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OF THE

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FROM

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SUPREME COURT
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FIRST DIVISION

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(Formerly OCA I.P.I. No. 98-603-RTJ)

OLIVIA LAUREL, Court Stenographer III, DIANA RAMOS, Utility Worker, both of the Regional Trial Court, Branch 25, Biñan, Laguna and HERMINIA JAVIER, Clerk III, RTC-Office of the Clerk of Court, Biñan, Laguna, and ALBERTO R. NOFUENTE, 3rd Assistant Provincial Prosecutor of Laguna, *complainants, vs.* **JUDGE PABLO B. FRANCISCO, Presiding Judge, Regional Trial Court, Branch 26, Sta. Cruz, Laguna,** *respondent.*

[A.M. No. P-10-2745. July 6, 2010]
(Formerly OCA I.P.I. No. 98-511-P)

JUDGE PABLO B. FRANCISCO, Presiding Judge, Regional Trial Court, Branch 26, Sta. Cruz, Laguna, *complainant, vs.* **OLIVIA LAUREL, Court Stenographer III, DIANA RAMOS, Utility Worker, both of the Regional Trial Court, Branch 25, Biñan, Laguna and HERMINIA JAVIER, Clerk III, RTC-Office of the Clerk of Court, Biñan, Laguna,** *respondents.*

[A.M. No. RTJ-00-1992. July 6, 2010]
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(Formerly OCA I.P.I. No. 00-963-P)

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[A.M. No. P-10-2747. July 6, 2010]
(Formerly OCA I.P.I. No. 99-740-P)

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II, CARIDAD D. CUEVILLAS, Clerk III, CARMELITA D. MORENO, Clerk III, MA. FE L. LOPEZ, Court Stenographer III, DIOSALYN N. PEREZ, Court Stenographer III, JULIETA M. CHAVES, Court Stenographer III, all of the Regional Trial Court, Branch 24, Biñan, Laguna and ATTY. MELVIN D.C. MANE, Clerk of Court V, *respondents.*

[A.M. No. P-10-2748. July 6, 2010]
(Formerly OCA I.P.I. No. 99-573-P)

JUDGE PABLO B. FRANCISCO, Presiding Judge, Regional Trial Court, Branch 26, Sta. Cruz, Laguna, *complainant, vs.* **CARIDAD D. CUEVILLAS, Clerk III, Branch 24, Regional Trial Court, Biñan, Laguna,** *respondent.*

[A.M. No. P-10-2749. July 6, 2010]
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JUDGE PABLO B. FRANCISCO, Presiding Judge, Regional Trial Court, Branch 26, Sta. Cruz, Laguna, *complainant, vs.* **HERMINIA S. JAVIER, Clerk III, NICANOR B. ALFONSO, Process Server, ANGELITO A. BATI, Utility Worker I, ARNEL G. MAGAT, Sheriff IV, all of the Regional Trial Court-Office of the Clerk of Court, Biñan, Laguna, CARIDAD D. CUEVILLAS, Clerk III, CARMELITA D. MORENO, Clerk III, DIOSALYN N. PEREZ, Court Stenographer III, MARIA FE LOPEZ, Court Stenographer III, JULIAN ORFIANO, JR., Legal Researcher III, all of the Regional Trial Court, Branch 24, Biñan, Laguna, BENEDICTO PASCUAL, Court Interpreter III, RAMON LUIS SEVILLA, Process Server, ANDREW A. SANTOS, Clerk III and OLIVIA M. LAUREL, Court Stenographer III, all of the Regional Trial Court, Branch 25, Biñan, Laguna,** *respondents.*

[A.M. No. P-10-2750. July 6, 2010]
(Formerly OCA I.P.I. No. 02-1410-P)

JUDGE PABLO B. FRANCISCO, Presiding Judge, Regional Trial Court, Branch 26, Sta. Cruz, Laguna, *complainant, vs.* **ATTY. ROWENA A. MALABANAN-GALEON, Clerk of Court V and BENEDICTO PASCUAL, Court Interpreter III, both of Branch 25, Regional Trial Court, Biñan, Laguna,** *respondents.*

[A.M. No. P-10-2751. July 6, 2010]
(Formerly OCA I.P.I. No. 02-1411-P)

JUDGE PABLO B. FRANCISCO, Presiding Judge, Regional Trial Court, Branch 26, Sta. Cruz, Laguna, *complainant, vs.* **ATTY. ROWENA A. MALABANAN-GALEON, Clerk of Court V, Regional Trial Court, Branch 25, Biñan, Laguna,** *respondent.*

[A.M. No. P-03-1706. July 6, 2010]
(Formerly OCA I.P.I. No. 02-1409-P)

JUDGE PABLO B. FRANCISCO, Presiding Judge, Regional Trial Court, Branch 26, Sta. Cruz, Laguna, *complainant, vs.* **ATTY. ROWENA A. MALABANAN-GALEON, Clerk of Court V and OLIVIA M. LAUREL, Court Stenographer III, both of the Regional Trial Court, Branch 25, Biñan, Laguna,** *respondents.*

[A.M. No. RTJ-10-2214. July 6, 2010]
(Formerly OCA I.P.I. No. 02-1592-RTJ)

JOEL O. ARELLANO and ARNEL M. MAGAT, both Deputy Sheriff, Regional Trial Court-Office of the Clerk of Court, Biñan, Laguna, *complainants, vs.* **JUDGE PABLO B. FRANCISCO, Presiding Judge,**

Regional Trial Court, Branch 26, Sta. Cruz, Laguna, *respondent.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; CONTEMPT; DEFINED.— Contempt of court is defined as "some act or conduct which tends to interfere with the business of the court, by a refusal to obey some lawful order of the court, or some act of disrespect to the dignity of the court which in some way tends to interfere with or hamper the orderly proceedings of the court and thus lessens the general efficiency of the same." It has also been described as "a defiance of the authority, justice or dignity of the court; such conduct as tends to bring the authority and administration of the law into disrespect or to interfere with or prejudice parties litigants or their witnesses during litigation." Simply put, it is despising of the authority, justice, or dignity of the court.

2. ID.; ID.; ID.; DIRECT CONTEMPT, HOW COMMITTED.— Direct contempt is one done "in the presence of or so near the court or judge as to obstruct the administration of justice." It is a contumacious act done *facie curiae* and may be punished summarily without hearing. In other words, one may be summarily adjudged in direct contempt at the very moment or at the very instance of the commission of the act of contumely. It is governed by Rule 71, Section 1 of the Rules of Court, as amended by Administrative Circular No. 22-95.

