGMENTS; FINAL AND EXECUTORY JUDGMENTS; APPELLATE COURT LOSES JURISDICTION TO ENTERTAIN APPEAL OF THE SAME.— In *Estoesta, Sr. v. Court of Appeals*, cited by petitioner itself (albeit out of context), we ruled that when a decision has already become final and executory, an appellate court loses jurisdiction to entertain an appeal much less to alter, modify or reverse the final and executory judgment. Thus: Well-settled is the rule that perfection of an appeal in the manner and within the reglementary period allowed by law is not only mandatory but also jurisdictional. Thus, if no appeal is perfected on time, the decision becomes final and executory by operation of law after the lapse of the reglementary period of appeal. Being final and executory the decision in question can no longer be altered, modified, or reversed by the trial court nor by the appellate court. Accordingly, the prevailing party is entitled as a matter of right to a writ of execution the issuance of which is a ministerial duty compelled by *mandamus.* It is actually within this context that the Court ruled that the appellate court, in reviewing a judgment that is already final and executory, acts without jurisdiction, and its decision is thus void and can be assailed at any time.

APPEARANCES OF COUNSEL

Cañeba & Andres Law Office for petitioner.

D E C I S I O N

DEL CASTILLO, *J.*:

While the general rule is that any decision rendered without jurisdiction is a total nullity and may be struck down at any time, the party that asserts it must be in good faith and not evidently availing thereof simply to thwart the execution of an award that has long become final and executory.

This Petition for Review on *Certiorari*[1] filed by petitioner Tiger Construction and Development Corporation (TCDC) assails the February 27, 2004[2] Resolution of the Court of Appeals (CA) in CA-G.R. SP No. 82344 which dismissed its petition for *certiorari* as well as the June 29, 2004[3] Resolution of the same court which denied its motion for reconsideration. The June 29, 2004 Resolution disposed as follows:

> This petition was dismissed on February 27, 2004 as follows:
>
> > Considering that the Certification against forum-shopping is signed by the manager of petitioner-corporation, unaccompanied by proof that he is authorized to represent the latter in this case, the Court resolves to DISMISS the petition.
>
> In its Motion for Reconsideration to the Resolution, petitioner attached Annex "A" which is the certification of the Board Resolution of TCDC authorizing Mr. Robert Kho to represent the corporation in filing the petition in this case.
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> Unfortunately, the Board met for the grant of such authority only on February 24, 2004 or four (4) days after the petition was filed on

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[1] *Rollo*, pp. 9-26.

[2] *Id.* at 28; penned by Associate Justice Romeo A. Brawner and concurred in by Associate Justices Rebecca De Guia-Salvador and Jose C. Reyes, Jr.

[3] *Id.* at 30.

February 20, 2004. In other words, the Board Resolution was a mere afterthought and thus will not serve to cure the fatal omission.

WHEREFORE, the Motion for Reconsideration is DENIED for lack of merit.

SO ORDERED.[4]

Factual Antecedents

On the basis of a complaint filed by respondents Reynaldo Abay and fifty-nine (59) others before the Regional Office of the Department of Labor and Employment (DOLE), an inspection was conducted by DOLE officials at the premises of petitioner TCDC. Several labor standard violations were noted, such as deficiencies in record keeping, non-compliance with various wage orders, non-payment of holiday pay, and underpayment of 13th month pay. The case was then set for summary hearing.

However, before the hearing could take place, the Director of Regional Office No. V, Ma. Glenda A. Manalo (Director Manalo), issued an Order on July 25, 2002, which reads:

> Consistent with Article 129 of the Labor Code of the Philippines in relation to Article 217 of the same Code, this instant case should be *referred back* to the National Labor Relations Commission (NLRC) Sub-Arbitration Branch V, Naga City, *on the ground that the aggregate money claim of each worker exceeds the jurisdictional amount of this Office [which] is (sic) Five Thousand Pesos Only (₱5,000.00).*
>
> WHEREFORE, in view of the foregoing, this case falls under the original and exclusive jurisdiction of the National Labor Relations Commission as provided under Article 217 of the Labor Code of the Philippines.[5]

Before the NLRC could take any action, DOLE Secretary Patricia A. Sto. Tomas (Secretary Sto. Tomas), in an apparent reversal of Director Manalo's endorsement, issued another inspection authority on August 2, 2002 in the same case. Pursuant to such authority, DOLE officials conducted another

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[4] Assailed Resolution, *id.* at 30.

[5] *Id.* at 12.

investigation of petitioner's premises and the same violations were discovered.

The DOLE officials issued a Notice of Inspection Results to petitioner directing it to rectify the violations within five days from notice. For failure to comply with the directive, the case was set for summary hearing on August 19, 2002. On even date, petitioner allegedly questioned the inspector's findings and argued that the proceedings before the regional office had been rendered moot by the issuance of the July 25, 2002 Order endorsing the case to the NLRC. According to petitioner, this July 25, 2002 Order was tantamount to a dismissal on the ground of lack of jurisdiction, which dismissal had attained finality; hence, all proceedings before the DOLE regional office after July 25, 2002 were null and void for want of jurisdiction.

On September 30, 2002, Director Manalo issued an Order directing TCDC to pay ₱2,123,235.90 to its employees representing underpayment of salaries, 13th month pay, and underpayment of service incentive leave pay and regular holiday pay. TCDC filed a Motion for Reconsideration on October 17, 2002 and a Supplemental Pleading to the Motion for Reconsideration on November 21, 2002, reiterating the argument that Director Manalo had lost jurisdiction over the matter.

Apparently convinced by petitioner's arguments, Director Manalo again endorsed the case to the NLRC Regional Arbitration Branch V (Legaspi City). On January 27, 2003, the NLRC returned the entire records of the case to Director Manalo on the ground that the NLRC does not have jurisdiction over the complaint.

Having the case in her office once more, Director Manalo finally issued an Order dated January 29, 2003 denying petitioner's motion for reconsideration for lack of merit.

Since TCDC did not interpose an appeal within the prescribed period, Director Manalo issued forthwith a Writ of Execution on February 12, 2003.

On May 14, 2003, while the sheriff was in the process of enforcing the Writ of Execution, and more than three months after the denial of its motion for reconsideration, TCDC filed an admittedly belated appeal with the DOLE Secretary. There it reiterated its argument that, subsequent to the July 25, 2002 Order, all of Director Manalo's actions concerning the case are null and void for having been issued without jurisdiction.

Acting on the ill-timed appeal, Secretary Sto. Tomas issued an Order[6] dated January 19, 2004 dismissing petitioner's appeal for lack of merit. Citing *Guico v. Quisumbing*,[7] Secretary Sto. Tomas held that jurisdiction over the case properly belongs with the regional director; hence, Director Manalo's endorsement to the NLRC was a clear error. Such mistakes of its agents cannot bind the State, thus Director Manalo was not prevented from continuing to exercise jurisdiction over the case.

Petitioner then filed a petition for *certiorari*[8] before the CA but the petition was dismissed for failure to certify against non-forum shopping. Petitioner's motion for reconsideration was likewise denied because the board resolution submitted was found to be a mere after-thought.

Petitioner thus filed the instant petition, which we initially denied on September 15, 2004[9] on the ground that the petition did not show any reversible error in the assailed Resolutions of the CA. Undaunted, TCDC filed a Motion for Reconsideration[10] insisting that the CA erred in dismissing its petition for *certiorari* on a mere technicality. Petitioner argues that the strict application of the rule on verification and certification of non-forum shopping will result in a patent denial of substantial justice.

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6 CA *rollo*, pp. 19-23.

7 359 Phil. 197, 207 (1998).

8 CA *rollo*, pp. 1-18.

9 *Rollo*, p. 76.

10 *Id.* at 77-80.

Since respondents did not[11] file a comment on the motion for reconsideration, we resolved[12] to grant the same and to reinstate the petition.[13]

Issue

The issue in the case is whether petitioner can still assail the January 29, 2003 Order of Director Manalo allegedly on the ground of lack of jurisdiction, after said Order has attained finality and is already in the execution stage.

Our Ruling

The petition lacks merit.

Petitioner admits that it failed to appeal the January 29, 2003 Order within the period prescribed by law. It likewise admits that the case was already in the execution process when it resorted to a belated appeal to the DOLE Secretary. Petitioner, however, excuses itself from the effects of the finality of the Order by arguing that it was allegedly issued without jurisdiction and may be assailed at any time.

While it is true that orders issued without jurisdiction are considered null and void and, as a general rule, may be assailed at any time, the fact of the matter is that in this case, Director Manalo acted *within her jurisdiction*. Under Article 128 (b) of the Labor Code,[14]as amended by Republic Act (RA)

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[11] *Id.* at 81, 98.

[12] *Id.* at 102-103.

[13] In light of the parties' failure to file their respective memoranda within the fixed periods, the Court resolved on November 12, 2008 (*id.* at 115) to deem waived the filing of memoranda for both parties.

[14] Article 128 of the Labor Code provides:

Article 128. VISITORIAL AND ENFORCEMENT POWER. – x x x

(b) Notwithstanding the provisions of Articles 129 and 217 of this Code to the contrary, and in cases where the relationship of employer-employee still exists, the Secretary of Labor and Employment or his duly authorized representatives shall have the power to issue compliance orders

No. 7730,[15] the DOLE Secretary and her representatives, the regional directors, have jurisdiction over labor standards violations based on findings made in the course of inspection of an employer's premises. The said jurisdiction is *not* affected by the amount of claim involved, as RA 7730 had effectively removed the jurisdictional limitations found in Articles 129 and 217 of the Labor Code insofar as inspection cases, pursuant to the visitorial and enforcement powers of the DOLE Secretary, are concerned.[16] The last sentence of Article 128(b) of the Labor Code recognizes an *exception*[17] to the jurisdiction of the DOLE

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to give effect to the labor standards provisions of this Code and other labor legislation based on the findings of labor employment and enforcement officers or industrial safety engineers made in the course of inspection. The Secretary or his duly authorized representatives shall issue writs of execution to the appropriate authority for the enforcement of their orders, except in cases where the employer contests the findings of the labor employment and enforcement officer and raises issues supported by documentary proofs which were not considered in the course of inspection.

[15] Entitled "AN ACT FURTHER STRENGTHENING THE VISITORIAL AND ENFORCEMENT POWERS OF THE SECRETARY OF LABOR AND EMPLOYMENT, AMENDING FOR THE PURPOSE ARTICLE 128 OF P.D. 442, AS AMENDED, OTHERWISE KNOWN AS THE LABOR CODE OF THE PHILIPPINES," dated June 2, 1994.

[16] *Ex-Bataan Veterans Security Agency, Inc. v. Laguesma*, G.R. No. 152396, November 20, 2007, 537 SCRA 651, 659*; V.L. Enterprises v. Court of Appeals*, G.R. No. 167512, March 12, 2007, 518 SCRA 174, 175; *EJR Crafts Corporation v. Court of Appeals*, G.R. No. 154101, March 10, 2006, 484 SCRA 340, 350; *Guico v. Quisumbing*, *supra* note 7.

[17] As explained in *Ex-Bataan Veterans Security Agency, Inc. v. Laguesma*, *supra* note 16, "if the labor standards case is covered by the exception clause in Article 128(b) of the Labor Code, then the Regional Director will have to endorse the case to the appropriate Arbitration Branch of the NLRC. In order to divest the Regional Director or his representatives of jurisdiction, the following elements must be present: (a) that the employer contests the findings of the labor regulations officer and raises issues thereon; (b) that in order to resolve such issues, there is a need to examine evidentiary matters; and (c) that such matters are not verifiable in the normal course of inspection. The rules also provide that the employer shall raise such objections during the hearing of the case or at any time after receipt of the notice of inspection results."

Secretary and her representatives, but such exception is neither an issue nor applicable here.

Director Manalo's initial endorsement of the case to the NLRC, on the mistaken opinion that the claim was within the latter's jurisdiction, did not oust or deprive her of jurisdiction over the case. She therefore retained the jurisdiction to decide the case when it was eventually returned to her office by the DOLE Secretary. "Jurisdiction or authority to try a certain case is conferred by law and not by the interested parties, much less by one of them, and should be exercised precisely by the person in authority or body in whose hands it has been placed by the law."[18]

We also cannot accept petitioner's theory that Director Manalo's initial endorsement of the case to the NLRC served as a dismissal of the case, which prevented her from subsequently assuming jurisdiction over the same. The said endorsement was evidently not meant as a final disposition of the case; it was a mere referral to another agency, the NLRC, on the mistaken belief that jurisdiction was lodged with the latter. It cannot preclude the regional director from subsequently deciding the case after the mistake was rectified and the case was returned to her by the DOLE Secretary, particularly since it was a labor case where procedural lapses may be disregarded in the interest of substantial justice.[19]

"Procedural due process as understood in administrative proceedings follows a more flexible standard as long as the proceedings were undertaken in an atmosphere of fairness and justice."[20] Although Director Manalo's endorsement of the complaint to the NLRC turned out to be ill-advised (because

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[18] *Tolentino v. Quirino*, 64 Phil. 873, 874 (1937).

[19] *Pamplona Plantation Company, Inc. v. Tinghil,* 491 Phil. 15, 30 (2005); *Ranara v. National Labor Relations Commission,* G.R. No. 100969, August 14, 1992, 212 SCRA 631, 634.

[20] *T.H. Valderrama and Sons, Inc. v. Drilon,* G.R. No. 78212, January 22, 1990, 181 SCRA 308.

the regional director actually had jurisdiction), we note that no right of the parties was prejudiced by such action. Petitioner was properly investigated, received a Notice of Inspection Results, participated fully in the summary hearings, filed a Motion for Reconsideration, and even a Supplemental Pleading to the Motion for Reconsideration.

There is also reason to doubt the good faith of petitioner in raising the alleged lack of jurisdiction. If, in all honesty and earnestness, petitioner believed that Director Manalo was acting without jurisdiction, it could have filed a petition for *certiorari* under Rule 65 *within* the proper period prescribed, which is 60 days from notice of the order.[21] Its failure to do so, without any explanation for such failure, belies its good faith. In such circumstances, it becomes apparent that petitioner is merely using the alleged lack of jurisdiction in a belated attempt to reverse or modify an order or judgment that had already become final and executory.[22] This cannot be done. In *Estoesta, Sr. v. Court of Appeals,* cited by petitioner itself (albeit out of context), we ruled that when a decision has already become final and executory, an appellate court loses jurisdiction to entertain an appeal much less to alter, modify or reverse the final and executory judgment. Thus:

> Well-settled is the rule that perfection of an appeal in the manner and within the reglementary period allowed by law is not only mandatory but also jurisdictional. Thus, if no appeal is perfected on time, the decision becomes final and executory by operation of law after the lapse of the reglementary period of appeal. Being final and executory the decision in question can no longer be altered, modified, or reversed by the trial court nor by the appellate court. Accordingly, the prevailing party is entitled as a matter of right to a writ of execution the issuance of which is a ministerial duty compelled by *mandamus*.[23]

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[21] See *National Federation of Labor v. Hon. Laguesma,* 364 Phil. 405, 411 (1999).

[22] G.R. No. 74817, November 8, 1989, 179 SCRA 203, 211-212.

[23] *Id*.

It is actually within this context that the Court ruled that the appellate court, in reviewing a judgment that is already final and executory, acts without jurisdiction, and its decision is thus void and can be assailed at any time.

In view of our ruling above that the January 29, 2003 Order was rendered with jurisdiction and can no longer be questioned (as it is final and executory), we can no longer entertain petitioner's half-hearted and unsubstantiated arguments that the said Order was allegedly based on erroneous computation and included non-employees. Likewise, we find no more need to address petitioner's contention that the CA erred in dismissing its petition on the ground of its belated compliance with the requirement of certification against forum-shopping.

WHEREFORE, the instant petition is *DENIED.* The assailed February 27, 2004 Resolution as well as the June 29, 2004 Resolution of the Court of Appeals in CA-G.R. SP No. 82344 are *AFFIRMED* insofar as it dismisses Tiger Construction and Development Corporation's petition and motion for reconsideration. Costs against petitioner.

SO ORDERED.

Carpio (Chairperson), Brion, Abad, and *Perez, JJ.*, concur.

SECOND DIVISION

[G.R. No. 165922. February 26, 2010]

BAGUIO MARKET VENDORS MULTI-PURPOSE COOPERATIVE (BAMARVEMPCO), represented by RECTO INSO, Operations Manager, *petitioner, vs.* **HON. ILUMINADA CABATO-CORTES, Executive Judge, Regional Trial Court, Baguio City,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; LEGAL FEES; COOPERATIVE CODE OF THE PHILIPPINES; EXEMPTION GRANTED BY THE CODE.— Article 62(6) of RA 6938 exempts cooperatives: x x x from the payment of all court and sheriff's fees payable to the Philippine Government for and in connection with all actions brought under this Code, or where such action is brought by the Cooperative Development Authority before the court, to enforce the payment of obligations contracted in favor of the cooperative. x x x The scope of the legal fees exemption Article 62(6) of RA 6938 grants to cooperatives is limited to two types of *actions*, namely: (1) actions brought under RA 6938; and (2) actions brought by the Cooperative Development Authority to enforce the payment of obligations contracted in favor of cooperatives.

2. ID.; ID.; ID.; ID.; CASE AT BAR.— By simple deduction, it is immediately apparent that Article 62(6) of RA 6938 is no authority for petitioner to claim exemption from the payment of legal fees in *this* proceeding because *first*, the fees imposable on petitioner do not pertain to an action brought under RA 6938 but to a petition for extrajudicial foreclosure of mortgage under Act 3135. *Second*, petitioner is not the Cooperative Development Authority which can claim exemption only in actions to enforce payments of obligations on behalf of cooperatives.

3. POLITICAL LAW; CONSTITUTIONAL LAW; JUDICIARY; COURT'S POWER TO PROMULGATE JUDICIAL RULES; NO LONGER SHARED WITH CONGRESS STARTING WITH THE 1987 CONSTITUTION.— However, the Court *En Banc* has recently ruled in *Re: Petition for Recognition of the Exemption*

of the Government Service Insurance System from Payment of Legal Fees on the issue of legislative exemptions from court fees. We take the opportunity to reiterate our *En Banc* ruling in *GSIS*. Until the 1987 Constitution took effect, our two previous constitutions *textualized* a power sharing scheme between the legislature and this Court in the enactment of judicial rules. Thus, both the 1935 and the 1973 Constitutions vested on the Supreme Court the "power to promulgate rules concerning pleading, practice, and procedure in all courts, and the admission to the practice of law." However, these constitutions also granted to the legislature the concurrent power to "repeal, alter or supplement" such rules. The 1987 Constitution textually altered the power-sharing scheme under the previous charters by deleting in Section 5(5) of Article VIII Congress' subsidiary and corrective power. This glaring and fundamental omission led the Court to observe in *Echegaray v. Secretary of Justice* that this Court's power to promulgate judicial rules "is no longer shared by this Court with Congress": The 1987 Constitution molded an even stronger and more independent judiciary. Among others, it enhanced the rule making power of this Court [under] Section 5(5), Article VIII x x x. *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. x x x

4. ID.; ID.; ID.; ID.; ID.; *ECHEGARAY* RULING REAFFIRMED IN GSIS RULING.— Any lingering doubt on the import of the textual evolution of Section 5(5) should be put to rest with our recent *En Banc* ruling denying a request by the Government Service Insurance System (GSIS) for exemption from payment of legal fees based on Section 39 of its Charter, Republic Act No. 8291, exempting GSIS from "all taxes, assessments, fees, charges or dues of all kinds." Reaffirming *Echegaray*'s construction of Section 5(5), the Court described its exclusive power to promulgate rules on pleading, practice and procedure as "one of the safeguards of this Court's institutional

> independence": [T]he 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*. x x x

APPEARANCES OF COUNSEL

E.L. Gayo & Associates Law Office for petitioner.

D E C I S I O N

CARPIO, *J.*:

The Case

For review[1] are the Orders[2] of the Executive Judge of the Regional Trial Court of Baguio City finding petitioner Baguio Market Vendors Multi-Purpose Cooperative liable for payment of foreclosure fees.

The Facts

Petitioner Baguio Market Vendors Multi-Purpose Cooperative (petitioner) is a credit cooperative organized under Republic Act No. 6938 (RA 6938), or the Cooperative Code of the Philippines.[3] Article 62(6) of RA 6938 exempts cooperatives:

> from the payment of all court and sheriff's fees payable to the Philippine Government for and in connection with all actions brought under this Code, or where such action is brought by the Cooperative Development Authority before the court, to enforce the payment of obligations contracted in favor of the cooperative.[4]

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

[2] Dated 30 August 2004 and 6 October 2004.

[3] Effective 27 April 1990, 15 days after its publication in the Official Gazette on 2 April 1990 following Article 130 of RA 6938.

[4] For a comparison of the varying tax treatment of cooperatives created under RA 6938 and cooperatives created under Presidential Decree, see *PHILRECA v. Secretary*, 451 Phil. 683 (2003).

In 2004, petitioner, as mortgagee, filed with the Clerk of Court of the Regional Trial Court of Baguio City (trial court) a petition to extrajudicially foreclose a mortgage under Act 3135, as amended.[5] Under Section 7(c) of Rule 141, as amended,[6] petitions for extrajudicial foreclosure are subject to legal fees based on the value of the mortgagee's claim. Invoking Article 62 (6) of RA 6938, petitioner sought exemption from payment of the fees.

The Ruling of the Trial Court

In an Order dated 30 August 2004, Judge Iluminada Cabato-Cortes (respondent), Executive Judge of the trial court, denied the request for exemption, citing Section 22 of Rule 141 of the Rules of Court, as amended, exempting from the Rule's coverage only the "Republic of the Philippines, its agencies and instrumentalities" and certain suits of local government units.[7]

Petitioner sought reconsideration but respondent denied its motion in the Order dated 6 October 2004. This time, respondent reasoned that petitioner's reliance on Article 62(6) of RA 6938 is misplaced because the fees collected under Rule 141 are not "fees payable to the Philippine Government" as they do not accrue to the National Treasury but to a special fund[8] under the Court's control.[9]

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[5] An Act To Regulate the Sale of Property Under Special Powers Inserted In Or Annexed To Real Estate Mortgages.

[6] Most recently by Administrative Matter No. 04-2-04-SC, effective 16 August 2004.

[7] Section 22 provides: "*Government exempt*. – The Republic of the Philippines, its agencies and instrumentalities are exempt from paying the legal fees provided in the Rule. Local governments and government-owned or controlled corporations with or without independent charters 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."

[8] The Judiciary Development Fund, created under Presidential Decree No. 1949.

[9] *Rollo*, p. 15.

Hence, this petition.

Petitioner maintains that the case calls for nothing more than a simple application of Article 62(6) of RA 6938.

The Office of the Solicitor General (OSG), in its Manifestation (in lieu of Comment), joins causes with petitioner. The OSG submits that as the substantive rule, Article 62(6) of RA 6938 prevails over Section 22 of Rule 141, a judicial rule of procedure. The OSG also takes issue with respondent's finding that the legal fees collected under Rule 141 are not "fees payable to the Philippine Government" as the judiciary forms part of the Philippine government, as defined under the Revised Administrative Code.[10]

Although not a party to this suit, we required the Court's Office of the Chief Attorney (OCAT) to comment on the petition, involving as it does, issues relating to the Court's power to promulgate judicial rules. In its compliance, the OCAT recommends the denial of the petition, opining that Section 22, Rule 141, as amended, prevails over Article 62(6) of RA 6938 because (1) the power to impose judicial fees is eminently judicial and (2) the 1987 Constitution insulated the Court's rule-making powers from Congress' interference by omitting in the 1987 Constitution the provision in the 1973 Constitution allowing Congress to alter judicial rules. The OCAT called attention to the Court's previous denial of a request by a cooperative group for the issuance of "guidelines" to implement cooperatives' fees exemption under Article 62(6) of RA 6938.[11] Lastly, the OCAT recommends the amendment of Section 22, Rule 141 to make explicit the non-exemption of cooperatives from the payment of legal fees.

The Issue

The question is whether petitioner's application for extrajudicial foreclosure is exempt from legal fees under Article 62(6) of RA 6938.

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[10] Executive Order No. 292.

[11] A.M. No. 92-9-408-0, 6 October 1992, *Re: Request of the Philippine Federation of Credit Cooperatives, Inc.* (Min. Res.)

The Ruling of the Court

We hold that Article 62(6) of RA 6938 does not apply to petitioner's foreclosure proceeding.

Petitions for Extrajudicial Foreclosure Outside of the Ambit of Article 62(6) of RA 6938

The scope of the legal fees exemption Article 62(6) of RA 6938 grants to cooperatives is limited to two types of *actions*, namely: (1) actions brought under RA 6938; and (2) actions brought by the Cooperative Development Authority to enforce the payment of obligations contracted in favor of cooperatives. By simple deduction, it is immediately apparent that Article 62(6) of RA 6938 is no authority for petitioner to claim exemption from the payment of legal fees in *this* proceeding because *first*, the fees imposable on petitioner do not pertain to an action brought under RA 6938 but to a petition for extrajudicial foreclosure of mortgage under Act 3135. *Second*, petitioner is not the Cooperative Development Authority which can claim exemption only in actions to enforce payments of obligations on behalf of cooperatives.

The Power of the Legislature vis a vis the Power of the Supreme Court to Enact Judicial Rules

Our holding above suffices to dispose of this petition. However, the Court *En Banc* has recently ruled in *Re: Petition for Recognition of the Exemption of the Government Service Insurance System from Payment of Legal Fees*[12] on the issue of legislative exemptions from court fees. We take the opportunity to reiterate our *En Banc* ruling in *GSIS*.

Until the 1987 Constitution took effect, our two previous constitutions *textualized* a power sharing scheme between the legislature and this Court in the enactment of judicial rules. Thus, both the 1935[13] and the 1973[14] Constitutions vested on

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[12] A.M. No. 08-2-01-0, 11 February 2010 (Res.).

[13] Article VIII, Section 13.

[14] Article X, Section 5(5).

the Supreme Court the "power to promulgate rules concerning pleading, practice, and procedure in all courts, and the admission to the practice of law." However, these constitutions also granted to the legislature the concurrent power to "repeal, alter or supplement" such rules.[15]

The 1987 Constitution textually altered the power-sharing scheme under the previous charters by deleting in Section 5(5) of Article VIII Congress' subsidiary and corrective power.[16] This glaring and fundamental omission led the Court to observe in *Echegaray v. Secretary of Justice*[17] that this Court's power to promulgate judicial rules "is no longer shared by this Court with Congress":

The 1987 Constitution molded an even stronger and more independent judiciary. Among others, it enhanced the rule making power of this Court [under] Section 5(5), Article VIII[18] x x x .

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[15] The 1935 Constitution provides: "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." (Section 13, Article VIII). Similarly, the 1973 Constitution provides: "The Supreme Court shall have the following powers: 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." (Section 5(5), Article X).

[16] *In Re Cunanan*, 94 Phil. 534 (1954).

[17] 361 Phil. 73, 88 (1999).

[18] The provision reads in full:

> 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 under-privileged. 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. x x x (Italicization in the original; boldfacing supplied)

Any lingering doubt on the import of the textual evolution of Section 5(5) should be put to rest with our recent *En Banc* ruling denying a request by the Government Service Insurance System (GSIS) for exemption from payment of legal fees based on Section 39 of its Charter, Republic Act No. 8291, exempting GSIS from "all taxes, assessments, fees, charges or dues of all kinds."[19] Reaffirming *Echegaray*'s construction of Section 5(5), the Court described its exclusive power to promulgate rules on pleading, practice and procedure as "one of the safeguards of this Court's institutional independence":

[T]he 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.* [20] x x x (Emphasis supplied)

WHEREFORE, we *DENY* the petition. We *AFFIRM* the Orders dated 30 August 2004 and 6 October 2004 of the Executive Judge of the Regional Trial Court of Baguio City.

Let a copy of this Decision be furnished the Office of the Court Administrator for circulation to all courts.

SO ORDERED.

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

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[19] *Supra* note 12.

[20] *Id.* at 13-14.

SECOND DIVISION

[G.R. No. 167415. February 26, 2010]

ATTY. MANGONTAWAR M. GUBAT, *petitioner, vs.* **NATIONAL POWER CORPORATION,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; RULE 45 PETITION IS THE PROPER REMEDY BUT THE PERIOD TO FILE THE SAME HAS LAPSED; PETITION FOR *CERTIORARI* UNDER RULE 65 IS NOT A SUBSTITUTE FOR THE LOST APPEAL.— [T]he petition should have been dismissed outright because petitioner resorted to the wrong mode of appeal by filing the instant petition for *certiorari* under Rule 65. Section 1 of the said Rule explicitly provides that a petition for *certiorari* is available only when there is no appeal or any plain, speedy, and adequate remedy in the ordinary course of law. In this case, the remedy of appeal by way of a petition for review on *certiorari* under Rule 45 is not only available but also the proper mode of appeal. For all intents and purposes, we find that petitioner filed the instant petition for *certiorari* under Rule 65 as a substitute for a lost appeal. We note that petitioner received a copy of the January 19, 2005 Resolution of the CA denying his motion for reconsideration on January 28, 2005. Under Section 2 of Rule 45, petitioner has 15 days from notice of the said Resolution within which to file his petition for review on *certiorari*. As such, he should have filed his appeal on or before February 12, 2005. However, records show that the petition was posted on March 1, 2005, or long after the period to file the appeal has lapsed.

2. ID.; JUDGMENTS; SUMMARY JUDGMENT; WHEN PROPER.— A summary judgment is allowed only if, after hearing, the court finds that except as to the amount of damages, the pleadings, affidavits, depositions and admissions show no genuine issue as to any material fact and that the movant is entitled to a judgment as a matter of law. The purpose of a summary judgment is to avoid drawn out litigations and useless delays because the facts appear undisputed to the mind of the court. Such

judgment is generally based on the facts proven summarily by affidavits, depositions, pleadings, or admissions of the parties. For a full-blown trial to be dispensed with, the party who moves for summary judgment has the burden of demonstrating clearly the absence of genuine issues of fact, or that the issue posed is patently insubstantial as to constitute a genuine issue. "Genuine issue" means an issue of fact which calls for the presentation of evidence as distinguished from an issue which is fictitious or contrived.

3. ID.; ID.; ID.; RENDITION OF SUMMARY JUDGMENT IS NOT PROPER SINCE THE AVERMENT OF BAD FAITH IS A FACTUAL ISSUE THAT NEEDS TO BE TRIED.— The above averments clearly pose factual issues which make rendition of summary judgment not proper. Bad faith imports a dishonest purpose or some moral obliquity and conscious doing of a wrong. It is synonymous with fraud, in that it involves a design to mislead or deceive another. The trial court should have exercised prudence by requiring the presentation of evidence in a formal trial to determine the veracity of the parties' respective assertions. Whether NPC and the plaintiffs connived and acted in bad faith is a question of fact and is evidentiary. Bad faith has to be established by the claimant with clear and convincing evidence, and this necessitates an examination of the evidence of all the parties. As certain facts pleaded were being contested by the opposing parties, such would not warrant a rendition of summary judgment.

4. CIVIL LAW; COMPROMISE AGREEMENT; COMPROMISE, DEFINED.— A compromise is a contract whereby the parties, by making reciprocal concessions, avoid litigation or put an end to one already commenced. It is a consensual contract, binding upon the signatories/privies, and it has the effect of *res judicata*. This cannot however affect third persons who are not parties to the agreement.

5. ID.; ID.; A CLIENT MAY ENTER INTO A COMPROMISE AGREEMENT WITHOUT THE INTERVENTION OF THE LAWYER BUT THE TERMS OF THE AGREEMENT SHOULD NOT DEPRIVE COUNSEL OF HIS FEES FOR SERVICES RENDERED.— Contrary to petitioner's contention, a client has an undoubted right to settle a suit without the intervention of

his lawyer, for he is generally conceded to have the exclusive control over the subject-matter of the litigation and may, at any time before judgment, if acting in good faith, compromise, settle, and adjust his cause of action out of court without his attorney's intervention, knowledge, or consent, even though he has agreed with his attorney not to do so. Hence, a claim for attorney's fees does not void the compromise agreement and is no obstacle to a court approval. However, counsel is not without remedy. As the validity of a compromise agreement cannot be prejudiced, so should not be the payment of a lawyer's adequate and reasonable compensation for his services should the suit end by reason of the settlement. The terms of the compromise subscribed to by the client should not be such that will amount to an entire deprivation of his lawyer's fees, especially when the contract is on a contingent fee basis. In this sense, the compromise settlement cannot bind the lawyer as a third party. A lawyer is as much entitled to judicial protection against injustice or imposition of fraud on the part of his client as the client is against abuse on the part of his counsel. The duty of the court is not only to ensure that a lawyer acts in a proper and lawful manner, but also to see to it that a lawyer is paid his just fees. Even if the compensation of a counsel is dependent only upon winning a case he himself secured for his client, the subsequent withdrawal of the case on the client's own volition should never completely deprive counsel of any legitimate compensation for his professional services.

6. **ID.; ID.; ID.; LAWYER'S COMPENSATION IS A PERSONAL OBLIGATION OF HIS CLIENT; INSTANCE WHERE THE ADVERSE PARTY MAY BE HELD SOLIDARILY LIABLE FOR THE PAYMENT OF COUNSEL'S COMPENSATION.—** In all cases, a client is bound to pay his lawyer for his services. The determination of bad faith only becomes significant and relevant if the adverse party will likewise be held liable in shouldering the attorney's fees. Petitioner's compensation is a personal obligation of his clients who have benefited from his legal services prior to their execution of the compromise agreement. This is strictly a contract between them. NPC would only be made liable if it was shown that it has connived with the petitioner's clients or acted in bad faith in the execution of the compromise agreement for the purpose of depriving petitioner of his lawful claims for attorney's fees. In each case, NPC should

be held solidarily liable for the payment of the counsel's compensation.

7. REMEDIAL LAW; APPEALS; WHEN THE MODE OF APPEAL IS AVAILABLE, THE PETITION FOR *CERTIORARI* IS DISMISSIBLE; EXCEPTION, APPLIED.— [W]e find that the trial court gravely abused its discretion amounting to lack or excess of jurisdiction when it ordered NPC solidarily liable with the plaintiffs for the payment of the attorney's fees. The rule that a petition for *certiorari* is dismissible when the mode of appeal is available admits of exceptions, to wit: (a) when the writs issued are null; and (b) when the questioned order amounts to an oppressive exercise of judicial authority. Clearly, respondent has shown its entitlement to the exceptions.

8. ID.; CIVIL PROCEDURE; FORUM SHOPPING; RULE ON THE REQUIREMENT OF CERTIFICATION OF NON-FORUM SHOPPING, LIBERALLY APPLIED; A COUNSEL IS PRESUMED TO HAVE THE AUTHORITY TO REPRESENT A COMPANY ALTHOUGH A VALID BOARD RESOLUTION IS LACKING.— The same liberal application should also apply to the question of the alleged lack of authority of Atty. Doromal to execute the certification of non-forum shopping for lack of board resolution from the NPC. True, only individuals vested with authority by a valid board resolution may sign the certificate of non-forum shopping in behalf of the corporation, and proof of such authority must be attached to the petition, the failure of which will be sufficient cause for dismissal. Nevertheless, it cannot be said that Atty. Doromal does not enjoy the presumption that he is authorized to represent respondent in filing the Petition for *Certiorari* before the CA. As Special Attorney, he is one of the counsels of NPC in the proceedings before the trial court, and the NPC never questioned his authority to sign the petition for its behalf.

APPEARANCES OF COUNSEL

Mangontawar M. Gubat for and in his behalf.
The Solicitor General for respondent.

D E C I S I O N

DEL CASTILLO, *J.*:

> *Truly, there is no doubt that the rights of others cannot be prejudiced by private agreements. However, before this Court can act and decide to protect the one apparently prejudiced, we should remember what Aesop taught in one of his fables: Every truth has two sides; it is well to look at both, before we commit ourselves to either.*

A lawyer asserts his right to his contingent fees after his clients, allegedly behind his back, had entered into an out-of-court settlement with the National Power Corporation (NPC). The trial court granted his claim by way of summary judgment. However, this was reversed by the Court of Appeals (CA) because the counsel was allegedly enforcing a decision that was already vacated. In this petition, petitioner Atty. Mangontawar M. Gubat (Atty. Gubat) attempts to persuade us that the compensation due him is independent of the vacated decision, his entitlement thereto being based on another reason: the bad faith of his clients and of the respondent NPC.

Factual Antecedents

In August 1990, plaintiffs Ala Mambuay, Norma Maba, and Acur Macarampat separately filed civil suits for damages against the NPC before the Regional Trial Court of Lanao del Sur in Marawi City (RTC), respectively docketed as Civil Case Nos. 294-90, 295-90, and 296-90. In the said complaint, plaintiffs were represented by Atty. Linang Mandangan (Atty. Mandangan) and petitioner herein, whose services were engaged at an agreed attorney's fees of ₱30,000.00 for each case and ₱600.00 for every appearance. Petitioner was the one who signed the complaints on behalf of himself and Atty. Mandangan.[1]

During the course of the proceedings, the three complaints were consolidated because the plaintiffs' causes of action are

[1] *Rollo*, pp. 132, 135, and 138.

similar. They all arose from NPC's refusal to pay the amounts demanded by the plaintiffs for the cost of the improvements on their respective lands which were destroyed when the NPC constructed the Marawi-Malabang Transmission Line.

On the day of the initial hearing on the merits, NPC and its counsel failed to appear. Consequently, respondent was declared in default. Despite the plea of NPC for the lifting of the default order, the RTC of Marawi City, Branch 8, rendered its Decision[2] on April 24, 1991, the dispositive portion of which provides:

> PREMISES CONSIDERED, judgment is hereby rendered in favor of the herein plaintiffs and against the defendant National Power Corporation as represented by its President Ernesto Aboitiz, P.M. Durias and Rodrigo P. Falcon, ordering the latter jointly and severally:
>
> (1) In Civil Case No. 204-90 to pay plaintiff Ala Mambuay the sum of ₱103,000.00 representing the value of the improvements and the occupied portion of the land, ₱32,000.00 as attorney's fees, ₱20,000.00 as moral and/or exemplary damages, ₱50,000.00 as actual damages and the costs;
>
> (2) In Civil Case No. 295-90 to pay plaintiff Norma Maba represented by Capt. Ali B. Hadji Ali the sum of ₱146,700.00 representing the value of the improvements and the occupied portion of the land, ₱32,000.00 as attorney's fees, ₱20,000.00 as moral and/or exemplary damages, ₱50,000.00 as actual damages and the costs;
>
> (3) In Civil Case No. 296-90 to pay plaintiff Acur Macarampat the sum of ₱94,100.00 representing the value of the improvements and the occupied portion of the land, ₱32,000.00 as attorney's fees, ₱20,000.00 as moral and/or exemplary damages, ₱50,000.00 as actual damages and the costs.[3]

NPC appealed to the CA which was docketed as CA-G.R. CV No. 33000. During the pendency of the appeal, Atty. Gubat filed an Entry and Notice of Charging Lien[4] to impose his

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[2] CA *rollo*, pp. 48-56; penned by Judge Santos B. Adiong.

[3] *Id.* at 55.

[4] *Rollo*, p. 34.

attorney's lien of ₱30,000.00 and appearance fees of ₱2,000.00 on each of the three civil cases he handled, totalling ₱96,000.00.

On August 19, 1992, NPC moved to dismiss its appeal[5] alleging that the parties had arrived at a settlement. Attached to the motion were acknowledgment receipts[6] dated April 2, 1992 signed by plaintiffs Acur Macarampat, Ala Mambuay, and Norma Maba, who received ₱90,060.00, ₱90,000.00, and ₱90,050.00 respectively, in full satisfaction of their claims against the NPC. The motion stated that copies were furnished to Atty. Mandangan and herein petitioner, although it was only Atty. Mandangan's signature which appeared therein.[7]

On January 24, 1996, the CA rendered its Decision[8] disposing thus:

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[5] *Id.* at 38-40.

[6] *Id.* at 35-37. Except as to the amount, name of plaintiff, and the Civil Case No., the Acknowledgment Receipts signed by each plaintiff were similarly worded in this manner:

This is to acknowledge receipt from the NATIONAL POWER CORPORATION (NPC) the sum of (amount) as full and complete settlement of the cases entitled in (name of case) in (civil case no.) which is now pending appeal before the Court of Appeals.

With the execution of this Acknowledgment Receipt, it is understood that I and my heirs and assigns have no further claim against NPC with respect to the damage to improvements over my parcel of land which was affected by the 69 KV Transmission Line.

Iligan City, Philippines, 2 April 1992.

Sgd.

(name of claimant)

Representing NPC:

(Sgd.)

CANDIDATO RAMOS

(Sgd.)

ATTY. ARTHUR L. ABUNDIENTE

Counsel for Defendant-NPC

[7] *Id.* at 40.

[8] CA *rollo*, pp 62-73; penned by Associate Justice Cancio C. Garcia and concurred in by Associate Justices Eugenio S. Labitoria and Portia Aliño-Hormachuelos.