3. LEGAL ETHICS; JUDGES; ISSUING BASELESS DIRECT CONTEMPT ORDER CONSTITUTES GRAVE ABUSE OF AUTHORITY.— Judge Francisco's issuance of the Direct Contempt Order is completely baseless and unjustified. There is utter lack of evidence that Javier, Laurel, Ramos, and Pros. Nofuente committed any contemptuous act. x x x Judge Francisco's averments that Pros. Nofuente's group, which included Javier, Laurel, and Ramos, engaged in raucous laughter in the judge's presence even "with nothing funny to laugh about," threw sharp glances and made faces at Judge Francisco, and engaged in boisterous conversation punctuated by laughter inside the court premises, are insufficient to constitute contumacious behavior. Contempt of court presupposes a

contumacious attitude, a flouting or arrogant belligerence, a defiance of the court, something that is not evident in this case. There is absolute lack of proof that the laughter, conversations, and glances of Pros. Nofuente's group were about or directed at Judge Francisco and they disrupted or obstructed proceedings before the judge. We believe that in issuing this baseless and erroneous contempt order, Judge Francisco was prevailed upon by his personal animosity against Pros. Nofuente and his group. x x x [W]e find that in issuing the Direct Contempt Order without legal basis, Judge Francisco is more appropriately guilty of the administrative offense of grave abuse of authority, rather than gross ignorance of the law and incompetence.

4. POLITICAL LAW; ADMINISTRATIVE LAW; COURT PERSONNEL; MISCONDUCT, DEFINED.— Misconduct is "a transgression of some established and definite rule of action, more particularly, unlawful behavior or gross negligence by a public officer." The misconduct is grave if it involves any of the additional elements of corruption, willful intent to violate the law or to disregard established rules, which must be established by substantial evidence.

5. ID.; ID.; ID.; MISCONDUCT, NOT A CASE OF.— Judge Francisco was unable to present any evidence at all to support his accusations against Javier, Laurel, and Ramos. There is no one to corroborate Judge Francisco's narration of the instances when the three court personnel purportedly disrespected him or of the supposed motives which prompted said personnel to behave so. It is difficult for us to conclude that Judge Francisco was the subject of the boisterous conversations, raucous laughter, and sharp glances of Javier, Laurel, and Ramos in the absence of substantial evidence. We are hard put to rule that they were guilty of behavior amounting to misconduct, much more, grave misconduct, there being no showing of any established and definite rule of action transgressed or disregarded by the charged court personnel.

6. ID.; ID.; ID.; FALSIFICATION OF DAILY TIME RECORDS, NOT ESTABLISHED.— Other than Judge Francisco's allegations, the records are bereft of any evidence establishing that the charged court employees did indeed falsify their DTRs. Judge Francisco's very own testimony before Justice Barrios during the investigation exhibits the weakness of his case against the

court employees for falsification of their DTRs. x x x From Judge Francisco's testimony alone, his cause of action is bound to fail. His own testimony wrote *finis* to his administrative cases against the court personnel for falsification of DTRs. Judge Francisco cannot depend on mere assumptions, suspicions, and speculations. His charges must be based on his own personal knowledge of facts, backed up by competent evidence. As correctly observed by Justice Barrios, "Judge Francisco failed to substantiate by convincing evidence that these employees committed falsification especially so as he has no personal knowledge of such act." Judge Francisco was in no position to have kept tabs on the daily attendance of all the court personnel he charged, especially those who worked at another branch or office and were not under the judge's administrative supervision. x x x We stress that Judge Francisco did not even have in his possession a single copy, whether original or certified photocopy, of the purportedly falsified DTRs. Without copies of the DTRs in question, there is no reasonable or logical way for us to determine whether they were indeed falsified. Additionally, the lack of details – such as the particular dates the court personnel were supposedly absent but which they declared to have been present at the court in their DTRs – not only prevents us from verifying Judge Francisco's allegations, it also precludes the charged court personnel from preparing their explanation or defense. x x x Since it has not been established that the DTRs of the court employees were falsified, then there is also no basis for us to hold administratively liable the immediate supervisors who approved the same. The signing by the supervisors of their subordinates' DTRs enjoys the presumption of regularity, which Judge Francisco failed to contradict and overcome with evidence.

7. LEGAL ETHICS; JUDGES; RESPONSIBILITY TO ADOPT PROPER AND EFFICIENT COURT MANAGEMENT.— Judge Francisco cannot put the entire blame for his failure to render a decision in Civil Case No. B-5217 within the prescribed period on the lack of notice from his staff that the parties had filed their memoranda and the case was already submitted for decision. He must remember that as a trial judge, he was expected to adopt a system of record management and organize his docket in order to bolster the prompt and effective dispatch of business. Proper and efficient court management is the responsibility of

the judge. It is incumbent upon judges to devise an efficient recording and filing system in their courts so that no disorderliness can affect the flow of cases and their speedy disposition.

8. POLITICAL LAW; ADMINISTRATIVE LAW; COURT PERSONNEL; FALSIFICATION BY FALSE NARRATION OF FACTS; ELEMENTS, NOT PRESENT IN CASE AT BAR.— In falsification by false narration of facts, (1) the offender makes untruthful statements in a narration of facts; (2) he has a legal obligation to disclose the truth of the facts narrated by him; (3) the facts narrated are absolutely false; and (4) it was made with a wrongful intent to injure a third person. None of these elements exists in this case. When Atty. Galeon certified the photocopies of the 10 pages of the court calendar book, she was not making a narration of facts. She was just certifying that the photocopies were faithful reproductions of the original pages of the court calendar book. As Atty. Galeon pointed out, she affixed her signature on the photocopies only after she had compared them with the original copies and was satisfied that they were exact copies.

APPEARANCES OF COUNSEL

Noe Cangco Zarate for Herminia Javier, *et al.*

D E C I S I O N

LEONARDO-DE CASTRO, *J.*:

For our resolution are 11 consolidated administrative cases.

While Judge Pablo B. Francisco (Judge Francisco) was detailed as acting Presiding Judge of Branch 25, and later on, of Branch 24, of the Regional Trial Court (RTC) of Biñan, Laguna, he instituted nine administrative complaints (A.M. No. P-10-2745, A.M. No. RTJ-00-1992, A.M. No. P-10-2746, A.M. No. P-10-2747, A.M. No. P-10-2748, A.M. No. P-10-2749, A.M. No. P-10-2750, A.M. No. P-10-2751, and A.M. No. P-03-1706) against the following officers and rank and file personnel of the RTC of Biñan, Laguna:

NAMES[1] **(in alphabetical order)**	**POSITIONS**
Nicanor B. Alfonso	Process Server
Joel O. Arellano	Sheriff
Angelito A. Bati	Utility Worker
Julieta M. Chaves	Court Stenographer III
Caridad D. Cuevillas	Clerk III
Atty. Rowena M. Galeon	Branch Clerk of Court
Atty. Gerardo P. Hernandez	Clerk of Court V
Herminia Javier	Clerk III
Olivia Laurel	Court Stenographer III
Maria Fe L. Lopez	Court Stenographer III
Arnel G. Magat	Sheriff IV
Atty. Melvin D.C. Mane	Branch Clerk of Court
Carmelita D. Moreno	Clerk III
Julian R. Orfiano, Jr.	Court Legal Researcher II
Benedicto B. Pascual	Interpreter III
Diosalyn N. Perez	Court Stenographer III
Diana Ramos	Utility Worker
Andrew A. Santos	Clerk III
Ramon Luis Sevilla	Process Server

The two other administrative cases at bar were filed against Judge Francisco: (1) A.M. No. RTJ-06-1992, by Javier, Laurel, and Ramos, together with Prosecutor Alberto R. Nofuente (Pros. Nofuente); and (2) A.M. No. RTJ-10-2214, by Magat and one Joel O. Arellano (Arellano).

We consolidated all 11 administrative cases for a more expedient and exhaustive determination, since all said cases were related to each other and essentially involve the same parties, issues, and causes of action. However, also considering the insufficiency of the records initially available to us, and our inability to resolve the issues based only on the pleadings submitted by the parties, we agreed in the recommendation of the Office of the Court Administrator (OCA) to refer the cases to the Court of Appeals for investigation, report, and recommendation. The cases were

[1] Hereinafter referred to individually by their surnames, or collectively as Alfonso, *et al.*

raffled to Associate Justice Roberto A. Barrios of the Court of Appeals.

I

FACTUAL ANTECEDENTS

Judge Francisco was originally assigned as the Presiding Judge of RTC-Branch 26 of Sta. Cruz, Laguna. After encountering a disconcerting problem in an election case, Judge Francisco requested that he be detailed elsewhere. He was thereafter detailed as the acting Presiding Judge of RTC-Branch 25 of Biñan, Laguna from January 1996 to January 1998, and then of RTC-Branch 24, also of Biñan, Laguna, from February 1998 to September 1998.

At first, the relations between Judge Francisco and the personnel of the RTC of Biñan, Laguna, were friendly and harmonious, but animosity crept in after some time. Even then Executive Judge Helario Corcuera (Executive Judge Corcuera) and Judge Rodrigo Cosico[2] of the RTC of Biñan, Laguna, were brought into the fray, with Judge Francisco filing various administrative complaints against the previous two judges, which were eventually dismissed.

In a letter[3] dated August 3, 1998 to Court Administrator Alfredo L. Benipayo (Benipayo), Alfonso, Arellano, Bati, Cuevillas, Javier, Laurel, Lopez, Magat, Atty. Mane, Moreno, Orfiano, Pascual, Perez, Ramos, Santos, and Sevilla expressed their sentiments against Judge Francisco, and demanded that said judge be relieved of his detail at the RTC of Biñan, Laguna and be ordered to return to his permanent post at the RTC of Sta. Cruz, Laguna. The court personnel wrote:

> We, the undersigned court personnels of Regional Trial Court, Branches XXIV and XXV and Office of the Clerk of Court, Biñan, Laguna respectfully communicate and convey unto your Honorable Office our sentiments toward temporary Presiding Judge, HON. PABLO B. FRANCISCO of Branch XXIV, RTC-Biñan, Laguna.

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[2] Now Associate Justice of the Court of Appeals.

[3] *Rollo* (A.M. No. P-10-2745), pp. 72-77.

It is the wish of the overwhelming court personnels to have a good and harmonious relationship with their judges so they can have a pleasant working condition to ensure a prompt and efficient performance of their duties and responsibilities. Unfortunately, this wish is now difficult and probably impossible to achieve in the Regional Trial Court, Biñan, Laguna during the incumbency of HON. PABLO B. FRANCISCO in RTC-Branch XXIV.

It all began when Judge Francisco was ordered by your Office to vacate Branch XXV and assume his temporary assignment in Branch XXIV. From them on, we never had an occasion to have an ideal mood and nice atmosphere to perform efficiently our assigned tasks in the judiciary. Four (4) of the staff in Branch XXIV were charged administratively for inexistent and imaginary reasons solely to show his might to those who go against him even on personal matters.

Two (2) employees in Branch XXV and one (1) from the Office of the Clerk of Court and even the Assistant Provincial Public Prosecutor were likewise victims of his suspicious mind when he cited them in direct contempt based on concocted ideas which could have cost their liberties for a period of nine (9) days if not for the timely temporary restraining order issued by the Honorable Court of Appeals.

Two (2) deputy sheriffs [of] the Court were obliged by HON. PABLO B. FRANCISCO to contribute Two Thousand Pesos (₱2,000.00) each to defray the "salary" of his personal bodyguard which amount is a big imposition on their meager salary. Out of fear, the two (2) sheriffs were constrained to shoulder that burden even though it is against their will.

Court employees had to bear insults even in open Court for slightest mistakes. He always gives bad interpretation to laughters and smiles. He always interpreted glances to mean making faces to ridicule him. He is also fond of delivering speeches in open Court and even after court sessions practically accusing all court personnel in RTC-Biñan, Laguna, are engaged in graft and corruption. Demoralizing remarks to humiliate and downgrade reputation and morals as public servants of employees are more often than not the order of the day. This uncalled behavior already caused the untimely resignation of his Branch Clerk of Court and utility aide and probably we will end up the same if his continued stay in Branch XXIV will be allowed by your Honorable Office.

Lately, he announced that he will prevent any retirement benefits available to those future retirees as he is decided to file administrative cases against each and every one of the Court personnel.

We, the undersigned Court employees of Branches XXIV and XXV of the Regional Trial Court are now totally demoralized, scared and afraid of the vindictive mind and future moves of HON. PABLO B. FRANCISCO. Fears now engulfed our minds as simple glances on him might cost our liberties if not our positions.

Thus, we are respectfully appealing unto your Honorable Office to give due course to this petition of ours to forestall a total demoralization if not complete destruction of this component part of the judiciary.

Furthermore, we understand that Hon. RTC-Judge Pablo B. Francisco has a pending request to extend his stay as Presiding Judge in Branch XXIV up to October 1, 1998. As things stand now in our Court, we respectfully appeal to you that the said request of Hon. Pablo B. Francisco be turned down and instead he be ordered to return soonest to his original and legitimate sala at Branch XXVI RTC-Sta. Cruz, Laguna.

Furthermore, HON. PABLO B. FRANCISCO boasts that he is [a nephew of HON. CHIEF JUSTICE ANDRES V. NARVAZA], and consequently, he is untouchable. We do hope this to be false.

We earnestly appeal that HON. PABLO B. FRANCISCO be ordered to return to his legitimate station in Branch XXVI of Regional Trial Court, Sta. Cruz, Laguna, where he belongs or somewhere else but not in Biñan, Laguna.

Should you desire, we are willing to have an audience with you to enable us to ventilate our grievances.[4]

Aware of the open animosity exhibited between Judge Francisco and several personnel of the RTC of Biñan, Laguna, and its damaging effect on the administration of justice, some members of the Integrated Bar of the Philippines (IBP), practicing their profession in Biñan, Laguna, sent a letter[5] dated August 19, 1998 to then Court Administrator Benipayo, likewise

[4] *Id*. at 72-75.

[5] *Id*. at. 78.

requesting the return of Judge Francisco to his original court of assignment at RTC-Branch 26 of Sta. Cruz, Laguna.

After consideration of the two letters, we issued Administrative Order No. 113-98 on August 27, 1998 revoking the designation of Judge Francisco as acting Presiding Judge of RTC-Branch 24 of Biñan, Laguna.

Despite Judge Francisco's return to the RTC of Sta. Cruz, Laguna, the administrative charges and counter-charges between Judge Francisco and the personnel of RTC of Biñan, Laguna, still subsist and await our resolution.