WHEREFORE, the Order of Default dated December 11, 1990; the Order denying the Motion for Reconsideration to Lift Order of Default dated January 25, 1991; and the Decision dated April 24, 1991, are hereby ANNULLED and SET ASIDE and the records of Civil Case Nos. 294-90, 295-90 and 296-90 are hereby ordered remanded to the court of origin for new trial.[9]

After the cases were remanded to the RTC, petitioner filed a Motion for Partial Summary Judgment[10] on his attorney's fees. He claimed that the plaintiffs and the NPC deliberately did not inform him about the execution of the compromise agreement, and that said parties connived with each other in entering into the compromise agreement in order to unjustly deprive him of his attorney's fees. Furthermore, he alleged:

xxx xxx xxx

12. That, in view of such settlement, there are no more genuine issues between the parties in the above-entitled cases except as to the attorney's fees; As such, this Honorable Court may validly render a partial summary judgment on the claim for attorney's fees; and

13. That the undersigned counsel hereby MOVES for a partial summary judgment on his lawful attorney's fees based on the pleadings and documents on file with the records of this case.[11]

xxx xxx xxx

Petitioner thus prayed that a partial summary judgment be rendered on his attorney's fees and that NPC be ordered to pay him directly his lawful attorney's fees of ₱32,000.00 in each of the above cases, for a total of ₱96,000.00.

NPC opposed the motion for partial summary of judgment. It alleged that a client may compromise a suit without the intervention of the lawyer and that petitioner's claim for attorney's fees should be made against the plaintiffs. NPC likewise claimed

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[9] *Id.* at 72.

[10] *Id.* at 74-77.

[11] *Id.* at 76.

that it settled the case in good faith and that plaintiffs were paid in full satisfaction of their claims which included attorney's fees.

On March 15, 2000, the trial court issued an Order[12] granting petitioner's motion for summary judgment. It found that the parties to the compromise agreement connived to petitioner's prejudice which amounts to a violation of the provisions of the Civil Code on Human Relations.[13] It ruled that:

x x x x x x x x x

There is no dispute that the Compromise Agreement was executed during the pendency of these cases with the Honorable Court of Appeals. Despite the knowledge of the defendant that the services of the movant was on a contingent basis, defendant proceeded with the Compromise Agreement without the knowledge of Atty. Gubat. The actuation of the defendant is fraudulently designed to deprive the movant of his lawful attorney's fees which was earlier determined and awarded by the Court. Had defendant been in good faith in terminating these cases, Atty. Gubat could have been easily contacted.

x x x x x x x x x[14]

The dispositive portion of the Order reads:

WHEREFORE, premises considered, plaintiffs Ala Mambuay, Norma Maba and Acur Macarampat as well as defendant National Power Corporation are hereby ordered to pay jointly and solidarily Atty. Mangontawar M. Gubat the sum of ₱96,000.00.[15]

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[12] *Id*. at 81-82; penned by Acting Presiding Judge Moslemen T. Macarambon.

[13] Article 19. Every person must, in the exercise of his rights and in the performance of his duties, act with justice, give everyone his due, and observe honesty and good faith.

Article 20. Every person who, contrary to law, willfully or negligently causes damage to another, shall indemnify the latter for the same.

Article 21. Any person who willfully causes loss or injury to another in a manner that is contrary to morals, good customs or public policy shall compensate the latter for the damage.

[14] CA *rollo*, pp. 81-82.

[15] *Id.* at 82.

NPC filed a Motion for Reconsideration[16] but the motion was denied by the trial court in its June 27, 2000 Order.[17] Thus, NPC filed a Petition for *Certiorari*[18] before the CA docketed as CA-G.R. SP No. 60722, imputing grave abuse of discretion on the court *a quo* for granting petitioner's Motion for Partial Summary Judgment. It prayed that the subject order be set aside insofar as NPC is concerned.

NPC maintained that it acted in good faith in the execution of the compromise settlement. It likewise averred that the lower court's award of attorney's fees amounting to ₱96,000.00 was clearly based on the award of attorney's fees in the April 24, 1991 Decision of the trial court which had already been reversed and set aside by the CA in CA-G.R. CV No. 33000. Moreover, NPC contended that petitioner cannot enforce his charging lien because it presupposes that he has secured a favorable money judgment for his clients. At any rate, since petitioner is obviously pursuing the compensation for the services he rendered to his clients, thus, recourse should only be against them, the payment being their personal obligation and not of respondent. NPC further alleged that even assuming that the subject attorney's fees are those that fall under Article 2208 of the Civil Code[19] which is in the concept of indemnity for damages to be paid to the winning party in a litigation, such fees belong to the clients and not to the lawyer, and this form of damages has already been paid directly to the plaintiffs.

On the other hand, petitioner claimed that he was not informed of the compromise agreement or furnished a copy of NPC's Motion to Dismiss Appeal. He alleged that the same was received only by Atty. Mandangan who neither signed any of the pleadings nor appeared in any of the hearings before the RTC. Petitioner

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[16] *Id*. at 83-86.

[17] *Id.* at 87; penned by Judge Santos B. Adiong.

[18] *Id.* at 2-24.

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

clarified that his motion for a partial summary judgment was neither a request for the revival of the vacated April 24, 1991 Decision nor an enforcement of the lien, but a grant of his contingent fees by the trial court as indemnity for damages resulting from the fraudulent act of NPC and of his clients who conspired to deprive him of the fees due him. He asserted that NPC cannot claim good faith because it knew of the existence of his charging lien when it entered into a compromise with the plaintiffs.

Petitioner also alleged that NPC's remedy should have been an ordinary appeal and not a petition for *certiorari* because the compromise agreement had settled the civil suits. Thus, when the trial court granted the motion for partial summary judgment on his fees, it was a final disposition of the entire case. He also argued that the issue of bad faith is factual which cannot be a subject of a *certiorari* petition. He also insisted that NPC's petition was defective for lack of a board

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(1) When exemplary damages are awarded;

(2) When the defendant's act or omission has compelled the plaintiff to litigate with third persons or to incur expenses to protect his interest;

(3) In criminal cases of malicious prosecution against the plaintiff;

(4) In case of a clearly unfounded civil action or proceeding against the plaintiff;

(5) Where the defendant acted in gross and evident bad faith in refusing to satisfy the plaintiff's plainly valid, just and demandable claim;

(6) In actions for legal support;

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

(8) In actions for indemnity under workmen's compensation and employer's liability laws;

(9) In a separate civil action to recover civil liability arising from a crime;

(10) When at least double judicial costs are awarded;

(11) In any other case where the court deems it just and equitable that attorney's fees and expenses of litigation should be recovered.

In all cases, the attorney's fees and expenses of litigation must be reasonable.

resolution authorizing Special Attorney Comie Doromal (Atty. Doromal) of the Office of the Solicitor General (OSG) to sign on NPC's behalf.

On September 9, 2002, the CA rendered the herein assailed Decision[20] ruling that:

> The reasoning of Atty. Gubat is a 'crude *palusot*' (a sneaky fallacious reasoning) for how can one enforce a part of a decision which has been declared void and vacated. In legal contemplation, there is no more decision because, precisely, the case was remanded to the court *a quo* for further proceeding.
>
> It was bad enough that Atty. Gubat tried to pull a fast [one] but it was [worse] that respondent Judge fell for it resulting in a plainly erroneous resolution.
>
> Like his predecessor Judge Adiong, Judge Macarambon committed basic errors unquestionably rising to the level of grave abuse of discretion amounting to lack or excess of jurisdiction.
>
> WHEREFORE, finding merit in the petition, the Court issues the writ of *certiorari* and strikes down as void the Order dated March 15, 2000 granting Atty. Mangontawar M. Gubat's Motion for Partial Summary Judgment as well as the Order dated June 27, 2000 denying petitioner National Power Corporation's Motion for Reconsideration.
>
> SO ORDERED. [21]

Petitioner filed a motion for reconsideration but the motion was denied by the CA in its January 19, 2005 Resolution,[22] Hence, this petition.

Petitioner insists on the propriety of the trial court's order of summary judgment on his attorney's fees. At the same time, he imputes grave abuse of discretion amounting to lack or excess of jurisdiction on the CA for entertaining respondent's Petition

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[20] *Rollo*, pp. 26-31; penned by Associate Justice Hilarion L. Aquino and concurred in by Associate Justices Salvador J. Valdez, Jr. and Jose L. Sabio, Jr.

[21] Id at 30-31.

[22] *Id.* at 32-33; penned by Associate Justice Jose Sabio, Jr. and concurred in by Associate Justices Godardo A. Jacinto and Salvador J. Valdez.

for *Certiorari*. He maintains that the petition should have been dismissed outright for being the wrong mode of appeal.

Our Ruling

The petition lacks merit.

Petitioner's resort to Rule 65 is not proper.

At the outset, the petition should have been dismissed outright because petitioner resorted to the wrong mode of appeal by filing the instant petition for *certiorari* under Rule 65. Section 1 of the said Rule explicitly provides that a petition for *certiorari* is available only when there is no appeal or any plain, speedy, and adequate remedy in the ordinary course of law. In this case, the remedy of appeal by way of a petition for review on *certiorari* under Rule 45 is not only available but also the proper mode of appeal. For all intents and purposes, we find that petitioner filed the instant petition for *certiorari* under Rule 65 as a substitute for a lost appeal. We note that petitioner received a copy of the January 19, 2005 Resolution of the CA denying his motion for reconsideration on January 28, 2005. Under Section 2 of Rule 45, petitioner has 15 days from notice of the said Resolution within which to file his petition for review on *certiorari*. As such, he should have filed his appeal on or before February 12, 2005. However, records show that the petition was posted on March 1, 2005, or long after the period to file the appeal has lapsed.

At any rate, even if we treat the instant petition as one filed under Rule 45, the same should still be denied for failure on the part of the petitioner to show that the CA committed a reversible error warranting the exercise of our discretionary appellate jurisdiction.

Petitioner's resort to summary judgment is not proper; he is not entitled to an immediate relief as a matter of law, for the existence of bad faith is a genuine issue of fact to be tried.

A summary judgment is allowed only if, after hearing, the court finds that except as to the amount of damages, the pleadings, affidavits, depositions and admissions show no genuine issue as to any material fact and that the movant is entitled to a judgment as a matter of law.[23] The purpose of a summary judgment is to avoid drawn out litigations and useless delays because the facts appear undisputed to the mind of the court. Such judgment is generally based on the facts proven summarily by affidavits, depositions, pleadings, or admissions of the parties.[24] For a full-blown trial to be dispensed with, the party who moves for summary judgment has the burden of demonstrating clearly the absence of genuine issues of fact, or that the issue posed is patently insubstantial as to constitute a genuine issue.[25] "Genuine issue" means an issue of fact which calls for the presentation of evidence as distinguished from an issue which is fictitious or contrived.[26]

Petitioner pleaded for a summary judgment on his fees on the claim that the parties intentionally did not inform him of the settlement. He alleged that he never received a copy of NPC's Motion to Withdraw Appeal before the CA and that instead, it was another lawyer who was furnished and who acknowledged receipt of the motion. When he confronted his clients, he was allegedly told that the NPC deceived them into believing that what they received was only a partial payment exclusive of the attorney's fees. NPC contested these averments. It claimed good faith in the execution of the compromise agreement. It stressed that the attorney's fees were already deemed included in the monetary consideration given to the plaintiffs for the compromise.

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[23] RULES OF COURT, Rule 35, Section 3.

[24] *Nocom v. Camerino*, G.R. No. 182984, February 10, 2009, 578 SCRA 390, 410.

[25] *Philippine Countryside Rural Bank v. Toring*, G.R. No. 157862, April 16, 2009.

[26] *Manufacturers Hanover Trust Co. and/or Chemical Bank v. Guerrero*, 445 Phil. 770, 776 (2003).

The above averments clearly pose factual issues which make the rendition of summary judgment not proper. Bad faith imports a dishonest purpose or some moral obliquity and conscious doing of a wrong. It is synonymous with fraud, in that it involves a design to mislead or deceive another.[27] The trial court should have exercised prudence by requiring the presentation of evidence in a formal trial to determine the veracity of the parties' respective assertions. Whether NPC and the plaintiffs connived and acted in bad faith is a question of fact and is evidentiary. Bad faith has to be established by the claimant with clear and convincing evidence, and this necessitates an examination of the evidence of all the parties. As certain facts pleaded were being contested by the opposing parties, such would not warrant a rendition of summary judgment.

Moreover, the validity or the correct interpretation of the alleged compromise agreements is still in issue in view of the diverse interpretations of the parties thereto. In fact, in the Decision of the CA dated January 24, 1996, the appellate court ordered the case to be remanded to the trial court for new trial, thereby ignoring completely NPC's motion to dismiss appeal based on the alleged compromise agreements it executed with the plaintiffs. Even in its assailed Decision of September 9, 2002, the CA did not rule on the validity of the alleged compromise agreements. This is only to be expected in view of its earlier ruling dated January 24, 1996 which directed the remand of the case to the court of origin for new trial.

Considering the above disquisition, there is still a factual issue on whether the NPC and the plaintiffs had already validly entered into a compromise agreement. Clearly, the NPC and the plaintiffs have diverse interpretations as regards the stipulations of the compromise agreement which must be resolved. According to the NPC, the amounts it paid to the plaintiffs were in full satisfaction of their claims. Plaintiffs claim otherwise. They insist that the amounts they received were exclusive of attorney's

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[27] *Solidbank Corporation v. Mindanao Ferroalloy Corporation*, G.R. No. 153535, July 28, 2005, 464 SCRA 409, 426.

claim. They also assert that NPC undertook to pay the said attorney's fees to herein petitioner.

> *A client may enter into a compromise agreement without the intervention of the lawyer, but the terms of the agreement should not deprive the counsel of his compensation for the professional services he had rendered. If so, the compromise shall be subjected to said fees. If the client and the adverse party who assented to the compromise are found to have intentionally deprived the lawyer of his fees, the terms of the compromise, insofar as they prejudice the lawyer, will be set aside, making both parties accountable to pay the lawyer's fees. But in all cases, it is the client who is bound to pay his lawyer for his legal representation.*

A compromise is a contract whereby the parties, by making reciprocal concessions, avoid litigation or put an end to one already commenced.[28] It is a consensual contract, binding upon the signatories/privies, and it has the effect of *res judicata*.[29] This cannot however affect third persons who are not parties to the agreement.[30]

Contrary to petitioner's contention, a client has an undoubted right to settle a suit without the intervention of his lawyer,[31] for he is generally conceded to have the exclusive control over the subject-matter of the litigation and may, at any time before judgment, if acting in good faith, compromise, settle, and adjust

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[28] CIVIL CODE, Article 2028.

[29] CIVIL CODE, Article 2037.

[30] *University of the East v. Secretary of Labor and Employment*, G.R. Nos. 93310-12, November 21, 1991, 204 SCRA 254, 262.

[31] *Rustia v. Judge of First Instance of Batangas*, 44 Phil. 62, 65 (1922).

his cause of action out of court without his attorney's intervention, knowledge, or consent, even though he has agreed with his attorney not to do so.[32] Hence, a claim for attorney's fees does not void the compromise agreement and is no obstacle to a court approval.[33]

However, counsel is not without remedy. As the validity of a compromise agreement cannot be prejudiced, so should not be the payment of a lawyer's adequate and reasonable compensation for his services should the suit end by reason of the settlement. The terms of the compromise subscribed to by the client should not be such that will amount to an entire deprivation of his lawyer's fees, especially when the contract is on a contingent fee basis. In this sense, the compromise settlement cannot bind the lawyer as a third party. A lawyer is as much entitled to judicial protection against injustice or imposition of fraud on the part of his client as the client is against abuse on the part of his counsel. The duty of the court is not only to ensure that a lawyer acts in a proper and lawful manner, but also to see to it that a lawyer is paid his just fees.[34]

Even if the compensation of a counsel is dependent only upon winning a case he himself secured for his client, the subsequent withdrawal of the case on the client's own volition should never completely deprive counsel of any legitimate compensation for his professional services.[35] In all cases, a client is bound to pay his lawyer for his services. The determination of bad faith only becomes significant and relevant if the adverse party will likewise be held liable in shouldering the attorney's fees.[36]

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[32] *Samonte v. Samonte,* 159-A Phil. 777, 791-792 (1975).

[33] *Cabildo v. Hon. Navarro,* 153 Phil. 310, 314 (1973).

[34] *Masmud v. National Labor Relations Commission*, G.R. No. 183385, February 13, 2009, 579 SCRA 509, 520.

[35] *National Power Corporation v. National Power Corporation Employees and Workers Association*, 178 Phil. 1, 10-11 (1979).

[36] See *Aro v. Hon. Nañawa,* 137 Phil. 745 (1969).

Petitioner's compensation is a personal obligation of his clients who have benefited from his legal services prior to their execution of the compromise agreement. This is strictly a contract between them. NPC would only be made liable if it was shown that it has connived with the petitioner's clients or acted in bad faith in the execution of the compromise agreement for the purpose of depriving petitioner of his lawful claims for attorney's fees. In each case, NPC should be held solidarily liable for the payment of the counsel's compensation. However, as we have already discussed, petitioner's resort to summary judgment is not proper. Besides, it is interesting to note that petitioner is the only one claiming for his attorney's fees notwithstanding that plaintiffs' counsels of record were petitioner herein and Atty. Mandangan. Nevertheless, this is not at issue here. As we have previously discussed, this is for the trial court to resolve.

The CA soundly exercised its discretion in resorting to a liberal application of the rules. There are no vested right to technicalities.

Concededly, the NPC may have pursued the wrong remedy when it filed a petition for *certiorari* instead of an appeal since the ruling on attorney's fees is already a ruling on the merits. However, we find that the trial court gravely abused its discretion amounting to lack or excess of jurisdiction when it ordered NPC solidarily liable with the plaintiffs for the payment of the attorney's fees. The rule that a petition for *certiorari* is dismissible when the mode of appeal is available admits of exceptions, to wit: (a) when the writs issued are null; and, (b) when the questioned order amounts to an oppressive exercise of judicial authority.[37] Clearly, respondent has shown its entitlement to the exceptions.

The same liberal application should also apply to the question of the alleged lack of authority of Atty. Doromal to execute the certification of non-forum shopping for lack of a board resolution from the NPC. True, only individuals vested with

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[37] *Jan-Dec Construction Corporation v. Court of Appeals*, G.R. No. 146818, February 6, 2006, 481 SCRA 556, 564.

authority by a valid board resolution may sign the certificate of non-forum shopping in behalf of the corporation, and proof of such authority must be attached to the petition,[38] the failure of which will be sufficient cause for dismissal. Nevertheless, it cannot be said that Atty. Doromal does not enjoy the presumption that he is authorized to represent respondent in filing the Petition for *Certiorari* before the CA. As Special Attorney, he is one of the counsels of NPC in the proceedings before the trial court, and the NPC never questioned his authority to sign the petition for its behalf.

In any case, the substantive issues we have already discussed are justifiable reasons to relax the rules of procedure. We cannot allow a patently wrong judgment to be implemented because of technical lapses. This ratiocination is in keeping with the policy to secure a just, speedy and inexpensive disposition of every action or proceeding.[39] As we have explained in *Alonso v. Villamor*:[40]

> There is nothing sacred about processes or pleadings, their forms or contents. Their sole purpose is to facilitate the application of justice to the rival claims of contending parties. They were created, not to hinder and delay, but to facilitate and promote, the administration of justice. They do not constitute the thing itself, which courts are always striving to secure to litigants. They are designed as the means best adopted to obtain that thing. In other words, they are a means to an end. When they lose the character of the one and become the other, the administration of justice is at fault and courts are correspondingly remiss in the performance of their obvious duty.
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> The error in this case is purely technical. To take advantage of it for other purposes than to cure it, does not appeal to a fair sense of justice. Its presentation as fatal to the plaintiff's case smacks of skill rather than right. A litigation is not a game of technicalities in which one more deeply schooled and skilled in the subtle art of movement

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[38] *Philippine Airlines, Inc. v. Flight Attendants and Stewards Association of the Philippines*, G.R. No. 143088, January 24, 2006, 479 SCRA 605, 608.

[39] RULES OF COURT, Rule 1, Section 6.

[40] 16 Phil 315, 321-322 (1910).

and position, entraps and destroys the other. It is rather, a contest in which each contending party fully and fairly lays before the court the facts in issue and then, brushing aside as wholly trivial and indecisive all imperfections of form and technicalities of procedure, asks that justice be done upon the merits. Law-suits, unlike duels, are not to be won by a rapier's thrust. Technicality, when it deserts its proper office as an aid to justice and becomes its great hindrance and chief enemy, deserves scant consideration from courts. There should be no vested rights in technicalities. No litigant should be permitted to challenge a record of a court of these Islands for defect of form when his substantial rights have not been prejudiced thereby.

WHEREFORE, the Petition is hereby *DISMISSED* for lack of merit. The September 9, 2002 Decision of the Court of Appeals and its January 19, 2005 Resolution are *AFFIRMED*.

SO ORDERED.

Carpio (Chairperson), Brion, Abad, and *Perez, JJ.*, concur.

SECOND DIVISION

[G.R. No. 173472. February 26, 2010]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **ELMER PERALTA *y* DE GUZMAN *alias* "MEMENG,"** *appellant.*

SYLLABUS

1. CRIMINAL LAW; SPECIAL OFFENSES; VIOLATION OF COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002; SALE OF ILLEGAL DRUGS; ELEMENTS THEREOF; CASE AT BAR.— The elements of the sale of illegal drugs are a) the identities of the buyer and seller, b) the transaction or sale of the illegal drug, and c) the existence of the *corpus delicti*. With respect to the third element, the prosecution must show that the integrity of the *corpus delicti* has been preserved. This is

crucial in drugs cases because the evidence involved—the seized chemical—is not readily identifiable by sight or touch and can easily be tampered with or substituted. x x x Here, the police arrested Peralta and seized the sachet of *shabu* from him on July 21, 2002 and made the request for testing on July 22, 2002. Since the prosecution did not present evidence that the sachet had been marked shortly after seizure and that its integrity had been preserved by proper sealing, the prosecution failed to prove the third element of the crime: the existence of the *corpus delicti.*

2. REMEDIAL LAW; EVIDENCE; VIOLATION OF DANGEROUS DRUGS ACT; CHAIN OF CUSTODY OF SEIZED PROHIBITED DRUG MUST BE ESTABLISHED.— In *Malillin v. People* the Court held that the prosecution must establish the chain of custody of the seized prohibited drugs. It must present testimony about every link in the chain of custody of such drugs, from the moment they were seized from the accused to the moment they are offered in evidence. But here the prosecution failed to show the chain of custody or that they followed the procedure that has been prescribed in connection with the seizure and custody of drugs. To begin with, the prosecution did not adduce evidence of when the sachet of *shabu* was marked. Consequently, it could have been marked long after its seizure or even after it had been tested in the laboratory. While the records show that the sachet bore the markings "AS-1-210702," indicating that Sangalang probably made the marking, the prosecutor did not bother to ask him if such marking was his. Sangalang identified the seized drugs in a manner that glossed over the need to establish their integrity.

3. ID.; ID.; ID.; ID.; RECOMMENDED QUESTIONS TO BE ASKED BY PROSECUTORS OF BUY-BUST WITNESS TO SHOW THE INTEGRITY OF THE SEIZED DRUG FROM THE TIME OF SEIZURE TO THE TIME THE SEIZED DRUG IS PRESENTED IN COURT.— Although the Court has repeatedly reminded the prosecutors concerned to present evidence which would show that the integrity of the seized drugs has been preserved from the time of their seizure to the time they are presented in court, such reminder seems not to have made an impact on some of them. Public prosecutors need to ask the right questions to the witnesses. The Court of course trusts the competence of most public prosecutors. Still, it would probably help to remind

the others to ask the following questions or substantially similar ones that will aid the court in determining the innocence or guilt of the accused: **Q. You said that you received from the accused a sachet containing crystalline powder that appeared to you to be "*shabu*." Would you be able to identify that sachet which appeared to you to contain *shabu*? Q. Showing to you this sachet containing what appears to be crystalline powder, what relation does it have, if any, to the sachet that you said you received from the accused? Q. This sachet has a marking on it that reads "AS-1-210702." Do you know who made this marking? Q. Who made it? Q. What do these letters and numbers represent? Q. When did you make this marking on the sachet? x x x Q. What did you do if any to ensure that the powder in this sachet is not tampered with or substituted when it left your hands? Q. What did you use for sealing this sachet? Q. When did this sachet leave your hands? Q. To whom did you give it? Q. For what reason did you give it to him?**

4. ID.; ID.; ID.; ID.; RECOMMENDED QUESTIONS TO BE ASKED BY PROSECUTORS OF THE CRIME LABORATORY TECHNICIAN-WITNESS TO SHOW THE INTEGRITY OF THE SEIZED DRUG.— And once the crime laboratory technician is presented, the prosecutor could ask him the following or substantially similar questions: **Q. Did this plastic container with powder in it which you brought today have any marking on it when you received it for examination? Q. In what condition did you receive the plastic container? (Or: Was the plastic container opened or sealed when you received it?) Q. Did you notice any sign that the plastic container or its contents may have been tampered with? Q. What did you do if any to ensure that the powder in this sachet is not tampered with or substituted after you finished examining it? Q. And where was this sachet stored pending your retrieval of it for the purpose of bringing it to court today? Q. Will you please examine it and tell us if it has been tampered with from the time it left your hands for storage.**

5. ID.; ID.; PRESUMPTION OF INNOCENCE PREVAILS OVER PRESUMPTION OF REGULARITY; EXISTENCE AND DUE EXECUTION OF CHEMISTRY REPORT D-332-02 HAS NO BEARING ON THE QUESTION OF CHAIN OF CUSTODY OF THE SEIZED DRUG; CASE AT BAR.— The fact that the parties

stipulated on the existence and due execution of Chemistry Report D-332-02 has no bearing on the question of chain of custody of the seized drugs. The stipulation only proves the authenticity of the request for laboratory examination of the drugs submitted to the laboratory (not that it was the same drugs seized from accused Peralta) and the results of the examination made of the same, nothing more. Under the circumstances, reliance on the presumption of regularity in the performance of duties is not enough for a conviction. Once challenged by evidence of flawed chain of custody, as in this case, the presumption of regularity cannot prevail over the presumption of innocence. Likewise, while the defense of denial on its own is inherently weak, the conviction of an accused must rely on the strength of the prosecution's evidence and not on the weakness of his defense.

APPEARANCES OF COUNSEL

The Solicitor General for appellee.
Public Attorney's Office for appellant.

D E C I S I O N

ABAD, *J.*:

This case is about how the courts may be assured that the integrity of seized prohibited drugs is preserved from the time of their seizure to the time of their laboratory examination and presentation in court as evidence in the case.

The Facts and the Case

The evidence for the prosecution shows that the District Drug Enforcement Group (DDEG), Southern Police, Fort Bonifacio, Taguig, Metro Manila, received reports of accused Elmer D. Peralta's drug-pushing activities at 21 Zero Block Mill Flores, Barangay Rizal, Makati City.

At about 11:30 p.m. of July 21, 2002 the DDEG staged a buy-bust operation with SPO1 Alberto Sangalang as poseur-buyer. An informant introduced Sangalang to accused Peralta

as they entered his house. The informant told Peralta that Sangalang was a Dance Instructor (DI) in need of *shabu* for himself and for fellow DIs so they could endure long nights. Sangalang gave Peralta a marked ₱500.00 bill for a sachet of *shabu*.

At a signal, Sangalang told his informant to go out and buy cigarettes. On seeing the informant come out of the house, the police back-up team rushed in. They arrested accused Peralta, took the marked money from him, and brought him to the police station. Meanwhile, the sachet of *shabu* was marked "AS-1-210702" and taken to the Philippine National Police Crime Laboratory for testing. The contents of the sachet tested positive for methamphetamine hydrochloride or *shabu*.

The prosecution presented Sangalang. He alone testified for the government since it was thought that the testimonies of the other police officers would only be corroborative.[1] The prosecution also dispensed with the testimony of the forensic chemist after the parties stipulated on the existence and due execution of Chemistry Report D-332-02, which showed that the specimen tested positive for *shabu*.[2]

For his part, appellant Peralta denied having committed the offense charged. He claimed that he went to bed at 7:00 p.m. on July 21, 2002. At about 11:30 p.m. someone's knocking at the door awakened him. Shortly after, four police officers forced the door open and barged into the house. They handcuffed Peralta, searched his house, and then brought him to the Southern Police District.[3]

At the time of the arrest, Noel "Toto" Odono[4] (Toto) and the spouses Apollo[5] and Charito dela Pena were conversing

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[1] Records, p. 38.

[2] *Id.* at 32.

[3] TSN, February 21, 2003, pp. 3-5.

[4] TSN, February 14, 2003, pp. 3-10.

[5] TSN, March 14, 2003, pp. 1-7.

near accused Peralta's house. Suddenly, they heard a commotion and saw several men forcibly enter it. Those men searched the house and arrested him.

Meanwhile, Toto related what he saw to Sgt. Eligio Peralta, Jr. (Sgt. Peralta), accused Peralta's brother. Sgt. Peralta hurried to his brother's house but found him already handcuffed. The sergeant repeatedly asked the police officers why they were arresting his brother without a warrant but he got no response. He followed the arresting team to the Southern Police District where he learned that his brother had been caught selling *shabu*.[6]

The Assistant City Prosecutor of Makati City charged accused Peralta before the Regional Trial Court[7] (RTC) of Makati City in Criminal Case 02-2009 with violation of Section 5, Article II of Republic Act 9165 or the Comprehensive Dangerous Drugs Act of 2002.

After trial, the RTC rendered a decision[8] dated June 20, 2003, rejecting accused Peralta's defense of denial. The trial court found him guilty of the crime charged and sentenced him to suffer life imprisonment and pay a fine of ₱500,000.00. Peralta appealed to this Court but, pursuant to the Court's ruling in *People v. Mateo*,[9] his case was referred to the Court of Appeals (CA) for adjudication in CA-G.R. CR-H.C. 00165.[10] On April 27, 2006 the latter court affirmed the decision of the RTC.[11]

The CA gave credence to the testimony of Sangalang who, it found, did not deviate from the regular performance of his duties and was not impelled by ill motive in testifying against Peralta. Also, the appellate court pointed out that the prosecution

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[6] TSN, March 21, 2003, pp. 2-7.

[7] Branch 135.

[8] Records, pp. 61-64. Penned by Judge Francisco B. Ibay.

[9] G.R. Nos. 147678-87, July 7, 2004, 433 SCRA 640.

[10] CA *rollo*, p. 74.

[11] *Rollo*, pp. 3-17. Penned by Associate Justice Edgardo F. Sundiam and concurred in by Associate Justices Martin S. Villarama, Jr. (now Supreme Court Justice) and Japar B. Dimaampao.

presented and identified the sachet of *shabu* in court. Finally, the CA said that accused Peralta's denial is a weak defense which cannot prevail over positive identification.

Accused Peralta seeks by notice of appeal[12] this Court's review of the decision of the CA.

The Issue Presented

The key issue here is whether or not the prosecution presented ample proof that the police officers involved caught accused Peralta at his home, peddling prohibited drugs.

The Court's Ruling

The elements of the sale of illegal drugs are a) the identities of the buyer and seller, b) the transaction or sale of the illegal drug, and c) the existence of the *corpus delicti*. With respect to the third element, the prosecution must show that the integrity of the *corpus delicti* has been preserved. This is crucial in drugs cases because the evidence involved—the seized chemical—is not readily identifiable by sight or touch and can easily be tampered with or substituted.[13]

In *Malillin v. People*[14] the Court held that the prosecution must establish the chain of custody of the seized prohibited drugs. It must present testimony about every link in the chain of custody of such drugs, from the moment they were seized from the accused to the moment they are offered in evidence.

But here the prosecution failed to show the chain of custody or that they followed the procedure that has been prescribed in connection with the seizure and custody of drugs. To begin with, the prosecution did not adduce evidence of when the sachet of *shabu* was marked. Consequently, it could have been marked long after its seizure or even after it had been tested in the laboratory. While the records show that the sachet bore the

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[12] CA *rollo*, p. 97.

[13] *Malillin v. People*, G.R. No. 172953, April 30, 2008, 553 SCRA 619, 632-633.

[14] *Id.* at 632.

markings "AS-1-210702," indicating that Sangalang probably made the marking, the prosecutor did not bother to ask him if such marking was his. Sangalang identified the seized drugs in a manner that glossed over the need to establish their integrity. Thus:[15]

Fiscal Lalin:

Q: You stated that you would likewise recognize the sachet of *shabu* subject matter of the sale transaction between you and *alias* "Memeng"?

A: Yes, sir.

Q: I have here with me a brown envelope containing the specimen subjected to laboratory examination, will you kindly examine the contents of this brown envelope and tell us whether you find inside Exhibit "E" the sachet of *shabu* which is the subject matter of the sale transaction that transpired between you and one *alias* "Memeng"?

A: This is the sachet of *shabu* that I was able to purchase from Memeng.

Q: Meaning, this is the sachet of *shabu* which *alias* "Memeng" sold to you?

A: Yes, sir.

Although the Court has repeatedly reminded the prosecutors concerned to present evidence which would show that the integrity of the seized drugs has been preserved from the time of their seizure to the time they are presented in court, such reminder seems not to have made an impact on some of them. Public prosecutors need to ask the right questions to the witnesses.

The Court of course trusts the competence of most public prosecutors. Still, it would probably help to remind the others to ask the following questions or substantially similar ones that will aid the court in determining the innocence or guilt of the accused:

Q. You said that you received from the accused a sachet containing crystalline powder that appeared to you to be

[15] TSN, December 4, 2002, p. 7.

"*shabu*." Would you be able to identify that sachet which appeared to you to contain *shabu*?

Q. Showing to you this sachet containing what appears to be crystalline powder, what relation does it have, if any, to the sachet that you said you received from the accused?

Q. This sachet has a marking on it that reads "AS-1-210702." Do you know who made this marking?

Q. Who made it?

Q. What do these letters and numbers represent?

Q. When did you make this marking on the sachet?

Since the seizing officer usually has to turn over the seized drugs to the desk officer or some superior officer, who would then send a courier to the police crime laboratory with a request that the same be examined to identify the contents, it is imperative for the officer who placed his marking on the plastic container to seal the same, preferably with adhesive tape that usually cannot be removed without leaving a tear on the plastic container. If the drugs were not in a plastic container, the police officer should put it in one and seal the same. In this way the drugs would assuredly reach the laboratory in the same condition it was seized from the accused.

Further, after the laboratory technician has tested and verified the nature of the powder in the container, he should seal it again with a new seal since the police officer's seal had been broken. In this way, if the accused wants to contest the test made, the Court would be assured that what is retested is the same powder seized from the accused.

The prosecutor could then ask questions of the officer who placed his marking on the plastic container to prove that the suspected drugs had not been tampered with or substituted when they left that officer's hands. The prosecutor could ask the following or substantially similar questions:

Q. What did you do if any to ensure that the powder in this sachet is not tampered with or substituted when it left your hands?

Q. What did you use for sealing this sachet?

Q. When did this sachet leave your hands?

Q. To whom did you give it?

Q. For what reason did you give it to him?

And once the crime laboratory technician is presented, the prosecutor could ask him the following or substantially similar questions:

Q. Did this plastic container with powder in it which you brought today have any marking on it when you received it for examination?

Q. In what condition did you receive the plastic container? (Or: Was the plastic container opened or sealed when you received it?)

Q. Did you notice any sign that the plastic container or its contents may have been tampered with?

Q. What did you do if any to ensure that the powder in this sachet is not tampered with or substituted after you finished examining it?

Q. And where was this sachet stored pending your retrieval of it for the purpose of bringing it to court today?

Q. Will you please examine it and tell us if it has been tampered with from the time it left your hands for storage.

If the sealing of the seized article had not been made, the prosecution would have to present the desk officer or superior officer to whom the seizing officer turned over such article. That desk officer or superior officer needs to testify that he had taken care that the drugs were not tampered with or substituted. And if someone else brought the unsealed sachet of drugs to the police crime laboratory, he, too, should give similar testimony, and so on up to the receiving custodian at

the crime laboratory until the drugs reach the laboratory technician who examined and resealed it.

Here, the police arrested Peralta and seized the sachet of *shabu* from him on July 21, 2002 and made the request for testing on July 22, 2002. Since the prosecution did not present evidence that the sachet had been marked shortly after seizure and that its integrity had been preserved by proper sealing, the prosecution failed to prove the third element of the crime: the existence of the *corpus delicti*.

The fact that the parties stipulated on the existence and due execution of Chemistry Report D-332-02 has no bearing on the question of chain of custody of the seized drugs. The stipulation only proves the authenticity of the request for laboratory examination of the drugs submitted to the laboratory (not that it was the same drugs seized from accused Peralta) and the results of the examination made of the same, nothing more.[16]

Under the circumstances, reliance on the presumption of regularity in the performance of duties is not enough for a conviction. Once challenged by evidence of flawed chain of custody, as in this case, the presumption of regularity cannot prevail over the presumption of innocence.[17] Likewise, while the defense of denial on its own is inherently weak, the conviction of an accused must rely on the strength of the prosecution's evidence and not on the weakness of his defense.[18]

In sum, the Court finds the evidence in this case insufficient to sustain the conviction of accused Peralta of the crime of which he was charged.

WHEREFORE, the Court *REVERSES* and *SETS ASIDE* the Decision dated April 27, 2006 of the Court of Appeals in CA-G.R. CR-H.C. 00165 and *ACQUITS* accused-appellant Elmer Peralta *y* de Guzman *alias* "Memeng" for failure of the

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[16] *People v. Cervantes*, G.R. No. 173742, March 17, 2009.

[17] *Dolera v. People*, G.R. No. 180693, September 4, 2009.

[18] *People v. Obmiranis*, G.R. No. 181492, December 16, 2008, 574 SCRA 140, 158.

prosecution to prove his guilt beyond reasonable doubt. He is ordered immediately *RELEASED* from detention unless he is confined for another lawful cause.

Let a copy of this Decision be furnished the Director, Bureau of Corrections, Muntinlupa City for immediate implementation. The Director of the Bureau of Corrections is *DIRECTED* to report the action he has taken to this Court within five days from receipt of this Decision.

SO ORDERED.

Carpio (Chairperson), Brion, Del Castillo, and *Perez, JJ.,* concur.

SECOND DIVISION

[G.R. No. 183505. February 26, 2010]

COMMISSIONER OF INTERNAL REVENUE, *petitioner, vs.* **SM PRIME HOLDINGS, INC. and FIRST ASIA REALTY DEVELOPMENT CORPORATION,** *respondents.*

SYLLABUS

1. TAXATION; NATIONAL INTERNAL REVENUE CODE (NIRC); VALUE ADDED TAX (VAT); THE ENUMERATION OF SERVICES SUBJECT TO VAT UNDER SECTION 108 OF THE NIRC IS NOT EXHAUSTIVE; EXPLAINED.— Section 108 of the NIRC of the 1997 reads: SEC. 108. Value-added Tax on Sale of Services and Use or Lease of Properties. — (A) Rate and Base of Tax. — There shall be levied, assessed and collected, a value-added tax equivalent to ten percent (10%) of gross receipts derived from the sale or exchange of services, including the use or lease of properties. The phrase **"sale or exchange of services"** means the performance of all kinds of services in the Philippines for others for a fee, remuneration

or consideration, **including** those performed or rendered by construction and service contractors; stock, real estate, commercial, customs and immigration brokers; lessors of property, whether personal or real; warehousing services; **lessors or distributors of cinematographic films;** persons engaged in milling, processing, manufacturing or repacking goods for others; proprietors, operators or keepers of hotels, motels, rest houses, pension houses, inns, resorts; proprietors or operators of restaurants, refreshment parlors, cafes and other eating places, including clubs and caterers; dealers in securities; lending investors; transportation contractors on their transport of goods or cargoes, including persons who transport goods or cargoes for hire and other domestic common carriers by land, air and water relative to their transport of goods or cargoes; services of franchise grantees of telephone and telegraph, radio and television broadcasting and all other franchise grantees except those under Section 119 of this Code; services of banks, non-bank financial intermediaries and finance companies; and non-life insurance companies (except their crop insurances), including surety, fidelity, indemnity and bonding companies; and **similar services** regardless of whether or not the performance thereof calls for the exercise or use of the physical or mental faculties. The phrase "sale or exchange of services" **shall likewise include:** (1) The lease or the use of or the right or privilege to use any copyright, patent, design or model, plan, secret formula or process, goodwill, trademark, trade brand or other like property or right; x x x **(7) The lease of motion picture films, films, tapes and discs; and** (8) The lease or the use of or the right to use radio, television, satellite transmission and cable television time. x x x A cursory reading of the foregoing provision clearly shows that the enumeration of the "sale or exchange of services" subject to VAT is not exhaustive. The words, "including," "similar services," and "shall likewise include," indicate that the enumeration is by way of example only. Among those included in the enumeration is the "lease of motion picture films, films, tapes and discs." This, however, is not the same as the showing or exhibition of motion pictures or films. As pointed out by the CTA *En Banc*: "Exhibition" in Black's Law Dictionary is defined as "To show or display. x x x To produce anything in public so that it may be taken into possession" (6th ed., p. 573). While the word "lease" is defined as "a contract by which one owning such property grants

to another the right to possess, use and enjoy it on specified period of time in exchange for periodic payment of a stipulated price, referred to as rent (Black's Law Dictionary, 6th ed., p. 889). x x x Since the activity of showing motion pictures, films or movies by cinema/theater operators or proprietors is not included in the enumeration, it is incumbent upon the court to determine whether such activity falls under the phrase "similar services." The intent of the legislature must therefore be ascertained.