In a Resolution dated August 19, 2003, the Court En Banc accepted the resignation of Judge Francisco upon the recommendation of the Office of the Court Administrator without prejudice to the continuation and outcome of the proceedings of the administrative complaints filed against him.

A.M. No. RTJ-06-1992

As the acting Presiding Judge of RTC-Branch 24 of Biñan, Laguna, Judge Francisco issued an Order[6] dated July 14, 1998 holding Javier, Laurel, Ramos, and Pros. Nofuente guilty of Direct Contempt, for supposedly disrupting the court proceedings in Sp. Proc. No. B-2433 held on July 14, 1998, and sentencing them to nine days' imprisonment at the Biñan Municipal Jail.

Javier, Laurel, Ramos and Pros. Nofuente filed before the Court of Appeals a Petition for *Certiorari* and Prohibition with a prayer for the issuance of a Writ of Preliminary Injunction, docketed as CA-G.R. SP. No. 48356. In its Resolution dated July 23, 1998, the Court of Appeals issued a Temporary Restraining Order (TRO) against the implementation of Judge Francisco's July 14, 1998 Order. Subsequently, the appellate court promulgated its Decision[7] dated September 9, 1998, setting aside the assailed Direct Contempt Order for having been issued by Judge Francisco with grave abuse of discretion. Judge Francisco's

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[6] *Rollo* (A.M. No. RTJ-06-1992), pp. 13-16.

[7] *Rollo* (A.M. No. P-10-2745), pp. 61-70.

appeal of the Court of Appeals judgment was denied by this Court.[8]

Judge Francisco's issuance of the Order dated July 14, 1998 also led to the filing by Javier, Laurel, Ramos, and Pros. Nofuente of a Complaint for *Gross Ignorance of the Law and Incompetence* against Judge Francisco. According to the Complaint, Judge Francisco's Direct Contempt Order was issued in violation of due process and Rule 71, Section 1 of the Rules of Court. Said Complaint was docketed as **A.M. No. RTJ-06-1992**.

Pros. Nofuente narrated that around 10:00 a.m. on said date, he was with Zenaida Manansala (Manansala), a complainant in one of the cases he was handling at the RTC-Branch 25 of Biñan, Laguna, to request Process Server Sevilla to subpoena the next witness in Manansala's case. Pros. Nofuente maintained that his voice was in the ordinary conversational volume which could not have disrupted the court proceedings, if there was any at all. He was just one or two meters away from the courtroom and, at that time, Judge Francisco was not wearing his robe and was seated at the lawyers' table. Pros. Nofuente denied he was conversing with Laurel and Ramos for the latter two were inside the staff room, busily doing their assigned tasks. They were all within the sight of Judge Francisco, but they were not aware that Judge Francisco was already throwing dagger looks at them. When Pros. Nofuente left, Judge Francisco shouted "*Mga tarantado kayo.*" Three days after the incident, Judge Francisco released the Order declaring, not only Laurel, Ramos, and Pros. Nofuente, but also Javier, guilty of Direct Contempt.

Laurel and Ramos also denied that they disrupted the court proceedings in Sp. Proc. No. B-2433 on July 14, 1998. Both of them could not remember talking to each other or to anybody or making noise at that time. Judge Francisco did not call their attention for the supposed disruption although his *sala* was just one or two meters away from their office.

[8] *Id*. at 71.

Javier, for her part, argued that she was cited of direct contempt *in absencia*. She was not within the court premises at 10:00 a.m. of July 14, 1998, as she was in Landbank, Calamba, Laguna to encash her check. She presented her Daily Time Record (DTR) for the month of July, showing that on July 14, 1998, she reported for work only for half a day, particularly, from 1:00 to 5:00 p.m. Javier also asserted that she had not even once disrupted court proceedings by boisterous conversation or laughter or by making any noise within the court premises.

In his Answer, Judge Francisco explained that his Direct Contempt Order was not the result of a single disrespectful act, but the culmination of a series of discourteous acts of Javier, Laurel, Ramos, and Pros. Nofuente, which impeded the administration of justice, particularly, causing the disruption of the court proceedings in Sp. Proc. No. B-2433 on July 14, 1998. Judge Francisco recounted that:

> For several months now, after the undersigned Presiding Judge vacated Branch 25 of this Court, a group of persons composed of Assistant Public Prosecutor Alberto R. Nofuente of the Department of Justice, and Olivia Laurel, Diana Ramos and Herminia Javier, court employees, has subjected the undersigned to spite and ridicule. Prosecutor Nofuente, in more than a dozen times, while within the court premises and upon sensing the presence of the Presiding Judge anywhere near him, would evidently blurt unsavory remarks aimed at the Presiding Judge although most of the time he would make them appear to be directed at Mayet, the food caterer of court employees. At one time, Prosecutor Nofuente even spit on the floor to show his ill will for the Presiding Judge who was passing by. The group also would frequently engage themselves even during office hours in raucous laughter within the presence and hearing of the Presiding Judge with nothing funny to laugh about. At one time, the Presiding Judge caught Diana Ramos acting like a cheerleader, egging on Prosecutor Nofuente, Olivia Laurel and Herminia Javier to laugh harder simultaneously, which prompted the Presiding Judge to call the attention of Olivia Laurel about her group's uncanny behavior. Even during court sessions of Branch 24, Olivia Laurel and Herminia Javier would throw sharp glances and make faces at the Presiding Judge. Almost every member of this group has an axe to grind against the Presiding Judge for events which transpired during his incumbency

in Branch 25. Olivia Laurel was eased out of [her] position as OIC-Branch Clerk of Court after the undersigned recommended a lawyer, a qualified one, in her place. Diana Ramos was caught by the undersigned tearing certain pages of case records and was publicly rebuked for it. The Presiding Judge had refused to drop charges against a relative of Herminia Javier arising out of the implementation of a search warrant. Of course, Herminia's unwavering loyalty to her group knows no bounds. Prosecutor Nofuente had on several occasions asked from the undersigned for the dismissal of certain criminal cases but which request were all refused on the ground that the evidence of guilt was strong. The prosecutor was also criticized severely by the Presiding Judge in several court decisions for filing about twenty (20) faulty informations in incestuous rape cases which absolved the accused from the death penalty.

Lately, the group has been disrupting proceedings in Branch 24 by creating noise through boisterous conversations punctuated by laughters inside the court premises.

In the hearing of Special Proceedings No. B-2433, on July 14, 1998, at about 10:00 o'clock a.m., the session was disrupted lengthily because Prosecutor Nofuente engaged in a monologue at the top of his voice so near the place where the proceedings are going on and drowning out in the process the examination being conducted by the Presiding Judge on William Martinez.

When the Presiding Judge was about to confront him, Prosecutor Nofuente hastily entered his nearby office. At lunch time, the group of Prosecutor Nofuente was heard by the Presiding Judge laughing heartily over the incident.

The Court expected Prosecutor Nofuente to explain at least why he committed those acts which disrupted the proceedings in Special Proceedings No. B-2433, but up to now he has not done so, which arrogance led the Court to conclude that he did disrupt said session deliberately.[9]

Judge Francisco presented as evidence the transcript of stenographic notes (TSN) of the hearing of Sp. Proc. No. B-2433 on July 14, 1998, taken down by Lopez, to prove what actually transpired during the proceedings:

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[9] *Rollo* (A.M. No. RTJ-06-1992), pp. 24-26.

TRANSCRIPT

Of stenographic notes taken down by the undersigned Court Stenographer during the hearing of the above-entitled case on July 14, 1998 at 10:30 o'clock in the morning. Presided over by the Hon. PABLO B. FRANCISCO, Presiding Judge.

xxx xxx xxx

COURT

What kind of drug or drugs are you taking in?

W. MARTINEZ

Shabu, Your Honor.

COURT

Since when have you been taking *shabu*? (*At this juncture, the presiding judge appears to be irritated by the loud voice of Fiscal Nofuente*).

W. MARTINEZ

For a year, Your Honor.

COURT

Were you examined by Dr. Melinda Fernando?

W. MARTINEZ

Yes, Your Honor.

COURT

And what was the result of the examination. Is this the record? (Examining the record) (*At this juncture, the Presiding Judge stood up to confront the person creating noise*.)

W. MARTINEZ

Yes, Your Honor.

COURT

Your father wants you to be rehabilitated, are you willing to be sent to a rehabilitation center?

W. MARTINEZ

Yes, Your Honor.

COURT

Are you willing to comply with the rules and regulations set by any of the rehabilitation centers of your choice?

W. MARTINEZ

Yes, Your Honor

(At this juncture, the Presiding Judge was advised by the stenographer to rest because his face was becoming reddish.)

COURT

Please place on record that the proceedings was disturbed because of the loud voice coming from Provincial Prosecutor Alberto Nofuente who was laughing and discussing in a very loud voice a certain matter with the employees of Branch 25 and the Presiding Judge has called the attention of those concerned, especially employees of Branch 25 about disturbing the hearing of this case. Let it be recorded further that this is not the first time that Provincial Prosecutor Alberto Nofuente has caused such disturbance while proceedings at Branch 24 is going on. (Emphasis ours).[10]

Judge Francisco further explained that it took him almost three days to release the Direct Contempt Order because he first had to confer with Executive Judge Corcuera as two of the respondents, Laurel and Ramos, were the Executive Judge's subordinates and their work might be disrupted. Judge Francisco also brought up the matter with Emilina Santos, Javier's mother, who was also an employee at the RTC-Branch 25 of Biñan, Laguna. He also relayed the controversy to Atty. Julita Escueta-Gonzales, a close friend of Laurel, Ramos and Javier, who promised to work out a peaceful settlement among the parties but Judge Francisco never received any apology or expression of regret from Javier, Laurel, Ramos, or Pros. Nofuente. Judge Francisco also averred that after the Court of Appeals issued

[10] Rollo (A.M. No. P-10-2745), pp. 16-18.

a TRO in CA-G.R. SP. No. 48356, enjoining the implementation of the Direct Contempt Order, Pros. Nofuente roamed around the court premises during office hours, and the loud conversations and raucous laughter of the prosecutor and his group could be heard all the way inside the judge's chamber. As a result, Judge Francisco sent a letter to Executive Judge Corcuera stating that if such disrespectful attitude would continue then he would issue another contempt citation.[11]

Judge Francisco added that Pros. Nofuente's story that he was simply requesting for the issuance of subpoena from Process Server Sevilla was hypocritical since a process server has no authority to issue a subpoena, a request for subpoena cannot be made orally, and RTC-Branch 25 of Biñan, Laguna was not in session at that time.

A.M. No. P-10-2745

Judge Francisco's Answer in A.M. No. RTJ-06-1992 served as his Complaint for *Grave Misconduct* against Javier, Laurel, and Ramos, and was docketed as **A.M. No. P-10-2745.**

Investigating Officer Justice Barrios summed up Judge Francisco's charges against Javier, Laurel, and Ramos as follows:

> In charging Laurel, Judge Francisco stated that her performance as OIC Branch Clerk of Court was initially commendable, but her friendship with Ramos and other court employees spoiled it.
>
> Regarding his complaint against Ramos, Judge Francisco averred that she glorifies herself as a clerk in charge of civil cases when in truth is she is but a utility worker who moonlights as caterer, and which is why she is absent most of the time. In the month of December 1996 alone, Ramos reported to work for only 2 days. She did not file her leave of absence but she was able to draw her full month's salary because Laurel approved her falsified daily time record.
>
> As to Judge Francisco's complaint against Javier, it was alleged that she is a close relative of a certain Alfredo Artecen. Sometime in August 1997, CIS operatives stationed in Pacita Complex, San Pedro, Laguna, applied for a search warrant. Due to the irregular service

[11] *Id*. at 42.

of said search warrant, the Court asked the CIS Operatives and the wife of Alfredo Artecen to explain why they should not be held for contempt. Javier expressed her displeasure to the show cause order, and told Judge Francisco that she would not testify for the arrest of Alfredo Artecen. Apart from this, Laurel, Javier and Ramos converged most of the time during office hours near the table of Laurel which is just about two (2) meters from the sala of Branch 24. This with their boorish behavior, showed a concerted design to malign and harass Judge Francisco.[12]

In their Joint Comment, Javier, Laurel, and Ramos claimed that Judge Francisco's accusations against them were malicious and made to satisfy the judge's personal grudge against them. Justice Barrios, in his Report, provided the following summary of Javier's, Laurel's, and Ramos's comments:

> Laurel denied having signed any falsified daily time record of Ramos when she was the [Officer in Charge (OIC)] Branch Clerk of Court as Ramos honestly indicated her absences for the month of December 1996. She also declared that she never felt bad when she was ousted as the OIC Branch Clerk of Court because she knew for a fact that she is not a lawyer and that the position will be filled up anytime by one who is qualified. Besides the one who was later on appointed as the Branch Clerk of Court was Atty. Melvin Mane, her cousin, hence there was no reason for her to feel bad.
>
> Ramos for her part declared that aside from being a utility worker she also works as a record custodian of civil cases, but strangely this is not known to Judge Francisco. Ramos stated that she acted as the maid of Judge Francisco for a long time. She was tasked with the cleaning of his chamber and the court premises, including serving him free snacks, shining his shoes, preparing his bench, stitching his pants, and other errands she never could say no to, and a dance instructor in his ballroom practices which sometimes starts at 3:00 o'clock p.m. and lasts until midnight. Ramos denied that she moonlights as caterer, although she admitted having cooked food but then only for a few relatives and mostly during Christmas season and for free. She stated however that she cooked on the request of Judge Francisco every time he arranged ballroom parties.

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[12] *Rollo* (A.M. No. RTJ-06-1992), pp. 49-50.