2. ID.; ID.; ID.; THE LEGISLATURE NEVER INTENDED TO INCLUDE CINEMA/THEATER OPERATORS OR PROPRIETORS IN THE COVERAGE OF VAT; RATIONALE.— The facts established herein reveal the legislative intent not to impose VAT on persons already covered by the amusement tax. This holds true even in the case of cinema/theater operators taxed under the LGC of 1991 precisely because the VAT law was intended to replace the percentage tax on certain services. The mere fact that they are taxed by the local government unit and not by the national government is immaterial. The Local Tax Code, in transferring the power to tax gross receipts derived by cinema/theater operators or proprietor from admission tickets to the local government, did not intend to treat cinema/theater houses as a separate class. No distinction must, therefore, be made between the places of amusement taxed by the national government and those taxed by the local government. To hold otherwise would impose an unreasonable burden on cinema/theater houses operators or proprietors, who would be paying an additional 10% VAT on top of the 30% amusement tax imposed by Section 140 of the LGC of 1991, or a total of 40% tax. Such imposition would result in injustice, as person taxed under the NIRC of 1997 would be in a better position than those taxed under the LGC of 1991. We need not belabor that a literal application of a law must be rejected if it will operate unjustly or lead to absurd results. Thus, we are convinced that the legislature never intended to include cinema/theater operators or proprietors in the coverage of VAT. On this point, it is *apropos* to quote the case of *Roxas v. Court of Tax Appeals*, to wit: The power of taxation is sometimes called also the power to destroy. Therefore, it should be exercised with caution to minimize injury to the proprietary rights of a taxpayer. It must be exercised fairly, equally and uniformly, lest the tax collector kill the "hen that

lays the golden egg." And, in order to maintain the general public's trust and confidence in the Government this power must be used justly and not treacherously.

3. ID.; LOCAL GOVERNMENT CODE (LGC); THE REMOVAL OF THE PROHIBITION UNDER THE LOCAL TAX CODE DID NOT GRANT NOR RESTORE TO THE NATIONAL GOVERNMENT THE POWER TO IMPOSE AMUSEMENT TAX ON CINEMA/THEATER OPERATORS OR PROPRIETORS; EXPLAINED.— The repeal of the Local Tax Code by the LGC of 1991 is not a legal basis for the imposition of VAT on the gross receipts of cinema/theater operators or proprietors derived from admission tickets. The removal of the prohibition under the Local Tax Code did not grant nor restore to the national government the power to impose amusement tax on cinema/theater operators or proprietors. Neither did it expand the coverage of VAT. Since the imposition of a tax is a burden on the taxpayer, it cannot be presumed nor can it be extended by implication. A law will not be construed as imposing a tax unless it does so clearly, expressly, and unambiguously. As it is, the power to impose amusement tax on cinema/theater operators or proprietors remains with the local government.

4. ID.; VALUE ADDED TAX (VAT); REVENUE MEMORANDUM CIRCULAR NO. 28-2001 WHICH IMPOSES VAT ON THE GROSS RECEIPTS FROM ADMISSION TO CINEMA HOUSES IS INVALID; SUSTAINED.— *Revenue Memorandum Circular No. 28-2001 is invalid.* Considering that there is no provision of law imposing VAT on the gross receipts of cinema/theater operators or proprietors derived from admission tickets, RMC No. 28-2001 which imposes VAT on the gross receipts from admission to cinema houses must be struck down. We cannot overemphasize that RMCs must not override, supplant, or modify the law, but must remain consistent and in harmony with, the law they seek to apply and implement. In view of the foregoing, there is no need to discuss whether RMC No. 28-2001 complied with the procedural due process for tax issuances as prescribed under RMC No. 20-86. x x x Moreover, contrary to the view of petitioner, respondents need not prove their entitlement to an exemption from the coverage of VAT. The rule that tax exemptions should be construed strictly against the taxpayer presupposes that the taxpayer is clearly subject to the tax being levied against him. The reason is obvious: it is illogical and

impractical to determine who are exempted without first determining who are covered by the provision. Thus, unless a statute imposes a tax clearly, expressly and unambiguously, what applies is the equally well-settled rule that the imposition of a tax cannot be presumed. In fact, in case of doubt, tax laws must be construed strictly against the government and in favor of the taxpayer.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.
Tan Acut Lopez & Pizon for respondents.

D E C I S I O N

DEL CASTILLO, *J.*:

When the intent of the law is not apparent as worded, or when the application of the law would lead to absurdity or injustice, legislative history is all important. In such cases, courts may take judicial notice of the origin and history of the law,[1] the deliberations during the enactment,[2] as well as prior laws on the same subject matter[3] to ascertain the true intent or spirit of the law.

This Petition for Review on *Certiorari* under Rule 45 of the Rules of Court, in relation to Republic Act (RA) No. 9282,[4]

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[1] *United States v. De Guzman,* 30 Phil. 416, 419-420 (1915).

[2] *People v. Degamo,* 450 Phil. 159, 179 (2003).

[3] *Celestial Nickel Mining Exploration Corporation v. Macroasia Corporation,* G.R. Nos. 169080, 172936, 176226 & 176319, December 19, 2007, 541 SCRA 166, 195.

[4] An Act Expanding the Jurisdiction of the Court of Tax Appeals (CTA), Elevating its Rank to the Level of a Collegiate Court with Special Jurisdiction and Enlarging its Membership, Amending for the Purpose Certain Sections of Republic Act No. 1125, As Amended, otherwise known as the Law Creating the Court of Tax Appeals, and for Other Purposes.

seeks to set aside the April 30, 2008 Decision[5] and the June 24, 2008 Resolution[6] of the Court of Tax Appeals (CTA).

Factual Antecedents

Respondents SM Prime Holdings, Inc. (SM Prime) and First Asia Realty Development Corporation (First Asia) are domestic corporations duly organized and existing under the laws of the Republic of the Philippines. Both are engaged in the business of operating cinema houses, among others.[7]

CTA Case No. 7079

On September 26, 2003, the Bureau of Internal Revenue (BIR) sent SM Prime a Preliminary Assessment Notice (PAN) for value added tax (VAT) deficiency on cinema ticket sales in the amount of ₱119,276,047.40 for taxable year 2000.[8] In response, SM Prime filed a letter-protest dated December 15, 2003.[9]

On December 12, 2003, the BIR sent SM Prime a Formal Letter of Demand for the alleged VAT deficiency, which the latter protested in a letter dated January 14, 2004.[10]

On September 6, 2004, the BIR denied the protest filed by SM Prime and ordered it to pay the VAT deficiency for taxable year 2000 in the amount of ₱124,035,874.12.[11]

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[5] *Rollo*, pp. 98-120; penned by Associate Justice Olga Palanca-Enriquez and concurred in by Presiding Justice Ernesto D. Acosta and Associate Justices Juanito C. Castañeda, Jr., Lovell R. Bautista, and Caesar A. Casanova. Associate Justice Erlinda P. Uy was on official business.

[6] *Id.* at 121-123; penned by Associate Justice Olga Palanca-Enriquez and concurred in by Presiding Justice Ernesto D. Acosta and Associate Justices Juanito C. Castañeda, Jr., Lovell R. Bautista, Erlinda P. Uy, and Caesar A. Casanova.

[7] *Id.* at 772.

[8] *Id.* at 100.

[9] *Id*.

[10] *Id.* at 101.

[11] *Id.*

On October 15, 2004, SM Prime filed a Petition for Review before the CTA docketed as CTA Case No. 7079.[12]

CTA Case No. 7085

On May 15, 2002, the BIR sent First Asia a PAN for VAT deficiency on cinema ticket sales for taxable year 1999 in the total amount of ₱35,823,680.93.[13] First Asia protested the PAN in a letter dated July 9, 2002.[14]

Subsequently, the BIR issued a Formal Letter of Demand for the alleged VAT deficiency which was protested by First Asia in a letter dated December 12, 2002.[15]

On September 6, 2004, the BIR rendered a Decision denying the protest and ordering First Asia to pay the amount of ₱35,823,680.93 for VAT deficiency for taxable year 1999.[16]

Accordingly, on October 20, 2004, First Asia filed a Petition for Review before the CTA, docketed as CTA Case No. 7085.[17]

CTA Case No. 7111

On April 16, 2004, the BIR sent a PAN to First Asia for VAT deficiency on cinema ticket sales for taxable year 2000 in the amount of ₱35,840,895.78. First Asia protested the PAN through a letter dated April 22, 2004.[18]

Thereafter, the BIR issued a Formal Letter of Demand for alleged VAT deficiency.[19] First Asia protested the same in a letter dated July 9, 2004.[20]

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[12] *Id*.

[13] *Id*.

[14] *Id*.

[15] *Id*.

[16] *Id.* at 102.

[17] *Id*.

[18] *Id*.

[19] *Id*.

[20] *Id*.

On October 5, 2004, the BIR denied the protest and ordered First Asia to pay the VAT deficiency in the amount of ₱35,840,895.78 for taxable year 2000.[21]

This prompted First Asia to file a Petition for Review before the CTA on December 16, 2004. The case was docketed as CTA Case No. 7111.[22]

CTA Case No. 7272

Re: Assessment Notice No. 008-02

A PAN for VAT deficiency on cinema ticket sales for the taxable year 2002 in the total amount of ₱32,802,912.21 was issued against First Asia by the BIR. In response, First Asia filed a protest-letter dated November 11, 2004. The BIR then sent a Formal Letter of Demand, which was protested by First Asia on December 14, 2004.[23]

Re: Assessment Notice No. 003-03

A PAN for VAT deficiency on cinema ticket sales in the total amount of ₱28,196,376.46 for the taxable year 2003 was issued by the BIR against First Asia. In a letter dated September 23, 2004, First Asia protested the PAN. A Formal Letter of Demand was thereafter issued by the BIR to First Asia, which the latter protested through a letter dated November 11, 2004.[24]

On May 11, 2005, the BIR rendered a Decision denying the protests. It ordered First Asia to pay the amounts of ₱33,610,202.91 and ₱28,590,826.50 for VAT deficiency for taxable years 2002 and 2003, respectively.[25]

Thus, on June 22, 2005, First Asia filed a Petition for Review before the CTA, docketed as CTA Case No. 7272.[26]

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[21] *Id.* at 25-26.

[22] *Id.* at 103.

[23] *Id*.

[24] *Id.* at 104.

[25] *Id.* at 700.

[26] *Id.* at 104.

Consolidated Petitions

The Commissioner of Internal Revenue (CIR) filed his Answers to the Petitions filed by SM Prime and First Asia.[27]

On July 1, 2005, SM Prime filed a Motion to Consolidate CTA Case Nos. 7085, 7111 and 7272 with CTA Case No. 7079 on the grounds that the issues raised therein are identical and that SM Prime is a majority shareholder of First Asia. The motion was granted.[28]

Upon submission of the parties' respective memoranda, the consolidated cases were submitted for decision on the sole issue of whether gross receipts derived from admission tickets by cinema/theater operators or proprietors are subject to VAT. [29]

Ruling of the CTA First Division

On September 22, 2006, the First Division of the CTA rendered a Decision granting the Petition for Review. Resorting to the language used and the legislative history of the law, it ruled that the activity of showing cinematographic films is not a service covered by VAT under the National Internal Revenue Code (NIRC) of 1997, as amended, but an activity subject to amusement tax under RA 7160, otherwise known as the Local Government Code (LGC) of 1991. Citing House Joint Resolution No. 13, entitled *"Joint Resolution Expressing the True Intent of Congress with Respect to the Prevailing Tax Regime in the Theater and Local Film Industry Consistent with the State's Policy to Have a Viable, Sustainable and Competitive Theater and Film Industry as One of its Partners in National Development,"*[30] the CTA First Division held that the House

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[27] *Id.* at 28.

[28] *Id.* at 104-105.

[29] *Id.* at 29.

[30] Approved by the House on the Third Reading on November 15, 2005. Its counterpart in the Senate, Senate Joint Resolution No. 6, entitled *"Joint Resolution Expressing the True Intent of Congress Regarding the Imposition of the Value-Added Tax Particularly on the Theater Industry,"* is pending in the Committee.

of Representatives resolved that there should only be one business tax applicable to theaters and movie houses, which is the 30% amusement tax imposed by cities and provinces under the LGC of 1991. Further, it held that consistent with the State's policy to have a viable, sustainable and competitive theater and film industry, the national government should be precluded from imposing its own business tax in addition to that already imposed and collected by local government units. The CTA First Division likewise found that Revenue Memorandum Circular (RMC) No. 28-2001, which imposes VAT on gross receipts from admission to cinema houses, cannot be given force and effect because it failed to comply with the procedural due process for tax issuances under RMC No. 20-86.[31] Thus, it disposed of the case as follows:

> IN VIEW OF ALL THE FOREGOING, this Court hereby **GRANTS** the Petitions for Review. Respondent's Decisions denying petitioners' protests against deficiency value-added taxes are hereby *REVERSED*. Accordingly, Assessment Notices Nos. VT-00-000098, VT-99-000057, VT-00-000122, 003-03 and 008-02 are **ORDERED** cancelled and set aside.
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> SO ORDERED.[32]

Aggrieved, the CIR moved for reconsideration which was denied by the First Division in its Resolution dated December 14, 2006.[33]

Ruling of the CTA En Banc

Thus, the CIR appealed to the CTA *En Banc*.[34] The case was docketed as CTA EB No. 244.[35] The CTA *En Banc* however

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[31] Notice, Publication and Effectivity of Internal Revenue Tax Rules and Regulations, issued by then Commissioner Bienvenido A. Tan, Jr. on July 24, 1986.

[32] *Rollo*, p. 247.

[33] *Id.* at 249-257.

[34] *Id.* at 32.

[35] *Id*.

denied[36] the Petition for Review and dismissed[37] as well petitioner's Motion for Reconsideration.

The CTA *En Banc* held that Section 108 of the NIRC actually sets forth an exhaustive enumeration of what services are intended to be subject to VAT. And since the showing or exhibition of motion pictures, films or movies by cinema operators or proprietors is not among the enumerated activities contemplated in the phrase "sale or exchange of services," then gross receipts derived by cinema/ theater operators or proprietors from admission tickets in showing motion pictures, film or movie are not subject to VAT. It reiterated that the exhibition or showing of motion pictures, films, or movies is instead subject to amusement tax under the LGC of 1991. As regards the validity of RMC No. 28-2001, the CTA *En Banc* agreed with its First Division that the same cannot be given force and effect for failure to comply with RMC No. 20-86.

Issue

Hence, the present recourse, where petitioner alleges that the CTA *En Banc* seriously erred:

(1) In not finding/holding that the gross receipts derived by operators/proprietors of cinema houses from admission tickets [are] subject to the 10% VAT because:

(a) THE EXHIBITION OF MOVIES BY CINEMA OPERATORS/PROPRIETORS TO THE PAYING PUBLIC IS A SALE OF SERVICE;

(b) UNLESS EXEMPTED BY LAW, ALL SALES OF SERVICES ARE EXPRESSLY SUBJECT TO VAT UNDER SECTION 108 OF THE NIRC OF 1997;

(c) SECTION 108 OF THE NIRC OF 1997 IS A CLEAR PROVISION OF LAW AND THE APPLICATION OF RULES OF STATUTORY CONSTRUCTION AND EXTRINSIC AIDS IS UNWARRANTED;

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[36] *Id.* at 119.

[37] *Id.* at 122.

(d) GRANTING WITHOUT CONCEDING THAT RULES OF CONSTRUCTION ARE APPLICABLE HEREIN, STILL THE HONORABLE COURT ERRONEOUSLY APPLIED THE SAME AND PROMULGATED DANGEROUS PRECEDENTS;

(e) THERE IS NO VALID, EXISTING PROVISION OF LAW EXEMPTING RESPONDENTS' SERVICES FROM THE VAT IMPOSED UNDER SECTION 108 OF THE NIRC OF 1997;

(f) QUESTIONS ON THE WISDOM OF THE LAW ARE NOT PROPER ISSUES TO BE TRIED BY THE HONORABLE COURT; and

(g) RESPONDENTS WERE TAXED BASED ON THE PROVISION OF SECTION 108 OF THE NIRC.

(2) In ruling that the enumeration in Section 108 of the NIRC of 1997 is exhaustive in coverage;

(3) In misconstruing the NIRC of 1997 to conclude that the showing of motion pictures is merely subject to the amusement tax imposed by the Local Government Code; and

(4) In invalidating Revenue Memorandum Circular (RMC) No. 28-2001.[38]

Simply put, the issue in this case is whether the gross receipts derived by operators or proprietors of cinema/theater houses from admission tickets are subject to VAT.

Petitioner's Arguments

Petitioner argues that the enumeration of services subject to VAT in Section 108 of the NIRC is not exhaustive because it covers all sales of services unless exempted by law. He claims that the CTA erred in applying the rules on statutory construction and in using extrinsic aids in interpreting Section 108 because the provision is clear and unambiguous. Thus, he maintains that the exhibition of movies by cinema operators or proprietors to the paying public, being a sale of service, is subject to VAT.

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

Respondents' Arguments

Respondents, on the other hand, argue that a plain reading of Section 108 of the NIRC of 1997 shows that the gross receipts of proprietors or operators of cinemas/theaters derived from public admission are not among the services subject to VAT. Respondents insist that gross receipts from cinema/theater admission tickets were never intended to be subject to any tax imposed by the national government. According to them, the absence of gross receipts from cinema/theater admission tickets from the list of services which are subject to the national amusement tax under Section 125 of the NIRC of 1997 reinforces this legislative intent. Respondents also highlight the fact that RMC No. 28-2001 on which the deficiency assessments were based is an unpublished administrative ruling.

Our Ruling

The petition is bereft of merit.

The enumeration of services subject to VAT under Section 108 of the NIRC is not exhaustive

Section 108 of the NIRC of the 1997 reads:

SEC. 108. Value-added Tax on Sale of Services and Use or Lease of Properties. —

(A) Rate and Base of Tax. — There shall be levied, assessed and collected, a value-added tax equivalent to ten percent (10%) of gross receipts derived from the sale or exchange of services, including the use or lease of properties.

The phrase **"sale or exchange of services"** means the performance of all kinds of services in the Philippines for others for a fee, remuneration or consideration, **including** those performed or rendered by construction and service contractors; stock, real estate, commercial, customs and immigration brokers; lessors of property, whether personal or real; warehousing services; **lessors or distributors of cinematographic films;** persons engaged in milling, processing, manufacturing or repacking goods for others; proprietors, operators or keepers of hotels, motels, rest houses, pension houses, inns, resorts; proprietors or operators of restaurants, refreshment parlors,

cafes and other eating places, including clubs and caterers; dealers in securities; lending investors; transportation contractors on their transport of goods or cargoes, including persons who transport goods or cargoes for hire and other domestic common carriers by land, air and water relative to their transport of goods or cargoes; services of franchise grantees of telephone and telegraph, radio and television broadcasting and all other franchise grantees except those under Section 119 of this Code; services of banks, non-bank financial intermediaries and finance companies; and non-life insurance companies (except their crop insurances), including surety, fidelity, indemnity and bonding companies; and **similar services** regardless of whether or not the performance thereof calls for the exercise or use of the physical or mental faculties. The phrase "sale or exchange of services" **shall likewise include:**

(1) The lease or the use of or the right or privilege to use any copyright, patent, design or model, plan, secret formula or process, goodwill, trademark, trade brand or other like property or right;

x x x x x x x x x

(7) The lease of motion picture films, films, tapes and discs; and

(8) The lease or the use of or the right to use radio, television, satellite transmission and cable television time.

x x x (Emphasis supplied)

A cursory reading of the foregoing provision clearly shows that the enumeration of the "sale or exchange of services" subject to VAT is not exhaustive. The words, "including," "similar services," and "shall likewise include," indicate that the enumeration is by way of example only.[39]

Among those included in the enumeration is the "lease of motion picture films, films, tapes and discs." This, however, is not the same as the showing or exhibition of motion pictures or films. As pointed out by the CTA *En Banc*:

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[39] See *Binay v. Sandiganbayan*, 374 Phil. 413, 440 (1999).

"Exhibition" in Black's Law Dictionary is defined as "To show or display. x x x To produce anything in public so that it may be taken into possession" (6th ed., p. 573). While the word "lease" is defined as "a contract by which one owning such property grants to another the right to possess, use and enjoy it on specified period of time in exchange for periodic payment of a stipulated price, referred to as rent (Black's Law Dictionary, 6th ed., p. 889). x x x[40]

Since the activity of showing motion pictures, films or movies by cinema/theater operators or proprietors is not included in the enumeration, it is incumbent upon the court to determine whether such activity falls under the phrase "similar services." The intent of the legislature must therefore be ascertained.

The legislature never intended operators or proprietors of cinema/theater houses to be covered by VAT

Under the NIRC of 1939,[41] the national government imposed amusement tax on proprietors, lessees, or operators of theaters, cinematographs, concert halls, circuses, boxing exhibitions, and other places of amusement, including cockpits, race tracks, and cabaret.[42] In the case of theaters or cinematographs, the

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[40] *Rollo*, p. 420.

[41] Commonwealth Act No. 466.

[42] SECTION 260. Amusement taxes. — There shall be collected from the proprietor, lessee, or operator of theaters, cinematographs, concert halls, circuses, boxing exhibitions, and other places of amusement the following taxes:

(a) When the amount paid for admission exceeds twenty centavos but does not exceed twenty-nine centavos, two centavos on each admission.

x x x x x x x x x

(i) When the amount paid for admission exceeds ninety-nine centavos, ten centavos on each admission.

In the case of theaters or cinematographs, the taxes herein prescribed shall first be deducted and withheld by the proprietors, lessees, or operators of such theaters or cinematographs and paid to the Collector of Internal Revenue before the gross receipts are divided between the proprietors, lessees, or operators of the theaters or cinematographs and the distributors of the cinematographic films.

taxes were first deducted, withheld, and paid by the proprietors, lessees, or operators of such theaters or cinematographs before the gross receipts were divided between the proprietors, lessees, or operators of the theaters or cinematographs and the distributors of the cinematographic films. Section 11[43] of the Local Tax Code,[44] however, amended this provision by transferring the power to impose amusement tax[45] on admission from theaters, cinematographs, concert halls, circuses and other places of amusements exclusively to the local government. Thus, when the NIRC of 1977[46] was enacted, the national government

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In the case of cockpits, race tracks, and cabarets, x x x. For the purpose of the amusement tax, the term "gross receipts" embraces all the receipts of the proprietor, lessee, or operator of the amusement place, excluding the receipts derived by him from the sale of liquors, beverages, or other articles subject to specific tax, or from any business subject to tax under this Code.

x x x x x x x x x

[43] SECTION 11. Taxes transferred. — The imposition of the taxes provided in Sections 12, 13, 14, 15, and 16 of this Code heretofore exercised by the national government or the municipal government, shall henceforth be exercised by the provincial government, to the exclusion of the national or municipal government. To avoid any revenue loss, the province shall levy and collect such taxes as provided in said Sections 12, 13 and 14.

[44] Presidential Decree No. 231 (1973).

[45] SECTION 13. Amusement tax on admission. — The province shall impose a tax on admission to be collected from the proprietors, lessees, or operators of theaters, cinematographs, concert halls, circuses and other places of amusements at the following rates:

(a) When the amount paid for admission is one peso or less, twenty per cent; and

(b) When the amount paid for admission exceeds one peso, thirty per cent.

In the case of theaters or cinematographs, the taxes herein prescribed shall first be deducted and withheld by the proprietors, lessees, or operators of the theaters or cinematographs and paid to the provincial treasurer concerned thru the municipal treasurer before the gross receipts are divided between the proprietors, lessees, or operators of the theaters or cinematographs and the distributors of the cinematographic films.

x x x x x x x x x

[46] Presidential Decree No. 1158.

imposed amusement tax only on proprietors, lessees or operators of cabarets, day and night clubs, Jai-Alai and race tracks.[47]

On January 1, 1988, the VAT Law[48] was promulgated. It amended certain provisions of the NIRC of 1977 by imposing a multi-stage VAT to replace the tax on original and subsequent sales tax and percentage tax on certain services. It imposed VAT on sales of services under Section 102 thereof, which provides:

SECTION 102. Value-added tax on sale of services. — (a) Rate and base of tax. — There shall be levied, assessed and collected, a value-added tax equivalent to 10% percent of gross receipts derived by any person engaged in the sale of services. The phrase "sale of services" means the performance of all kinds of services for others for a fee, remuneration or consideration, including those performed or rendered by construction and service contractors; stock, real estate, commercial, customs and immigration brokers; lessors of personal property; **lessors or distributors of cinematographic films;** persons engaged in milling, processing, manufacturing or repacking goods for others; and similar services regardless of whether or not the performance thereof calls for the exercise or use of the physical or mental faculties: Provided That the following services performed in the Philippines by VAT-registered persons shall be subject to 0%:

(1) Processing manufacturing or repacking goods for other persons doing business outside the Philippines which goods are subsequently exported, x x x

xxx xxx xxx

"Gross receipts" means the total amount of money or its equivalent representing the contract price, compensation or service fee, including the amount charged for materials supplied with the services and deposits or advance payments actually or constructively received during the taxable quarter for the service performed or to be performed for another person, excluding value-added tax.

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[47] SECTION 268. Amusement taxes. — There shall be collected from the proprietor, lessee or operator of cabarets, day and night clubs, Jai-Alai and race tracks, a tax equivalent to x x x

[48] Executive Order No. 273.

(b) Determination of the tax. — (1) Tax billed as a separate item in the invoice. — If the tax is billed as a separate item in the invoice, the tax shall be based on the gross receipts, excluding the tax.

(2) Tax not billed separately or is billed erroneously in the invoice. — If the tax is not billed separately or is billed erroneously in the invoice, the tax shall be determined by multiplying the gross receipts (including the amount intended to cover the tax or the tax billed erroneously) by 1/11. (Emphasis supplied)

Persons subject to amusement tax under the NIRC of 1977, as amended, however, were exempted from the coverage of VAT.[49]

On February 19, 1988, then Commissioner Bienvenido A. Tan, Jr. issued RMC 8-88, which clarified that the power to impose amusement tax on gross receipts derived from admission tickets was exclusive with the local government units and that only the gross receipts of amusement places derived from sources other than from admission tickets were subject to amusement tax under the NIRC of 1977, as amended. Pertinent portions of RMC 8-88 read:

Under the Local Tax Code (P.D. 231, as amended), the jurisdiction to levy amusement tax on gross receipts arising from admission to places of amusement has been transferred to the local governments to the exclusion of the national government.

xxx xxx xxx

Since the promulgation of the Local Tax Code which took effect on June 28, 1973 none of the amendatory laws which amended the National Internal Revenue Code, including the value added tax law under Executive Order No. 273, has amended the provisions of Section 11 of the Local Tax Code. Accordingly, the sole jurisdiction for collection of amusement

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[49] SECTION 103. Exempt Transactions. — The following shall be exempt from the value-added tax:

(a) Sale of nonfood agricultural; marine and forest products in their original state by the primary producer or the owner of the land where the same are produced.

x x x x x x x x x

(j) Services rendered by persons subject to percentage tax under Title V;

x x x x x x x x x

tax on admission receipts in places of amusement rests exclusively on the local government, to the exclusion of the national government. Since the Bureau of Internal Revenue is an agency of the national government, then it follows that it has no legal mandate to levy amusement tax on admission receipts in the said places of amusement.

Considering the foregoing legal background, the provisions under Section 123 of the National Internal Revenue Code as renumbered by Executive Order No. 273 (Sec. 228, old NIRC) pertaining to amusement taxes on places of amusement shall be implemented in accordance with BIR RULING, dated December 4, 1973 and BIR RULING NO. 231-86 dated November 5, 1986 to wit:

"x x x Accordingly, **only the gross receipts of the amusement places derived from sources other than from admission tickets shall be subject to x x x amusement tax prescribed under Section 228 of the Tax Code, as amended** (now Section 123, NIRC, as amended by E.O. 273). **The tax on gross receipts derived from admission tickets shall be levied and collected by the city government pursuant to Section 23 of Presidential Decree No. 231, as amended x x x" or by the provincial government, pursuant to Section 11 of P.D. 231, otherwise known as the Local Tax Code**. (Emphasis supplied)

On October 10, 1991, the LGC of 1991 was passed into law. The local government retained the power to impose amusement tax on proprietors, lessees, or operators of theaters, cinemas, concert halls, circuses, boxing stadia, and other places of amusement at a rate of not more than thirty percent (30%) of the gross receipts from admission fees under Section 140 thereof.[50] In the case of theaters or cinemas, the tax shall first be deducted and withheld by their proprietors, lessees, or operators and paid to the local government before the gross receipts are divided between said

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[50] SECTION 140. Amusement Tax. — (a) The province may levy an amusement tax to be collected from the proprietors, lessees, or operators of theaters, cinemas, concert halls, circuses, boxing stadia, and other places of amusement at a rate of not more than thirty percent (30%) of the gross receipts from admission fees.

(b) In the case of theaters or cinemas, the tax shall first be deducted and withheld by their proprietors, lessees, or operators and paid to the provincial treasurer before the gross receipts are divided between said proprietors, lessees, or operators and the distributors of the cinematographic films.

proprietors, lessees, or operators and the distributors of the cinematographic films. However, the provision in the Local Tax Code expressly excluding the national government from collecting tax from the proprietors, lessees, or operators of theaters, cinematographs, concert halls, circuses and other places of amusements was no longer included.

In 1994, RA 7716 restructured the VAT system by widening its tax base and enhancing its administration. Three years later, RA 7716 was amended by RA 8241. Shortly thereafter, the NIRC of 1997[51] was signed into law. Several amendments[52] were made to expand the coverage of VAT. However, none pertain to cinema/theater operators or proprietors. At present, only lessors or distributors of cinematographic films are subject to VAT. While persons subject to amusement tax[53] under

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x x x x x x x x x

[51] Republic Act No. 8424.

[52] See Republic Act No. 8761, Republic Act No. 9010, Republic Act No. 9238 and Republic Act No. 9337.

[53] SECTION 125. Amusement Taxes. — There shall be collected from the proprietor, lessee or operator of cockpits, cabarets, night or day clubs, boxing exhibitions, professional basketball games, Jai-Alai and racetracks, a tax equivalent to:

(a) Eighteen percent (18%) in the case of cockpits;

(b) Eighteen percent (18%) in the case of cabarets, night or day clubs;

(c) Ten percent (10%) in the case of boxing exhibitions: Provided, however, That boxing exhibitions wherein World or Oriental Championships in any division is at stake shall be exempt from amusement tax: Provided, further, That at least one of the contenders for World or Oriental Championship is a citizen of the Philippines and said exhibitions are promoted by a citizen/s of the Philippines or by a corporation or association at least sixty percent (60%) of the capital of which is owned by such citizens;

(d) Fifteen percent (15%) in the case of professional basketball games as envisioned in Presidential Decree No. 871: Provided, however, That the tax herein shall be in lieu of all other percentage taxes of whatever nature and description; and

(e) Thirty percent (30%) in the case of Jai-Alai and racetracks of their gross receipts, irrespective of whether or not any amount is charged for admission.

the NIRC of 1997 are exempt from the coverage of VAT.[54]

Based on the foregoing, the following facts can be established:

(1) Historically, the activity of showing motion pictures, films or movies by cinema/theater operators or proprietors has always been considered as a form of entertainment subject to amusement tax.

(2) Prior to the Local Tax Code, all forms of amusement tax were imposed by the national government.

(3) When the Local Tax Code was enacted, amusement tax on admission tickets from theaters, cinematographs, concert halls, circuses and other places of amusements were transferred to the local government.

(4) Under the NIRC of 1977, the national government imposed amusement tax only on proprietors, lessees or operators of cabarets, day and night clubs, Jai-Alai and race tracks.

(5) The VAT law was enacted to replace the tax on original and subsequent sales tax and percentage tax on certain services.

For the purpose of the amusement tax, the term 'gross receipts' embraces all the receipts of the proprietor, lessee or operator of the amusement place. Said gross receipts also include income from television, radio and motion picture rights, if any. A person or entity or association conducting any activity subject to the tax herein imposed shall be similarly liable for said tax with respect to such portion of the receipts derived by him or it.

The taxes imposed herein shall be payable at the end of each quarter and it shall be the duty of the proprietor, lessee or operator concerned, as well as any party liable, within twenty (20) days after the end of each quarter, to make a true and complete return of the amount of the gross receipts derived during the preceding quarter and pay the tax due thereon.

[54] SECTION 109. Exempt Transactions. — The following shall be exempt from the value-added tax:

(a) Sale of nonfood agricultural products; marine and forest products in their original state by the primary producer or the owner of the land where the same are produced;

x x x x x x x x x

(j) Services subject to percentage tax under Title V;

(6) When the VAT law was implemented, it exempted persons subject to amusement tax under the NIRC from the coverage of VAT.

(7) When the Local Tax Code was repealed by the LGC of 1991, the local government continued to impose amusement tax on admission tickets from theaters, cinematographs, concert halls, circuses and other places of amusements.

(8) Amendments to the VAT law have been consistent in exempting persons subject to amusement tax under the NIRC from the coverage of VAT.

(9) Only lessors or distributors of cinematographic films are included in the coverage of VAT.

These reveal the legislative intent not to impose VAT on persons already covered by the amusement tax. This holds true even in the case of cinema/theater operators taxed under the LGC of 1991 precisely because the VAT law was intended to replace the percentage tax on certain services. The mere fact that they are taxed by the local government unit and not by the national government is immaterial. The Local Tax Code, in transferring the power to tax gross receipts derived by cinema/theater operators or proprietor from admission tickets to the local government, did not intend to treat cinema/theater houses as a separate class. No distinction must, therefore, be made between the places of amusement taxed by the national government and those taxed by the local government.

To hold otherwise would impose an unreasonable burden on cinema/theater houses operators or proprietors, who would be paying an additional 10%[55] VAT on top of the 30% amusement tax imposed by Section 140 of the LGC of 1991, or a total of 40% tax. Such imposition would result in injustice, as persons taxed under the NIRC of 1997 would be in a better position than those taxed under the LGC of 1991. We need not belabor that a literal application of a law must be rejected if it will

[55] Now 12%.

operate unjustly or lead to absurd results.[56] Thus, we are convinced that the legislature never intended to include cinema/theater operators or proprietors in the coverage of VAT.

On this point, it is *apropos* to quote the case of *Roxas v. Court of Tax Appeals*,[57] to wit:

> The power of taxation is sometimes called also the power to destroy. Therefore, it should be exercised with caution to minimize injury to the proprietary rights of a taxpayer. It must be exercised fairly, equally and uniformly, lest the tax collector kill the "hen that lays the golden egg." And, in order to maintain the general public's trust and confidence in the Government this power must be used justly and not treacherously.

The repeal of the Local Tax Code by the LGC of 1991 is not a legal basis for the imposition of VAT

Petitioner, in issuing the assessment notices for deficiency VAT against respondents, ratiocinated that:

> Basically, it was acknowledged that a cinema/theater operator was then subject to amusement tax under Section 260 of Commonwealth Act No. 466, otherwise known as the National Internal Revenue Code of 1939, computed on the amount paid for admission. With the enactment of the Local Tax Code under Presidential Decree (PD) No. 231, dated June 28, 1973, the power of imposing taxes on gross receipts from admission of persons to cinema/theater and other places of amusement had, thereafter, been transferred to the provincial government, to the exclusion of the national or municipal government (Sections 11 & 13, Local Tax Code). However, the said provision containing the exclusive power of the provincial government to impose amusement tax, had also been repealed and/or deleted by Republic Act (RA) No. 7160, otherwise known as the Local Government Code of 1991, enacted into law on October 10, 1991. Accordingly, **the enactment of RA No. 7160, thus, eliminating the statutory prohibition on the national government to impose business tax on gross receipts**

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[56] *Commissioner of Internal Revenue v. Solidbank Corp.*, 462 Phil. 96, 130 (2003).

[57] 131 Phil. 773, 780-781 (1968).

from admission of persons to places of amusement, led the way to the valid imposition of the VAT pursuant to Section 102 (now Section 108) of the old Tax Code, as amended by the Expanded VAT Law (RA No. 7716) and which was implemented beginning January 1, 1996.[58] (Emphasis supplied)

We disagree.

The repeal of the Local Tax Code by the LGC of 1991 is not a legal basis for the imposition of VAT on the gross receipts of cinema/theater operators or proprietors derived from admission tickets. The removal of the prohibition under the Local Tax Code did not grant nor restore to the national government the power to impose amusement tax on cinema/theater operators or proprietors. Neither did it expand the coverage of VAT. Since the imposition of a tax is a burden on the taxpayer, it cannot be presumed nor can it be extended by implication. A law will not be construed as imposing a tax unless it does so clearly, expressly, and unambiguously.[59] As it is, the power to impose amusement tax on cinema/theater operators or proprietors remains with the local government.

Revenue Memorandum Circular No. 28-2001 is invalid

Considering that there is no provision of law imposing VAT on the gross receipts of cinema/theater operators or proprietors derived from admission tickets, RMC No. 28-2001 which imposes VAT on the gross receipts from admission to cinema houses must be struck down. We cannot overemphasize that RMCs must not override, supplant, or modify the law, but must remain consistent and in harmony with, the law they seek to apply and implement.[60]

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[58] *Rollo*, pp. 671-672; 681 and 693.

[59] *Commissioner of Internal Revenue v. Court of Appeals*, 338 Phil. 322, 330 (1997).

[60] *Commissioner of Internal Revenue v. Court of Appeals*, 310 Phil. 392, 397 (1995).

In view of the foregoing, there is no need to discuss whether RMC No. 28-2001 complied with the procedural due process for tax issuances as prescribed under RMC No. 20-86.

Rule on tax exemption does not apply

Moreover, contrary to the view of petitioner, respondents need not prove their entitlement to an exemption from the coverage of VAT. The rule that tax exemptions should be construed strictly against the taxpayer presupposes that the taxpayer is clearly subject to the tax being levied against him.[61] The reason is obvious: it is both illogical and impractical to determine who are exempted without first determining who are covered by the provision.[62] Thus, unless a statute imposes a tax clearly, expressly and unambiguously, what applies is the equally well-settled rule that the imposition of a tax cannot be presumed.[63] In fact, in case of doubt, tax laws must be construed strictly against the government and in favor of the taxpayer.[64]

WHEREFORE, the Petition is hereby *DENIED*. The assailed April 30, 2008 Decision of the Court of Tax Appeals *En Banc* holding that gross receipts derived by respondents from admission tickets in showing motion pictures, films or movies are not subject to value-added tax under Section 108 of the National Internal Revenue Code of 1997, as amended, and its June 24, 2008 Resolution denying the motion for reconsideration are *AFFIRMED*.

SO ORDERED.

Carpio (Chairperson), Brion, Abad, and *Perez, JJ.,* concur.

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[61] *Commissioner of Internal Revenue v. The Phil. American Accident Insurance Company, Inc.*, 493 Phil. 785, 793 (2005).

[62] *Commissioner of Internal Revenue v. Court of Appeals, supra* note 59.

[63] *Commissioner of Internal Revenue v. The Phil. American Accident Insurance Company, Inc., supra*.

[64] *Id*.

EN BANC

[G.R. No. 184286. February 26, 2010]

MAYOR JOSE MARQUEZ LISBOA PANLILIO, *petitioner, vs.* **COMMISSION ON ELECTIONS and SAMUEL ARCEO DE JESUS, SR.,** *respondents.*

SYLLABUS

POLITICAL LAW; ELECTION LAWS; COMELEC RULES OF PROCEDURE; PERIOD FOR FILING MOTION FOR RECONSIDERATION; SUSPENSION OF THE EXECUTION OF DECISION; CASE AT BAR.— Petitioner Panlilio points out that since the COMELEC Second Division did not issue a preliminary injunction order after its 60-day TRO lapsed, nothing prevented the RTC from implementing its earlier order installing Panlilio as Busuanga Mayor pending respondent De Jesus' appeal from the decision against him. And, since the resolution annulling the RTC orders of execution pending appeal had not yet become final, the same cannot yet be implemented. Panlilio concludes from this that the COMELEC *en banc* committed grave abuse of discretion when it issued its September 5, 2008 order enjoining the RTC and the parties to comply with the Second Division's *status quo* order. But, the Second Division did better than just issue a preliminary injunction to supplant the expiring TRO. It issued after hearing its resolution of July 15, 2008, already adjudicating the merits of the case. It annulled the RTC order that allowed the execution of its decision pending appeal for lack of good reasons to support the issuance. x x x True, the implementation of the main relief granted— the setting aside of the RTC's orders that allowed execution pending appeal—may be deemed suspended when petitioner Panlilio filed a motion for its reconsideration. But the preliminary injunction component of the resolution—the maintenance of the *status quo* that existed before the RTC issued its April 17, 2008 order — is not suspended. It is expressly kept in force.

APPEARANCES OF COUNSEL

George Erwin M. Garcia for petitioner.
The Solicitor General for public respondent.
Romulo B. Macalintal and *Edgardo Carlo L. Vistan* for private respondent.

D E C I S I O N

ABAD, *J.*:

This case is about an attempt by the Regional Trial Court (RTC) to install the winning protestant in an election protest case pending appeal by the protestee to the Commission on Elections (COMELEC) despite the latter's order to the parties to maintain the *status quo*.

The Facts and the Case

Petitioner Jose Panlilio (Panlilio) and respondent Samuel de Jesus, Sr. (De Jesus) ran against each other for Mayor of Busuanga, Palawan, in the May 14, 2007 elections. De Jesus got 3,902 votes as against Panlilio's 3,150 votes, with De Jesus winning by 752 votes. On May 25, 2007 Panlilio filed an election protest[1] with the RTC, Branch 51, Puerto Princesa City. On March 7, 2008 the RTC declared Panlilio the winner over De Jesus by two votes.[2]

De Jesus appealed the RTC decision to the COMELEC.[3] Pending resolution of the appeal, petitioner Panlilio filed with the RTC a motion for execution of its judgment pending appeal.[4] Initially, the RTC denied the motion on the grounds a) that Panlilio gave no good reason that would justify immediate execution; and b) that public interest would be better served

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[1] Docketed as SPL. PROC. 1871.