Javier also denied the allegations against her and averred that there was no instance that she showed her displeasure over the actions taken by Judge Francisco in the case of Alfredo Artecen. She could have easily warned Alfredo Artecen who happened to be his neighbor about the search warrant, but she did not.[13]

In addition, Javier, Laurel, and Ramos accused Judge Francisco of falsifying the TSN of the proceedings in Sp. Proc. No. B-2433 on July 14, 1998. They alleged that Judge Francisco coerced and threatened Stenographic Reporter Lopez to insert and add words, phrases, and situations in the said transcript to make it appear that Pros. Nofuente disrupted court proceedings. Lopez even executed an Affidavit attesting that she was pressured by Judge Francisco into entering the said falsities into the TSN, to wit:

1. I am one of the court stenographer assigned at the Regional Trial Court, Branch 24, Biñan, Laguna.

2. On July 14, 1998, at about 10:30 o'clock in the morning, a proceedings for confinement, docketed as SP PROC NO. B-2433 entitled "*William I. Martinez vs. Jose Martinez*" was made by the Regional Trial Court presided by the Honorable Pablo B. Francisco and in such proceedings I was the court stenographer assigned to take the stenographic notes of the proceedings which I did, copy of the original stenographic notes is hereto attached and made integral part hereof, as Annex A;

3. A few days after the Honorable Judge Pablo B. Francisco was served a copy of the petition for *certiorari* in CA-G.R. SP No. 48356 entitled "*Public Prosecutor Alberto R. Nofuente, Olivia M. Laurel, Diana A. Ramos and Herminia Javier –versus– Hon. Judge Pablo B. Francisco*," I was called in the afternoon by the Honorable Judge Pablo B. Francisco to transcribe the stenographic notes taken on July 14, 1998 at SP PROC No. B-2433 entitled "*William I. Martinez vs. Jose Martinez*" which I complied with;

4. After I have transcribed the stenographic notes before a computer, the Honorable Judge Pablo B. Francisco went to my place and instructed me to add and insert into the transcript of the stenographic notes the following words and phrases.

[13] *Id* at 50-51.

xxx xxx xxx

a. appears to be irritated by the loud voice of Fiscal Nofuente – line 18, 19 and 20, page 2, T.S.N. July 14, 1998.

xxx xxx xxx

b. stood up to confront the person creating noise – line 9 and 10, page 3, T.S.N. July 14, 1998.

c. (At this juncture, the Presiding Judge was advised by the stenographer to rest because his face was becoming reddish) line 3, 4 and 5, page 4, T.S.N. July 14, 1998.

xxx xxx xxx

5. The truth of the matter is that the aforequoted portions which were required by the Honorable Judge Pablo B. Francisco to be added and inserted into the transcript do not appear in the original stenographic notes, Annex A hereto and I complied because of fear that if I would not comply, I might be subjected to some actions against me similar to those members of the staff of the Clerk of Court of the Regional Trial Court, Biñan, Laguna who are being charged administratively, for one reason or the other, by the Honorable Judge Pablo B. Francisco, aside from the fact that he was my superior being the Presiding Judge of the Regional Trial Court, Branch 24, Biñan, Laguna.

6. I am executing this affidavit for the purpose of setting the records straight and to attest to the truth of the foregoing.[14]

Javier, Laurel, and Ramos further stated that almost all of the court personnel of the RTC of Biñan, Laguna had fallen victim to Judge Francisco's vindictiveness. Judge Francisco became hostile to everybody. He branded the court personnel as disrespectful, misinterpreting the latter's smiles and glances as making faces or laughter as insult. It was for this reason that some personnel filed a petition with the Supreme Court requesting for Judge Francisco's return to his original station at the RTC of Sta. Cruz, Laguna.

[14] *Rollo* (A.M. No. P-10-2745), pp. 82-83.

A.M. No. RTJ-00-1992

A.M. No. RTJ-00-1992 involves Judge Francisco's Complaint for *Falsification of Public Documents* against Laurel and Ramos. He averred that Laurel, as Officer-in-Charge (OIC) Branch Clerk of Court, approved Ramos's allegedly falsified DTR. A similar case was also filed by Judge Francisco before the Office of the Ombudsman but it was ordered closed and terminated in a Joint Resolution dated July 28, 2000.

Justice Barrios culled the following antecedent facts in A.M. No. RTJ-00-1992 from the pleadings submitted by the parties:

> Judge Francisco averred that when he was still the detailed presiding judge of Branch 25, he noticed that Ramos did not report to work everyday and that she did not perform her duties of cleaning the courtroom and surrounding areas. He confronted Ramos about this but she reasoned out that she was always tasked by the then Branch Clerk of Court to bring certain documents to the Supreme Court and that whenever she is absent, she filed her leave of absence. When the Branch Clerk of Court resigned, Laurel was designated as the OIC Branch Clerk of Court and Ramos' absences continued. A person named *"Kulot"* was seen cleaning the court room and adjoining areas and later it came to his knowledge that Ramos was engaged in the food catering business and *"Kulot"* was one of her waiters. Judge Francisco stated that Ramos never actually performed her tasks as utility worker and on the days that she was present in the office, she positioned herself in one of the office tables and gloried herself as clerk in charge of civil cases. Apart from this Ramos also engaged in the processing of EASCO surety bonds and typing marriage contracts officiated by him or that of Judge Rodrigo Cosico, now Justice of the Court of Appeals. It was because of his heavy work load that Judge Francisco failed to check Ramos' application for leave of absence until December 1997 when he found out that her approved leave of absence were far less than her actual absences. Despite her absences Ramos was able to draw her salary because she made it appear in her daily time record that she reported for work every working day from 8:00 a.m. to 5:00 o'clock p.m. and Laurel knowing fully well of her absences approved the daily time record. It was from March 1996 to January 1998 when Ramos did not report to work everyday.

Ramos in addition to her refutations and assertions in [A.M No. P-10-2745], declared that *"Kulot"* never cleaned the courtroom in her sake but he frequented their office because she recommended him to Judge Francisco upon the judge's request to be taught of other variations in ballroom dancing. It was *"Kulot"* who helped her clear the area of the courtroom before ballroom practices thus they pulled and pushed tables and chairs and sometimes it was he who swept the floor and put back the tables and chairs for the next day's hearing. Ramos denied too that she had some participation in the processing of EASCO surety bonds and typing marriage licenses.

Laurel on the other hand admitted that she signed and approved the daily time records of Ramos when she was still the Acting Branch Clerk of Court, but denied that they were falsified.

According to Ramos and Laurel, this case is only one of the several cases filed by Judge Francisco against all the court personnel of Branches 24 and 25 who petitioned for his ouster from the said courts and he filed administrative and criminal cases though unfounded and baseless just to get even with them.

In his Reply-Affidavit, Judge Francisco averred that contrary to the assertions that Ramos was her dance instructor, he stated that he received his dancing lessons from one Vinia Bulfaney of Jun Encarnacion Dance Studio from September to December 1996 and that he took dance lessons at home from one Jennifer Monte. In his attack against Ramos, Judge Francisco stated that *speaking of intestinal fortitude, respondent Diana Ramos indeed possesses an abundance of this debasing quality as she now reports for work heavy with a child, without any qualm as to how the public might react to this "interesting stage" of her life, considering that her marriage to her husband, has been recently annulled and she is not known to have contracted a second marriage or reconciled with her husband; that [Judge Francisco] is quite thankful that he has been away from Biñan for the past one year and a half otherwise, given the moral depravity of [Ramos] in claiming abuse of respondent Diana Ramos by [Judge Francisco], a claim by [Laurel and Ramos] of filial relation between [Judge Francisco] and the baby within respondent Diana Ramos' womb might not have been a distinct possibility.*[15]

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[15] *Rollo* (A.M. No. P-10-2746), pp. 291-294; Report and Recommendation, pp. 53-56.