[2] *Rollo*, pp. 225-255.

[3] Docketed as EAC A-37-2008.

[4] *Rollo*, pp. 259-262.

if there were no disruptions in governance.[5] On April 17, 2008, however, the RTC issued an order,[6] reversing itself and allowing execution pending appeal because its previous order had brought more confusion and chaos in the municipality[7] and Panlilio had the support of the provincial government and the congressional district.

Respondent De Jesus filed a motion for reconsideration[8] but the RTC denied it on April 28, 2008.[9] Thus, he filed a petition for *certiorari* with application for a temporary restraining order (TRO) and preliminary injunction with the COMELEC against the RTC and petitioner De Jesus,[10] seeking to annul the order of execution pending appeal.[11]

On May 15, 2008 the COMELEC's Second Division issued a 60-day TRO, enjoining the execution pending appeal or, in case petitioner Panlilio had already taken his oath, directing a return to the *status quo* prior to the issuance of the order of execution pending appeal. The Second Division also directed respondent De Jesus to continue discharging his duties as Mayor until further orders. Lastly, it required Panlilio to answer De Jesus' petition.[12]

On July 15, 2008 the Second Division issued a resolution, granting respondent De Jesus' petition and setting aside the RTC's orders of April 17 and 28, 2008.[13] The Second Division did not find good reasons for allowing execution of the RTC decision pending an appeal from it to the COMELEC. The

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[5] *Id*. at 270-272.

[6] *Id*. at 221-223.

[7] *Id*. at 221.

[8] *Id.* at 290-299.

[9] *Id*. at 224.

[10] Docketed as SPR 76-2008.

[11] *Rollo*, pp. 187-220.

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

[13] *Id*. at 78-86.

RTC declared petitioner Panlilio winner on a mere 2-vote margin, said the Second Division, after the RTC deducted 754 votes from De Jesus. Before the people's will can be enforced, it must be first ascertained. Thus, the Second Division directed all parties "to observe the *status quo*" prior to the issuance of the RTC's order of April 17, 2008 and directed respondent De Jesus to keep his post "until the finality of the March 7, 2008 decision of the court *a quo*."

On July 19, 2008 Panlilio filed a motion for reconsideration of the July 15, 2008 order,[14] which motion the COMELEC division elevated to the *en banc* for its resolution.[15] Meanwhile, on July 21, 2008 Panlilio asked the RTC to implement the writ of execution it earlier issued in his favor, given that the COMELEC's 60-day TRO had already expired. The Court granted the motion in its order of August 27, 2008.[16] After the sheriff served the writ of execution on the parties or on September 3, 2008, Panlilio took his oath as Mayor.

On September 4, 2008 respondent De Jesus hurried to the COMELEC *en banc* to seek relief from petitioner Panlilio's threatened takeover of the mayor's office.[17] On September 5, 2008 the *en banc* set aside the RTC's order.[18] It also ordered the RTC and Panlilio to maintain the July 15, 2008 *status quo* order of the COMELEC Second Division. Acting on a query of the Department of Interior and Local Government regarding which mayor to recognize, the COMELEC *en banc* issued an order on September 11, 2008, declaring incumbent De Jesus as the Mayor of Busuanga.[19]

Undeterred, on September 12, 2008 petitioner Panlilio filed this petition for *certiorari* and prohibition with application for

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[14] *Id.* at 87-99.

[15] *Id.* at 100.

[16] *Id.* at 52-61.

[17] COMELEC records, pp. 220-225.

[18] *Rollo*, pp. 43-44.

[19] *Id.* at 46-49.

TRO and preliminary injunction against COMELEC and respondent De Jesus.[20] He asks this Court to annul the actions of the COMELEC that allowed De Jesus to keep the post of Mayor of Busuanga.

The Issue

The key issue in this case is whether or not the COMELEC *en banc* acted with grave abuse of discretion when it enjoined the implementation of the RTC's order of execution pending appeal notwithstanding the lapse of the 60-day TRO that the COMELEC Second Division had earlier issued.

The Court's Ruling

Petitioner Panlilio points out that since the COMELEC Second Division did not issue a preliminary injunction order after its 60-day TRO lapsed, nothing prevented the RTC from implementing its earlier order installing Panlilio as Busuanga Mayor pending respondent De Jesus' appeal from the decision against him. And, since the resolution annulling the RTC orders of execution pending appeal had not yet become final, the same cannot yet be implemented. Panlilio concludes from this that the COMELEC *en banc* committed grave abuse of discretion when it issued its September 5, 2008 order enjoining the RTC and the parties to comply with the Second Division's *status quo* order.

But, the Second Division did better than just issue a preliminary injunction to supplant the expiring TRO. It issued after hearing its resolution of July 15, 2008, already adjudicating the merits of the case. It annulled the RTC order that allowed the execution of its decision pending appeal for lack of good reasons to support its issuance. The dispositive portion of Second Division's resolution reads:

WHEREFORE, premises considered, the Commission RESOLVED, as it hereby RESOLVES, to GRANT the instant petition for *certiorari*. The Orders of the public respondent dated April 17 and 28, 2008 are hereby SET ASIDE.

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[20] *Id.* at 7-40.

Accordingly, all parties are directed to observe the status prior to issuance of the April 17, 2008 Special Order of the public respondent and the petitioner Samuel Arce[o] de Jesus, Sr. is directed to continue to function as municipal mayor of Busuanga, Palawan until the finality of the March 28, 2008 decision of the court *a quo*.[21]

The first part of the above grants the main relief that respondent De Jesus sought: it SETS ASIDE the RTC's orders of April 17 and 28, 2008 that allowed execution of its decision pending appeal. On the other hand, the second part grants the preliminary injunction he sought. It took the place of the TRO. Although the Second Division did not here use the words "preliminary injunction," it directed or enjoined all parties "**to observe the *status quo***" that existed prior to the issuance of the RTC's order of April 17, 2008. It was the same "*status quo*" that the expiring TRO enforced.

True, the implementation of the main relief granted—the setting aside of the RTC's orders that allowed execution pending appeal—may be deemed suspended when petitioner Panlilio filed a motion for its reconsideration.[22] But the preliminary injunction component of the resolution–the maintenance of the *status quo* that existed before the RTC issued its April 17, 2008 order—is not suspended. It is expressly kept in force.

Besides, if instead of issuing a preliminary injunction in place of a TRO, a court opts to decide the case on its merits with the result that it also enjoins the same acts covered by its TRO, it stands to reason that the decision amounts to a grant of preliminary injunction. Such injunction should be deemed in force pending any appeal from the decision. The view of petitioner Panlilio—that execution pending appeal should still continue notwithstanding a decision of the higher court enjoining such

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[21] *Id.* at 86.

[22] COMELEC RULES OF PROCEDURE, Rule 19, Sec. 2. *Period for Filing Motions for Reconsideration.*—A motion to reconsider a decision, resolution, order or ruling of a Division shall be filed within five (5) days from the promulgation thereof. Such motion, if not *pro forma*, suspends the execution or implementation of the decision, resolution, order or ruling.

execution—does not make sense. It will render quite inutile the proceedings before such court.

Parenthetically, respondent De Jesus accuses petitioner Panlilio of forum shopping in view of a manifestation he filed with the COMELEC *en banc* on September 17, 2008, asking it to already resolve his motion for reconsideration of the July 15, 2008 resolution of the Second Division[23] despite the pendency of the present petition.

The Court does not have to resolve this issue considering its ruling above. At any rate, it seems clear that the subject matter of the present petition is the COMELEC *en banc*'s order of September 15, 2008, enjoining the parties to maintain the *status quo* directed by its Second Division. On the other hand, the subject matter of petitioner Panlilio's September 17, 2008 manifestation urging action from the COMELEC *en banc* is the motion for reconsideration that he filed from the resolution or decision of the Second Division. Since the Court did not enjoin this, the COMELEC *en banc* was free to proceed with its adjudication of the main case.

ACCORDINGLY, the Court *DISMISSES* the petition and *AFFIRMS* the orders of the Commission on Elections *En Banc* in SPR 76-2008 dated September 5 and 11, 2008.

SO ORDERED.

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

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[23] COMELEC records, pp. 472-479.

EN BANC

[G.R. No. 190526. February 26, 2010]

SANDRA Y. ERIGUEL, *petitioner, vs.* **COMMISSION ON ELECTIONS and MA. THERESA DUMPIT-MICHELENA,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; COURTS; JURISDICTION OVER THE SUBJECT MATTER; CONFERRED ONLY BY THE CONSTITUTION OR BY LAW.— Indeed, it is a basic doctrine in procedural law that the jurisdiction of a court or an agency exercising quasi-judicial functions (such as the COMELEC) over the subject-matter of an action is conferred only by the Constitution or by law. Jurisdiction cannot be fixed by the agreement of the parties; it cannot be acquired through, or waived, enlarged or diminished by, any act or omission of the parties. Neither can it be conferred by the acquiescence of the court, more particularly so in election cases where the interest involved transcends those of the contending parties.

2. POLITICAL LAW; ELECTIONS; COMELEC; WHEN EXERCISING ITS QUASI-JUDICIAL POWERS, THE COMMISSION IS CONSTITUTIONALLY MANDATED TO DECIDE THE CASE FIRST IN DIVISION, AND *EN BANC* ONLY UPON MOTION FOR RECONSIDERATION.— The COMELEC, in the exercise of its quasi-judicial functions, is bound to follow the provision set forth in Section 3, Article IX-C of the 1987 Constitution, which reads: Sec. 3. The Commission on Elections may sit *en banc* or in two divisions, and shall promulgate its rules of procedure in order to expedite disposition of election cases, including pre-proclamation controversies. **All such election cases shall be heard and decided in division, provided that motions for reconsideration of decisions shall be decided by the Commission *en banc*.** It therefore follows that when the COMELEC is exercising its quasi-judicial powers such as in the present case, the Commission is constitutionally mandated to decide the case first in division, and *en banc* only upon motion for reconsideration.

3. ID.; ID.; ID.; ORIGINAL APPELLATE JURISDICTION TO RESOLVE AN APPEAL TO AN ELECTION PROTEST DECIDED BY THE TRIAL COURT IS LODGED WITH THE COMELEC DIVISION; IMMEDIATE TRANSFER OF THE APPEAL TO THE COMMISSION *EN BANC* CONSTITUTES GRAVE ABUSE OF DISCRETION.— [T]he Special Second Division of the COMELEC clearly acted with grave abuse of discretion when it immediately transferred to the Commission *en banc* a case that ought to be heard and decided by a division. Such action cannot be done without running afoul of Section 3, Article IX-C of the 1987 Constitution. Instead of peremptorily transferring the case to the Commission *en banc*, the Special Second Division of COMELEC, should have instead assigned another Commissioner as additional member of its Special Second Division, not only to fill in the seat temporarily vacated by Commissioner Ferrer, but more importantly so that the required *quorum* may be attained. Emphasis must be made that it is the COMELEC division that has original appellate jurisdiction to resolve an appeal to an election protest decided by a trial court. Conclusively, the Commission *en banc* acted without jurisdiction when it heard and decided Dumpit's appeal.

4. ID.; ID.; ID.; REMEDY OF THE PARTIES AGAINST AN INTERLOCUTORY ORDER ISSUED BY A COMELEC DIVISION.— Any one (1) among the parties should have moved for a reconsideration of the July 22, 2009 Order before the Special Second Division since what was involved was an interlocutory order. The Special Second Division may, however, opt to refer the resolution of the motion to the Commission *en banc*, but only upon a unanimous vote by all of the Division members. If the motion is still denied by the COMELEC *en banc*, the aggrieved party may thereafter seek recourse to this Court *via* a petition for *certiorari* under Rule 65.

5. ID.; ID.; ELECTION PROTESTS; THE COMELEC CANNOT PROCEED TO CONDUCT A FRESH APPRECIATION OF THE CONTESTED BALLOTS WITHOUT FIRST ASCERTAINING THE INTEGRITY THEREOF; RATIONALE; *ROSAL* DOCTRINE CITED AND APPLIED TO THE CASE AT BAR.— The records of the case also indicate that the COMELEC *en banc* proceeded to conduct a fresh appreciation of the contested ballots without first ascertaining whether the ballots to be recounted had been kept inviolate. This lackadaisical and flawed procedure on the

part of the COMELEC is further highlighted by the fact that as early as August 10, 2009, COMELEC Chairman Jose A.R. Melo has already issued an order to the Commission's Law Department to investigate why some election returns in La Union were missing, while some of the ballot boxes appeared to have been tampered with. x x x In *Rosal*, we painstakingly explained the importance of ascertaining the integrity of the ballots before conducting a revision. There, we said: The purpose of an election protest is to ascertain whether the candidate proclaimed elected by the board of canvassers is the true and lawful choice of the electorate. Such a proceeding is usually instituted on the theory that the election returns, which are deemed *prima facie* to be true reports of how the electorate voted on election day and which serve as the basis for proclaiming the winning candidate, do not accurately reflect the true will of the voters due to alleged irregularities that attended the counting of ballots. In a protest prosecuted on such a theory, the protestant ordinarily prays that the official count as reflected in the election returns be set aside in favor of a revision and recount of the ballots, the results of which should be made to prevail over those reflected in the returns pursuant to the doctrine that "in an election contest where what is involved is the number of votes of each candidate, the best and most conclusive evidence are the ballots themselves." **It should never be forgotten, though, that the superior status of the ballots as evidence of how the electorate voted presupposes that these were the very same ballots actually cast and counted in the elections.** Thus, it has been held that before the ballots found in a [ballot] box can be used to set aside the returns, the court (or **the Comelec** as the case may be) **must be sure** that it has before it the same ballots deposited by the voters. The *Rosal* doctrine finds equal, if not more, importance in the instant case where the proceeding adopted by the COMELEC involved not only a revision of ballots, but a fresh appreciation thereof.

6. ID.; ID.; ID.; COMELEC'S FINDINGS RENDERED VOID FOR LACK OF JURISDICTION AND FAILURE TO ENSURE THE INTEGRITY OF THE BALLOTS; ASSAILED RESOLUTION WAS SET ASIDE.— [H]owever exhaustive the COMELEC's findings may appear to be, the same is still rendered void due to its lack of jurisdiction and its failure to ensure that the integrity of the ballots has been preserved prior to conducting

a fresh appreciation thereof. Under such circumstances, the question as to who between the parties was duly elected mayor of Agoo, La Union still cannot be settled without conducting proper proceedings in the COMELEC. Therefore, we are left with no other recourse but to set aside the assailed Resolution for being both procedurally and substantively infirm.

7. ID.; ID.; ID.; APPRECIATION OF THE CONTESTED BALLOTS, PROPER PROCEDURE.— [T]he COMELEC is hereby ordered to re-raffle and assign the case to one (1) of its divisions, and to issue an order that an additional member be appointed to the assigned division should it later on be determined that the required *quorum* still could not be attained. Since the custody of the ballot boxes has already been transferred to the COMELEC, the COMELEC division to which the case shall be assigned must, prior to proceeding with a fresh appreciation of the ballots, determine whether the ballot boxes for the Municipality of Agoo sufficiently retained their integrity as to justify the conclusion that the ballots contained therein could be relied on as better evidence than the election returns. The COMELEC division shall also determine which ballot boxes in the said municipality were in such a condition as would afford reasonable opportunity for unauthorized persons to gain unlawful access to their contents. Should it be found that there are such ballot boxes, the ballots contained therein shall be held to have lost all probative value and should not be used to set aside the official count in the election returns, following our ruling in *Rosal*.

8. ID.; ID.; THE COMELEC IS REMINDED TO BE MORE PRUDENT AND CIRCUMSPECT IN RESOLVING ELECTION PROTESTS BY FOLLOWING THE PROPER PROCEDURE, WHETHER IN THE EXERCISE OF ITS ORIGINAL OR APPELLATE JURISDICTION, IN ORDER NOT TO FRUSTRATE THE TRUE WILL OF THE ELECTORATE.— We likewise remind the COMELEC to be more prudent and circumspect in resolving election protests by following the proper procedure, whether in the exercise of its original or appellate jurisdiction, in order not to frustrate the true will of the electorate. Otherwise, the very foundation of our democratic processes may just as well be easily and expediently compromised.

APPEARANCES OF COUNSEL

Leonard Florent O. Bulatao and *Brillantes Navarro Jumamil Arcilla Escolin Martinez & Vivero Law Offices* for petitioner.

The Solicitor General for public respondent.

Michelle D. Martinez for private respondent.

D E C I S I O N

VILLARAMA, JR., *J.*:

May a division of the Commission on Elections (COMELEC) elevate an appeal to the Commission *en banc* without first resolving it? And in connection with the said appeal, may the COMELEC *en banc* legally proceed with a fresh appreciation of the contested ballots without first ascertaining that the same have been kept inviolate? These are the two (2) important issues raised in this petition for *certiorari* filed under Rule 64 in relation to Rule 65 of the 1997 Rules of Civil Procedure, as amended.

First, the facts.

Petitioner Sandra Eriguel (Eriguel) and private respondent Ma. Theresa Dumpit-Michelena (Dumpit) were mayoralty candidates in Agoo, La Union during the May 14, 2007 elections.

On May 18, 2007, after the canvassing and counting of votes, Eriguel was proclaimed as the duly elected mayor of the Municipality of Agoo. Eriguel received 11,803 votes against Dumpit's 7,899 votes, translating to a margin of 3,904 votes.

On May 28, 2007, Dumpit filed an Election Protest *Ad Cautelam*[1] before the Regional Trial Court (RTC) of Agoo, La Union contesting the appreciation and counting of ballots in 152 precincts in Agoo. Dumpit alleged that some of the ballots cast in favor of Eriguel were erroneously counted and appreciated in the latter's favor despite containing markings and identical symbols. Dumpit also alleged that while a number of ballots containing

[1] *Rollo*, pp. 408-422. Docketed as EPC No. A-16.

Eriguel's name were written by only one (1) person, the same were still counted in the latter's favor.[2]

Initially, the RTC dismissed the election protest on May 31, 2007 due to Dumpit's failure to specify the number of votes credited to the parties per proclamation as required by Section 11(c), Rule 2 of A.M. No. 07-4-15-SC.[3] The protest was, however, reinstated following Dumpit's filing of a motion for reconsideration.

Preliminary conference was then conducted on June 15, 2007. Revision of ballots followed shortly thereafter and was completed on July 18, 2007.[4] The results of the revision showed that Eriguel had 11,678 votes against Dumpit's 7,839 votes, or a lead of 3,839 votes.

On Dumpit's motion, the RTC conducted a technical examination of the ballots. Senior Document Examiner Antonio Magbojos of the National Bureau of Investigation (NBI) Questioned Documents Division conducted the technical examination for Dumpit, while Chief Inspector Jose Wacangan of the Regional Crime Laboratory Office No.1 of the Philippine National Police (PNP) conducted the examination for Eriguel.[5] Eight (8) other witnesses for Dumpit also testified during the trial.[6]

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[2] *Id.* at 415-416.

[3] Sec. 11(c), Rule 2 of the Rules of Procedure in Election Contests Before the Courts Involving Elective Municipal and Barangay Officials, or The Election Contest Rules which took effect on May 15, 2007, reads:

> Rule 2. ELECTION CONTESTS
>
> x x x x x x x x x
>
> SEC. 11. *Contents of the protest or petition.* – An election protest or petition for *quo warranto* shall specifically state the following facts:
>
> x x x x x x x x x
>
> (c) the number of votes credited to the parties per proclamation.

[4] *Rollo*, p. 439.

[5] *Id.* at 439-440.

[6] *Id.* at 443-444.

On December 7, 2007, the trial court issued a decision upholding Eriguel's proclamation.[7] The pertinent portion of the RTC decision reads:

A perusal of all the testimonies of the witnesses and all other evidences presented by the Protestant are not substantial enough to persuade the Judge of this Court to rule in favor of Protestant.

The Judge of this Court had gone over reading the Minutes of Voting and Counting of Votes but could not find any alleged irregularity recorded nor any protest entered in said Minutes of Voting and Counting of Votes.

xxx xxx xxx

While witnesses (Ligaya Mutia, Elmer Tamayo, Melita Genove, and Ma. Victoria Japson) were presented and testified that there were irregularities or protests made but were not duly recorded by the BEI Chairman either intentionally or unintentionally, still the same did not or is not enough to overcome such presumption. Granting without concluding (*sic*) that such were the case, their testimonies are merely confined to the precincts in which they served as poll watcher[s] and does not affect other precincts where the conduct of the election were generally peaceful. The same is not enough to overcome the margin of more than three thousand votes lead of the Protestee.

The Judge had even observed in the course of his scanning the Minutes of Voting and Counting of Votes that the Protestant or the Political Party to which she belongs has four (4) watchers in some precincts, three (3), two (2) and one (1) in other precincts. In other words, the Protestant or KAMPI had a number of watchers who were in the voting precincts during the May 14, 2007 elections. Poll watchers are the eyes and ears of the candidates. They are trained/oriented (or supposed to be) in such a way that they would be able to perform their tasks of seeing to it that the votes cast for the candidate they

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[7] *Id.* at 459-460. The dispositive portion of the December 7, 2007 RTC Decision reads:

WHEREFORE, upon the foregoing premises, the Court declares protestee, SANDRA Y. ERIGUEL, the duly elected Mayor of the Municipality of AGOO, La Union in the local elections of May 14, 2007, by plurality of votes.

DECIDED on the 3rd day of December, 2007.

PROMULGATED this 7th day of December, 2007.

are serving will be counted and to file a protest should any sign of irregularity be observed.

Mr. Antonio Magbojos gave his expert handwriting testimony on the entries written on the ballots for the Protestee, however, these are mere opinions and speculations which were not substantiated by any strong, direct and convincing evidence on how such entries were written by one person for a particular set or group of ballots in a particular precinct.[8]

Unsatisfied with the findings, Dumpit appealed to the COMELEC. The case was docketed as EAC No. A-01-2008, and was initially assigned to the Special Second Division composed of Presiding Commissioner Rene V. Sarmiento and Commissioner Nicodemo T. Ferrer. Commissioner Ferrer, however, decided to inhibit himself. This prompted Presiding Commissioner Sarmiento to issue an Order dated July 22, 2009 elevating the appeal to the Commission *en banc*.[9] The transfer of the case to the Commission *en banc* was apparently made pursuant to Section 5(b), Rule 3 of the COMELEC Rules of Procedure, which states,

Sec. 5. *Quorum; Votes Required.* – (a) x x x

(b) When sitting in Divisions, two (2) Members of a Division shall constitute a quorum to transact business. The concurrence of at least two (2) Members of a Division shall be necessary to reach a decision, resolution, order or ruling. If this required number is not obtained, the case shall be automatically elevated to the Commission *en banc* for decision or resolution.[10]

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[8] *Id.* at 446-450.

[9] *Id.* at 464. The July 22, 2009 Order of the Special Second Division of COMELEC reads:

> Considering that the necessary majority can not be had in the resolution of this case, the same, together with the records thereof, is hereby elevated to the Commission *en banc*.
>
> SO ORDERED.

[10] *Id.* at 56.

Thereafter, the Commission *en banc* proceeded to conduct a fresh appreciation of the contested ballots.[11] On December 9, 2009, after an exhaustive appreciation of all the contested ballots,[12] the Commission *en banc* promulgated a resolution nullifying 3,711 ballots cast in favor of Eriguel after finding the same to have been written by only one (1) or two (2) persons. The following figures were thus derived:[13]

	Dumpit	Eriguel
Total number of votes per physical count after revision	7,839	11,678
ADD claimed/credited ballots	35	41
LESS ballots INVALIDATED after appreciation	14	4,026
Total No. of votes AFTER Comelec appreciation	7,860	7,693

On this note, the Commission *en banc* set aside the RTC's decision and declared Dumpit as the duly elected mayor of Agoo, La Union, for having garnered 167 more votes than Eriguel.[14]

Aggrieved, Eriguel now comes before us *via* a petition for *certiorari*.

Eriguel essentially raises the following two issues: (1) procedurally, whether the Special Second Division of the COMELEC gravely abused its authority when it automatically elevated Dumpit's appeal to the Commission *en banc* after only one commissioner was left to deal with the case; and (2) substantively, whether the COMELEC *en banc*'s fresh appreciation of the contested ballots without first ascertaining

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[11] *Id.* at 57.

[12] *Id.* at 60-201.

[13] *Id.* at 201.

[14] *Id.* at 201-202. The dispositive portion of the December 9, 2009 COMELEC *en banc* Resolution reads:

> WHEREFORE, in view of the foregoing, the appeal is GRANTED. The appealed decision of the Regional Trial Court of Agoo, La Union is REVERSED and SET ASIDE. Appellant Maria Theresa Dumpit-Michelena is hereby proclaimed as the winning Mayor of Agoo, La Union having garnered 167 votes more than appellee Sandra Y. Eriguel.
>
> SO ORDERED.

the integrity thereof violated the doctrine enunciated in *Rosal v. Commission on Elections*.[15]

We find the petition meritorious.

I. Automatic elevation of the appeal to the Commission *en banc* is invalid

The COMELEC, in the exercise of its quasi-judicial functions, is bound to follow the provision set forth in Section 3, Article IX-C of the 1987 Constitution, which reads:

> Sec. 3. The Commission on Elections may sit *en banc* or in two divisions, and shall promulgate its rules of procedure in order to expedite disposition of election cases, including pre-proclamation controversies. **All such election cases shall be heard and decided in division, provided that motions for reconsideration of decisions shall be decided by the Commission *en banc*.**[16]

It therefore follows that when the COMELEC is exercising its quasi-judicial powers such as in the present case, the Commission is constitutionally mandated to decide the case first in division, and *en banc* only upon motion for reconsideration.[17]

Indeed, it is a basic doctrine in procedural law that the jurisdiction of a court or an agency exercising quasi-judicial functions (such as the COMELEC) over the subject-matter of an action is conferred only by the Constitution or by law. Jurisdiction cannot be fixed by the agreement of the parties; it cannot be acquired through, or waived, enlarged or diminished by, any act or omission of the parties.[18] Neither can it be conferred by the acquiescence of the

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[15] G.R. Nos. 168253 & 172741, March 16, 2007, 518 SCRA 473.

[16] Emphasis supplied.

[17] *Baytan v. Commission on Elections*, G.R. No. 153945, February 4, 2003, 396 SCRA 703, 716; and *Canicosa v. Commission on Elections*, G.R. No. 120318, December 5, 1997, 282 SCRA 512, 521.

[18] Regalado, Vol. I, *Remedial Law Compendium*, 9th revised edition, pp. 11-12.

court,[19] more particularly so in election cases where the interest involved transcends those of the contending parties.

This being so, the Special Second Division of the COMELEC clearly acted with grave abuse of discretion when it immediately transferred to the Commission *en banc* a case that ought to be heard and decided by a division. Such action cannot be done without running afoul of Section 3, Article IX-C of the 1987 Constitution. Instead of peremptorily transferring the case to the Commission *en banc*, the Special Second Division of COMELEC, should have instead assigned another Commissioner as additional member of its Special Second Division, not only to fill in the seat temporarily vacated by Commissioner Ferrer, but more importantly so that the required *quorum* may be attained.

Emphasis must be made that it is the COMELEC division that has original appellate jurisdiction to resolve an appeal to an election protest decided by a trial court. Conclusively, the Commission *en banc* acted without jurisdiction when it heard and decided Dumpit's appeal.

Any one (1) among the parties should have moved for a reconsideration of the July 22, 2009 Order before the Special Second Division since what was involved was an interlocutory order.[20] The Special Second Division may, however, opt to refer the resolution of the motion to the Commission *en banc*, but only upon a unanimous vote by all of the Division members.[21] If the motion is still denied

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[19] *Id.* at 12.

[20] Sec. 5 (c), Rule 3 of the COMELEC Rules of Procedure reads:

Sec. 5. *Quorum; Votes Required.* – x x x

(c) Any motion to reconsider a decision, resolution, order or ruling of a Division shall be resolved by the Commission *en banc* **except motions on interlocutory orders of the division which shall be resolved by the division which issued the order.** (Emphasis supplied.)

[21] Sec. 2, Rule 3 of the COMELEC Rules of Procedure reads:

Sec. 2. *The Commission En Banc.* – **The Commission shall sit *en banc*** in cases hereinafter specifically provided, or in pre-proclamation cases upon a vote of a majority of the members of the Commission, or in all other cases where a division is not authorized to act, or **where, upon a unanimous vote of all the Members of a Division, an interlocutory matter or issue relative to an action or proceeding before it is decided to be referred to the Commission *en banc*.** (Emphasis supplied.)

by the COMELEC *en banc*, the aggrieved party may thereafter seek recourse to this Court *via* a petition for *certiorari* under Rule 65.[22]

II. The COMELEC cannot proceed to conduct a fresh appreciation of ballots without first ascertaining the integrity thereof

The records of the case also indicate that the COMELEC *en banc* proceeded to conduct a fresh appreciation of the contested ballots without first ascertaining whether the ballots to be recounted had been kept inviolate. This lackadaisical and flawed procedure on the part of the COMELEC is further highlighted by the fact that as early as August 10, 2009, COMELEC Chairman Jose A.R. Melo has already issued an order to the Commission's Law Department to investigate why some election returns in La Union were missing,[23] while some of the ballot boxes appeared to have been tampered with.[24]

On December 4, 2009, Eriguel even filed an omnibus motion expressing concern over the discovery and praying that she be informed of the status of the investigation in order to ensure that the ballots being appreciated by the Commission at that time were still the same ballots that had been cast by the electorate of Agoo.[25] The motion, however, remained unresolved as the Commission *en banc* proceeded with the appreciation of ballots and, eventually, promulgated the assailed Resolution five (5) days thereafter.

In *Rosal*,[26] we painstakingly explained the importance of ascertaining the integrity of the ballots before conducting a revision. There, we said:

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[22] *Supra*, note 15 at 486.

[23] *Rollo*, p. 570.

[24] *Id.* at 566-567.

[25] *Id.* at 28.

[26] *Supra* note 15.

The purpose of an election protest is to ascertain whether the candidate proclaimed elected by the board of canvassers is the true and lawful choice of the electorate. Such a proceeding is usually instituted on the theory that the election returns, which are deemed *prima facie* to be true reports of how the electorate voted on election day and which serve as the basis for proclaiming the winning candidate, do not accurately reflect the true will of the voters due to alleged irregularities that attended the counting of ballots. In a protest prosecuted on such a theory, the protestant ordinarily prays that the official count as reflected in the election returns be set aside in favor of a revision and recount of the ballots, the results of which should be made to prevail over those reflected in the returns pursuant to the doctrine that "in an election contest where what is involved is the number of votes of each candidate, the best and most conclusive evidence are the ballots themselves."

It should never be forgotten, though, that the superior status of the ballots as evidence of how the electorate voted presupposes that these were the very same ballots actually cast and counted in the elections. Thus, it has been held that before the ballots found in a [ballot] box can be used to set aside the returns, the court (or **the Comelec** as the case may be) **must be sure** that it has before it the same ballots deposited by the voters.[27]

The *Rosal* doctrine finds equal, if not more, importance in the instant case where the proceeding adopted by the COMELEC involved not only a revision of ballots, but a fresh appreciation thereof.

Thus, however exhaustive the COMELEC's findings may appear to be, the same is still rendered void due to its lack of jurisdiction and its failure to ensure that the integrity of the ballots has been preserved prior to conducting a fresh appreciation thereof.

Under such circumstances, the question as to who between the parties was duly elected mayor of Agoo, La Union still cannot be settled without conducting proper proceedings in the COMELEC. Therefore, we are left with no other recourse but

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[27] *Id.* at 487-488. Emphasis supplied.

to set aside the assailed Resolution for being both procedurally and substantively infirm.

Accordingly, the COMELEC is hereby ordered to re-raffle and assign the case to one (1) of its divisions, and to issue an order that an additional member be appointed to the assigned division should it later on be determined that the required *quorum* still could not be attained. Since the custody of the ballot boxes has already been transferred to the COMELEC, the COMELEC division to which the case shall be assigned must, prior to proceeding with a fresh appreciation of the ballots, determine whether the ballot boxes for the Municipality of Agoo sufficiently retained their integrity as to justify the conclusion that the ballots contained therein could be relied on as better evidence than the election returns. The COMELEC division shall also determine which ballot boxes in the said municipality were in such a condition as would afford reasonable opportunity for unauthorized persons to gain unlawful access to their contents. Should it be found that there are such ballot boxes, the ballots contained therein shall be held to have lost all probative value and should not be used to set aside the official count in the election returns, following our ruling in *Rosal*.[28]

We likewise remind the COMELEC to be more prudent and circumspect in resolving election protests by following the proper procedure, whether in the exercise of its original or appellate jurisdiction, in order not to frustrate the true will of the electorate. Otherwise, the very foundation of our democratic processes may just as well be easily and expediently compromised.

WHEREFORE, the instant petition is *GRANTED*. The Resolution dated December 9, 2009 of the Commission on Elections *en banc* in EAC No. A-01-2008 is hereby declared *NULL* and *VOID*. The Commission on Elections is hereby *DIRECTED* to re-raffle and assign the case to one (1) of its divisions, and to proceed with the resolution of the case with utmost dispatch. To this end, it shall:

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[28] *Id.* at 498.

(1) identify which of the ballot boxes were otherwise preserved with such substantial compliance with statutory safety measures as to preclude reasonable opportunity for tampering with their contents. The ballots from these precincts shall be deemed to have retained their integrity in the absence of evidence to the contrary and the Commission on Elections may consider them in the recount; and

(2) ascertain which of the ballot boxes were found in such a condition as would afford reasonable opportunity for unauthorized persons to gain unlawful access to their contents. The Commission on Elections shall exclude from the recount the ballots from these boxes and shall rely instead on the official count as stated in the election returns.

The *status quo ante* orders issued by this Court on December 28, 2009 and January 4, 2010 are hereby *MAINTAINED*.

SO ORDERED.

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

Velasco, Jr., J., in the result.

Peralta, J., on official leave.

EN BANC

[A.M. No. 10-1-13-SC. March 2, 2010]

RE: *SUBPOENA DUCES TECUM* DATED JANUARY 11, 2010 OF ACTING DIRECTOR ALEU A. AMANTE, PIAB-C, OFFICE OF THE OMBUDSMAN

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; *SUBPOENA DUCES TECUM*; QUESTION ON THE PROPRIETY THEREOF, RENDERED MOOT BY THE OMBUDSMAN'S DISMISSAL ORDER OF THE UNDERLYING COMPLAINT. — In light of the Ombudsman's dismissal order of February 4, 2010, any question relating to the legality and propriety of the *subpoena duces tecum* the Ombudsman issued [in relation to the dismissed case] has been rendered moot and academic. The *subpoena duces tecum* merely drew its life and continued viability from the underlying criminal complaint, and the complaint's dismissal — belated though it may be — cannot but have the effect of rendering the need for the *subpoena duces tecum* academic.

2. ID.; ID.; ID.; ISSUANCE OF *SUBPOENA DUCES TECUM* BY THE OFFICE OF THE OMBUDSMAN; ELUCIDATED. — In the appropriate case, the Office of the Ombudsman has full authority to issue subpoenas, including *subpoena duces tecum*, for compulsory attendance of witnesses and the production of documents and information relating to matters under its investigation. The grant of this authority, however, is not unlimited, as the Ombudsman must necessarily observe and abide by the terms of the Constitution and our laws, the Rules of Court and the applicable jurisprudence on the issuance, service, validity and efficacy of subpoenas. Under the Rules of Court, the issuance of subpoenas, including a *subpoena duces tecum*, operates under the requirements of reasonableness and relevance. For the production of documents to be reasonable and for the documents themselves to be relevant, the matter under inquiry should, in the first place, be one that the Ombudsman can legitimately entertain, investigate and rule upon.

3. ID.; ID.; ID.; ISSUANCE OF *SUBPOENA DUCES TECUM* IN RELATION TO CRIMINAL COMPLAINT FILED AGAINST

RETIRED SUPREME COURT JUSTICES FOR ALLEGED VIOLATION OF RA 3019 (THE ANTI-GRAFT AND CORRUPT PRACTICES ACT); MATTERS TO BE CONSIDERED. – In the present case, the "matter" that gave rise to the issuance of a *subpoena duces tecum* was a criminal complaint filed by the complainants Lozano for the alleged violation by retired Supreme Court Chief Justice Hilario Davide, Jr. and retired Associate Justice Alicia Austria-Martinez of Section 3(e) of R.A. 3019, as amended (the Anti-Graft and Corrupt Practices Act). A first step in considering whether a criminal complaint (and its attendant compulsory processes) is within the authority of the Ombudsman to entertain (and to issue), is to consider the nature of the powers of the Supreme Court. This Court, by constitutional design, is supreme in its task of adjudication; judicial power is vested solely in the Supreme Court and in such lower courts as may be established by law. Judicial power includes the duty of the courts, not only to settle actual controversies, but also to determine whether grave abuse of discretion amounting to lack or excess of jurisdiction has been committed in any branch or instrumentality of government. As a rule, all decisions and determinations in the exercise of judicial power ultimately go to and stop at the Supreme Court whose judgment is final. ***This constitutional scheme cannot be thwarted or subverted through a criminal complaint that, under the guise of imputing a misdeed on the Court and its Members, seeks to revive and re-litigate matters that have long been laid to rest by the Court.*** Effectively, such criminal complaint is a collateral attack on a judgment of this Court that, by constitutional mandate, is final and already beyond question.

4. POLITICAL LAW; CONSTITUTIONAL LAW; JUDICIAL DEPARTMENT; SUPREME COURT; RULINGS SHOWING THAT A CRIMINAL COMPLAINT FOR VIOLATION OF SECTION 3(E), RA 3019, BASED ON THE LEGAL CORRECTNESS OF THE OFFICIAL ACTS OF JUSTICES OF THE SUPREME COURT, CANNOT PROSPER; APPROPRIATE RECOURSE. — A simple jurisprudential research would easily reveal that this Court has had the occasion to rule on the liability of Justices of the Supreme Court for violation of Section 3(e) of R.A. 3019—the very same provision that the complainants Lozano invoke in this case. In the case *In re Wenceslao Laureta,* the client of Atty. Laureta

filed a complaint with the *Tanodbayan* charging Members of the Supreme Court with violation of Section 3(e) of Republic Act No. 3019 for having knowingly, deliberately and with bad faith rendered an unjust resolution in a land dispute. The Court unequivocally ruled that insofar as this Court and its Divisions are concerned, a charge of violation of the Anti-Graft and Corrupt Practices Act on the ground that such collective decision is "unjust" should **not** prosper; the parties cannot "relitigate in another forum the final judgment of the Court," as to do so is to subordinate the Court, in the exercise of its judicial functions, to another body. The case *In re Joaquin T. Borromeo* reiterates the *Laureta* ruling, particularly that (1) judgments of the Supreme Court are not reviewable; (2) administrative, civil and criminal complaints against a judge should not be turned into substitutes for appeal; (3) only courts may declare a judgment unjust; and (4) the absurdity of the situation where the Ombudsman is made to determine whether or not a judgment of the Court is unjust. The Court further discussed the requisites for the prosecution of judges, as follows: That is not to say that it is not possible at all to prosecute judges for this impropriety, of rendering an unjust judgment or interlocutory order; but, taking account of all the foregoing considerations, the indispensable requisites are that there be a final declaration by a competent court in some appropriate proceeding of the manifestly unjust character of the challenged judgment or order, and there be also evidence of malice and bad faith, ignorance or inexcusable negligence on the part of the judge in rendering said judgment or order. Thus, consistent with the nature of the power of this Court under our constitutional scheme, only this Court — not the Ombudsman – can declare a Supreme Court judgment to be unjust. In *Alzua v. Arnalot*, the Court ruled that "judges of superior and general jurisdiction are not liable to respond in civil action for damages, and provided this rationale for this ruling: Liability to answer to everyone who might feel himself aggrieved by the action of the judge would be inconsistent with the possession of this freedom and would destroy that independence without which no judiciary can be either respectable or useful." The same rationale applies to the indiscriminate attribution of criminal liability to judicial officials. Plainly, under these rulings, a criminal complaint for violation of Section 3(e) of RA 3019, *based on the legal correctness of*

the official acts of Justices of the Supreme Court, cannot prosper and should not be entertained. This is not to say that Members of the Court are absolutely immune from suit during their term, for they are not. The Constitution provides that the appropriate recourse against them is to seek their removal from office if they are guilty of culpable violation of the Constitution, treason, bribery, graft and corruption, other high crimes, or betrayal of public trust. Only after removal can they be criminally proceeded against for their transgressions. While in office and thereafter, and for their official acts that do not constitute impeachable offenses, recourses against them and their liabilities therefor, are as defined in the above rulings.

5. ID.; ADMINISTRATIVE LAW; RA NO. 6770 ON THE OFFICE OF THE OMBUDSMAN; HAS INVESTIGATORY POWER AGAINST IMPEACHABLE OFFICERS FOR ALLEGED SERIOUS MISCONDUCT, BUT ONLY *IF WARRANTED*; CASE AT BAR. — Section 22 of Republic Act No. 6770, in fact, specifically grants the Ombudsman the authority to investigate impeachable officers, but only when such investigation is **warranted**: Section 22. *Investigatory Power*. The Office of the Ombudsman shall have the power to investigate any serious misconduct in office allegedly committed by officials removable by impeachment, for the purpose of filing a verified complaint for impeachment, if warranted. Conversely, if a complaint against an impeachable officer is unwarranted for lack of legal basis and for clear misapplication of law and jurisprudence, the Ombudsman should spare these officers from the harassment of an unjustified investigation. The present criminal complaint against the retired Justices is one such case where an investigation is not warranted, *based as it is on the legal correctness of their official acts*, and the Ombudsman should have immediately recognized the criminal complaint for what it is, instead of initially proceeding with its investigation and issuing a *subpoena duces tecum*.

6. ID.; CONSTITUTIONAL LAW; JUDICIAL DEPARTMENT; SUPREME COURT; POWER TO REVIEW THE LOWER COURTS' FINDINGS OF FACT.— The Supreme Court is the highest court of the land with the power to review, revise, reverse, modify, or affirm on appeal or *certiorari*, *as the law or the Rules of Court may provide*, final judgments and orders of the lower courts. It has the authority to promulgate rules

on practice, pleadings and admission to the bar, and suspend the operation of these rules in the interest of justice. Jurisprudence holds, too, that the Supreme Court may exercise these powers over the factual findings of the lower courts, among other prerogatives, in the following instances: (1) when the findings are grounded entirely on speculations, surmises, or conjectures; (2) when the inference made is manifestly mistaken, absurd of impossible; (3) when there is grave abuse of discretion; (4) when the judgment is based on a misappreciation of facts; (5) when the findings of fact are conflicting; (6) when, in making its findings, the same are contrary to the admissions of both appellant and appellee; (7) when the findings are contrary to those of the trial court; (8) when the findings 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; and (10) when the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record.

7. ID.; ADMINISTRATIVE LAW; SECTION 3(E) OF RA NO. 3019; VIOLATION THEREOF; GIVING A PRIVATE PARTY UNWARRANTED BENEFITS THROUGH MANIFEST PARTIALITY; PARTIALITY, BAD FAITH AND GROSS NEGLIGENCE, DEFINED.— A public official can violate Section 3(e) of Republic Act No. 3019 in two ways: (1) by causing undue injury to any party, including the Government; or (2) by giving any private party any unwarranted benefits, advantage or preference; in either case, these acts must be committed through manifest partiality, evident bad faith, or gross and inexcusable negligence. "Partiality" is defined as a bias towards the disposition to see and report towards the matters as wished for, rather than as they are. "Bad faith" connotes not only bad judgment or negligence but also a dishonest purpose, a conscious wrongdoing, or a breach of duty amounting to fraud. "Gross negligence," on the other hand, is characterized by the want of even slight care, acting or omitting to act in a situation where there is a duty to act, not inadvertently but willfully and intentionally, with a conscious indifference to consequences as far as other persons are concerned.

8. ID.; ID.; ID.; ID.; ID.; FACTS MANIFESTING PARTIALITY, BAD FAITH OR NEGLIGENCE, NOT ALLEGED IN CASE AT BAR.

— The criminal complaint in this case failed to allege the facts and circumstances showing that the retired Justices acted with partiality, bad faith or negligence. The act of a judicial officer in reviewing the findings of fact in a decision and voting for its reversal cannot by itself constitute a violation of Section 3(e) of Republic Act No. 3019 in the absence of facts, alleged and proven, demonstrating a dishonest purpose, conscious partiality, extrinsic fraud, or any wrongdoing on his or her part. A complainant's mere disagreement with the magistrate's own conclusions, to be sure, does not justify a criminal charge under Section 3(e) against the latter. In the absence of alleged and proven particular acts of manifest partiality, evident bad faith or gross inexcusable negligence, good faith and regularity are generally presumed in the performance of official duties by public officers. For the criminal complaint's fatal omissions and resultant failure to allege a *prima facie* case, it rightfully deserves immediate dismissal.

9. LEGAL ETHICS; LAWYERS; SERIOUS MISCONDUCT; COMMITTED WHEN THERE WAS PLAIN DISREGARD, MISUSE AND MISREPRESENTATION OF CONSTITUTIONAL PROVISIONS. — In our view, the complainants' errors do not belong to the genre of plain and simple errors that lawyers commit in the practice of their profession. Their plain disregard, misuse and misrepresentation of constitutional provisions constitute serious misconduct that reflects on their fitness for continued membership in the Philippine Bar. At the very least, their transgressions are blatant violations of Rule 10.02 of the Code of Professional Responsibility, which provides: Rule 10.02. A lawyer shall not knowingly misquote or misrepresent the contents of a paper, the language or the argument of opposing counsel, or the text of a decision or authority, or **knowingly cite as a law a provision already rendered inoperative by repeal or amendment**, or assert as a fact that which has not been proved. To emphasize the importance of requiring lawyers to act candidly and in good faith, an identical provision is found in Cannon 22 of the Canons of Professional Ethics. Moreover, lawyers are sworn to "do no falsehood, nor consent to the doing of any in court…" before they are even admitted to the Bar. All these the complainants appear to have seriously violated.

R E S O L U T I O N

PER CURIAM:

Before us for consideration are the inter-related matters listed below:

a. **The *subpoena duces tecum* (dated January 11, 2010 and received by this Court on January 18, 2010), issued by the Office of the Ombudsman on the "Chief, Office of the Administrative Services or AUTHORIZED REPRESENTATIVE, Supreme Court, Manila," for the submission to the Office of the Ombudsman of the latest Personal Data Sheets and last known forwarding address of former Chief Justice Hilario G. Davide, Jr. and former Associate Justice Ma. Alicia Austria-Martinez.** The *subpoena duces tecum* was issued in relation with criminal complaint under (b) below, pursuant to Section 13, Article XI of the Constitution and Section 15 of Republic Act No. 6770. The Office of the Administrative Services (*OAS*) referred the matter to us on January 21, 2010 with a request for clearance to release the specified documents and information.

b. **Copy of the criminal complaint entitled *Oliver O. Lozano and Evangeline Lozano-Endriano v. Hilario G. Davide, Jr., et al.,*** OMB-C-C-09-0527-J, cited by the Ombudsman as basis for the *subpoena duces tecum* it issued. We secured a copy of this criminal complaint from the Ombudsman to determine the legality and propriety of the *subpoena duces tecum* sought.

c. **Order dated February 4, 2010 (which the Court received on February 9, 2010), signed by Acting Director Maribeth Taytaon-Padios of the Office of the Ombudsman (with the approval of Ombudsman Ma. Merceditas Navarro-Gutierrez), dismissing the Lozano complaint and referring it to the Supreme Court for appropriate action.** The order was premised on the Memorandum[1] issued on July

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[1] The pertinent part of the Memorandum reads:

31, 2003 by Ombudsman Simeon Marcelo who directed that all complaints against judges and other members of the Judiciary be immediately dismissed and referred to the Supreme Court for appropriate action.

OUR RULING

I. The *Subpoena Duces Tecum*

In light of the Ombudsman's dismissal order of February 4, 2010, any question relating to the legality and propriety of the *subpoena duces tecum* the Ombudsman issued has been rendered moot and academic. The *subpoena duces tecum* merely drew its life and continued viability from the underlying criminal complaint, and the complaint's dismissal – belated though it may be – cannot but have the effect of rendering the need for the *subpoena duces tecum* academic.

As guide in the issuance of compulsory processes to Members of this Court, past and present, in relation to complaints touching on the exercise of our judicial functions, we deem it appropriate to discuss for the record the extent of the Ombudsman's authority in these types of complaints.

In the appropriate case, the Office of the Ombudsman has full authority to issue subpoenas, including *subpoena duces tecum*, for compulsory attendance of witnesses and the production of documents and information relating to matters under its investigation.[2] The grant of this authority, however, is not

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Henceforth, on the basis of the foregoing, and in keeping with the spirit of the stated doctrine, all criminal complaints against judged (sic) and other members of the Supreme Court shall be immediately **DISMISSED** and **REFERRED** to the Supreme Court for appropriate action. The dismissal shall not in any manner touch on the merits of the complaint, and shall be made for the sole purpose of referring the same to the Supreme Court. (emphasis found in the original.)

[2] Section 15 of Rep. Act No. 6770 reads:

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

x x x x x x x x x

unlimited, as the Ombudsman must necessarily observe and abide by the terms of the Constitution and our laws, the Rules of Court and the applicable jurisprudence on the issuance, service, validity and efficacy of subpoenas. Under the Rules of Court, the issuance of subpoenas, including a *subpoena duces tecum*, operates under the requirements of reasonableness and relevance.[3] For the production of documents to be reasonable and for the documents themselves to be relevant, the matter under inquiry should, in the first place, be one that the Ombudsman can legitimately entertain, investigate and rule upon.

In the present case, the "matter" that gave rise to the issuance of a *subpoena duces tecum* was a criminal complaint filed by the complainants Lozano for the alleged violation by retired Supreme Court Chief Justice Hilario Davide, Jr. and retired Associate Justice Ma. Alicia Austria-Martinez of Section 3(e) of R.A. 3019, as amended (the Anti-Graft and Corrupt Practices Act).

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(4) Direct the officer concerned, in any appropriate case, and subject to such limitations as it may provide in its rules of procedure, to furnish it with copies of documents relating to contracts or transactions entered into by his office involving the disbursement or use of public funds or properties, and report any irregularity to the Commission on Audit for appropriate action;

(5) Request any government agency for assistance and information necessary in the discharge of its responsibilities, and to examine, if necessary, pertinent records and documents.

Paragraphs 4 and 5 of Section 13, Rule XI of the Constitution are similarly phrased:

Section 13. The Office of the Ombudsman shall have the following functions and duties:

x x x x x x x x x

(4) Direct the officer concerned, in any appropriate case, and subject to such limitations as may be provided by law, to furnish it with copies of documents relating to contracts or transactions entered into by his office involving the disbursement or use of public funds or properties, and report any irregularity to the Commission on Audit for appropriate action.

(5) Request any government agency for assistance and information in the discharge of its responsibilities, and to examine, if necessary, pertinent records and information.

[3] See: Sections 3 and 4, Rule 21, Rules of Court.

A first step in considering whether a criminal complaint (and its attendant compulsory processes) is within the authority of the Ombudsman to entertain (and to issue), is to consider the nature of the powers of the Supreme Court. This Court, by constitutional design, is supreme in its task of adjudication; judicial power is vested solely in the Supreme Court and in such lower courts as may be established by law. Judicial power includes the duty of the courts, not only to settle actual controversies, but to determine whether grave abuse of discretion amounting to lack or excess of jurisdiction has been committed in any branch or instrumentality of government.[4] As a rule, all decisions and determinations in the exercise of judicial power ultimately go to and stop at the Supreme Court whose judgment is final. ***This constitutional scheme cannot be thwarted or subverted through a criminal complaint that, under the guise of imputing a misdeed to the Court and its Members, seeks to revive and re-litigate matters that have long been laid to rest by the Court.*** Effectively, such criminal complaint is a collateral attack on a judgment of this Court that, by constitutional mandate, is final and already beyond question.

A simple jurisprudential research would easily reveal that this Court has had the occasion to rule on the liability of Justices of the Supreme Court for violation of Section 3(e) of R.A. 3019—the very same provision that the complainants Lozano invoke in this case.

In the case of *In re Wenceslao Laureta*,[5] the client of Atty. Laureta filed a complaint with the *Tanodbayan* charging Members of the Supreme Court with violation of Section 3(e) of Republic Act No. 3019 for having knowingly, deliberately and with bad faith rendered an unjust resolution in a land dispute. The Court unequivocally ruled that insofar as this Court and its Divisions are concerned, a charge of violation of the Anti-Graft and Corrupt Practices Act on the ground that such collective decision is "unjust" should **not** prosper; the parties cannot

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[4] CONSTITUTION, Article VIII, Section 1.

[5] 232 Phil 353 (1987).

"relitigate in another forum the final judgment of the Court," as to do so is to subordinate the Court, in the exercise of its judicial functions, to another body.[6]

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[6] To quote the pertinent portions of *Laureta*, pp. 384-388:

As aptly declared in the Chief Justice's Statement of December 24, 1986, which the Court hereby adopts *in toto*, "It is elementary that the Supreme Court is supreme—the third great department of government entrusted exclusively with the judicial power to adjudicate with finality all justiciable disputes public and private. No other department or agency may pass upon its judgments or declare them 'unjust.'" It is elementary that "(A)s has ever been stressed since the early case of *Arnedo v. Llorente* (18 Phil. 257, 263[1911]) controlling and irresistible reasons of public policy and of sound practice in the courts demand that at the risk of occasional error, judgment of courts determining controversies submitted to them should become final at some definite time fixed by law or by a rule of practice recognized by law, so as to be thereafter beyond the control even of the court which rendered them for the purpose of correcting errors of fact or of law, into which, in the opinion of the court it may have fallen…."

Respondents should have known that the provisions of Article 204 of the Revised Penal Code as to 'rendering knowingly unjust judgment' refer to an individual judge who does so "in any case submitted to him for decision" and even then, it is not the prosecutor who would pass judgment on the "unjustness" of the decision rendered by him but the proper appellate court with jurisdiction to review the same, either of the Court of Appeals and/or the Supreme Court. *Respondents should likewise know that* ***said penal article has no application to the members of a collegiate court such as this Court or its Divisions*** *who reach their conclusions in consultation and accordingly render their collective judgment after due deliberation.* ***It also follows, consequently, that a charge of violation of the Anti-Graft and Corrupt Practices Act on the ground that such a collective decision is "unjust" cannot prosper***. (emphasis supplied)

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To subject to the threat and ordeal of investigation and prosecution, a judge, more so a member of the Supreme Court for official acts done by him in good faith and in regular exercise of official duty and judicial functions is to subvert and undermine the very independence of the judiciary, and subordinate the judiciary to the executive. xxx

To allow litigants to go beyond the Court's resolution and claim that the members acted "with deliberate bad faith" and rendered an "unjust resolution" in disregard or violation of the duty of their high office to act upon their own independent consideration and judgment of the matter at hand would be to destroy the authenticity, integrity and conclusiveness of such collegiate acts and resolution and to disregard utterly the presumption

The case *In re Joaquin T. Borromeo*[7] reiterates the *Laureta* ruling, particularly that (1) judgments of the Supreme Court are not reviewable; (2) administrative, civil and criminal complaints against a judge should not be turned into substitutes for appeal; (3) only courts may declare a judgment unjust; and (4) the absurdity of the situation where the Ombudsman is made to determine whether or not a judgment of the Court is unjust. The Court further discussed the requisites for the prosecution of judges, as follows:

> That is not to say that it is not possible at all to prosecute judges for this impropriety, of rendering an unjust judgment or interlocutory order; but, taking account of all the foregoing considerations, the indispensable requisites are that there be a final declaration by a competent court in some appropriate proceeding of the manifestly unjust character of the challenged judgment or order, and there be also evidence of malice and bad faith, ignorance or inexcusable negligence on the part of the judge in rendering said judgment or order.

Thus, consistent with the nature of the power of this Court under our constitutional scheme, only this Court – not the Ombudsman – can declare a Supreme Court judgment to be unjust.

In *Alzua v. Arnalot*,[8] the Court ruled that "judges of superior and general jurisdiction are not liable to respond in civil action for damages, and provided this rationale for this ruling: Liability to answer to everyone who might feel himself aggrieved by

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of regular performance of official duty. To allow such collateral attack would destroy the separation of powers and undermine the role of the Supreme Court as the final arbiter of all justiciable disputes.

Dissatisfied litigants and/or their counsels **cannot** without violating the separation of powers mandated by the Constitution **relitigate in another forum the final judgment of this Court** on legal issues submitted by them and their adversaries for final determination to and by the Supreme Court and which fall within judicial power to determine and adjudicate exclusively vested by the Constitution in the Supreme Court and in such inferior courts as may be established by law.

[7] 311 Phil. 441, 509 (1995).

[8] 21 Phil. 308, 326 (1912).

the action of the judge would be inconsistent with the possession of this freedom and would destroy that independence without which no judiciary can be either respectable or useful." The same rationale applies to the indiscriminate attribution of criminal liability to judicial officials.

Plainly, under these rulings, a criminal complaint for violation of Section 3(e) of RA 3019, *based on the legal correctness of the official acts of Justices of the Supreme Court*, cannot prosper and should not be entertained. This is not to say that Members of the Court are absolutely immune from suit during their term, for they are not. The Constitution provides that the appropriate recourse against them is to seek their removal from office if they are guilty of culpable violation of the Constitution, treason, bribery, graft and corruption, other high crimes, or betrayal of public trust.[9] Only after removal can they be criminally proceeded against for their transgressions. While in office and thereafter, and for their official acts that do not constitute impeachable offenses, recourses against them and their liabilities therefor are as defined in the above rulings.

Section 22 of Republic Act No. 6770, in fact, specifically grants the Ombudsman the authority to investigate impeachable officers, but only when such investigation is **warranted**:

> Section 22. *Investigatory Power*. The Office of the Ombudsman shall have the power to investigate any serious misconduct in office allegedly committed by officials removable by impeachment, for the purpose of filing a verified complaint for impeachment, if warranted.

Conversely, if a complaint against an impeachable officer is unwarranted for lack of legal basis and for clear misapplication of law and jurisprudence, the Ombudsman should spare these officers from the harassment of an unjustified investigation. The present criminal complaint against the retired Justices is one such case where an investigation is not warranted, *based as it is on the legal correctness of their official acts*, and the Ombudsman should have immediately recognized the criminal

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[9] CONSTITUTION, Article XI, Section 2.

complaint for what it is, instead of initially proceeding with its investigation and issuing a *subpoena duces tecum*.

II. *The Ombudsman's Dismissal of the Criminal Complaint*

As the Ombudsman's dismissal of the *criminal complaint* (*Oliver O. Lozano and Evangeline Lozano-Endriano v. Hilario G. Davide, Jr., et al.*, OMB-C-C-09-0527-J) clearly implied, no complete dismissal took place as the matter was simply "*referred to the Supreme Court for appropriate action.*"

Although it was belatedly made, we cannot fault this Ombudsman action for the reasons we have already discussed above. While both accused are now retired from the service, the complaint against them still qualifies for exclusive consideration by this Court as the acts complained of spring from their judicial actions while they were with the Court. From this perspective, we therefore pass upon the *prima facie* merits of the complainants Lozano's criminal complaint.

a. Grounds for the Dismissal of the Complaint

By its express terms, the criminal complaint stemmed from the participation of the accused in the Resolution the First Division of this Court issued in *Heirs of Antonio Pael v. Court of Appeals*, docketed as G.R. Nos. 133547 and 133843. The retired Chief Justice and retired Associate Justice allegedly committed the following unlawful acts:

1) Overturning the findings of fact of the CA;

2) Stating in the Resolution that the "Chin-Mallari property overlaps the UP property," when the DENR Survey Report stated that the "UP title/property overlaps the Chin-Mallari property";

3) Issuing a Resolution, for which three Justices voted, to set aside a Decision for which five Justices voted.

By these acts, the retired Members of this Court are being held criminally accountable *on the theory that they violated*

the Constitution and the law in ruling in the cited cases, thereby causing "undue injury" to the parties to these cases.

After due consideration, we dismiss the criminal complaint against retired Chief Justice Hilario G. Davide, Jr. and retired Associate Justice Ma. Alicia Austria-Martinez under Section 3(e) of RA 3019. We fully expound on the reasons for this conclusion in the discussions below.

a. Contrary to the complainants' position, the Supreme Court has the power to review the lower courts' findings of fact.

The Supreme Court is the highest court of the land with the power to review, revise, reverse, modify, or affirm on appeal or *certiorari, as the law or the Rules of Court may provide,* final judgments and orders of the lower courts.[10] It has the authority to promulgate rules on practice, pleadings and admission to the bar, and suspend the operation of these rules in the interest of justice.[11] Jurisprudence holds, too, that the Supreme Court may exercise these powers over the factual findings of the lower courts, among other prerogatives, in the following instances: (1) when the findings are grounded entirely on speculations, surmises, or conjectures; (2) when the inference made is manifestly mistaken, absurd of impossible; (3) when there is grave abuse of discretion; (4) when the judgment is based on a misappreciation of facts; (5) when the findings of fact are conflicting; (6) when, in making its findings, the same are contrary to the admissions of both appellant and appellee; (7) when the findings are contrary to those of the trial court; (8) when the findings 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; and (10) when the findings of fact are premised on the supposed absence of evidence and

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[10] CONSTITUTION, Article VIII, Section 5(2).

[11] *Id.,* Section 5(5).

contradicted by the evidence on record.[12] Thus, contrary to the complainants Lozanos' assertions in their complaint, the Supreme Court, in the proper cases, **can and does rule on factual submissions before it,** and even reverses the lower court's factual findings when the circumstances call for this action.

b. Misuse of Constitutional Provisions

The complainants Lozano appear to us to have brazenly misquoted and misused applicable constitutional provisions to justify their case against the retired Justices. We refer particularly to their use (or strictly, *misuse*) of **Article X, Section 2(3) of the *1973* Constitution** which they claim to be the governing rule that the retired Justices should have followed in acting on *Pael*. This constitutional provision states:

> Cases heard by a division shall be decided with the concurrence of at least five Members, but if such required number is not obtained the case shall be decided *en banc*; Provided, that no doctrine or principle of law laid down by the Court in a decision rendered *en banc* or in division may be modified or reversed except by the Court sitting *en banc*.[13]

For failure to act according to these terms, the complainants claim that the retired Justices subverted the Constitution by reversing, *by a vote of a majority of only three members*, the decision of the First Division unanimously approved by its full membership of five members.

Had the complainants bothered to carefully consider the facts and developments in *Pael* and accordingly related these to the

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[12] *Reyes v. Montemayor*, G.R. No. 166516, September 3, 2009; *Uy v. Villanueva*, G.R. No. 157851, June 29, 2007, 526 SCRA 73, 83-84; *Malison v. Court of Appeals*, G.R. No. 147776, July 10, 2007, 527 SCRA 109, 117; and *Buenaventura v. Republic*, G.R. No. 166865, March 2, 2007, 517 SCRA 271, 282.

[13] Part of the Criminal Complaint-Affidavit for Corrupt Practices, signed by Atty. Oliver O. Lozano and Atty. Evangeline Lozano-Endriano, received by the Ombudsman on September 8, 2009, Ombudsman Records, pp. 1089-1189,1090.

applicable constitutional provision, they would have discovered that *Pael* was decided in 2003 when the **1987 Constitution, not the 1973 Constitution,** was the prevailing Charter. They then would have easily learned of the manner cases are heard and decided by Division before the Supreme Court under the 1987 Constitution. **Section 4(3), Article VIII** of this Constitution provides:

> Cases or matters heard by a division shall be decided or resolved with the **concurrence of a majority of the Members who actually took part** in the deliberations on the issues in the case and voted thereon, **and in no case, without the concurrence of at least three of such Members**. When the required number is not obtained, the case shall be decided *en banc*; Provided, that no doctrine or principle of law laid down by the court in a decision rendered *en banc* or in division may be modified or reversed except by the court sitting *en banc*." (Emphasis supplied.)

This is the provision that governed in 2003 and still governs to this day. Thus, the complainants' argument and basis for their criminal complaint — *i.e.*, that in ruling on a motion for reconsideration, all five members of the Division should concur — is totally wrong.

c. The elements of the offense charged are not sufficiently alleged in the complaint

A public official can violate Section 3(e) of Republic Act No. 3019[14] in two ways: (1) by causing undue injury to any party, including the Government; or (2) by giving any private party

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

x x x x x x x x x

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

x x x x x x x x x

any unwarranted benefit, advantage or preference;[15] in either case, these acts must be committed with manifest partiality, evident bad faith, or gross and inexcusable negligence.

"Partiality" is defined as a bias towards the disposition to see and report matters as wished for, rather than as they are. "Bad faith" connotes not only bad judgment or negligence, but also a dishonest purpose, a conscious wrongdoing, or a breach of duty amounting to fraud. "Gross negligence," on the other hand, is characterized by the want of even slight care, acting or omitting to act in a situation where there is a duty to act, not inadvertently but willfully and intentionally, with a conscious indifference to consequences as far as other persons are concerned.[16]

The criminal complaint in this case failed to allege the facts and circumstances showing that the retired Justices acted with partiality, bad faith or negligence. The act of a judicial officer in reviewing the findings of fact in a decision and voting for its reversal cannot by itself constitute a violation of Section 3(e) of Republic Act No. 3019 in the absence of facts, alleged and proven, demonstrating a dishonest purpose, conscious partiality, extrinsic fraud, or any wrongdoing on his or her part. A complainant's mere disagreement with the magistrate's own conclusions, to be sure, does not justify a criminal charge under Section 3(e) against the latter. In the absence of alleged and proven particular acts of manifest partiality, evident bad faith or gross inexcusable negligence, good faith and regularity are generally presumed in the performance of official duties by public officers.[17]

For the criminal complaint's fatal omissions and resultant failure to allege a *prima facie* case, it rightfully deserves immediate dismissal.

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[15] *Velasco v. Sandiganbayan*, 492 Phil. 669, 677 (2005).

[16] *Dela Chica v. Sandiganbayan*, 462 Phil. 712, 721 (2003); and *Mendoza-Arce v. Office of the Ombudsman*, 430 Phil. 101, 115 (2002).

[17] *Dela Chica v. Sandiganbayan*, 462 Phil. 712, 722 (2003).

III. The Complainants' Potential Liability for Filing the Ombudsman Complaint

In light of the above conclusions and under the attendant circumstances of the criminal complaints, we cannot avoid considering whether the complainants Lozano acted properly as members of the Bar, as officers of this Court, and as professionals governed by norms of ethical behavior, in filing their complaint.

In their criminal complaint, the complainants gave a slanted view of the powers of this Court to suit their purposes; for these same purposes, they wrongly cited and misapplied the provisions of the Constitution, not just any ordinary statute. As lawyers, the complainants must be familiar and well acquainted with the fundamental law of the land, and are charged with the duty to apply the constitutional provisions in light of their prevailing jurisprudential interpretation. As law practitioners active in the legal and political circles, the complainants can hardly be characterized as "unknowing" in their misuse and misapplication of constitutional provisions. They should, at the very least, know that the 1973 Constitution and its provisions have been superseded by the 1987 Constitution, and that they cannot assail — invoking the 1973 Constitution — the judicial acts of members of the Supreme Court carried out in 2003 when the 1987 Constitution was in effect. Their misuse of the Constitution is made more reprehensible when the overriding thrust of their criminal complaint is considered; they used the 1973 provisions to falsely attribute malice and injustice to the Supreme Court and its Members.

In our view, the complainants' errors do not belong to the genre of plain and simple errors that lawyers commit in the practice of their profession. Their plain disregard, misuse and misrepresentation of constitutional provisions constitute serious misconduct that reflects on their fitness for continued membership in the Philippine Bar. At the very least, their transgressions are blatant violations of Rule 10.02 of the Code of Professional Responsibility, which provides:

Rule 10.02. A lawyer shall not knowingly misquote or misrepresent the contents of a paper, the language or the argument of opposing counsel, or the text of a decision or authority, or **knowingly cite as a law a provision already rendered inoperative by repeal or amendment**, or assert as a fact that which has not been proved. (Emphasis provided.)

To emphasize the importance of requiring lawyers to act candidly and in good faith, an identical provision is found in Cannon 22 of the Canons of Professional Ethics. Moreover, lawyers are sworn to "do no falsehood, nor consent to the doing of any in court…" before they are even admitted to the Bar. All these the complainants appear to have seriously violated.

In the interest of due process and fair play, the complainants Lozano should be heard, in relation to their criminal complaint before the Ombudsman against retired Chief Justice Hilario G. Davide, Jr. and retired Associate Justice Ma. Alicia Austria-Martinez, on why they should not be held accountable and accordingly penalized for violations of their duties as members of the Bar and officers of this Court, and of the ethics of the legal profession.

WHEREFORE, premises considered, we *DISMISS* the criminal complaint entitled *Oliver O. Lozano, et al. v. Hilario G. Davide, Jr., et al.,* OMB-C-C-09-0527-J for utter lack of merit, and *DECLARE* as *MOOT* and *ACADEMIC* the question of compliance with the *subpoena duces tecum* dated January 11, 2010 that the Ombudsman issued against this Court.

We hereby *ORDER* the complainants Atty. Oliver O. Lozano and Atty. Evangeline Lozano-Endriano to *EXPLAIN IN WRITING* to this Court, within a non-extendible period of 15 days from receipt of this Resolution, why they should not be penalized as members of the Bar and as officers of this Court, for their open disregard of the plain terms of the Constitution and the applicable laws and jurisprudence, and their misuse and misrepresentation of constitutional provisions in their criminal complaint before the Office of the Ombudsman, entitled *Oliver O. Lozano, et al. v. Hilario G. Davide, Jr., et al.,* OMB-C-C-09-0527-J.

SO ORDERED.

Puno, C.J., Carpio, Corona, 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. P-05-2064. March 2, 2010]
(Formerly A.M. OCA IPI No. 05-7-449-RTC)

OFFICE OF THE COURT ADMINISTRATOR, *petitioner, vs.* **CLERK OF COURT JOCELYN G. CABALLERO, REGIONAL TRIAL COURT, KIDAPAWAN CITY, NORTH COTABATO,** *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; COURT EMPLOYEES; REQUIRED DECORUM. — Time and time again, this Court has stressed that those charged with the dispensation of justice — from the presiding judge to the lowliest clerk — are circumscribed with a heavy burden of responsibility. Their conduct at all times must not only be characterized by propriety and decorum but, above all else, must be beyond suspicion. Every employee should be an example of integrity, uprightness, and honesty.

2. ID.; ID.; ID.; SHERIFF; DUTIES WITH REGARD TO SHERIFF'S EXPENSES FOR EXECUTING WRITS; VIOLATED IN CASE AT BAR. — The requirements of Section 10, Rule 141 of the Rules of Court are unequivocal. With regard to sheriff's expenses for executing writs issued pursuant to court orders or decisions; or for safeguarding the property levied upon, attached, or seized, including kilometrage for each kilometer of travel, guards' fees, warehousing, and similar charges, the interested party shall pay said expenses in an amount estimated by the sheriff, subject

to the approval of the court. ***Upon approval of said estimated expenses, the interested party shall deposit such amount with the clerk of court and ex-officio sheriff, who shall disburse the same to the deputy sheriff assigned to effect the process, subject to liquidation within the same period for rendering a return on the process. The liquidation shall be approved by the Court. Any unspent amount shall be refunded to the party making the deposit.*** x x x Furthermore, a Sheriff's Trust Fund account with the Land Bank of the Philippines should be maintained for these collections (for Sheriff's expenses). Corollary thereto, considering that Atty. Caballero failed to maintain an account as Sheriff's Trust Fund, the collections should therefore be in the cash vault of the court for safekeeping. However, no collections were presented for the cash count during the audit. Thus, not only did Atty. Caballero ignore the requirements prescribed by Section 10, Rule 101; she also failed to account for the collections under the Sheriff's Trust Fund.

3. ID.; ID.; ID.; CLERK OF COURT; VIOLATION OF COURT CIRCULARS IN CASE AT BAR. — We take note that the withdrawals of cash bonds were not signed by the presiding judge. It was a gross violation of Circular No. 50-95. Atty. Caballero, as the Clerk of Court, had the duty to remit the collections within the prescribed period. Obviously, the unwithdrawn interests earned (net of withholding tax) on Fiduciary Fund deposits from August 1993 to March 2004, with an accumulated amount of Two Hundred Eleven Thousand Three Hundred Forty-Nine Pesos & 64/100 (₱211,349.64), was another violation of the Court's circulars. Shortages in the amounts to be remitted and the years of delay in the actual remittances constitute neglect of duty, for which she should be administratively liable. More so, since Atty. Caballero failed to give a satisfactory explanation for said shortages.

4. ID.; ID.; ID.; ID.; DUTIES AND OBLIGATIONS AS TO COURT FUNDS; FAILURE TO COMPLY WITH CIRCULARS ON DEPOSITS OF COLLECTIONS WARRANTS ADMINISTRATIVE SANCTIONS. — Settled is the role of clerks of court as judicial officers entrusted with a delicate function with regard to collection of legal fees, and expected to correctly and effectively implement regulations. Relating to proper administration of court funds, the Court has issued Supreme

Court Circular No. 13-92, which commands that all fiduciary collections "shall be deposited immediately by the Clerk of Court concerned, upon receipt thereof, with an authorized depositary bank." Clerks of court perform a delicate function as designated custodians of the court's funds, revenues, records, properties, and premises. As such, they are generally regarded as treasurers, accountants, guards, and physical plant managers thereof. x x x They are liable for any loss, shortage, destruction, or impairment of such funds and property. It is the duty of the clerks of court to perform their responsibilities faithfully, so that they can fully comply with the circulars on deposits of collections. They are reminded to deposit immediately, with authorized government depositaries, the various funds they have collected, because they are not authorized to keep those funds in their custody. The unwarranted failure to fulfill these responsibilities deserves administrative sanction, and not even the full payment of the collection shortages will exempt the accountable officer from liability.

5. ID.; ID.; ID.; ID.; ID.; ID.; GROSS NEGLECT OF DUTY AND GROSS DISHONESTY; COMMITTED BY FAILURE TO IMMEDIATELY REMIT CASH COLLECTIONS, EXPLAIN FUND SHORTAGE, RESTITUTE THE SAME AND COMPLY WITH COURT'S DIRECTIVES; CASE AT BAR. — By failing to properly remit the cash collections constituting public funds, Atty. Caballero violated the trust reposed in her as disbursement officer of the judiciary. Her failure to explain the fund shortage satisfactorily and to restitute the shortage and fully comply with the Court's directives leave us no choice but to hold her liable for gross neglect of duty and gross dishonesty. In *Lirios v. Oliveros* and *Re: Report on the Financial Audit Conducted on the Books of Accounts of Atty. Raquel G. Kho, Clerk of Court IV, RTC, Oras, Eastern Samar,* the Court held that the unreasonable delay in the remittance of fiduciary funds constituted serious misconduct. Atty. Caballero's belated turnover of cash deposited with her is inexcusable and will not exonerate her from liability. Clerks of Court are presumed to know their duty to immediately deposit with the authorized government depositories the various funds they receive, for they are not supposed to keep funds in their personal possession. Even undue delay in the remittances of the amounts that they collect at the very least constitutes misfeasance.

Although Atty. Caballero subsequently deposited her other cash accountabilities with respect to the Fiduciary Fund, she was nevertheless liable for failing to immediately deposit the said collections into the court's funds. Her belated remittance will not free her from punishment. Even restitution of the whole amount cannot erase her administrative liability. More so, in the instant case, she failed to fully comply with all the Court's directives, particularly directive (D).

6. ID.; ID.; CIVIL SERVICE LAWS; GRAVE OFFENSES; PENALTY IS DISMISSAL. — Section 22(a), (b) and (c) of Rule XIV of the Omnibus Rules Implementing Book V of Executive Order No. 292, and Other Pertinent Civil Service Laws, classifies Gross Neglect of Duty, Dishonesty, and Grave Misconduct as grave offenses. The penalty for each of these offenses is dismissal even for the first offense. x x x We reiterate anew that this Court has not hesitated to impose the ultimate penalty on those who have fallen short of their accountabilities. No less than the Constitution enshrines the principle that a public office is a public trust. The supreme law of the land commands all public officers and employees to be at all times accountable to the people; and to serve them with utmost dedication, honesty, and loyalty (DHL).

D E C I S I O N

PER CURIAM:

This administrative matter stemmed from the financial audit of the Regional Trial Court of Kidapawan City, North Cotabato (RTC-Kidapawan), conducted by the Audit Team of the Court Management Office (team). The audit covered the accountability period of Clerk of Court Atty. Jocelyn G. Caballero (Caballero) from April 1983 to April 2004.

The team's preliminary cash count revealed an initial cash shortage of ₱19,875.20[1] which Atty. Caballero immediately reasoned to be due to the encashment of her personal checks. This prompted the team to conduct a more detailed and

[1] *Rollo*, p. 109.

comprehensive financial audit on all the books of accounts of the court.

Based on the available documents, the Financial Audit Report yielded the following results:

1. The cash count on May 17, 2004 disclosed a shortage of ₱19,875.20 which was due to the encashment of personal checks of Atty. Caballero from the court's collections;[2]

2. Atty. Caballero issued merely acknowledgment receipts instead of official receipts for collections received as sheriff's expenses as evidenced by the photocopies of several acknowledgement receipts issued by Atty. Caballero,[3] summarized below:

FORECLOSURE CASE NO.	AMOUNT COLLECTED
204-2000	₱ 1,000.00
183-196	7,000.00
181-2000	2,000.00
50 to 51-2001	2,000.00
41-2001	5,000.00
37-2001	2,000.00
167-2002	1,000.00
113 to 116-2002	4,000.00
71-2002	1,000.00
38-2003	1,000.00
06-2004	1,000.00
TOTAL	₱27,000.00

3. Confiscated bonds amounting to ₱66,000.00 were withdrawn from the Fiduciary Fund account with the Land Bank of the

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[2] *Id.* at 18.

[3] *Id.* at 27-37.

Philippines, but not remitted to the Judiciary Development Fund:[4]

Date Confiscated	Date Withdrawn	Case No.	Amount
07/10/96	11/08/96	2643-2654	₱ 30,000.00
08/15/96	12/05/96	2012	6,000.00
05/04/99	04/21/99	197-96	30,000.00
TOTAL			₱ 66,000.00

In view of the above-mentioned findings, the team required Caballero to comment on its findings/observations. Corollary thereto, the team asked Atty. Caballero to produce the proofs of liquidation in order to verify the exact amount given to sheriffs as sheriff's expenses. The team likewise asked Atty. Caballero to show proofs of remittances of the confiscated bonds to the General Fund.[5] On both counts, Atty. Caballero offered no proof of either remittances or liquidation. However, Atty. Caballero submitted an Affidavit dated May 24, 2004,[6] where she averred that the parties to the case consented that the money they paid be used as sheriff's expenses; thus, there was no need for liquidation, and acknowledgment receipts would suffice. She further claimed that the money collected as sheriff's expenses was all given to the implementing sheriffs concerned.

The audit further revealed that the interests earned (net of withholding tax) on Fiduciary Fund deposits from August 1993 to March 2004, with an accumulated amount of Two Hundred Eleven Thousand Three Hundred Forty-Nine Pesos & 64/100 (₱211,349.64), remained unwithdrawn.

On May 25, 2004, the team requested Alexander D. Lopez, Sheriff IV, Office of the Clerk of Court (OCC); Jose Noel C. Balbas, Sheriff IV, Branch 17; and Norberto F. Dapusala, Sheriff

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[4] *Id.* at 112.

[5] It appeared that the confiscated bonds were confiscated and withdrawn prior to the effectivity of the *En Banc* Resolution A.M. No. 99-8-01-SC.

[6] *Rollo,* p. 38.

IV, Branch 23, all in RTC-Kidapawan City, to confirm how much exactly was given to them by Atty. Caballero as sheriff's expenses.

On May 27, 2004, in their respective Affidavits,[7] Lopez, Balbas and Dapusala acknowledged in unison that Atty. Caballero gave them ₱100.00 only as sheriff's expenses for the service of court processes including foreclosures. Moreover, Dapusala added that since 2002 up to the present, Atty. Caballero had not given him any amount as sheriff's expenses.

In sum, Atty. Caballero incurred the following accountabilities:

A. CLERK OF COURT GENERAL FUND		
(Period Covered: April 1983 to April 2004)		
Total Collections from April 1983 to December 2003		₱ 1,060,323.36
Less: Deposits for the same period		₱ 1,044,060.79
Balance of Accountability		₱ 16,262.57
Less: GF Collections deposited to JDF		₱ 8,064.61
FINAL ACCOUNTABILITY (shortage)		**₱ 8,197.96**
B. FIDUCIARY FUND (Period Covered: April 1983 to April 2004)		
Unwithdrawn Fiduciary Fund as of March 31, 1983		₱ 83,984.37
Add: Total Collections from April 1983 to April 2004		₱ 6,253,474.51
Total:		₱ 6,337,458.88
Less: Total Withdrawals for the same period		₱ 4,040,878.36
Unwithdrawn Fiduciary Fund as of April 30, 2004		**₱ 2,296,580.52**
Less: Balance per LBP SA# 0741 0236-28 as of April 30, 2004	₱ 2,465,545.12	
Less: Unwithdrawn interest net of tax of ₱ 52,837.41	₱ 211,349.64	**₱ 2,254,195.48**
Balance of Accountability		**₱ 42,385.04**
Less: Deposit-in-Transit		10,000.00
FINAL ACCOUNTABILITIES (Shortage)		**₱ 32,385,04**

In a Memorandum dated October 22, 2004,[8] the Office of the Court Administrator directed Hon. Rogelio R. Narisma, Executive Judge, RTC, Kidapawan City to investigate the instant complaint

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

[8] *Id*. at 48.

and to relieve Atty. Caballero of her duties and functions as accountable officer.

In their Compliance dated April 29, 2005,[9] all three sheriffs concerned once again reiterated their earlier statements about receiving a fixed ₱100.00 as sheriff's expenses. They also added that it was Ms. Minerva Paunon, Cash Clerk, RTC-Kidapawan City, from whom they got the amount for sheriff's expenses after the same was handed over to her by Atty. Caballero. The sheriffs in turn were required to sign and acknowledge the amount received in a logbook. Atty. Caballero opted not to give her statement in court.

After investigation, Judge delos Santos, in his Report dated April 29, 2005,[10] manifested his observation that indeed Atty. Caballero was remiss in the performance of her duties. The pertinent portion of his report reads as thus:

> It can be clearly deduced from the aforesaid memorandum that Atty. Caballero only gave the three (3) sheriffs ₱100.00 for every foreclosure case or in serving summons and other court processes. She explained that these are the incidental expenses in connection with every foreclosure specifically on chattels where more expenses shall be incurred. ***She also mentioned in the memorandum that she still had with her whatever amount in excess of ₱100.00 paid to her by each litigant. She is the one accountable for the amount that she received for every foreclosure case. Verily, Atty. Caballero all (sic) confirmed the statements of the three (3) sheriffs and Ms. Paunon.*** (Emphasis supplied.)