A.M. No. P-10-2746

A.M. No. P-10-2746 is another Complaint for *Falsification of Public Documents* filed by Judge Francisco against Branch Clerk of Court Atty. Hernandez, Legal Researcher Orfiano, and Stenographers Chaves, Lopez, and Perez, all of RTC-Branch 24 of Biñan, Laguna. Judge Francisco instituted a similar case against the same court personnel before the Office of the Ombudsman but it was ordered closed and terminated by the said office. Justice Barrios's Report presented a gist of Judge Francisco's Complaint:

> Judge Francisco averred in his affidavit that when he was detailed as the Presiding Judge of Branch 25 he noticed that some personnel of Branch 24, particularly the stenographers Perez, Lopez, Dilay (deceased) and Chaves were not reporting for work everyday. Since he frequented the library which is near the working tables of the stenographers, he noticed that only the stenographer on duty reported to work. Branch 24 was still then being presided by Justice Rodrigo Cosico. Chaves disappeared sometime in July 1997 and surfaced only in November or December of the same year and that according to her she went on vacation to the United States. When Justice Cosico was promoted to the Court of Appeals, Judge Francisco then presided over the hearing of motions in cases pending in Branch 24. That was when he was able to observe closely the work attitude of the employees therein. On the thought that these stenographers were not filing their leaves of absence Judge Francisco went to the Office of the Court Administrator and he was surprised to learn that the approved leaves of absence were too minimal to cover their actual absences from work. Also upon his verification from the Finance Division, he learned that these stenographers were receiving their full salary every month despite their unauthorized absences. In order to correct the alleged rampant practice of falsifying the daily time records, Judge Francisco issued Memorandum Circulars x x x but the stenographers paid no attention to these and continued to absent themselves from work and to falsify their daily time records. Judge Francisco sent a letter to the Court Administrator Alfredo Benipayo regarding these alleged absences x x x. Responding to this complaint Justice Benipayo informed him x x x that though authorized to act on this but then court operations would be paralyzed if he were to impose disciplinary action against them. Hence through the intercession of Judge Corcuera, he compromised with these

stenographers that they will not be meted out preventive suspension provided they mend their work behavior. Judge Francisco alleged that their promise was however just to trick him for later these stenographers joined in the petition that he be returned to Branch 26 of Sta. Cruz, Laguna. Again on July 1998, he caught Lopez and Perez making false attendance entries in their daily time records and in the logbook. These stenographers falsified their daily time records from April 1996 to July 1998 and the then OIC Branch Clerk of Court Orfiano as well as the Branch Clerk of Court Hernandez approved their daily time records knowing fully well that these were falsified.[16]

The concerned court personnel all denied Justice Francisco's allegations that they were involved in the falsification of DTRs, arguing that these were merely uncorroborated and false accusations which should be dismissed.

Chaves contradicted Justice Francisco's claim that she disappeared in July 1997 and resurfaced only in November or December of the same year. She averred that for the days she was absent from work, she had filed the corresponding leave of absence. She admitted being on leave from July 21 to September 15, 1997 but it was a vacation leave with pay. She went to the United States of America, and she secured the proper clearance and travel authority from Court Administrator Benipayo before the trip. She reported back to work on September 15, 1997 and was present since then. Chaves asserted that Judge Francisco filed the complaint against her out of personal revenge because Chaves's husband was among the IBP members who signed a petition seeking the judge's return to his permanent station at the RTC of Sta. Cruz, Laguna.

Lopez and Perez pointed out that Judge Francisco only made a general allegation that they falsified their DTRs from April 1996 to July 1998, without specifying the particular dates when they were purportedly absent without leave. They countered that it was Judge Francisco who was not filing his leave of absence and falsified his monthly certificates of service because he did not conduct hearings on Wednesdays during the same

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[16] *Id*. at 294-296; *id*. at 56-58.

time period. They also contested Judge Francisco's claim that he went to the library to research almost everyday because said judge was only sending somebody else to borrow books or reading materials for him. Perez explained that it was impossible for her to have reported for work only twice a week because she was rendering services as stenographer to Branches 24 and 25 of the RTC of Biñan, Laguna. Lopez asserted that she dutifully reflected in the attendance logbook the exact time of her arrival and departure, and she filed the corresponding leave of absence whenever she was unable to report to work. However, at one instance, Judge Francisco called her, Moreno, and Perez, together with the late Dilay, to the judge's chamber where he told them to change some entries in their DTRs. Although the four of them were reluctant, they complied in fear because Judge Francisco was very angry and persistent at that time.

Orfiano could not recall having signed the allegedly falsified DTRs of the stenographers Chaves, Lopez, and Perez for April 1996 to July 1998. Orfiano further explicated that it was not only he who approved the DTRs, but also the two Branch Clerks of Court, who have since resigned, and even Judge Francisco himself from the months of May to July 1998, when he (Orfiano) was the OIC Branch Clerk of Court.

Atty. Hernandez, in his Comment, stated that he served as the Branch Clerk of Court of RTC-Branch 24 of Biñan, Laguna from July 17, 1997 until his resignation on June 30, 1998. At the time he assumed his position, no bundy clock was available for the employees of RTC-Branch 24. As there was no way to verify the employees' actual time of arrival and departure, Atty. Hernandez, in signing the DTRs, just relied on the employees' representation that the entries therein were true and correct. Use of an attendance logbook was implemented beginning only on February 20, 1998, pursuant to Judge Francisco's Memorandum Circular No. 08-98. Judge Francisco subsequently issued Memorandum No. 01 on May 20, 1998 transferring the authority to sign the employees' DTRs from Atty. Hernandez to himself. From February 20 to May 28, 1998, when Atty.

Hernandez was still allowed to sign the DTRs, he made sure that his co-employees faithfully reflected therein their absences by comparing the entries in their respective DTRs with those in the attendance logbook.

A.M. No. P-10-2747

Judge Francisco was not yet through with filing administrative charges against the personnel of the RTC of Biñan, Laguna. In his Letter-Complaint dated August 21, 1998, docketed as **A.M. No. P-10-2747**, he accused several court personnel with different administrative offenses, *viz*:

a. NICANOR B. ALFONSO is a process server in the Office of the Clerk of Court. But I came to know that he is a court employee only in December 1997 because, in the almost two (2) years then of my detail in Biñan, I seldom saw him in the court premises. I knew him more as the driver-bodyguard of Mayor Bayani "Arthur" Alonte of Biñan.