In a Memorandum dated March 22, 2005,[11] Atty. Caballero insisted that the investigation against her be terminated and that the complaint be dismissed since she was allegedly denied her right to due process, as she was not given a copy of the Financial Audit Report and was immediately relieved as accountable officer.

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[9] *Id.* at 49.

[10] *Id*. at 50-53.

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

On August 17, 2005,[12] as recommended by the Office of the Court Administrator, the Court directed Atty. Caballero to:

a) EXPLAIN why no administrative sanction shall be imposed against her for:

1. Encashing her personal checks and those of other employees from the collections of the court;

2. Issuing acknowledgment receipts for the amounts received as sheriff's expenses, instead of official receipts;

3. Not presenting any proofs of liquidation as to where the amounts covered by the acknowledgment receipts were disbursed;

4. Not presenting proofs that any excess of the collected amounts as sheriff's expenses were refunded to the parties making the deposit;

5. Not presenting any amount on the cash count on May 17, 2004 representing collections for sheriff's expenses, considering that she did not maintain an account with the Land Bank of the Philippines (LBP) for these collections; and

6. Withdrawing the following confiscated cash bond from the FF account of the court with the LBP, Kidapawan City Branch, but unremitted to the GF account of the National Treasury, viz:

Date Confiscated	*Date Withdrawn*	*Case No.*	*Amount*
07/10/96	*11/08/96*	*2643-2654*	*₱ 30,000.00*
08/15/96	*12/05/96*	*2012*	*6,000.00*
05/04/99	*04/21/99*	*197-96*	*30,000.00*
TOTAL			***₱ 66,000.00***

b) WITHDRAW the unwithdrawn interest, net of tax as of March 31, 2004, from the Fiduciary Fund amounting to ₱211,349.64 and DEPOSIT the same to the Judiciary Development Fund account and submit to the FMD, CMO the machine validated deposit slip.

b) DEPOSIT to the Judiciary Development Fund the amount of ₱66,000.00 representing confiscated cash bonds withdrawn from

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[12] *Id.* at 91-92.

the Fiduciary Fund but still unremitted, and SUBMIT the machine validated deposit slip to the FMD, CMO; and

d) PAY and DEPOSIT the shortages she incurred for General Fund and for Fiduciary Fund in the amounts of ₱8,197.96 and ₱32,385.04, respectively, and SUBMIT the machine validated deposit slip to FMD, CMO.

In another Resolution dated August 17, 2005,[13] the Court resolved to redocket the administrative matter involving the financial audit of Kidapawan City as a regular administrative complaint against Atty. Caballero.

In her Explanation/Compliance dated September 28, 2005,[14] Atty. Caballero admitted that she usually encashed the checks of court employees if there was cash available for humanitarian reasons.

In her case, Atty. Caballero alleged that she had discovered late in the afternoon of May 14, 2005, which was a Friday, that she had not yet encashed her mid-year bonus and Representation and Transportation Allowance (RATA) checks with the bank. She claimed that she needed cash money for the tuition fee of her nephew, whom she was sending to school. She further claimed that since her nephew was scheduled to leave for Cebu the following day, May 15, 2005, she decided to encash her checks out of the court collections, as she could no longer wait until Monday — or until May 17, 2004 — considering that her available cash on hand was only good for her nephew's allowance and traveling expenses. She, however, averred that the money was immediately replenished upon encashment of her checks.

Atty. Caballero asserted that the encashment of personal checks from the court's collections did not violate any rule, since those were good checks issued by the Supreme Court. She reasoned out that the court would not incur any losses, since the amount of court collections remained the same.

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[13] *Id.* at 93.

[14] *Id.* at 94-98.

With regard to the non-issuance of official receipts for the amounts received as sheriff's expenses, Atty. Caballero admitted that she issued only acknowledgment receipts instead of official receipts, since she knew that the money would be used to defray expenses for serving court processes and would not be remitted to the National Treasury. Atty. Caballero further contended that she informed the parties thru their counsel that the money they deposited would be used to defray the expenses for the service of the court processes. Hence, she claimed that there was no need for her to issue official receipts.

Moreover, Atty. Caballero claimed that it was never a practice in the past to require sheriffs to make liquidation or submit proof of such liquidation in view of the arrangement made by the previous Clerks of Court with the banks. She explained that, previously, the court did not collect filing fees; the authorized banks/financial institution were only required to give cash advances for sheriff's expenses, and corresponding acknowledgment vouchers for said cash advances were prepared by the bank for signature of the sheriffs.

She further narrated that this practice had been carried on up to the time she became Clerk of Court and *ex-officio* sheriff, and that there was no occasion in the past when the local auditors, conducting an audit in their court, had required that this cash advances for sheriff's expenses be presented for audit; neither did they require proof of liquidation.

As to her failure to immediately remit the ₱66,000.00 confiscated bonds, Atty. Caballero admitted that she had withdrawn a total of ₱66,000.00 of confiscated bonds from the Fiduciary Fund, and indeed failed to remit the same to the General Fund[15] but instead withheld it until the determination of the interest accruing to the unwithdrawn fiduciary collection. She claimed that it was never her intention to defraud the government of the said amount, since it was merely a scheme to guaranty that, in case she had over-remittance, she could easily use it to offset the cash bonds she had withdrawn from the Fiduciary

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[15] *Id.* at 5.

Fund she had withheld and only deposited on September 27, 2005.

Finally, in compliance with the directives of the Court in its Resolution dated August 17, 2005, Atty. Caballero reported that she had already substantially complied therewith in the following manner:

AS TO DIRECTIVE IN PAR.(B): The unwithdrawn interest net of tax as of March 31, 2004, from the Fiduciary Fund amounting to ₱221,349.64 was already withdrawn on May 27, 2004 and was deposited to SAJJ Account in the amount of ₱110,101.13 and the same were already embodied in the monthly Report of Collections and Deposits for the month of May 2004. Xerox copies of the validated withdrawal and deposit slips, JDF and SAJJ official receipts together with the duplicate copies of the May 2004 Monthly report of collections and Deposits for JDF and SAJJ are attached herewith for ready reference as Annexes 1 to 11.

AS TO DIRECTIVE IN PAR.(C): The amount of ₱66,000.00 representing the unremitted confiscated cash bonds which was withdrawn from the Fiduciary Fund was remitted on September 27, 2005, as shown in the attached validated deposit slip.

With regard to the Court's directive in paragraph D of the same resolution — to pay and deposit the alleged shortages she had incurred in the General Fund and the Fiduciary Fund in the amounts ₱8,197.96 and ₱32,385.04, respectively, Atty. Caballero asked for the indulgence of the Court, requesting that she be furnished a copy of the Financial Audit Report, so she could determine the basis of the shortages.

In a Resolution dated July 19, 2006,[16] the Court resolved to hold in abeyance the imposition of administrative liability on Atty. Caballero, pending her receipt of a copy of the Financial Audit Report and her submission of her explanation.

On February 13, 2006, in its Memorandum,[17] the Office of the Court Administrator (OCA) found Atty. Caballero guilty

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[16] *Id.* at 123.

[17] *Id.* at 109-120.

of violating Administrative Circular No. 3-2000. The OCA likewise manifested that respondent had already complied with the Court's directives, particularly the directives in paragraphs B and C of the Resolution dated August 17, 2005, after taking note of the deposit slips of remittances submitted by Atty. Caballero.[18] However, the OCA recommended that the imposition of administrative liability be held in abeyance, pending receipt of the requested copy of the Financial Audit Report.

However, due to Atty. Caballero's failure to submit her explanation relative to the Financial Audit Report, the Court, in a Resolution dated March 26, 2008,[19] resolved to deem Atty. Caballero to have waived the filing of said explanation and considered the instant case submitted for resolution. To date, Atty. Caballero has not yet fully complied with all the directives of the Court's resolution, particularly the directive in paragraph D.

RULING

Time and time again, this Court has stressed that those charged with the dispensation of justice — from the presiding judge to the lowliest clerk — are circumscribed with a heavy burden of responsibility. Their conduct at all times must not only be characterized by propriety and decorum but, above all else, must be beyond suspicion. Every employee should be an example of integrity, uprightness, and honesty.[20]

There is no question as to the guilt of Atty. Caballero. She has been remiss in the performance of her administrative responsibilities. The records speak for themselves, as it was

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[18] We are of the observation that the deposit slips submitted by Atty. Caballero were not machine-validated.

[19] *Rollo*, p. 141.

[20] *In Re: Report of COA on the Shortage of the Accountabilities of Clerk of Court Lilia S. Buena, MTCC, Naga City*, 348 Phil. 1, (1998); *In Re: Delayed Remittance of Collections of Odtuha*, 445 Phil. 220, 224, (2003); *Office of the Court Administrator v. Galo*, 373 Phil. 483, 490 (1999)**;** *Cosca v. Palaypayon*, A.M. No. MTJ-92-721, 237 SCRA 249, 269, September 30, 1994.

clearly shown that she (1) encashed her personal checks and those of other employees from the collections of the court; (2) issued acknowledgment receipts for the amounts received as sheriff's expenses, instead of official receipts; (3) failed to present proofs that any excess in the amounts collected as sheriff's expenses was refunded to the parties making the deposit; (4) failed to present proofs of liquidation as to where the amounts covered by the acknowledgment receipts were disbursed; (5) failed to present any amount on the cash count on May 17, 2004, representing collections for sheriff's expenses, considering that she did not maintain an account with the Land Bank of the Philippines for these collections; (6) failed to present proof of remittances to the Judiciary Development Fund (JDF) after withdrawing confiscated cash bonds from the Fiduciary Fund account of the court; (7) failed to remit interest earned from the Fiduciary Fund deposits to the account of JDF; and (8) failed to account for the shortages she incurred in General Fund and the Fiduciary Fund in the amounts of ₱8,197.96 and ₱32,385.04, respectively.

The requirements of Section 10, Rule 141 of the Rules of Court are unequivocal. With regard to sheriff's expenses for executing writs issued pursuant to court orders or decisions; or for safeguarding the property levied upon, attached, or seized, including kilometrage for each kilometer of travel, guards' fees, warehousing, and similar charges, the interested party shall pay said expenses in an amount estimated by the sheriff, subject to the approval of the court. ***Upon approval of said estimated expenses, the interested party shall deposit such amount with the clerk of court and ex-officio sheriff, who shall disburse the same to the deputy sheriff assigned to effect the process, subject to liquidation within the same period for rendering a return on the process. The liquidation shall be approved by the Court. Any unspent amount shall be refunded to the party making the deposit.***

Here, as found by the Investigating Judge, Atty. Caballero only gave ₱100.00 to the implementing sheriff for every foreclosure case, or for serving summons and other court

processes. Atty. Caballero admitted that she still had with her whatever amount in excess of ₱100.00 was paid to her by each litigant, as she claimed that it would be used for incidental expenses. However, in her Affidavit dated May 24, 2004,[21] she changed her version and instead claimed that all money covered by the acknowledgment receipts was given to the implementing sheriffs, and nothing remained with her. She, likewise, failed to present any proof of liquidation as to whether the amounts stated in the acknowledgment receipts were disbursed, considering that all concerned sheriffs and even Paunon corroborated the fact that Atty. Caballero gave them only ₱100.00 for the implementation of said foreclosure cases. There was also no evidence that the unspent amount paid by the litigants was refunded to the parties making the deposit.

Furthermore, a Sheriff's Trust Fund account with the Land Bank of the Philippines should be maintained for these collections.[22] Corollary thereto, considering that Atty. Caballero failed to maintain an account as Sheriff's Trust Fund, the collections should therefore be in the cash vault of the court for safekeeping. However, no collections were presented for the cash count during the audit. Thus, not only did Atty. Caballero ignore the requirements prescribed by Section 10, Rule 101; she also failed to account for the collections under the Sheriff's Trust Fund.

We also take note that the withdrawals of cash bonds were not signed by the presiding judge. It was a gross violation of Circular No. 50-95.[23] Atty. Caballero, as the Clerk of Court,

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[21] *Rollo,* p. 6.

[22] Administrative Circular No. 3-2000 dated June 15, 2000.

[23] SUBJECT: COURT FIDUCIARY FUND

The following guidelines and procedures for purposes of uniformity in the manner of collections and deposits are hereby established:

Guidelines in Making Deposits:

x x x x x x x x x

had the duty to remit the collections within the prescribed period.[24] Obviously, the unwithdrawn interests earned (net of withholding tax) on Fiduciary Fund deposits from August 1993 to March 2004, with an accumulated amount of Two Hundred Eleven Thousand Three Hundred Forty-Nine Pesos & 64/100 (₱211,349.64), was another violation of the Court's circulars. Shortages in the amounts to be remitted and the years of delay in the actual remittances constitute neglect of duty, for which she should be administratively liable. More so, since Atty. Caballero failed to give a satisfactory explanation for said shortages.

Settled is the role of clerks of court as judicial officers entrusted with a delicate function with regard to collection of legal fees, and expected to correctly and effectively implement regulations.[25] Relating to proper administration of court funds, the Court has issued Supreme Court Circular No. 13-92, which commands that all fiduciary collections "shall be deposited immediately by

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(2) Deposits shall be made in the name of the Court, with its Clerk of Court and the Executive Judge as authorized signatories.

Guidelines in Making Withdrawals:

(1) Withdrawal slips shall be signed by the Executive/Presiding Judge and countersigned by the Clerk of Court.

(2) No withdrawals except as specifically provided in the immediately preceding paragraph, shall be allowed unless there is a lawful order from the Court that has jurisdiction over the subject matter involved.

[24] Administrative Circular 5-93 states:

3. Duty of the Clerks of Court, Officers-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 therefore, 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 for said fund.

[25] *Gutierrez v. Quitalig*, 448 Phil. 465 (2003), cited in *Dela Peña v. Sia*, A.M. No. P-06-2167, June 27, 2006, 493 SCRA 8.

the Clerk of Court concerned, upon receipt thereof, with an authorized depositary bank."

Clerks of court perform a delicate function as designated custodians of the court's funds, revenues, records, properties, and premises. As such, they are generally regarded as treasurers, accountants, guards, and physical plant managers thereof.[26] It is the clerks of court's duty to faithfully perform their duties and responsibilities as such, to the end that there is full compliance with their function: that of being the custodians of the court's funds and revenues, records, properties, and premises.[27] They are the chief administrative officers of their respective courts. It is also their duty to ensure that the proper procedures are followed in the collection of cash bonds. Clerks of court are officers of the law who perform vital functions in the prompt and sound administration of justice. Their office is the hub of adjudicative and administrative orders, processes and concerns. They are liable for any loss, shortage, destruction, or impairment of such funds and property.

It is the duty of the clerks of court to perform their responsibilities faithfully, so that they can fully comply with the circulars on deposits of collections. They are reminded to deposit immediately, with authorized government depositaries, the various funds they have collected, because they are not authorized to keep those funds in their custody. The unwarranted failure to fulfill these responsibilities deserves administrative sanction, and not even the full payment of the collection shortages will exempt the accountable officer from liability.

Clearly, Atty. Caballero's action was in complete violation of Administrative Circular No. 3-2000 dated June 15, 2000,

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[26] *Re: Misappropriation of the Judiciary Fund Collections by Juliet C. Banag, Clerk of Court, MTC, Plaridel, Bulacan,* A.M. No. P-02-1641, January 20, 2004.

[27] *Office of the Court Administrator v. Fortaleza*, A.M. No. P-01-1524 (formerly A.M. No. 01-2-14-MTC), July 29, 2002, 385 SCRA 293, 303, citing *Office of the Court Administrator v. Bawalan*, 231 SCRA 408 (1994) and *Office of the Court Administrator v. Galo*, 314 SCRA 705 (1999).

which commands that all fiduciary collections shall be deposited immediately by the Clerk of Court concerned, upon receipt thereof, with an authorized government depository bank. The procedural guidelines of this circular provide:

II. Procedural Guidelines

A. Judiciary Development Fund

xxx xxx x x x

3. Systems and Procedures.

xxx xxx 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

Collections shall not be used for encashment of personal checks, salary checks, etc. x x x

xxx xxx x x x

B. General Fund (GF)

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 collections in the manner herein prescribed, and render the proper Monthly Report of Collections and Deposits for said Fund**. (Emphasis supplied.)

These circulars are mandatory in nature and designed to promote full accountability for government funds; no protestation

of good faith can override such mandatory nature. Failure to observe these circulars, resulting in loss, shortage, destruction, or impairment of court funds and properties, makes Atty. Caballero liable therefor. Further, Atty. Caballero's act of allowing the encashment of salary checks from the court's collections directly contravenes the same circular.

By failing to properly remit the cash collections constituting public funds, Atty. Caballero violated the trust reposed in her as disbursement officer of the judiciary. Her failure to explain the fund shortage satisfactorily and to restitute the shortage and fully comply with the Court's directives leave us no choice but to hold her liable for gross neglect of duty and gross dishonesty. In *Lirios v. Oliveros*[28] and *Re: Report on the Financial Audit Conducted on the Books of Accounts of Atty. Raquel G. Kho, Clerk of Court IV, RTC, Oras, Eastern Samar*,[29] the Court held that the unreasonable delay in the remittance of fiduciary funds constituted serious misconduct.

Atty. Caballero's belated turnover of cash deposited with her is inexcusable and will not exonerate her from liability. Clerks of Court are presumed to know their duty to immediately deposit with the authorized government depositories the various funds they receive, for they are not supposed to keep funds in their personal possession. Even undue delay in the remittances of the amounts that they collect at the very least constitutes misfeasance. Although Atty. Caballero subsequently deposited her other cash accountabilities with respect to the Fiduciary Fund, she was nevertheless liable for failing to immediately deposit the said collections into the court's funds. Her belated remittance will not free her from punishment. Even restitution of the whole amount cannot erase her administrative liability. More so, in the instant case, she failed to fully comply with all the Court's directives, particularly directive (D). Clearly, her failure to deposit the said amount upon collection was prejudicial

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[28] A.M. No. P-96-1178, February 6, 1996, 253 SCRA 258.

[29] A.M. No. P-06-2177, January 27, 2006, 493 SCRA 44.

to the court, which did not earn interest income on the said amount or was not able to otherwise use the said funds.[30]

The long delay in the remittance of the court's funds, as well as the unexplained shortages that remained unaccounted for, raises grave doubts regarding the trustworthiness and integrity of Atty. Caballero. Her failure to remit the funds in due time constitutes gross dishonesty and gross misconduct. It diminishes the faith of the people in the Judiciary. Dishonesty, being in the nature of a grave offense, carries the extreme penalty of dismissal from the service even if committed for the first time.[31]

Section 22(a), (b) and (c) of Rule XIV of the Omnibus Rules Implementing Book V of Executive Order No. 292, and Other Pertinent Civil Service Laws, classifies Gross Neglect of Duty, Dishonesty, and Grave Misconduct as grave offenses. The penalty for each of these offenses is dismissal even for the first offense.[32]

Hence, for the delay in the remittance of cash collections in violation of Supreme Court Circulars No. 5-93 and No. 13-92, and for her failure to keep proper records of all collections and remittances, Atty. Caballero is found guilty of Gross Neglect of Duty punishable, even for the first offense, by dismissal.[33]

We reiterate anew that this Court has not hesitated to impose the ultimate penalty on those who have fallen short of their accountabilities. No less than the Constitution enshrines the principle that a public office is a public trust.[34] The supreme law of the land commands all public officers and employees to

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[30] See *Report on the Financial Audit Conducted on the Books of Accounts of Mr. Agerico P. Balles, MTCC-OCC, Tacloban City*, A.M. No. P-05-2065, April 2, 2009, 583 SCRA 50, 61.

[31] *Id*. at 62.

[32] *Id.*

[33] *Id.*

[34] CONSTITUTION, Art. XI, Sec. 1.

be at all times accountable to the people;[35] and to serve them with utmost dedication, honesty, and loyalty (DHL).[36]

WHEREFORE, respondent *ATTY. JOCELYN G. CABALLERO,* Clerk of Court, RTC, Kidapawan City, North Cotabato, is hereby found *GUILTY* of *GROSS NEGLECT OF DUTY* and *DISHONESTY*. She is ordered *DISMISSED* from the service with forfeiture of all retirement benefits and with prejudice to re-employment in the government, including government-owned or controlled corporations. The Employees Leave Division, Office of Administrative Services, OCA, is *DIRECTED* to compute the balance of respondent Atty. Caballero's earned leave credits and forward the same to the Finance Division, Fiscal Management Office, OCA, which shall compute their monetary value. The amount, as well as other benefits she may be entitled to, shall be applied as restitution of the shortage.

SO ORDERED.

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

Velasco, Jr., J., no part due to prior action in OCA.

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[35] *Id*.

[36] "DHL" refers to the code expounded upon by Chief Justice Artemio V. Panganiban in his address to the Supreme Court employees during their flag-raising ceremony on January 2 and 9, 2006.

SECOND DIVISION

[G.R. No. 176518. March 2, 2010]

THE PARENTS-TEACHERS ASSOCIATION (PTA) OF ST. MATHEW CHRISTIAN ACADEMY, GREGORIO INALVEZ, JR., ROWENA LAYUG, MALOU MALVAR, MARILOU BARAQUIO, GARY SINLAO, LUZVIMINDA OCAMPO, MARIFE FERNANDEZ, FERNANDO VICTORIO, ERNESTO AGANON and RIZALINO MANGLICMOT, represented by their Attorney-in-Fact, GREGORIO INALVEZ, JR., *petitioners, vs.* **THE METROPOLITAN BANK and TRUST CO.,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; FORECLOSURE OF MORTGAGE; IT IS MINISTERIAL UPON THE COURT TO ISSUE WRIT OF POSSESSION AFTER THE FORECLOSURE SALE AND DURING THE PERIOD OF REDEMPTION; EXCEPTION. — As a rule, it is ministerial upon the court to issue a writ of possession after the foreclosure sale and during the period of redemption. Section 7 of Act No. 3135 explicitly authorizes the purchaser in a foreclosure sale to apply for a writ of possession during the redemption period by filing an *ex parte* motion under oath for that purpose "in the registration or cadastral proceedings if the property is registered, or in special proceedings in the case of property registered under the Mortgage Law" with the Regional Trial Court of the province or place where the real property or any part thereof is situated, in the case of mortgages duly registered with the Registry of Deeds. Upon filing of such motion and the approval of the corresponding bond, the law also directs in express terms the said court to issue the order for a writ of possession. However, this rule is not without exception. In *Barican v. Intermediate Appellate Court*, we held that the obligation of a court to issue an *ex parte* writ of possession in favor of the purchaser in an extrajudicial foreclosure sale

ceases to be ministerial once it appears that there is a third party in possession of the property who is claiming a right adverse to that of the debtor/mortgagor. x x x It is settled that the issuance of a writ of possession is a ministerial duty of the court. The purchaser of the foreclosed property, upon *ex parte* application and the posting of the required bond, has the right to acquire possession of the foreclosed property during the 12-month redemption period.

2. ID.; CIVIL PROCEDURE; FORUM-SHOPPING; VALIDITY THEREOF IN AN APPLICATION FOR ISSUANCE OF A WRIT OF POSSESSION. — In *Green Asia Construction and Development Corporation v. Court of Appeals*, where the issue of validity of the Certificate of Non-Forum Shopping was questioned in an application for the issuance of a Writ of Possession, we held that: x x x it bears stressing that **a certification on non-forum shopping is required only in a complaint or a petition which is an initiatory pleading.** In this case, the subject petition for the issuance of a writ of possession filed by private respondent is not an initiatory pleading. **Although private respondent denominated its pleading as a petition, it is more properly a motion.** What distinguishes a motion from a petition or other pleading is not its form or the title given by the party executing it, but its purpose. The purpose of a motion is not to initiate litigation, but to bring up a matter arising in the progress of the case where the motion is filed. It is not necessary to initiate an original action in order for the purchaser at an extrajudicial foreclosure of real property to acquire possession. Even if the application for the writ of possession was denominated as a "petition," it was in substance merely a motion. Indeed, any insignificant lapse in the certification on non-forum shopping filed by the MBTC did not render the writ irregular. After all, no verification and certification on non-forum shopping need be attached to the motion.

3. POLITICAL LAW; CONSTITUTIONAL LAW; ON THE RIGHT TO QUALITY EDUCATION AND ACADEMIC FREEDOM; NOT VIOLATED BY ISSUANCE OF THE WRIT OF POSSESSION IN CASE AT BAR.— The Constitutional mandate to protect and promote the right of all citizens to quality education at all levels is directed to the State and not to the school. On this basis, the petitioner-students cannot prevent the MBTC from acquiring possession of the school premises by virtue of a

validly issued writ of possession. There is likewise no violation of the so-called academic freedom. Article XIV, Section 5(2) of the Constitution mandates "that academic freedom shall be enjoyed in all institutions of higher learning." Academic freedom did not go beyond the concept of freedom of intellectual inquiry, which includes the freedom of professionally qualified persons to inquire, discover, publish and teach the truth as they see it in the field of their competence subject to no control or authority except of rational methods by which truths and conclusions are sought and established in these disciplines. It also pertains to the right of the school or college to decide for itself, its aims and objectives, and how best to attain them - the grant being given to institutions of higher learning - free from outside coercion or interference save possibly when the overriding public welfare calls for some restraint. x x x In this case, except for their bare allegation that "if the school will be ejected because of the writ of possession, the students will necessarily be ejected also" and "thereby their learning process and other educational activities shall have been disrupted," petitioners miserably failed to show the relevance of the right to quality education and academic freedom to their case or how they were violated by the Order granting the writ of possession to the winning bidder in the extrajudicial foreclosure sale.

4. ID.; ACT NO. 3135 (ACT TO REGULATE SALE OF PROPERTY UNDER SPECIAL POWERS INSERTED IN OR ANNEXED TO REAL ESTATE MORTGAGE); *EX PARTE* PETITION FOR THE ISSUANCE OF WRIT OF POSSESSION THEREIN DOES NOT REQUIRE PRIOR EVIDENCE. — This *ex parte* petition for the issuance of a writ of possession under Section 7 of Act No. 3135 is not, strictly speaking, a "judicial process" as contemplated in Article 433 of the Civil Code. As a judicial proceeding for the enforcement of one's right of possession as purchaser in a foreclosure sale, it is not an ordinary suit by which one party "sues another for the enforcement of a wrong or protection of a right, or the prevention or redress of a wrong." In *Idolor v. Court of Appeals*, we described the nature of the *ex parte* petition for issuance of possessory writ under Act No. 3135 to be a non-litigious proceeding and summary in nature. As an *ex parte* proceeding, it is brought for the benefit of one party only, and without notice to, or consent by any person adversely interested. It is a proceeding where the relief

is granted without requiring an opportunity for the person against whom the relief is sought to be heard. It does not matter even if the herein petitioners were not specifically named in the writ of possession nor notified of such proceedings. In *Sagarbarria v. Philippine Business Bank,* we rejected therein petitioner's contention that he was denied due process when the trial court issued the writ of possession without notice. Here in the present case, we similarly reject petitioners' contention that the trial court should have conducted a trial prior to issuing the Order denying their motion to intervene. As it is, the law does not require that a petition for a writ of possession may be granted only after documentary and testimonial evidence shall have been offered to and admitted by the court. As long as a verified petition states the facts sufficient to entitle the petitioner to the relief requested, the court shall issue the writ prayed for. There is no need for petitioners to offer any documentary or testimonial evidence for the court to grant the petition.

5. ID.; ID.; ON WRIT OF POSSESSION ALREADY ISSUED, ANY QUESTION THEREAFTER SHOULD BE ASSAILED BY APPEAL. — Section 8 of Act No. 3135 *viz:* 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 canceled, specifying the damages suffered by him, because the mortgage was not violated or the sale was not made in accordance with the provisions hereof, and the court shall take cognizance of this petition in accordance with the summary procedure provided for in section one hundred and twelve of Act Numbered Four hundred and ninety-six; and if it finds the complaint of the debtor justified, it shall dispose in his favor of all or part of the bond furnished by the person who obtained possession. Either of the parties may appeal from the order of the judge in accordance with section fourteen of Act Numbered Four hundred and ninety-six; but the order of possession shall continue in effect during the pendency of the appeal. In *De Gracia v. San Jose,* we held that: x x x the order for a writ of possession issues as a matter of course upon the filing of the proper motion and the approval of the corresponding bond. No discretion is left to the court. **And any question regarding the regularity and validity of the sale (and the consequent**

cancellation of the writ) is left to be determined in a subsequent proceeding as outlined in Section 8. Such question is not to be raised as a justification for opposing the issuance of the writ of possession, since, under the Act, the proceeding for this is *ex parte*. Since the writ of possession had already been issued in LRC Case No. 6438 per Order dated November 29, 2005, the proper remedy is an appeal and not a petition for *certiorari*, in accordance with our ruling in *Metropolitan Bank and Trust Company v. Tan* and *Government Service Insurance System v. Court of Appeals*. As long as the court acts within its jurisdiction, any alleged errors committed in the exercise of its discretion will amount to nothing more than mere errors of judgment, correctable by an appeal if the aggrieved party raised factual and legal issues; or a petition for review under Rule 45 of the Rules of Court if only questions of law are involved.

6. ID.; SPECIAL CIVIL ACTIONS; *CERTIORARI*; REQUIRES PRIOR FILING OF MOTION FOR RECONSIDERATION; EXCEPTIONS. —As a general rule, a motion for reconsideration should precede recourse to *certiorari* in order to give the trial court an opportunity to correct the error that it may have committed. The said rule is not absolute and may be dispensed with in instances where the filing of a motion for reconsideration would serve no useful purpose, such as when the motion for reconsideration would raise the same point stated in the motion or where the error is patent for the order is void or where the relief is extremely urgent, as in cases where execution had already been ordered where the issue raised is one purely of law.

7. ID.; EQUITY CANNOT PREVAIL AGAINST PROVISIONS OF THE LAW. — In *San Luis v. San Luis*, we expounded on the concept of justice by holding that: More than twenty centuries ago, Justinian defined justice "as the constant and perpetual wish to render everyone his due." That wish continues to motivate this Court when it assesses the facts and the law in every case brought to it for decision. Justice is always an essential ingredient of its decisions. Thus when the facts warrant, we interpret the law in a way that will render justice, presuming that it was the intention of the lawmaker, to begin with, that the law be dispensed with justice. While equity which has been aptly described as "justice outside legality" is applied only in the absence of, and never against, statutory law or judicial

rules of procedure. Positive rules prevail over all abstract arguments based on equity *contra legem*. For all its conceded merit, equity is available only in the absence of law and not as its replacement. In this case, justice demands that we conform to the positive mandate of the law as expressed in Act No. 3135, as amended. Equity has no application as to do so would be tantamount to overruling or supplanting the express provisions of the law.

APPEARANCES OF COUNSEL

Concepcion Law Office for petitioners.
Ricardo C. Atienza for respondent.

D E C I S I O N

DEL CASTILLO, *J.*:

As a general rule, the issuance of a writ of possession after the foreclosure sale and during the period of redemption is ministerial. As an exception, it ceases to be ministerial if there is a third party holding the property adversely to the judgment debtor.

In this case, we find that petitioners' right over the foreclosed property is not adverse to that of the judgment debtor or mortgagor. As such, they cannot seek the quashal or prevent the implementation of the writ of possession.

Factual Antecedents

The facts of this case as summarized by the Court of Appeals (CA) in its assailed Decision[1] dated November 29, 2006 are as follows:

Sometime in 2001, the spouses Denivin Ilagan and Josefina Ilagan (spouses Ilagan) applied for and were granted a loan by the

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[1] *CA rollo*, pp. 190-197; penned by Associate Justice Arturo G. Tayag and concurred in by Associate Justices Remedios A. Salazar-Fernando and Noel G. Tijam.

[Metropolitan Bank and Trust Co.] in the amount of x x x (₱4,790,000.00) [secured by] x x x a Real Estate Mortgage over the parcels of land covered by Transfer Certificates of Title with Nos. 300203, 285299, 278042, 300181, 300184, 300191, 300194, and 300202, respectively.

Upon default, an extrajudicial foreclosure was conducted with [Metropolitan Bank and Trust Co.] being the highest bidder x x x and for which a Certificate of Sale was issued in its favor.

During the period of redemption, the respondent Bank filed an *Ex-Parte* Petition for Issuance of a Writ of Possession docketed as LRC Case No. 6438 by posting x x x the required bond which was subsequently approved. x x x

[On June 30, 2005], the St. Mathew Christian Academy of Tarlac, Inc. filed a Petition for Injunction with Prayer for Restraining Order docketed as Special Civil Action No. 9793 against the respondent Bank and the Provincial Sheriff of Tarlac.

On August 16, 2005, the x x x Judge issued a Joint Decision in LRC Case No. 6438 and Special Civil Action No. 9793, the contents of which are x x x as follows:

JOINT DECISION

> Metropolitan Bank x x x is now entitled to a writ of possession, it being mandatory even during the period of redemption.
>
> The school, St. Mathew Christian [Academy] filed the petition for injunction on the ground that it cannot be ejected being a third party.
>
> x x x St. Mathew Christian Academy is practically owned by the mortgagors, spouses Denivin and Josefina Ilagan. Firstly, the lease to St. Mathew by the Ilagans, as lessor, was for a period of one year from the execution of the lease contract in 1998. Therefore, the lease should have expired in 1999. However, since the lease continued after 1999, the lease is now with a definite period, or monthly, since the payment of lease rental is monthly. (Articles 1670 and 1687, Civil Code). Therefore, the lease expires at the end of each month.
>
> Secondly, the lease was not registered and annotated at the back of the title, and therefore, not binding on third persons. (Article 1648, Civil Code)

> Thirdly, the spouses are the owners or practically the owners of St. Mathew. Even if it has a separate personality, nevertheless, "piercing the veil of corporate entity" is resorted to for the spouses should not be allowed to commit fraud under the separate entity/personality of St. Mathew.
>
> In connection with the allegation of the spouses Ilagans that the mortgage contract contains provision which is *pactum commisorium*, the Court does not agree. What is prohibited is the automatic appropriation without the public sale of the mortgaged properties.
>
> The interest charges may be exorbitant, but it does not of itself cause the nullity of the entire contract of mortgage.
>
> There is also no violation on the proscription on forum shopping. What is important is that, there is really no other case between the parties involving the same subject matter.
>
> In fine, St. Mathew is not really a third person. It is bound by the writ of possession issued by this Court.
>
> WHEREFORE, the writ of possession issued by this Court dated April 22, 2005 is hereby affirmed, Civil Case No. 9793 is dismissed. No costs.
>
> SO ORDERED.[2]

Pending resolution of the motion for reconsideration of the said Joint Decision, herein petitioners Parents-Teachers Association (PTA) of St. Mathew Christian Academy (SMCA) and Gregorio Inalvez, Jr., Rowena Layug, Malou Malvar, Marilou Baraquio, Gary Sinlao, Luzviminda Ocampo, Marife Fernandez, Fernando Victorio, Ernesto Aganon, and Rizalino Manglicmot who are teachers and students of SMCA, filed a Motion for Leave to file Petition in Intervention[3] in Special Civil Action No. 9793, which was granted by the trial court in an Order dated November 10, 2005.[4] However, in a subsequent Order dated December 7, 2005, the trial court reversed its earlier

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[2] *Id.* at 191-194.

[3] *Id.* at 65-66.

[4] *Id.* at 74.

Order by ruling that petitioners' intervention would have no bearing on the issuance and implementation of the writ of possession. Thus, it directed that the writ be implemented by placing respondent Metropolitan Bank and Trust Company (MBTC) in physical possession of the property.[5]

Without filing a motion for reconsideration, petitioners assailed the trial court's Order through a Petition for *Certiorari* and Prohibition before the CA. However, said petition was dismissed by the CA for lack of merit in its assailed Decision dated November 29, 2006. It held thus:

> Considering that in this case the writ of possession had already been issued x x x petitioners' remedy was to file x x x a petition that the sale be set aside and the writ of possession cancelled. Instead, petitioners filed the instant Petition for *Certiorari*.
>
> Moreover, no motion for reconsideration of the said Order directing the issuance of a writ of possession was filed neither was there any motion for reconsideration of the assailed Order of 7 December 2005 prior to the institution of the instant Petition for *Certiorari* to afford the respondent Court an opportunity to correct its alleged error. The rule is that *certiorari* as a special civil action will not lie unless a motion for reconsideration is filed before the respondent tribunal to allow it to correct its imputed error. While there are exceptions to the rule, none has been invoked by petitioners.
>
> WHEREFORE, premises considered, the instant Petition is hereby DISMISSED for lack of merit.
>
> SO ORDERED.[6]

Petitioners filed a Motion for Reconsideration but the motion was denied in a Resolution dated January 29, 2007.

Hence, petitioners filed this Petition for Review on *Certiorari*.

Issues

1. THE COURT OF APPEALS COMMITTED A CLEAR AND REVERSIBLE ERROR WHEN IT FAILED AND REFUSED TO

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[5] *Id.* at 75.

[6] *Id.* at 195-196.

CONSIDER THE GROUNDS RELIED UPON IN THE PETITION BEFORE IT WHEN THE SAME ARE CLEARLY MERITORIOUS AND ARE BASED ON THE LAW AND JUSTICE;

2. THE COURT OF APPEALS COMMITTED A CLEAR AND REVERSIBLE ERROR WHEN IT FAILED AND REFUSED TO CONSIDER THAT THE REMEDY AVAILABLE TO HEREIN PETITIONERS IS THE SPECIAL CIVIL ACTION OF *CERTIORARI* AND NOT A PETITION TO SET ASIDE THE FORECLOSURE SALE IN LRC CASE No. 6438;

3. THE COURT OF APPEALS COMMITTED A CLEAR AND REVERSIBLE ERROR IN RULING THAT A MOTION FOR RECONSIDERATION IS STILL NEEDED BEFORE THE PETITIONERS COULD FILE A SPECIAL CIVIL ACTION OF *CERTIORARI*; and

4. THE COURT OF APPEALS COMMITTED A CLEAR AND REVERSIBLE ERROR IN NOT HOLDING THAT CONSIDERATIONS OF JUSTICE AND EQUITY, AND NOT TECHNICALITY, SHOULD BE THE BASES FOR THE RESOLUTION OF THE PETITION BEFORE IT. [7]

Our Ruling

The petition is bereft of merit.

Petitioners are not "Third Parties" against whom the writ of possession cannot be issued and implemented.

As a rule, it is ministerial upon the court to issue a writ of possession after the foreclosure sale and during the period of redemption.[8] Section 7 of Act No. 3135 explicitly authorizes the purchaser in a foreclosure sale to apply for a writ of possession during the redemption period by filing an *ex parte* motion under oath for that purpose "in the registration or cadastral proceedings if the property is registered, or in special proceedings in the case of property registered under the Mortgage Law"

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[7] *Rollo*, p. 14.

[8] *Development Bank of the Philippines v. Prime Neighborhood Association*, G.R. Nos. 175728 & 178914, May 8, 2009, 587 SCRA 582.

with the Regional Trial Court of the province or place where the real property or any part thereof is situated, in the case of mortgages duly registered with the Registry of Deeds. Upon filing of such motion and the approval of the corresponding bond, the law also directs in express terms the said court to issue the order for a writ of possession.[9]

However, this rule is not without exception. In *Barican v. Intermediate Appellate Court*,[10] we held that the obligation of a court to issue an *ex parte* writ of possession in favor of the purchaser in an extrajudicial foreclosure sale ceases to be ministerial once it appears that there is a third party in possession of the property who is claiming a right adverse to that of the debtor/mortgagor. This ruling was reiterated in *Policarpio v. Active Bank*[11] where we held that:

> Ordinarily, a purchaser of property in an extrajudicial foreclosure sale is entitled to possession of the property. Thus, whenever the purchaser prays for a writ of possession, the trial court has to issue it as a matter of course. *However, the obligation of the trial court to issue a writ of possession ceases to be ministerial once it appears that there is a third party in possession of the property* ***claiming a right adverse to that of the debtor/mortgagor***. Where such third party exists, the trial court should conduct a hearing to determine the nature of his adverse possession. (Emphasis supplied)

In this case, we find that petitioners cannot be considered as third parties because they are not claiming a right adverse to the judgment debtor. Petitioner-teachers and students did not claim ownership of the properties, but merely averred actual "physical possession of the subject school premises."[12] Petitioner-teachers' possession of the said premises was based on the employment contracts they have with the school. As regards

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[9] *Sulit v. Court of Appeals*, 335 Phil. 914, 924 (1997).

[10] G.R. No. 79906, June 20, 1988, 162 SCRA 358, 363, citing *IFC Service Leasing and Acceptance Corporation v. Nera*, 125 Phil. 595, 598 (1967); *Tan Soo Huat v. Ongwico*, 63 Phil. 746 (1936).

[11] G.R. No. 157125, September 19, 2008, 566 SCRA 27, 32.

[12] *Rollo*, p. 123.

the petitioner-students, *Alcuaz v. Philippine School of Business Administration*[13] and *Non v. Dames II*[14] characterized the school-student relationship as contractual in nature. As such, it would be specious to conclude that the teachers and students hold the subject premises *independent* of or adverse to SMCA. In fact, their interest over the school premises is necessarily inferior to that of the school. Besides, their contracts are with the school and do not attach to the school premises. Moreover, the foreclosure of the current school premises does not prevent the SMCA from continuing its operations elsewhere.

At this point, it is relevant to note that in the Joint Decision dated August 16, 2005, the trial court found that SMCA was not a third party and was therefore bound by the said writ of possession.[15] Consequently, it affirmed the issuance of the writ of possession.

MBTC thus correctly argued that petitioners did not have superior rights to that of SMCA over the subject property because their supposed possession of the same emanated only from the latter. Since petitioners' possession of the subject school premises stemmed from their employment or enrollment contracts with the school, as the case may be, necessarily, their right to possess the subject school premises cannot be adverse to that of the school and of its owners. As such, the petitioners cannot be deemed "third parties" as contemplated in Act No. 3135, as amended.

The lack of authority to sign the certificate of non-forum shopping attached to the Petition for Issuance of Writ of Possession was an insignificant lapse.

Petitioners further claim that the lack of authority to sign the certificate on non-forum shopping attached to the Petition for the

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[13] 244 Phil. 8, 20 (1988).

[14] G.R. No. 89317, May 20, 1990, 185 SCRA 523.

[15] CA *rollo,* p. 133.

Issuance of the Writ of Possession rendered the same worthless and should be deemed as non-existent.[16] MBTC asserts otherwise, citing *Spouses Arquiza v. Court of Appeals*[17] where we held that an application for a writ of possession is a mere incident in the registration proceeding which is in substance merely a motion,[18] and therefore does not require such a certification.

Petitioners' contention lacks basis. In *Green Asia Construction and Development Corporation v. Court of Appeals*,[19] where the issue of validity of the Certificate of Non-Forum Shopping was questioned in an application for the issuance of a Writ of Possession, we held that:

> x x x it bears stressing that **a certification on non-forum shopping is required only in a complaint or a petition which is an initiatory pleading.** In this case, the subject petition for the issuance of a writ of possession filed by private respondent is not an initiatory pleading. **Although private respondent denominated its pleading as a petition, it is more properly a motion.** What distinguishes a motion from a petition or other pleading is not its form or the title given by the party executing it, but its purpose. The purpose of a motion is not to initiate litigation, but to bring up a matter arising in the progress of the case where the motion is filed.[20] (Emphasis supplied)

It is not necessary to initiate an original action in order for the purchaser at an extrajudicial foreclosure of real property to acquire possession.[21] Even if the application for the writ of possession was denominated as a "petition," it was in substance merely a motion.[22] Indeed, any insignificant lapse in the

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[16] *Rollo*, pp. 125-126.

[17] 498 Phil. 793, 802-803 (2005).

[18] *Rollo*, pp. 146-147.

[19] G.R. No. 163735, November 24, 2006, 508 SCRA 79.

[20] *Id.* at 84.

[21] *Id*.

[22] *Id*.

certification on non-forum shopping filed by the MBTC did not render the writ irregular. After all, no verification and certification on non-forum shopping need be attached to the motion.[23]

Hence, it is immaterial that the certification on non-forum shopping in the MBTC's petition was signed by its branch head. Such inconsequential oversight did not render the said petition defective in form.

The trial court's Order did not violate the petitioner-students' right to quality education and academic freedom.

We disagree with petitioners' assertion that the students' right to quality education and academic freedom was violated. The constitutional mandate to protect and promote the right of all citizens to quality education at all levels[24] is directed to the State and not to the school.[25] On this basis, the petitioner-students cannot prevent the MBTC from acquiring possession of the school premises by virtue of a validly issued writ of possession.

There is likewise no violation of the so-called academic freedom. Article XIV, Section 5(2) of the Constitution mandates "that academic freedom shall be enjoyed in all institutions of higher learning." Academic freedom did not go beyond the concept of freedom of intellectual inquiry,[26] which includes the freedom of professionally qualified persons to inquire, discover, publish and teach the truth as they see it in the field of their competence subject to no control or authority except of rational methods by which truths and conclusions are sought and established in these disciplines. It also pertains to the right of

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[23] *Metropolitan Bank and Trust Company v. Bance,* G.R. No. 167280, April 30, 2008, 553 SCRA 507, 519.

[24] CONSTITUTION, Article XIV, Section 1.

[25] *University of the Philippines v. Judge Ayson,* 257 Phil. 580, 587 (1989).

[26] Joaquin G. Bernas, S.J., *The 1987 Constitution of the Republic of the Philippines: A Commentary* 2003 edition, p. 1253.

the school or college to decide for itself, its aims and objectives, and how best to attain them – the grant being given to institutions of higher learning – free from outside coercion or interference save possibly when the overriding public welfare calls for some restraint.[27] In *Garcia v. The Faculty Admission Committee, Loyola School of Theology*,[28] we held that:

> [I]t is to be noted that the reference is to the 'institutions of higher learning' as the recipients of this boon. It would follow then that the school or college itself is possessed of such a right. It decides for itself its aims and objectives and how best to attain them. It is free from outside coercion or interference save possibly when the overriding public welfare calls for some restraint. It has a wide sphere of autonomy certainly extending to the choice of students. This constitutional provision is not to be construed in a niggardly manner or in a grudging fashion. That would be to frustrate its purpose, nullify its intent. x x x It is the business of a university to provide that atmosphere which is most conducive to speculation, experiment and creation. It is an atmosphere in which there prevail the 'four essential freedoms' of a university - to determine for itself on academic grounds who may teach, what may be taught, how it shall be taught, and who may be admitted to study.

In this case, except for their bare allegation that "if the school will be ejected because of the writ of possession, the students will necessarily be ejected also"[29] and "thereby their learning process and other educational activities shall have been disrupted,"[30] petitioners miserably failed to show the relevance of the right to quality education and academic freedom to their case or how they were violated by the Order granting the writ of possession to the winning bidder in the extrajudicial foreclosure sale.

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[27] *Tangonan v. Judge Paño*, 221 Phil. 601, 612 (1985).

[28] 160-A Phil. 929, 943-944 (1975). Citations omitted.

[29] *Rollo*, p. 126

[30] *Id*.

The petitioners were accorded due process.

The petitioners argue that the court below did not conduct trial for the presentation of evidence to support its conclusion that the intervention would have no bearing on the issuance and implementation of the writ of possession,[31] thereby depriving them of due process.

Petitioners' contention is without merit. It is settled that the issuance of a writ of possession is a ministerial duty of the court.[32] The purchaser of the foreclosed property, upon *ex parte* application and the posting of the required bond, has the right to acquire possession of the foreclosed property during the 12-month redemption period.[33]

This *ex parte* petition for the issuance of a writ of possession under Section 7 of Act No. 3135 is not, strictly speaking, a "judicial process" as contemplated in Article 433[34] of the Civil Code.[35] As a judicial proceeding for the enforcement of one's right of possession as purchaser in a foreclosure sale, it is not an ordinary suit by which one party "sues another for the enforcement of a wrong or protection of a right, or the prevention or redress of a wrong."[36]

In *Idolor v. Court of Appeals*,[37] we described the nature of the *ex parte* petition for issuance of possessory writ under Act No. 3135 to be a non-litigious proceeding and summary in nature. As an *ex parte* proceeding, it is brought for the benefit

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[31] *Id*.

[32] *Rayo v. Metropolitan Bank and Trust Company*, G.R. No. 165142, December 10, 2007, 539 SCRA 571, 579.

[33] ACT NO. 3135, Section 7.

[34] Art. 433. Actual possession under claim of ownership raises a disputable presumption of ownership. The true owner must resort to judicial process for the recovery of the property.

[35] *Rayo v. Metropolitan Bank and Trust Company*, *supra* at 579-580.

[36] *Id*.

[37] 490 Phil. 808, 816 (2005).

of one party only, and without notice to, or consent by any person adversely interested.[38] It is a proceeding where the relief is granted without requiring an opportunity for the person against whom the relief is sought to be heard.[39] It does not matter even if the herein petitioners were not specifically named in the writ of possession nor notified of such proceedings.[40] In *Sagarbarria v. Philippine Business Bank*,[41] we rejected therein petitioner's contention that he was denied due process when the trial court issued the writ of possession without notice.

Here in the present case, we similarly reject petitioners' contention that the trial court should have conducted a trial prior to issuing the Order denying their motion to intervene.[42] As it is, the law does not require that a petition for a writ of possession may be granted only after documentary and testimonial evidence shall have been offered to and admitted by the court.[43] As long as a verified petition states the facts sufficient to entitle the petitioner to the relief requested, the court shall issue the writ prayed for. There is no need for petitioners to offer any documentary or testimonial evidence for the court to grant the petition.[44]

The proper remedy for the petitioners is a separate, distinct and independent suit, provided for under Act No. 3135.

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[38] *Sagarbarria v. Philippine Business Bank*, G.R. No. 178330, July 23, 2009.

[39] *Spouses Santiago v. Merchants Rural Bank of Talavera, Inc.*, 493 Phil. 862, 869 (2005).

[40] *Rayo v. Metropolitan Bank and Trust Company, supra* note 32 at 581.

[41] *Supra*.

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

[43] *Oliveros v. Presiding Judge, RTC, Br. 24, Biñan, Laguna,* G.R. No. 165963, September 3, 2007, 532 SCRA 109, 120.

[44] *Spouses Santiago v. Merchants Rural Bank of Talavera, Inc., supra* at 870.

Petitioners assert that Section 8 of Act No. 3135 specifically refers to "the debtor" as the party who is required to file a petition for the cancellation of the writ of possession in the same proceeding in which possession was requested.[45] As they are not the debtors referred to in the said law, petitioners argue that the filing of a petition for the cancellation of the writ of possession in the same proceeding in which possession was requested, does not apply to them.[46] Hence, they allege that it was improper for the CA to conclude that the Petition for *Certiorari* was the wrong remedy in the case where the writ of possession was issued.[47]

Respondent, on the other hand, avers that *certiorari* is available only when there is grave abuse of discretion amounting to lack or excess of jurisdiction and there is no appeal, or any plain, speedy and adequate remedy in the ordinary course of law.[48] In the instant case, the respondent argues that the court merely granted the Writ of Possession in accordance with settled jurisprudence[49] and that the remedy of *certiorari* does not lie because there is an available remedy which is an appeal.[50]

We hold that the CA correctly held that the proper remedy is a separate, distinct and independent suit provided for in Section 8 of Act No. 3135[51] *viz*:

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 canceled, specifying the damages suffered by him, because the mortgage was not violated or the sale was not made in accordance with the provisions hereof, and the court shall take cognizance of

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[45] *Rollo,* p. 129.

[46] *Id*. at 130.

[47] *Id*. at 129

[48] *Id.* at 149.

[49] *Id*.

[50] *Id*

[51] CA *rollo,* p. 196.

this petition in accordance with the summary procedure provided for in Section one hundred and twelve of Act Numbered Four hundred and ninety-six; and if it finds the complaint of the debtor justified, it shall dispose in his favor of all or part of the bond furnished by the person who obtained possession. Either of the parties may appeal from the order of the judge in accordance with section fourteen of Act Numbered Four hundred and ninety-six; but the order of possession shall continue in effect during the pendency of the appeal.

In *De Gracia v. San Jose*,[52] we held that:

> x x x the order for a writ of possession issues as a matter of course upon the filing of the proper motion and the approval of the corresponding bond. No discretion is left to the court. **And any question regarding the regularity and validity of the sale (and the consequent cancellation of the writ) is left to be determined in a subsequent proceeding as outlined in Section 8. Such question is not to be raised as a justification for opposing the issuance of the writ of possession, since, under the Act, the proceeding for this is *ex parte*.** (Emphasis supplied)

Since the writ of possession had already been issued in LRC Case No. 6438 per Order dated November 29, 2005, the proper remedy is an appeal and not a petition for *certiorari*,[53] in accordance with our ruling in *Metropolitan Bank and Trust Company v. Tan*[54] and *Government Service Insurance System v. Court of Appeals*.[55] As long as the court acts within its jurisdiction, any alleged errors committed in the exercise of its discretion will amount to nothing more than mere errors of judgment, correctable by an appeal if the aggrieved party raised factual and legal issues; or a petition for review under Rule 45 of the Rules of Court if only questions of law are involved.

As a general rule, a motion for reconsideration must be filed before resort to the special civil action of certiorari is made.

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[52] 94 Phil. 623, 625-626 (1954).

[53] *Rollo*, pp. 31-32.

[54] G.R. No. 159934, June 26, 2008, 555 SCRA 502, 512.

[55] 251 Phil. 222 (1989).

As a general rule, a motion for reconsideration should precede recourse to *certiorari* in order to give the trial court an opportunity to correct the error that it may have committed. The said rule is not absolute and may be dispensed with in instances where the filing of a motion for reconsideration would serve no useful purpose, such as when the motion for reconsideration would raise the same point stated in the motion[56] or where the error is patent for the order is void[57] or where the relief is extremely urgent, as in cases where execution had already been ordered where the issue raised is one purely of law.[58]

In the case at bar, the petitioners stated in their Petition for *Certiorari* and Prohibition before the CA as follows:[59]

18. Respondent sheriff and his deputies are now set to implement the said writ of possession and are now poised to evict the students and teachers from their classrooms, grounds and school facilities;

19. Petitioners did not anymore file a motion for reconsideration of said order x x x and is proceeding directly to this Honorable Court because the filing of a motion for reconsideration would serve no useful purpose x x x Besides the relief sought is extremely urgent as the respondent sheriff is set to implement the questioned orders x x x and the circumstances herein clearly indicate the urgency of judicial intervention x x x hence, this petition.

Plainly, the petitioners have the burden to substantiate that their immediate resort to the appellate court is based on any of the exceptions to the general rule. They have to show the urgent and compelling reasons for such recourse. The aforecited allegations of the petitioners in their petition before the CA did not dispense with the burden of establishing that their case falls under any of the exceptions to the general rule. Unlike

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[56] *Fortich-Celdran v. Celdran,* 125 Phil. 903, 908 (1967).

[57] *Vigan Electric Light Co., Inc. v. Public Service Commission,* 119 Phil. 304, 313-314 (1964).

[58] *Central Bank of the Philippines v. Hon. Cloribel,* 150-A Phil. 86, 100 (1972).

[59] CA *rollo,* p. 18.

the case of *Ronquillo v. Court of Appeals*[60] cited by the petitioners, where not only was a writ of execution issued but petitioner's properties were already scheduled to be sold at public auction on April 2, 1980 at 10:00 a.m., the herein petitioners failed to show the specificity and imminence of the urgency confronting their immediate recourse to the appellate court.

We therefore hold that the CA correctly found the necessity for a prior resort to a motion for reconsideration prior to the institution of the Petition for *Certiorari*.

Considerations of equity do not apply in the instant case.

The petitioners claim that the challenged decision of the CA would show that the petition was decided on the basis of pure technicality and that the appellate court did not pass upon the merits of the petition.[61] They further assert that considerations of justice and equity and not technicality, should be the bases for the resolution of the petition.[62] MBTC, on the other hand, argues that equity may not apply if there is applicable law and jurisprudence.

In *San Luis v. San Luis*,[63] we expounded on the concept of justice by holding that:

> More than twenty centuries ago, Justinian defined justice "as the constant and perpetual wish to render everyone his due." That wish continues to motivate this Court when it assesses the facts and the law in every case brought to it for decision. Justice is always an essential ingredient of its decisions. Thus when the facts warrant, we interpret the law in a way that will render justice, presuming that it was the intention of the lawmaker, to begin with, that the law be dispensed with justice.

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[60] 217 Phil. 269, 277-278 (1984).

[61] *Rollo*, p. 131.

[62] *Id*.

[63] G.R. No. 133743 & 134029, February 6, 2007, 514 SCRA 294, 313, citing *Alonzo v. Intermediate Appellate Court*, 234 Phil. 267, 276 (1987).

While equity which has been aptly described as "justice outside legality" is applied only in the absence of, and never against, statutory law or judicial rules of procedure.[64] Positive rules prevail over all abstract arguments based on equity *contra legem*.[65] For all its conceded merit, equity is available only in the absence of law and not as its replacement.[66]

In this case, justice demands that we conform to the positive mandate of the law as expressed in Act No. 3135, as amended. Equity has no application as to do so would be tantamount to overruling or supplanting the express provisions of the law.

In our Resolution[67] dated June 4, 2007, we issued a Temporary Restraining Order enjoining respondent to desist from implementing the Writ of Possession. We also required petitioners to post a cash or surety bond in the amount of ₱50,000.00 within five days from notice, otherwise the temporary restraining order shall be automatically lifted. The petitioners posted a cash bond in the amount of ₱50,000.00 on June 27, 2007 pursuant to our June 4, 2007 Resolution.[68]

WHEREFORE, premises considered, the Petition for Review on *Certiorari* is *DENIED* for lack of merit. The temporary restraining order heretofore issued is hereby *LIFTED* and *SET ASIDE*. The Decision of the Court of Appeals dated November 29, 2006 and its Resolution dated January 29, 2007 are *AFFIRMED*.

SO ORDERED.

Carpio (Chairperson), Brion, Abad, and *Perez, JJ.,* concur.

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[64] *Zabat, Jr. v. Court of Appeals*, 226 Phil. 489, 495 (1986).

[65] *Id*.

[66] *Tirazona v. Philippine EDS Techno-Service, Inc. (PET, Inc.)*, G.R. No. 169712, January 20, 2009, 576 SCRA 625, 626.

[67] *Rollo*, p. 71.

[68] *Id.* at 77.

SECOND DIVISION

[G.R. No. 180866. March 2, 2010]

LEPANTO CERAMICS, INC., *petitioner, vs.* **LEPANTO CERAMICS EMPLOYEES ASSOCIATION,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; FACTUAL FINDINGS OF VOLUNTARY ARBITRATOR AFFIRMED BY THE COURT OF APPEALS, RESPECTED. — We uphold the rulings of the voluntary arbitrator and of the Court of Appeals. Findings of labor officials, who are deemed to have acquired expertise in matters within their respective jurisdictions, are generally accorded not only respect but even finality, and bind us when supported by substantial evidence. This is the rule particularly where the findings of both the arbitrator and the Court of Appeals coincide. As a general proposition, an arbitrator is confined to the interpretation and application of the CBA. He does not sit to dispense his own brand of industrial justice: his award is legitimate only in so far as it draws its essence from the CBA. That was done in this case.

2. LABOR AND SOCIAL LEGISLATION; LABOR STANDARDS; CONDITIONS OF EMPLOYMENT; BONUS; ELUCIDATED. — By definition, a "bonus" is a gratuity or act of liberality of the giver. It is something given in addition to what is ordinarily received by or strictly due the recipient. A bonus is granted and paid to an employee for his industry and loyalty which contributed to the success of the employer's business and made possible the realization of profits. A bonus is also granted by an enlightened employer to spur the employee to greater efforts for the success of the business and realization of bigger profits.

3. ID.; ID.; ID.; ID.; BONUS INTEGRATED IN THE COLLECTIVE BARGAINING AGREEMENT (CBA), BECOMES A DEMANDABLE OBLIGATION. — Generally, a bonus is not a demandable and enforceable obligation. For a bonus to be enforceable, it must have been promised by the employer and expressly agreed upon by the parties. Given that the bonus in

this case is integrated in the CBA, the same partakes the nature of a demandable obligation. Verily, by virtue of its incorporation in the CBA, the Christmas bonus due to respondent Association has become more than just an act of generosity on the part of the petitioner but a contractual obligation it has undertaken. A CBA refers to a negotiated contract between a legitimate labor organization and the employer, concerning wages, hours of work and all other terms and conditions of employment in a bargaining unit. As in all other contracts, the parties to a CBA may establish such stipulations, clauses, terms and conditions as they may deem convenient, provided these are not contrary to law, morals, good customs, public order or public policy. It is a familiar and fundamental doctrine in labor law that the CBA is the law between the parties and they are obliged to comply with its provisions.

4. ID.; ID.; ID.; ID.; BUSINESS LOSSES ARE FEEBLE GROUND TO REPUDIATE OBLIGATION UNDER THE CBA. — Business losses are a feeble ground for petitioner to repudiate its obligation under the CBA. The rule is settled that any benefit and supplement being enjoyed by the employees cannot be reduced, diminished, discontinued or eliminated by the employer. The principle of non-diminution of benefits is founded on the constitutional mandate to protect the rights of workers and to promote their welfare and to afford labor full protection. Hence, absent any proof that petitioner's consent was vitiated by fraud, mistake or duress, it is presumed that it entered into the CBA voluntarily and had full knowledge of the contents thereof and was aware of its commitments under the contract.

5. ID.; LABOR RELATIONS; COLLECTIVE BARGAINING AGREEMENT; DUTY TO BARGAIN COLLECTIVELY WHEN THERE EXISTS A COLLECTIVE BARGAINING AGREEMENT; REMEDY TO CLARIFY A CBA PROVISION IN THE SUBSEQUENT CBA NEGOTIATIONS. — The Court is fully aware that implementation to the letter of the subject CBA provision may further deplete petitioner's resources. Petitioner's remedy though lies not in the Court's invalidation of the provision but in the parties' clarification of the same in subsequent CBA negotiations. Article 253 of the Labor Code is relevant: **Art. 253. Duty to bargain collectively when there exists a collective bargaining agreement. - When there is a collective bargaining agreement, the duty to bargain collectively**

shall also mean that neither party shall terminate nor modify such agreement during its lifetime. However, either party can serve a written notice to terminate or modify the agreement at least sixty (60) days prior to its expiration date. It shall be the duty of both parties to keep the status quo and to continue in full force and effect the terms and conditions of the existing agreement during the sixty (60)-day period and/or until a new agreement is reached by the parties.

APPEARANCES OF COUNSEL

Daisy L. Parker for petitioner.

D E C I S I O N

PEREZ, *J.*:

Before this Court is a Petition for Review on *Certiorari* under Rule 45[1] of the 1997 Rules of Civil Procedure filed by petitioner Lepanto Ceramics, Inc. (petitioner), assailing the: (1) Decision[2] of the Court of Appeals, dated 5 April 2006, in CA-G.R. SP No. 78334 which affirmed *in toto* the decision of the Voluntary Arbitrator[3] granting the members of the respondent association a Christmas Bonus in the amount of Three Thousand Pesos (₱3,000.00), or the balance of Two Thousand Four Hundred Pesos (₱2,400.00) for the year 2002, and the (2) Resolution[4] of the same court dated 13 December 2007 denying Petitioner's Motion for Reconsideration.

The facts are:

Petitioner Lepanto Ceramics, Incorporated is a duly organized corporation existing and operating by virtue of Philippine Laws.

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[1] Appeal by *Certiorari* to the Supreme Court.

[2] Penned by Associate Justice Josefina Guevara-Salonga, with Associate Justices Fernanda Lampas Peralta and Sesinando E. Villon concurring. *Rollo*, pp. 10-19.

[3] Penned by Voluntary Arbitrator Lydia A. Navarro. *Id.* at 167-169.

[4] *Id.* at 30.

Its business is primarily to manufacture, make, buy and sell, on wholesale basis, among others, tiles, marbles, mosaics and other similar products.[5]

Respondent Lepanto Ceramics Employees Association (respondent Association) is a legitimate labor organization duly registered with the Department of Labor and Employment. It is the sole and exclusive bargaining agent in the establishment of petitioner.[6]

In December 1998, petitioner gave a ₱3,000.00 bonus to its employees, members of the respondent Association.[7]

Subsequently, in September 1999, petitioner and respondent Association entered into a Collective Bargaining Agreement (CBA) which provides for, among others, the grant of a Christmas gift package/bonus to the members of the respondent Association.[8] The Christmas bonus was one of the enumerated "existing benefit, practice of traditional rights" which "shall remain in full force and effect."

The text reads:

Section 8. – All other existing benefits, practice of traditional rights consisting of Christmas Gift package/bonus, reimbursement of transportation expenses in case of breakdown of service vehicle and medical services and safety devices by virtue of company policies by the UNION and employees shall remain in full force and effect.

Section 1. EFFECTIVITY

This agreement shall become effective on September 1, 1999 and shall remain in full force and effect without change for a period of four (4) years or up to August 31, 2004 except as to the representation aspect which shall be effective for a period of five (5) years. It shall bind each and every employee in the bargaining unit including the present and future officers of the Union.

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[5] CA *rollo*, p. 36.

[6] *Id.* at 39.

[7] *Id.* at 42.

[8] Records, p. 7.

In the succeeding years, 1999, 2000 and 2001, the bonus was not in cash. Instead, petitioner gave each of the members of respondent Association Tile Redemption Certificates equivalent to ₱3,000.00.[9] The bonus for the year 2002 is the root of the present dispute. Petitioner gave a year-end cash benefit of Six Hundred Pesos (₱600.00) and offered a cash advance to interested employees equivalent to one (1) month salary payable in one year.[10] The respondent Association objected to the ₱600.00 cash benefit and argued that this was in violation of the CBA it executed with the petitioner.

The parties failed to amicably settle the dispute. The respondent Association filed a Notice of Strike with the National Conciliation Mediation Board, Regional Branch No. IV, alleging the violation of the CBA. The case was placed under preventive mediation. The efforts to conciliate failed. The case was then referred to the Voluntary Arbitrator for resolution where the Complaint was docketed as Case No. LAG-PM-12-095-02.

In support of its claim, respondent Association insisted that it has been the traditional practice of the company to grant its members Christmas bonuses during the end of the calendar year, each in the amount of ₱3,000.00 as an expression of gratitude to the employees for their participation in the company's continued existence in the market. The bonus was either in cash or in the form of company tiles. In 2002, in a speech during the Christmas celebration, one of the company's top executives assured the employees of said bonus. However, the Human Resources Development Manager informed them that the traditional bonus would not be given as the company's earnings were intended for the payment of its bank loans. Respondent Association argued that this was in violation of their CBA.

The petitioner averred that the complaint for nonpayment of the 2002 Christmas bonus had no basis as the same was not a demandable and enforceable obligation. It argued that the

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[9] *Rollo,* pp. 43-44.

[10] *Id.* at 45.

giving of extra compensation was based on the company's available resources for a given year and the workers are not entitled to a bonus if the company does not make profits. Petitioner adverted to the fact that it was debt-ridden having incurred net losses for the years 2001 and 2002 totaling to ₱1.5 billion; and since 1999, when the CBA was signed, the company's accumulated losses amounted to over ₱2.7 billion. Petitioner further argued that the grant of a one (1) month salary cash advance was not meant to take the place of a bonus but was meant to show the company's sincere desire to help its employees despite its precarious financial condition. Petitioner also averred that the CBA provision on a "Christmas gift/bonus" refers to alternative benefits. Finally, petitioner emphasized that even if the CBA contained an unconditional obligation to grant the bonus to the respondent Association, the present difficult economic times had already legally released it therefrom pursuant to Article 1267 of the Civil Code.[11]

The Voluntary Arbitrator rendered a Decision dated 2 June 2003, declaring that petitioner is bound to grant each of its workers a Christmas bonus of ₱3,000.00 for the reason that the bonus was given prior to the effectivity of the CBA between the parties and that the financial losses of the company is not a sufficient reason to exempt it from granting the same. It stressed that the CBA is a binding contract and constitutes the law between the parties. The Voluntary Arbitrator further expounded that since the employees had already been given ₱600.00 cash bonus, the same should be deducted from the claimed amount of ₱3,000.00, thus leaving a balance of ₱2,400.00. The dispositive portion of the decision states, *viz*:

> Wherefore, in view of the foregoing respondent LCI is hereby ordered to pay the members of the complainant union LCEA their respective Christmas bonus in the amount of three thousand (₱3,000.00) pesos for the year 2002 less the ₱600.00 already given or a balance of ₱2,400.00.[12]

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[11] Article 1267. When the service has become so difficult as to be manifestly beyond the contemplation of the parties, the obligor may also be released therefrom, in whole or in part.

[12] *Rollo,* p. 169.

Petitioner sought reconsideration but the same was denied by the Voluntary Arbitrator in an Order dated 27 June 2003, in this wise:

> The Motion for Reconsideration filed by the respondent in the above-entitled case which was received by the Undersigned on June 26, 2003 is hereby denied pursuant to Section 7 Rule XIX on Grievance Machinery and Voluntary Arbitration; Amending The Implementing Rules of Book V of the Labor Code of the Philippines; to wit:
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> > Section 7. Finality of Award/Decision – The decision, order, resolution or award of the voluntary arbitrator or panel of voluntary arbitrators shall be final and executory after ten (10) calendar days from receipt of the copy of the award or decision by the parties and it shall not be subject of a motion for reconsideration.[13]

Petitioner elevated the case to the Court of Appeals erroneously *via* a Petition for *Certiorari* under Rule 65 of the Rules of Court docketed as CA-G.R. SP No. 78334.[14] As adverted to earlier, the Court of Appeals affirmed *in toto* the decision of the Voluntary Arbitrator. The appellate court also denied petitioner's motion for reconsideration.

In affirming respondent Association's right to the Christmas bonus, the Court of Appeals held:

> In the case at bar, it is indubitable that petitioner offered private respondent a Christmas bonus/gift in 1998 or before the execution of the 1999 CBA which incorporated the said benefit as a traditional

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[13] *Id.* at 170.

[14] The Court of Appeals gave due course to the Petition although the proper remedy should have been a Petition for Review under Rule 43 of the 1997 Rules of Civil Procedure.

> **Rule 43. – Appeals From the Court of Tax Appeals and Quasi-Judicial Agencies to the Court of Appeals.**
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> **Section 1. Scope. – This Rule shall apply to appeals from judgments or final orders of the Court of Tax Appeals and from awards, judgments, final orders or resolutions of or authorized by any quasi-judicial agency in the exercise of its quasi-judicial functions. Among these agencies are x x x, and voluntary arbitrators authorized by law.**

right of the employees. Hence, the grant of said bonus to private respondent can be deemed a practice as the same has not been given only in the 1999 CBA. Apparently, this is the reason why petitioner specifically recognized the grant of a Christmas bonus/gift as a practice or tradition as stated in the CBA. x x x.

x x x x x x x x x

Evidently, the argument of petitioner that the giving of a Christmas bonus is a management prerogative holds no water. There were no conditions specified in the CBA for the grant of said benefit contrary to the claim of petitioner that the same is justified only when there are profits earned by the company. As can be gleaned from the CBA, the payment of Christmas bonus was not contingent upon the realization of profits. It does not state that if the company derives no profits, there are no bonuses to be given to the employees. In fine, the payment thereof was not related to the profitability of business operations.

Moreover, it is undisputed that petitioner, aside from giving the mandated 13th month pay, has further been giving its employees an additional Christmas bonus at the end of the year since 1998 or before the effectivity of the CBA in September 1999. Clearly, the grant of Christmas bonus from 1998 up to 2001, which brought about the filing of the complaint for alleged non-payment of the 2002 Christmas bonus does not involve the exercise of management prerogative as the same was given continuously on or about Christmas time pursuant to the CBA. Consequently, the giving of said bonus can no longer be withdrawn by the petitioner as this would amount to a diminution of the employee's existing benefits.[15]

Not to be dissuaded, petitioner is now before this Court. The only issue before us is whether or not the Court of Appeals erred in affirming the ruling of the voluntary arbitrator that the petitioner is obliged to give the members of the respondent Association a Christmas bonus in the amount of ₱3,000.00 in 2002.[16]

We uphold the rulings of the voluntary arbitrator and of the Court of Appeals. Findings of labor officials, who are deemed

[15] *Id.* at 16-17.

[16] *Id.* at 9.

to have acquired expertise in matters within their respective jurisdictions, are generally accorded not only respect but even finality, and bind us when supported by substantial evidence. This is the rule particularly where the findings of both the arbitrator and the Court of Appeals coincide.[17]

As a general proposition, an arbitrator is confined to the interpretation and application of the CBA. He does not sit to dispense his own brand of industrial justice: his award is legitimate only in so far as it draws its essence from the CBA.[18] That was done in this case.

By definition, a "bonus" is a gratuity or act of liberality of the giver. It is something given in addition to what is ordinarily received by or strictly due the recipient. A bonus is granted and paid to an employee for his industry and loyalty which contributed to the success of the employer's business and made possible the realization of profits.[19]

A bonus is also granted by an enlightened employer to spur the employee to greater efforts for the success of the business and realization of bigger profits.[20]

Generally, a bonus is not a demandable and enforceable obligation. For a bonus to be enforceable, it must have been promised by the employer and expressly agreed upon by the parties.[21] Given that the bonus in this case is integrated in the

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[17] *Philippine Airlines, Inc. v. Philippine Airlines Employees Association (PALEA),* G.R. No. 142399, 12 March 2008, 548 SCRA 117, 129 citing *Stamford Marketing Corporation v. Julian,* 468 Phil. 34, 55 (2004).

[18] *United Kimberly-Clark Employees Union-Philippine Transport General Workers' Organization v. Kimberly-Clark Philippines, Inc.,* G.R. No. 162957, 6 March 2006, 484 SCRA 187, 200.

[19] *Protacio v. Laya Mananghaya and Co.,* G.R. No. 168654, 25 March 2009.

[20] *Philippine Airlines, Inc. v. Philippine Airlines Employees Association (PALEA), supra* note 16 at 133 citing *Philippine Education Co., Inc. (PECO) v. Court of Industrial Relations,* 92 Phil. 381, 385 (1952).

[21] *American Wire and Cable Daily Rated Employees Union v. American Wire and Cable,* 497 Phil. 213, 224 (2005).

CBA, the same partakes the nature of a demandable obligation. Verily, by virtue of its incorporation in the CBA, the Christmas bonus due to respondent Association has become more than just an act of generosity on the part of the petitioner but a contractual obligation it has undertaken.[22]

A CBA refers to a negotiated contract between a legitimate labor organization and the employer, concerning wages, hours of work and all other terms and conditions of employment in a bargaining unit. As in all other contracts, the parties to a CBA may establish such stipulations, clauses, terms and conditions as they may deem convenient, provided these are not contrary to law, morals, good customs, public order or public policy.[23]

It is a familiar and fundamental doctrine in labor law that the CBA is the law between the parties and they are obliged to comply with its provisions.[24] This principle stands strong and true in the case at bar.

A reading of the provision of the CBA reveals that the same provides for the giving of a "Christmas gift package/bonus" without qualification. Terse and clear, the said provision did not state that the Christmas package shall be made to depend on the petitioner's financial standing. The records are also bereft of any showing that the petitioner made it clear during CBA negotiations that the bonus was dependent on any condition. Indeed, if the petitioner and respondent Association intended that the ₱3,000.00 bonus would be dependent on the company earnings, such intention should have been expressed in the CBA.

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[22] *Philippine Airlines, Inc. v Philippine Airlines Employees Association (PALEA), supra* note 16 at 133.

[23] *Honda Philippines, Inc. v. Samahan ng Malayang Manggagawa sa Honda,* G.R. No. 145561, 15 June 2005, 460 SCRA 186,190.

[24] *University of San Agustin v. University of San Agustin Employees Union,* G.R. No. 177594, 23 July 2009; *HFJ Philippines, Inc. v. Pilar,* G.R. No. 168716, 16 April 2009.

It is noteworthy that in petitioner's 1998 and 1999 Financial Statements, it took note that "the 1997 financial crisis in the Asian region adversely affected the Philippine economy."[25]

From the foregoing, petitioner cannot insist on business losses as a basis for disregarding its undertaking. It is manifestly clear that petitioner was very much aware of the imminence and possibility of business losses owing to the 1997 financial crisis. In 1998, petitioner suffered a net loss of ₱14,347,548.00.[26] Yet it gave a ₱3,000.00 bonus to the members of the respondent Association. In 1999, when petitioner's very own financial statement reflected that "the positive developments in the economy have yet to favorably affect the operations of the company,"[27] and reported a loss of ₱346,025,733.00,[28] it entered into the CBA with the respondent Association whereby it contracted to grant a Christmas gift package/bonus to the latter. Petitioner supposedly continued to incur losses in the years 2000[29] and 2001. Still and all, this did not deter it from honoring the CBA provision on Christmas bonus as it continued to give ₱3,000.00 each to the members of the respondent Association in the years 1999, 2000 and 2001.

All given, business losses are a feeble ground for petitioner to repudiate its obligation under the CBA. The rule is settled that any benefit and supplement being enjoyed by the employees cannot be reduced, diminished, discontinued or eliminated by the employer. The principle of non-diminution of benefits is founded on the constitutional mandate to protect the rights of

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[25] Said Financial Statements further noted that "The Asian Crisis led to a volatile foreign exchange and interest rates. During the first half of 1999, the situation has improved with the peso moving in a relatively narrow range of $38 to $40 against the US dollar between 31 December 1998 and 30 September 1999 x x x. Records, p. 215.

[26] *Id.* at 218.

[27] *Id.* at 215.

[28] *Id.* at 218.

[29] Petitioner's financial statement states that in year 2000 it incurred a net loss of ₱865,137,705.00 and ₱958,602,659.00 in the year 2001.

workers and to promote their welfare and to afford labor full protection.[30]

Hence, absent any proof that petitioner's consent was vitiated by fraud, mistake or duress, it is presumed that it entered into the CBA voluntarily and had full knowledge of the contents thereof and was aware of its commitments under the contract.

The Court is fully aware that implementation to the letter of the subject CBA provision may further deplete petitioner's resources. Petitioner's remedy though lies not in the Court's invalidation of the provision but in the parties' clarification of the same in subsequent CBA negotiations. Article 253 of the Labor Code is relevant:

Art. 253. Duty to bargain collectively when there exists a collective bargaining agreement. - When there is a collective bargaining agreement, the duty to bargain collectively shall also mean that neither party shall terminate nor modify such agreement during its lifetime. However, either party can serve a written notice to terminate or modify the agreement at least sixty (60) days prior to its expiration date. It shall be the duty of both parties to keep the status quo and to continue in full force and effect the terms and conditions of the existing agreement during the sixty (60)-day period and/or until a new agreement is reached by the parties.

WHEREFORE, Premises considered, the petition is *DENIED* for lack of merit. The Decision of the Court of Appeals dated 5 April 2006 and the Resolution of the same court dated 13 December 2007 in CA-G.R. SP No. 78334 are *AFFIRMED*.

SO ORDERED.

Carpio (Chairperson), Brion, Del Castillo, and *Abad, JJ.,* concur.

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[30] *Arco Metal Products, Co., Inc. v. Samahan ng Mga Mangagagawa sa Arco Metal-NAFLU (SAMARM-NAFLU)*, G.R. No. 170734, 14 May 2008, 554 SCRA 110, 118-119.

SECOND DIVISION

[G.R. No. 182720. March 2, 2010]

G.G. SPORTSWEAR MFG. CORP., *petitioner, vs.* **WORLD CLASS PROPERTIES, INC.,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; *OBITER DICTUM*; PRONOUNCEMENT NOT CONSIDERED AS *OBITER DICTUM* WHEN MATTER TOUCHED UPON WAS THAT SQUARELY RAISED IN A PETITION FOR REVIEW; CASE AT BAR. — We explained the concept of an *obiter dictum* in *Villanueva v. Court of Appeals* by saying: It has been held that an adjudication on any point within the issues presented by the case cannot be considered as *obiter dictum*, and this rule applies to all pertinent questions, although only incidentally involved, which are presented and decided in the regular course of the consideration of the case, and led up to the final conclusion, and to any statement as to matter on which the decision is predicated. Accordingly, **a point expressly decided does not lose its value as a precedent because the disposition of the case is**, or might have been, **made on some other ground, or even though, by reason of other points in the case, the result reached might have been the same if the court had held, on the particular point, otherwise than it did. A decision which the case could have turned on is not regarded as *obiter dictum* merely because, owing to the disposal of the contention, it was necessary to consider another question, nor can an additional reason in a decision, brought forward after the case has been disposed of on one ground, be regarded as *dicta*.** So, also, where a case presents two (2) or more points, any one of which is sufficient to determine the ultimate issue, but the court actually decides all such points, the case as an authoritative precedent as to every point decided, and none of such points can be regarded as having the status of a *dictum*, and one point should not be denied authority merely because another point was more dwelt on and more fully argued and considered, nor does a decision on one proposition make statements of the court regarding other propositions *dicta*. The Board's pronouncement

in its January 31, 2006 decision – that the Agreement could no longer be rescinded because the CR/LS had already been issued at the time the complaint was filed – cannot be considered a mere *obiter dictum* because it touched upon a matter squarely raised by World Class in its petition for review, specifically, the issue of whether GG Sportswear was entitled to a refund on the ground that it did not have a CR/LS at the time the parties entered into the Agreement.

2. CIVIL LAW; CONTRACTS; RESCISSION; PROPRIETY IN BREACH OF CONTRACT; RESCISSION PREMATURE WHERE OBLIGATION NOT YET BREACHED. — Unless the parties stipulated it, rescission is allowed only when the breach of the contract is substantial and fundamental to the fulfillment of the obligation. Whether the breach is slight or substantial is largely determined by the attendant circumstances. x x x Even if we apply Article 1191 of the Civil Code, which provides: **Art. 1191.** The power to rescind obligations is implied in reciprocal ones, in case one of the obligors should not comply with what is incumbent upon him. x x x, no reason still exists to rescind the contract [in case at bar]. Under the Agreement, *World Class's obligation was to finish the project and turn over the purchased units to GG Sportswear on or before the completion date.* Notably, at the time GG Sportswear filed its complaint on *June 10, 1997*, the agreed completion date of *December 15, 1998*, or even *August 1998*, the date appearing on World Class's first License to Sell, was still a long way out. In other words, **when GG Sportswear filed its complaint, World Class had not yet breached its obligation, and rescission under this provision of the Civil Code was premature.**

3. ID.; ID.; ID.; ID.; RECOURSE OF BUYER ON DEVELOPER'S FAILURE TO DEVELOP SUBDIVISION OR CONDOMINIUM PROJECT UNDER PD NO. 957, NOT PROPER WHERE THERE IS NO LAPSE ON COMPLETION PERIOD. — Neither can GG Sportswear find recourse through P.D. No. 957, or the "Subdivision and Condominium Buyers' Protective Decree." This law covers all sales and purchases of subdivision or condominium units, and provides that the buyer's installment payments shall not be forfeited in favor of the developer or owner if the latter *fails to develop* the subdivision or condominium project. Section 23 of P.D. No. 957 provides: **Section 23.** *Non-Forfeiture of Payments.* No installment payment

made by a buyer in a subdivision or condominium project for the lot or unit he contracted to buy shall be forfeited in favor of the owner or developer when the buyer, after due notice to the owner or developer, **desists from further payment** due to the **failure of the owner or developer to develop the subdivision or condominium project according to the approved plans and within the time limit for complying with the same.** Such buyer may, at his option, be **reimbursed the total amount paid** including amortization interests but excluding delinquency interests, with interest thereon at the legal rate. Upon the developer's failure to develop, the buyer may choose either: (1) to continue with the contract but *suspend payments* until the developer complies with its obligation to finish the project; or (2) *to cancel the contract* and *demand a refund* of all payments made, excluding delinquency interests. Notably, *a buyer's cause of action against a developer for failure to develop ripens only when the developer fails to complete the project on the lapse of the completion period stated on the sale contract or the developer's License to Sell.*

4. POLITICAL LAW; ADMINISTRATIVE LAW; SUBDIVISION AND CONDOMINIUM BUYERS' PROTECTIVE DECREE (P.D. NO. 957); SELLING OF SUBDIVISION LOTS AND CONDOMINIUM UNITS WITHOUT THE REQUIRED CERTIFICATE OF REGISTRATION AND LICENSE TO SELL, WILL NOT INVALIDATE THE CONTRACT. — On a final note, we choose to reiterate, for the benefit of the HLURB, our ruling in *Co Chien v. Sta. Lucia Realty & Development, Inc.*, that *the requirements of Sections 4 and 5 of P.D. No. 957 are intended merely for administrative convenience in order to allow for a more effective regulation of the industry and do not go into the validity of the contract such that the absence thereof would automatically render the contract null and void.* We said: A review of the relevant provisions of P.D. 957 reveals that while the law penalizes the selling of subdivision lots and condominium units without prior issuance of a Certificate of Registration and License to Sell by the HLURB, **it does not provide that the absence thereof will automatically render a contract, otherwise validly entered, void**. The penalty imposed by the decree is the general penalty provided for the violation of any of its provisions. It is well-settled in this jurisdiction that the clear language of the law shall prevail. This principle

particularly enjoins strict compliance with provisions of law which are penal in nature, or when a penalty is provided for the violation thereof. **With regard to P.D. 957, nothing therein provides for the nullification of a contract to sell in the event that the seller, at the time the contract was entered into, did not possess a certificate of registration and license to sell.** Absent any specific sanction pertaining to the violation of the questioned provisions (Sections 4 and 5), the general penalties provided in the law shall be applied. The general penalties for the violation of any provisions in P.D. 957 are provided for in Sections 38 and 39. As can clearly be seen in the cited provisions, the same do not include the nullification of contracts that are otherwise validly entered. x x x **The lack of certificate and registration, without more, while penalized under the law, is not in and of itself sufficient to render a contract void.**

APPEARANCES OF COUNSEL

Donato Zarate & Rodriguez for petitioner.
J.L. Jorvina, Jr. for respondent.

D E C I S I O N

BRION, *J.*:

Through its petition for review on *certiorari*, the petitioner G.G. Sportswear Mfg. Corp. (*GG Sportswear*) seeks to reverse the December 19, 2007 decision[1] and the January 2, 2008 resolution[2] of the Court of Appeals (*CA*) denying: (1) the rescission of its Reservation Agreement with the respondent, World Class Properties, Inc. (*World Class*) and (2) a refund of the payments made pursuant to this Agreement.

The facts, as culled from the records, are briefly summarized below.

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[1] Penned by Associate Justice Amelita G. Tolentino, and concurred in by Associate Justice Lucenito N. Tagle and Associate Justice Agustin S. Dizon; *rollo*, pp. 41-52.

[2] *Id.* at 53-54.

World Class is the owner/developer of Global Business Tower (now Antel Global Corporate Center), an office condominium project located on Julia Vargas Avenue and Jade Drive, Ortigas Center, Pasig City slated for completion on December 15, 1998.

GG Sportswear, a domestic corporation, offered to purchase the 38th floor penthouse unit and 16 parking slots for 32 cars in World Class's condominium project for the discounted, pre-selling price of ₱89,624,272.82. After GG Sportswear paid the ₱500,000.00 reservation fee, the parties, on May 15, 1996, signed a Reservation Agreement (*Agreement*)[3] that provides for the schedule of payments, including the stipulated monthly installments on the down payment and the balance on the purchase price, as follows:[4]

Item	Amount to be paid	Monthly Installment	Duration
20% Down Payment	₱ 17,924,854.56 less: 500,000.00 (Reservation Fee) ₱ 17,424,854.56	₱ 1,742,485.45	May 1996 to Feb 1997
60% Payment	53,774,563.69	1,792,485.45	Mar 1997 to Aug 1999
20% Final Payment	17,924,854.56		Upon turn-over
TOTAL PRICE	**₱ 89,624,272.82**		

Based on the Agreement, the **contract to sell** pertaining to the entire 38th floor Penthouse unit and the parking slots would be executed **upon the payment of thirty percent (30%) of**

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[3] *Id.* at 175-177.

[4] *Per* the Reservation Agreement, *id.*, quoted in the Court of Appeals Decision of December 19, 2007; *id.*, p. 42, the terms are as follows: (1) Total purchase price is ₱89,624,272.82; (2) Down payment (20%) of ₱17,924,854.56, payable on May 9, 1996, less the Reservation Fee of ₱ 500,000, or a sum of ₱17,424,854.56; (3) The down payment is payable in 10 equal monthly installments of ₱1,742,484.45 per month from May 30, 1996 to February 28, 1997; (4) The Balance of ₱71,699,418.25 shall be paid in the following manner: 80% of the balance payable in 30 equal monthly installments on the dates and as covered by the post-dated checks (PDCs) delivered by GG Sportswear to World Class and which checks appear in the Reservation Agreement; the remaining 20% of the balance shall be payable upon the turn-over of the unit.

the total purchase price.[5] It also stipulated that all its provisions would be deemed incorporated in the contract to sell and other documents to be executed by the parties thereafter. The Agreement also specified that the failure of the buyer to pay any of the installments on the stipulated date would give the developer the right either to: (1) charge 3% interest per month on all unpaid receivables, or (2) rescind and cancel the Agreement without the need of any court action and, upon cancellation, automatically forfeit the reservation fee and other payments made by the buyer.[6]

From May to December 1996, GG Sportswear timely paid the installments due; the **eight monthly installment payments** amounted to a total of **₱19,717,339.50**, or **21%** of the total contract price.

In a letter dated January 30, 1997,[7] GG Sportswear requested the return of the outstanding postdated checks it previously delivered to World Class because it (GG Sportswear) intended to replace these old checks with new ones from the corporation's new bank. World Class acceded, but suggested the execution of a new Reservation Agreement to reflect the arrangement involving the replacement checks, with the retention of the other terms and conditions of the old Agreement.[8] GG Sportswear did not object to the execution of a new Reservation Agreement, but **requested that World Class defer the deposit of the replacement checks for 90 days**.[9] World Class denied this request, contending that a deferment would delay the subsequent monthly installment payments.[10] It likewise demanded that GG Sportswear immediately

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[5] *Id.* at 176. The Reservation Agreement provides that "[t]he Contract to Sell will be executed upon payment of Thirty percent (30%) of the total value of the sale."

[6] *Id*.

[7] *Id.* at 178.

[8] World Class's letter dated February 3, 1997, *id.* at 179.

[9] GG Sportswear's letter dated February 8, 1997, *id.* at 180.

[10] World Class's letter dated February 11, 1997, *id.* at 181.

pay its **overdue January 1997 installment** to avoid the penalties[11] provided in the Agreement.[12]

On March 5, 1997, GG Sportswear delivered the replacement checks and **paid the January 1997 installment payment which had been delayed by two months**. World Class in turn issued a *second* Reservation Agreement, which it transmitted to GG Sportswear for the latter's conformity. World Class also sent GG Sportswear a *provisional* Contract to Sell,[13] which stated that the condominium project would be ready for turnover to the buyer not later than **December 15, 1998.**

GG Sportswear did not sign the second Reservation Agreement. Instead, it sent a letter[14] to World Class, requesting that its check dated April 24, 1997 be deposited on May 15, 1997 because it was experiencing financial difficulties. When World Class rejected GG Sportswear's request, GG Sportswear sent another letter informing World Class that **the second Reservation Agreement was incomplete because it did not expressly provide the *time of completion* of the condominium unit.**[15] World Class countered that the provisional Contract to Sell it previously submitted to GG Sportswear expressly provided for the completion date (December 15, 1998) and insisted that GG Sportswear pay its overdue account.[16]

On June 10, 1997, GG Sportswear filed a Complaint[17] with the Housing and Land Use Regulatory Board (*HLURB*) claiming a refund of the installment payments made to World Class because it was **dissatisfied with the completion date** found in the Contract to Sell.

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[11] The Agreement provided for surcharges on unpaid installments, acceleration and *forfeiture* clauses.

[12] World Class's letter dated February 11, 1997, *supra* note 10.

[13] *Rollo*, pp. 151-156.

[14] Dated April 23, 1997; *id.* at 186.

[15] Dated April 30, 1997; *id.* at 147.

[16] World Class's letter dated May 28, 1997; *id.* at 149-150.

[17] *Id.* at 136-139.

In its Answer,[18] World Class countered that: (1) it is not guilty of breach of contract since it is the petitioner that committed a breach; (2) the complaint is an afterthought since GG Sportswear is suffering from financial difficulties; (3) the petitioner's dissatisfaction with the **expected date of completion** of the unit as indicated in the proposed Contract to Sell is not a valid and sufficient ground for refund; (4) a refund is justified only in cases where the owner/developer *fails to develop* the project within the specified period of time under Presidential Decree (P.D.) No. 957,[19] *which period has not yet arrived*; and (5) the petitioner was *already in default when it filed the complaint* and therefore came to court with unclean hands.

On September 12, 2005, HLURB Arbiter Atty. Dunstan T. San Vicente (*Arbiter*) rendered a decision[20] *rescinding* the Agreement, after finding that World Class violated Sections 4 and 5 of P.D. No. 957 by **entering into the Agreement without the required Certificate of Registration and License to Sell** (*CR/LS*).[21] He also implied that a refund is proper in

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[18] *Id.* at 159-174.

[19] Entitled "*Regulating the Sale of Subdivision Lots and Condominiums, Providing Penalties for Violations Thereof*," otherwise known as "*The Subdivision and Condominium Buyers' Protective Decree.*"

[20] *Rollo*, pp. 74-81.

[21] *Id.* at 74-81. The decision stated in part:

> Pursuant to Sections 4 and 5 of P.D. No. 957, the owner/developer of a subdivision or condominium project is beforehand required to secure a Certificate of Registration and License to Sell from this Board before selling subdivision lots or condominium units in the project. x x x.
>
> A verification of the records of the subject condominium project would show that the project was issued a License to Sell only on 01 August 1996, whereas the Reservation Agreement in question was executed on or about May 15, 1996 when the respondent had no License to Sell yet.
>
> x x x x x x x x x
>
> As correctly pointed out by complainant, the absence of a License to Sell by the owner or developer at the time of the execution of the Reservation Agreement would consequently translate into a lack of guarantee for

this case under Article 1416 of the Civil Code. As a consequence, he ordered World Class to *refund* the amount of ₱19,717,339.50 paid by GG Sportswear with 6% legal interest thereon, and to pay 10% of the principal amount as attorney's fees. He likewise found World Class *administratively liable* and ordered it to pay a fine of ₱10,000.00.

World Class appealed to the HLURB Board of Commissioners (*Board*). On January 31, 2006, the Board *modified* the Arbiter's decision by ruling that *the Agreement could no longer be rescinded for lack of a CR/LS because World Class had already been issued a License to Sell on August 1, 1996, or before the complaint was filed*.[22] Notwithstanding this pronouncement, the Board still awarded a *refund* in GG Sportswear's favor. The Board reasoned that World Class had only until August 1998 to complete the project under its first License to Sell. However, World Class, by its own actions, impliedly admitted that it would be **incapable of completing its project by this time;** it repackaged the project and had

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completion of the project which a 'performance bond' addresses as mandated under Section 6 of P.D. No. 957. Without a guarantee for completion or absence of performance bond, which is a prerequisite in the issuance of a License to Sell then there is indeed no assurance of a specific date when the project would be completed. Devoid of specific date of completion of the condominium project in a Contract to Sell and as prescribed in the License to Sell, the buying public would indeed be subject to the mercy, whims, caprices, and even negligence of the owner/developer. (emphasis supplied)

x x x x x x x x x

Confronted now by respondent's act/s of selling to the complainant the units at Antel Global Corporate Center without license to sell, which is contrary to the mandatory provisions of P.D. No. 957, this Office is left with no sound option but to rule as void the subject transaction.

In this situation, the complainant-buyer may recover its payments as provided in Article 1416 of the Civil Code, thus:

Art. 1416. When the Agreement is not illegal *per se* but is merely prohibited and the prohibition by the law is designed for the protection of the plaintiff, he may, if public policy is thereby enhanced, recover what he has paid or delivered.

[22] *Rollo,* pp. 82-86.

applied for and been issued a new License to Sell, which granted World Class until December 1999 to complete the project.[23] In essence, the Board equated World Class's "incapability" to finish the project within the time specified in its first License to Sell with a developer's "failure to develop" a condominium project – an omission sanctioned under P.D. No. 957 and entitled a buyer to a refund of all payments made.[24]

In its decision[25] of September 11, 2006, the Office of the President (*OP*) denied World Class's appeal by quoting extensively from the Arbiter's decision. The OP subsequently denied World Class's motion for reconsideration in its November 13, 2006 order.[26]

In its petition for review[27] before the CA, World Class essentially argued that the OP committed a grave abuse of discretion when it upheld the Board's ruling that GG Sportswear was entitled to a refund.

The CA, in its decision[28] of December 19, 2007, *reversed* the OP decision and *denied* GG Sportswear's prayers for rescission of the Agreement and refund of the payments made. It explained that the OP should have given weight to the Board's modified finding that "*the absence of the certificate of registration and license to sell no longer existed at the time of the filing of the complaint and could no longer be used as basis to demand rescission.*" Since GG Sportswear never appealed this finding, it had already attained finality and must bind the OP.

On the awarded refund, the CA held that the OP erroneously based GG Sportswear's right to recovery of payments on Article

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

[24] Section 23, P.D. No. 957.

[25] *Rollo,* pp. 87-100.

[26] *Id.* at 101-103.

[27] Under Rule 43 of the 1997 Rules of Civil Procedure.

[28] *Rollo,* pp. 41-52.

1416 of the Civil Code (as what the Arbiter's decision[29] suggested), which entitles a plaintiff to recover the amounts paid under a contract that *violates mandatory or prohibitory laws*. Since World Class already had a CR/LS when GG Sportswear filed its complaint, GG Sportswear could no longer demand rescission and refund under Sections 4 and 5 of P.D. No. 957.

The appellate court also found no merit in GG Sportswear's argument that it was entitled to rescind the Agreement and demand a refund because World Class failed to provide a Contract to Sell for the subject units. Under the Agreement, the Contract to Sell would be executed only upon payment of thirty (30%) of the total value of the sale; since GG Sportswear had only paid 21% of the total contract price, it could not demand the execution of the Contract to Sell. The CA likewise denied GG Sportswear's motion for reconsideration.[30]

Hence, GG Sportswear filed with this Court the present petition for review on *certiorari*,[31] claiming that the CA erred when: (1) it relied heavily on the Board's finding that the Agreement could no longer be rescinded because the CR/LS had already been issued at the time the complaint was filed, which was a mere *obiter dictum*; and (2) it held that GG Sportswear was not entitled to the execution of a Contract to Sell because it had not yet paid 30% of the total value of the sale.

THE RULING OF THE COURT

We find the petition devoid of merit.

The Board ruling that the Agreement could not be rescinded based on lack of a CR/LS had already attained finality.

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[29] *Supra* note 20.

[30] Resolution of April 29, 2008. *Rollo*, pp. 53-54.

[31] Under Rule 45 of the 1997 Rules of Civil Procedure, *id.* at 8-37.

We explained the concept of an *obiter dictum* in *Villanueva v. Court of Appeals*[32] by saying:

> It has been held that an adjudication on any point within the issues presented by the case cannot be considered as *obiter dictum*, and this rule applies to all pertinent questions, although only incidentally involved, which are presented and decided in the regular course of the consideration of the case, and led up to the final conclusion, and to any statement as to matter on which the decision is predicated. Accordingly, **a point expressly decided does not lose its value as a precedent because the disposition of the case is**, or might have been, **made on some other ground, or even though, by reason of other points in the case, the result reached might have been the same if the court had held, on the particular point, otherwise than it did. A decision which the case could have turned on is not regarded as *obiter dictum* merely because, owing to the disposal of the contention, it was necessary to consider another question, nor can an additional reason in a decision, brought forward after the case has been disposed of on one ground, be regarded as *dicta*.** So, also, where a case presents two (2) or more points, any one of which is sufficient to determine the ultimate issue, but the court actually decides all such points, the case as an authoritative precedent as to every point decided, and none of such points can be regarded as having the status of a *dictum*, and one point should not be denied authority merely because another point was more dwelt on and more fully argued and considered, nor does a decision on one proposition make statements of the court regarding other propositions *dicta*.[33] [emphasis supplied.]

The Board's pronouncement in its January 31, 2006 decision – that the Agreement could no longer be rescinded because the CR/LS had already been issued at the time the complaint was filed – cannot be considered a mere *obiter dictum* because it touched upon a matter squarely raised by World Class in its petition for review, specifically, the issue of whether GG Sportswear was entitled to a refund on the ground that it did not have a CR/LS at the time the parties entered into the Agreement.

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[32] G.R. No. 142947, March 19, 2002, 379 SCRA 463.

[33] *Rollo,* pp. 469-470.

With this ruling, the Board reversed the Arbiter's ruling on this particular issue, expressly stating that "*the absence of the certificate of registration and license to sell no longer existed at the time of the filing of the complaint and could no longer be used as basis to demand rescission*." **This ruling became final when GG Sportswear chose not to file an appeal with the OP.** Thus, even if the Board ultimately awarded a refund to GG Sportswear based entirely on another ground, the Board's ruling on the non-rescissible character of the Agreement is binding on the parties.

Consequently, the OP had no jurisdiction to revert to the Arbiter's earlier declaration that the Agreement was void due to World Class's lack of a CR/LS, a finding that clearly contradicted the Board's final and executory ruling.

There was no breach on the part of World Class to justify the rescission and refund.

GG Sportswear likewise has no legal basis to demand either the rescission of the Agreement or the refund of payments it made to World Class under the Agreement.

Unless the parties stipulated it, rescission is allowed only when the breach of the contract is substantial and fundamental to the fulfillment of the obligation.[34] Whether the breach is slight or substantial is largely determined by the attendant circumstances.[35]

GG Sportswear anchors its claim for rescission on two grounds: (a) its dissatisfaction with the completion date; and (b) the lack of a Contract to Sell. As to the first ground, World Class makes much of the fact that the completion date is not indicated in the Agreement, maintaining that this lack of detail renders the Agreement void on the ground that the intention of the parties cannot be ascertained. We disagree with this contention.

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[34] *Del Castillo vda. de Mistica v. Naguiat*, G.R. No. 137909, December 11, 2003, 418 SCRA 73.

[35] *Vermen Realty Development Corporation v. Court of Appeals*, G.R. No. 101762, July 6, 1993, 224 SCRA 549, 555.

In the first place, GG Sportswear cannot claim that it did not know the time-frame for the project's completion when it entered into the Agreement with World Class. As World Class points out, it is absurd and unbelievable that Mr. Gidwani, the president of GG Sportswear and an experienced businessman, did not have an idea of the expected completion date of the condominium project before he bought the condominium units for ₱89,624,272.82. Even assuming that GG Sportswear was not aware of the exact completion date, we note that GG Sportswear signed the Agreement despite the Agreement's omission to expressly state a specific completion date. This directly implies that a specific ***completion date was not a material consideration for GG Sportswear when it executed the Agreement***. Thus, even if we believe GG Sportswear's contention that it was dissatisfied with the completion date subsequently indicated in the provisional Contract to Sell, we cannot consider this dissatisfaction a breach so substantial as to render the Agreement rescissible. The grant, too, to World Class of a first License to Sell up to August 1998 and a second License to Sell up to December 1999, to our mind, served as a clear notice of when the project was to be completed. As we discussed above, the initial lack of a License to Sell is not a basis to cancel the Agreement and has in fact effectively been cured even if it may be considered an initial defect.

Moreover, the provisional Contract to Sell that accompanied the second Reservation Agreement *explicitly* provided that the condominium project would be ready for turnover no later than December 15, 1998, a clear expression of the project's completion date. While GG Sportswear claims dissatisfaction with this completion date, *it never alleged that the given December 15, 1998 completion date violates the completion date previously agreed upon by the parties*. In fact, nowhere does GG Sportswear allege that the parties ever agreed upon an earlier completion date. We therefore find no reason for GG Sportswear to be dissatisfied with the indicated completion date. Even if it had been unhappy with the completion date, this ground, standing alone, is not sufficient basis to rescind

the Agreement; unhappiness is a state of mind, not a defect available in law as a basis to rescind a contract.

As a last point on this topic, we cannot help but view with suspicion GG Sportswear's decision to question the second Reservation Agreement's lack of an express completion date as this question *only* came up *after* World Class had rejected GG Sportswear's request to defer the deposit of its check in light of the financial difficulties it was then encountering. Also by this time, GG Sportswear had already defaulted on its monthly installment payments to World Class. Under these circumstances, we are more inclined to believe World Class's contention that GG Sportswear's complaint was simply an attempt to evade its obligations to World Class under the Agreement. This is a ploy we cannot accept.

On the second ground, we note that the Agreement expressly provides that GG Sportswear shall be entitled to a Contract to Sell only upon its payment of at least 30% of the total contract price.[36] *Since GG Sportswear had only paid 21% of the total contract price, World Class's obligation to execute a Contract to Sell had not yet arisen.* Accordingly, GG Sportswear had no basis to claim that World Class breached this obligation.

Even if we apply Article 1191 of the Civil Code, which provides:

> **Art. 1191.** The power to rescind obligations is implied in reciprocal ones, in case one of the obligors should not comply with what is incumbent upon him. x x x.

no reason still exists to rescind the contract. Under the Agreement, *World Class's obligation was to finish the project and turn over the purchased units to GG Sportswear on or before the completion date.* Notably, at the time GG Sportswear filed its complaint on *June 10, 1997*, the agreed completion date of *December 15, 1998*, or even *August 1998*, the date appearing on World Class's first License to Sell, was still a long way out. In other words, **when GG Sportswear filed its complaint, World**

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[36] *Supra* note 5.

Class had not yet breached its obligation, and rescission under this provision of the Civil Code was premature.

Rescission of contracts of sale of commercial condominium units on installment is governed by P.D. No. 957.

Neither can GG Sportswear find recourse through P.D. No. 957, or the "Subdivision and Condominium Buyers' Protective Decree." This law covers all sales and purchases of subdivision or condominium units, and provides that the buyer's installment payments shall not be forfeited in favor of the developer or owner if the latter *fails to develop* the subdivision or condominium project. Section 23 of P.D. No. 957 provides:

> **Section 23.** *Non-Forfeiture of Payments.* No installment payment made by a buyer in a subdivision or condominium project for the lot or unit he contracted to buy shall be forfeited in favor of the owner or developer when the buyer, after due notice to the owner or developer, **desists from further payment** due to the **failure of the owner or developer to develop the subdivision or condominium project according to the approved plans and within the time limit for complying with the same.** Such buyer may, at his option, be **reimbursed the total amount paid** including amortization interests but excluding delinquency interests, with interest thereon at the legal rate. [Emphasis supplied.]

Upon the developer's failure to develop, the buyer may choose either: (1) to continue with the contract but *suspend payments* until the developer complies with its obligation to finish the project; or (2) *to cancel the contract* and *demand a refund* of all payments made, excluding delinquency interests. Notably, *a buyer's cause of action against a developer for failure to develop ripens only when the developer fails to complete the project on the lapse of the completion period stated on the sale contract or the developer's License to Sell.*

To recall, the completion date of the Antel Global Corporate Center was either in August 1998 (based on World Class's first License to Sell), on December 15, 1998 (based on the

provisional Contract to Sell), or on December 1999 (based on World Class's second License to Sell). At the time GG Sportswear filed its complaint against World Class on June 10, 1997, the Antel Global Corporate Center was still in the course of development[37] and **none of these projected completion dates had arrived. Hence, any complaint for refund was premature.**

Significantly, World Class completed the project in August 1999, or within the time period granted by the HLURB for the completion of the condominium project under the second License to Sell. This completion, undertaken while the case was pending before the Arbiter, rendered the issue of World Class's failure to develop the condominium project moot and academic.

As a side note, we observe that GG Sportswear, not World Class, substantially breached its obligations under the Agreement when it was remiss in the timely payment of its obligations, such that its January 1997 installment was paid only in March 1997, or two months after due date. GG Sportswear did not pay the succeeding installment dated April 1997 (presumably for February 1997) until it had filed its complaint in June 1997. A substantial breach of a reciprocal obligation, like *failure to pay the price in the manner prescribed by the contract*, entitles the injured party to rescind the obligation.[38] Under this contractual term, it was World Class, not GG Sportswear, which had the ground to demand the rescission of the Agreement, as well as the prerogative to secure the forfeiture of all the payments already made by GG Sportswear. However, whether the Agreement between World Class and Sportswear should now be rescinded is a question we do not decide, as this is not a matter before us.

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[37] *Per* the provisional Contract to Sell, the construction of the project was to commence not later than March 30, 1996.

[38] *Sps. Velarde v. Court of Appeals*, G.R. No. 108346, July 11, 2001, 361 SCRA 56, 57.

The lack of a Certificate of Registration/License to Sell merely subjects the developer to administrative sanctions.

On a final note, we choose to reiterate, for the benefit of the HLURB, our ruling in *Co Chien v. Sta. Lucia Realty & Development, Inc.*,[39] that *the requirements of Sections 4 and 5 of P.D. No. 957 are intended merely for administrative convenience in order to allow for a more effective regulation of the industry and do not go into the validity of the contract such that the absence thereof would automatically render the contract null and void.* We said:

> A review of the relevant provisions of P.D. 957 reveals that while the law penalizes the selling of subdivision lots and condominium units without prior issuance of a Certificate of Registration and License to Sell by the HLURB, **it does not provide that the absence thereof will automatically render a contract, otherwise validly entered, void**. The penalty imposed by the decree is the general penalty provided for the violation of any of its provisions. It is well-settled in this jurisdiction that the clear language of the law shall prevail. This principle particularly enjoins strict compliance with provisions of law which are penal in nature, or when a penalty is provided for the violation thereof. **With regard to P.D. 957, nothing therein provides for the nullification of a contract to sell in the event that the seller, at the time the contract was entered into, did not possess a certificate of registration and license to sell.** Absent any specific sanction pertaining to the violation of the questioned provisions (Sections 4 and 5), the general penalties provided in the law shall be applied. The general penalties for the violation of any provisions in P.D. 957 are provided for in Sections 38 and 39. As can clearly be seen in the cited provisions, the same do not include the nullification of contracts that are otherwise validly entered.
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> x x x x x x x x x
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> **The lack of certificate and registration, without more, while penalized under the law, is not in and of itself sufficient to render a contract void.**[40] (Emphasis supplied.)

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[39] G.R. No. 162090, January 31, 2007, 513 SCRA 570.

[40] *Id.* at 578-580.

We see no reason to depart from this ruling, and so hold that the Arbiter erred in declaring the Agreement void due to the absence of a CR/LS at the time the Agreement was executed.

WHEREFORE, we *DENY* the present petition for review on *certiorari* and *AFFIRM* the assailed CA Decision and Resolution dated December 19, 2007 and January 2, 2008, respectively. Accordingly, the complaint of G.G. Sportswear Mfg. Corp. is *DISMISSED*. Costs against petitioner G.G. Sportswear Mfg. Corp.

SO ORDERED.

Carpio (Chairperson), Del Castillo, Abad, and *Perez, JJ.*, concur.

THIRD DIVISION

[G.R. No. 185644. March 2, 2010]

HEIRS OF ESTELITA BURGOS-LIPAT, namely: ALAN B. LIPAT and ALFREDO B. LIPAT, JR., *petitioners, vs.* **HEIRS OF EUGENIO D. TRINIDAD, namely: ASUNCION R. TRINIDAD, VICTOR R. TRINIDAD, IMACULADA T. ALFONSO, CELESTINA T. NAGUIAT, FERNANDO R. TRINIDAD, MICHAEL R. TRINIDAD and JOSEFINA T. NAGUIAT,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; LAW OF THE CASE; APPLICATION IN CASE AT BAR. — In [the case of] *Lipat [v. Pacific Banking Corporation],* this Court upheld the RTC decision giving petitioners five months and 17 days from the finality of the trial court's decision to redeem their foreclosed property. *Lipat*, already final and executory, has therefore

become the law of the case between the parties, including their heirs who are petitioners and respondents in this case. In *Union Bank of the Philippines v. ASB Development Corporation*, we explained: Law of the case has been defined as "the opinion delivered on a former appeal. More specifically, it means that whatever is already irrevocably established as the controlling legal rule or decision between the same parties in the same case continues to be the law of the case, whether correct on general principles or not, so long as the facts on which such decision was predicated continue to be the facts of the case before the court." Consequently, petitioners had five months and 17 days from the finality of *Lipat* to exercise their right of redemption, even though this period was beyond one year from the date of registration of the sale.

2. ID.; ID.; FINAL AND EXECUTORY JUDGMENTS; CANNOT BE REVERSED. — The CA erred (and even committed a grave abuse of discretion) when it insisted on a contrary ruling [in case at bar]. The CA had no power to reverse this Court's final and executory judgment. The CA overstepped its authority when it held that the right of redemption had already expired one year after the date of the registration of the certificate of sale. Like all other courts in our judicial system, the CA must take its bearings from the rulings and decisions of this Court.

3. COMMERCIAL LAW; GENERAL BANKING ACT; RATE OF INTEREST AS SPECIFIED IN THE MORTGAGE CONTRACT, APPLIED FOR ONE YEAR PERIOD FROM DATE OF REGISTRATION OF THE CERTIFICATE OF SALE; RATE BEYOND SAID ONE YEAR PERIOD, ADJUSTED IN CASE AT BAR. — The amount tendered by petitioners to redeem their foreclosed property was determined by the sheriff at the rate of one percent per month for only one year. Section 78 of the General Banking Act requires payment of the amount fixed by the court in the order of execution, with interest thereon *at the rate specified in the mortgage contract*, and all the costs and other judicial expenses incurred by the bank or institution concerned by reason of the execution and sale and as a result of the custody of said property less the income received from the property. The rate of interest specified in the mortgage contract shall be applied for the one-year period reckoned from the date of registration of the certificate of sale in accordance with the General Banking Act. However, since petitioners

effectively had more than one year to exercise the right of redemption, justice, fairness and equity require that they pay 12% p.a. interest beyond the one-year period up to June 16, 2004 when Partas consigned the redemption price with the RTC.

APPEARANCES OF COUNSEL

Richard V. Funk for petitioners.
Renado B. Corpuz, Jr. for respondents.

D E C I S I O N

CORONA, *J.*:

On April 16, 1979, petitioners Estelita Burgos-Lipat and Alfredo Lipat (spouses Lipat)[1] obtained a ₱583,854 loan from Pacific Banking Corporation (PBC), secured by a real estate mortgage on their Quezon City property.[2] The mortgage was eventually extended to secure additional loans, discounting lines, overdrafts and credit accommodations that petitioners subsequently obtained from PBC.

Due to petitioners' failure to pay their loans, PBC foreclosed on the subject property. Eugenio D. Trinidad[3] was declared the highest bidder during the public auction and was issued a certificate of sale on January 31, 1989. The certificate of sale was registered on April 12, 1989.

On November 28, 1989, petitioners filed a complaint for annulment of mortgage, extra-judicial foreclosure and certificate of sale in the Regional Trial Court (RTC) of Quezon City, Branch 84 against PBC, Eugenio D. Trinidad and the Registrar of Deeds

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[1] Represented by their daughter Teresita Lipat.

[2] Covered by Transfer Certificate of Title No. 49535 (RT-38224) and located at No. 814 Aurora Boulevard, Cubao, Quezon City.

[3] During the pendency of this case, Eugenio D. Trinidad passed away. Pursuant to Rule 3, Sec. 16 of the Rules of Court, he was substituted by his heirs in this case.

and *ex-officio* sheriff of Quezon City.

In a decision dated February 10, 1993, the RTC dismissed the complaint but granted petitioners five months and 17 days from the finality of the decision to exercise their right of redemption over the foreclosed property. We affirmed this decision on April 30, 2003 in *Lipat v. Pacific Banking Corporation*.[4]

Meanwhile, petitioners assigned their rights over the contested property to Partas Transporation Co., Inc. (PTCI). On June 16, 2004, within the given period left for redemption,[5] PTCI exercised the right of redemption and paid the redemption amount computed by the sheriff. However, respondent heirs of Trinidad refused to claim the redemption money and surrender the certificate of title covering the foreclosed property, claiming the amount tendered was inadequate, *i.e.*, the interest of 1% per month was computed only for a one-year period. Ultimately, the RTC upheld the exercise of redemption and directed respondents to surrender the certificate of title in an order dated May 17, 2005.[6] Respondents' motion for reconsideration was denied in an order dated September 28, 2005.[7]

Respondents filed a notice of appeal which was denied by the RTC on February 6, 2006.

Petitioners subsequently moved for execution of the May 17, 2005 order and the RTC granted the same in an order dated August 22, 2006.[8] Without filing a motion for reconsideration of the order, respondents immediately filed a petition for *certiorari*[9] in the CA.

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[4] 450 Phil 401 (2003).

[5] The decision in *Lipat* attained finality on December 30, 2003 as shown in the entry of judgment. December 30, 2003 to May 30, 2004 is equivalent to 5 months while May 31, 2004 to June 16, 2004 is 16 days.

[6] *Rollo*, pp. 102-104.

[7] *Rollo*, pp. 105-108.

[8] RTC order dated August 22, 2006. *Rollo*, pp. 114-119.

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

In a decision dated July 31, 2008,[10] the CA granted respondents' petition and set aside the August 22, 2006 RTC order. It held that the right to redemption should have been exercised within one year from the date of registration of the certificate of sale.

Petitioners filed a motion for reconsideration[11] but the CA denied the same in a resolution dated December 5, 2008.[12]

Hence, this petition.[13]

The one-year redemption period applied by the CA is the rule that generally applies to foreclosure of mortgage by a bank.[14] The period of redemption is not tolled by the filing of a complaint

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[10] Penned by Associate Justice Portia Aliño-Hormachuelos and concurred in by Associate Justices Hakim S. Abdulwahid and Teresita Dy-Liacco Flores. *Rollo,* pp. 86-97.

[11] *Rollo,* p. 130.

[12] *Rollo,* p. 99.

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

[14] R.A. No. 337, Sec. 78. Loans against real estate security shall not exceed seventy per cent (70%) of the appraised value of the respective real estate security, plus seventy per cent (70%) of the appraised value of insured improvements, and such loans shall not be made unless title to the real estate, free from all encumbrances, shall be in the mortgagor. **In the event of foreclosure, whether judicially or extrajudicially, of any mortgage on real estate which is security for any loan granted before the passage of this Act or under the provisions of this Act, the mortgagor or debtor whose real property has been sold at public auction, judicially or extrajudicially, for the full or partial payment of an obligation to any bank, banking, or credit institution, within the purview of this Act, shall have the right, within one year after the sale of the real estate as a result of the foreclosure of the respective mortgage, to redeem the property by paying the amount fixed by the court in the order of execution, with interest thereon at the rate specified in the mortgage, and all the costs and other judicial expenses incurred by the bank or institution concerned by reason of the execution and sale and as a result of the custody of said property less the income received from the property.** However, the purchaser at the auction sale concerned shall have the right to enter upon and take possession of such property immediately after the date of the confirmation of the auction sale and administer the same in accordance with law.

Similarly, loans on the security of chattels shall not exceed fifty per cent (50%) of the appraised value of the security, and such loans shall not

or petition for annulment of the mortgage and the foreclosure sale conducted pursuant to the said mortgage.[15] However, considering the exceptional circumstances surrounding this case, we will not apply the rule in this instance *pro hac vice*.

In *Lipat*,[16] this Court upheld the RTC decision giving petitioners five months and 17 days from the finality of the trial court's decision to redeem their foreclosed property. *Lipat*, already final and executory, has therefore become the law of the case between the parties, including their heirs who are petitioners and respondents in this case. In *Union Bank of the Philippines v. ASB Development Corporation*,[17] we explained:

Law of the case has been defined as "the opinion delivered on a former appeal. More specifically, it means that whatever is already irrevocably established as the controlling legal rule or decision between the same parties in the same case continues to be the law of the case, whether correct on general principles or not, so long as the facts on which such decision was predicated continue to be the

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be made unless title to the chattels, free from all encumbrances, shall be in the mortgagor.

The Monetary Board may, by regulation, prescribe further security requirements to which the various types of bank credit shall be subject, and, in accordance with the authority granted to it in section one hundred eleven of the Central Bank Act, the Board may by regulation reduce the maximum ratios established in the present section, but in the exercise of the aforementioned authority, the Board shall in no case fix ratios greater than those established herein.

The Monetary Board may, similarly, in accordance with the authority granted to it in Section one hundred eleven of the Central Bank Act, reduce the maximum permissible maturities specified in this Act for various types of bank loans, but in no case shall the Board exercise such power to authorize maximum maturities greater than those established in this Act. Any reduction by the Board of the maximum maturities specified in this Act shall apply only to loans made after the date of such action.

[15] *Landrito, Jr. v. Court of Appeals*, G.R. No. 133079, 9 August 2005, 466 SCRA 107, 118.

[16] *Supra* note 4.

[17] G.R. No. 172895, 30 July 2008, 560 SCRA 578.

facts of the case before the court."[18]

Consequently, petitioners had five months and 17 days from the finality of *Lipat* to exercise their right of redemption, even though this period was beyond one year from the date of registration of the sale.

Thus, the CA erred (and even committed a grave abuse of discretion) when it insisted on a contrary ruling. The CA had no power to reverse this Court's final and executory judgment. The CA overstepped its authority when it held that the right of redemption had already expired one year after the date of the registration of the certificate of sale. Like all other courts in our judicial system, the CA must take its bearings from the rulings and decisions of this Court.[19]

Nevertheless, we note that the amount tendered by petitioners to redeem their foreclosed property was determined by the sheriff at the rate of one percent per month for only one year. Section 78 of the General Banking Act[20] requires payment of the amount fixed by the court in the order of execution, with interest thereon *at the rate specified in the mortgage contract*, and all the costs and other judicial expenses incurred by the bank or institution concerned by reason of the execution and sale and as a result of the custody of said property less the income received from the property.[21] The rate of interest specified in the mortgage contract shall be applied for the one-year period reckoned from the date of registration of the certificate of sale in accordance with the General Banking Act. However, since petitioners effectively had more than one year to exercise the right of redemption, justice, fairness and equity require that they pay 12% p.a. interest beyond the one-year period up to June 16,

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[18] *Supra* at 600.

[19] *Republic of the Philippines v. Garcia*, G.R. No. 167741, 12 July 2007, 527 SCRA 495, 502.

[20] RA 337. This was repealed by the enactment of the General Banking Law (R.A. 8791) which took effect on June 14, 2000.

[21] *Supra* note 12.

2004 when Partas consigned the redemption price with the RTC.

WHEREFORE, the motions for reconsideration of this Court's resolutions dated January 14, 2009[22] and March 4, 2009[23] are hereby *GRANTED*.

The petition is *REINSTATED* and likewise *GRANTED*. The decision and resolution of the Court of Appeals in C.A.-G.R. SP No. 96176 are *REVERSED* and *SET ASIDE*. The order of the Regional Trial Court of Quezon City dated August 22, 2006 is hereby *REINSTATED* with the modification that the redemption price be recomputed in accordance with Section 78 of the General Banking Act.[24] The said redemption price shall be subject to legal interest at 12% p.a. from April 13, 1990 until June 16, 2004.

SO ORDERED.

Velasco, Jr., Nachura, Del Castillo,[*] and *Mendoza, JJ.*, concur.

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[22] Minute resolution denying petitioners' motion for an extension of 30 days within which to file a petition for review for failing to comply with Bar Matter 1922 and for failing to comply with the 2004 Rules on Notarial Practice. *Rollo*, p. 8.

[23] Minute resolution denying the instant petition for review for being filed beyond the reglementary period. *Rollo*, pp. 219-220.

[24] In particular, the said amount should include the amount fixed by the court in the order of execution, **with interest thereon at the rate specified in the mortgage contract** from **April 12, 1989** to **April 12, 1990**, plus costs and judicial expenses incurred by respondents by reason of the execution and sale and as a result of the custody of property less any income received from the property.

[*] Per Special Order No. 824 dated February 12, 2010.

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