When I interviewed Mr. Alfonso, he told me that he was already rendering service exclusively for Mayor Alonte and his family for about five (5) years. He admitted though that all the while he was drawing his salary from the Supreme Court. I then directed him to return to work, but he refused reasoning out that his stint with Mayor Alonte "had been the arrangement" with the other executive judges of the RTC before me.

x x x x x x x x x

b. BENEDICTO B. PASCUAL is the Court Interpreter in Branch 25. He manages to hold on to his position despite his lack of civil service eligibility. A perennial bar candidate, Mr. Pascual took his last examination in October 1996.

To prepare for the bar exams, Mr. Pascual managed to obtain leave with pay on the following dates:

> "81 days sick leave with pay from April 1 to July 31, 1996, and 43 days vacation leave with pay from August 1 to September 30, 1996."

x x x. There was almost no leave credits left for Mr. Pascual as he began attending his review classes.

The bar examination was given in October 1996 and, understandably, Mr. Pascual was absent the whole month. He reported for work only in the middle of November 1996 as a matter of fact. So that his absence for one and a half (1 ½) months from October 1, 1996 was no longer covered by the leave granted to him. But he was still able to draw his salaries in full for the months of October and November as he even earned leave credits during his unauthorized absence.

c. ANGELITO BATI is a Utility Worker in the Office of the Clerk of Court. Sometime in May 1998, I came to know that he was the person serving summons upon the defendants in civil cases assigned in Branch 24. When confronted by the undersigned, Mr. Bati admitted doing so supposedly with "proper authorization" from Sheriff IV Arnel Magat. On October July (sic) 28, 1998, I issued a memorandum, x x x, calling for an investigation of the anomaly. So far, at least two (2) defendants in those civil cases have come up and identified Mr. Bati as the person who served the summons upon them.

d. ARNEL G. MAGAT is Sheriff IV under the Office of the Clerk of Court. He was the one who "deputized" Angelito Bati to do the service of summons aforesaid. Yet, he prepared and signed the Sheriff's Return certifying that said service of summons were done by him personally on the dates given.

Mr. Magat also has a pending administrative case wherein Elizabeth Tiongco, a plaintiff in an unlawful detainer case, accuses him of diverting to his personal use the amount of about ₱40,000.00 collected by him from the defendant. When I called the parties to a conference to settle the dispute, Mr. Magat promised to turn over said sum of ₱40,000.00 to Ms. Tiongco in installments. Ms. Tiongco has been complaining to me that Mr. Magat has not remitted to her any installment payment under his promise.

e. JULIAN ORFIANO, JR. is the Legal Researcher and former OIC Branch Clerk of Court in Branch 24. While conducting an inventory of the cases in Branch 24, soon after my detail therein, I noticed that the number of the expediente of active cases far exceeded by more than a hundred number pending cases reported to the Supreme Court monthly.

Mr. Orfiano was the first court personnel to raise his voice in protest when apprised of my move to request the OCAD for a physical audit of said cases. Later on, I came to know that Mr. Orfiano was

the one personally responsible for the preparation of said monthly reports.

In April 1998, certain OCAD personnel, accompanied by Justice Molina, did conduct said physical audit, the result of which despite my follow-up, has not yet been released. x x x.

Mr. Orfiano was also the OIC Branch Clerk of Court who during his tenure of office approved the falsified Daily Time Records (DTR) of Branch 24 court personnel.

f. CARIDAD CUEVILLAS AND LITA MORENO are the clerks in charge of criminal and civil cases, respectively, in Branch 24. Both of them detested being required to report for work everyday and being reprimanded for not doing their work properly. So many hearings of cases have been postponed due to their failure to prepare either the notices to the parties or the subpoena to witness.

Lately, Ms. Moreno concealed from me certain motions which required my immediate attention. x x x.

g. MARIA FE LOPEZ AND [DIOSALYN] PEREZ are Stenographers in Branch 24. During the time that Judge (now Justice) Cosico was presiding in Branch 24, all four (4) stenographers in the branch reported for work, at most, two (2) times a week. Yet, they were drawing their full monthly salary by falsifying their DTRs which were approved by Mr. Julian Orfiano and later by Atty. Gerardo Hernandez, resigned Branch Clerk of Court.

x x x x x x x x x

h. DIANA RAMOS, OLIVIA LAUREL, ANDREW SANTOS, [RAMON] LUIS SEVILLA AND HERMINIA JAVIER are court employees closely identified with a group headed by Third Public Prosecutor Alberto R. Nofuente, the prosecutor who filed about twenty (20) Informations for simple rapes before Branch 25, notwithstanding the private complainants' statements that those who ravished them were either their fathers, step fathers, uncles *etc*., thus allowing all the accused to escape from the death penalty. For severely criticizing Prosecutor Nofuente for his ignorance of criminal procedure, I was subjected by this group to spite and ridicule for several months until I finally cited them, except Luis Sevilla and Andrew Santos, for direct contempt. x x x.

Some members of this group are also known as brokers for EASCO bail bonds and for fast tracked wedding ceremonies in court. They felt bad when I worked for the banning of EASCO as surety due to unpaid liabilities under its bonds x x x.

Of course, some members of this group do not report for work everyday and yet are able to draw their full months salary, especially DIANA RAMOS who moonlights as a food caterer.

i. ATTY. MELVIN D.C. MANE resigned recently as Deputy Clerk of Court in Branch 25. He dreams of becoming a judge so he acted like one during his tenure. He asked me to assign to him several cases for drafting of the decisions. He failed to accomplish his task before my imposed limit of sixty (60) days, so I was constrained to work on these cases double time to catch the deadline. I chastised him severely for his indolence.[17]

In a letter[18] dated March 9, 1999, addressed to the then Chief Justice Hilario G. Davide, Jr., Judge Francisco requested immediate action on A.M. No. P-10-2747.

In their Joint Comment[19] dated January 6, 2000, all the charged court personnel contended that Judge Francisco's Letter-Complaint should be considered a mere scrap of paper because it was not verified nor corroborated. Nevertheless, they also voiced their denial of the charges against them. They accused Judge Francisco of falsifying his certificates of service by not reflecting therein that he was not holding session every Wednesday from December 4, 1995 to January 5, 1997. In fact, there was one Wednesday when then Deputy Court Administrator Zenaida N. Elepaño (DCA Elepaño) called by long distance to inquire about a case handled by Judge Francisco, but the judge was not around. Judge Francisco did not file his leave of absence yet still received in full his monthly salary for the period.

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[17] *Rollo* (A.M. No. P-10-2747), pp. 12-19.

[18] *Id.* at 1.

[19] *Id.* at 55-58.

Judge Francisco filed a Reply[20] dated January 25, 2000, in which he insisted on the validity of his unverified Letter-Complaint against the court employees, reasoning that the Rules of Court does not require that such a complaint be under oath since he, the complainant, is a judge. Judge Francisco also denied that he was not conducting trials on Wednesdays and, as proof, he attached photocopies of the calendar of cases falling on Wednesdays.

A.M. No. P-10-2748

In **A.M. No. P-10-2748**, Judge Francisco filed a Complaint for *Grave Misconduct* against Cuevillas.

Judge Francisco's Complaint stemmed from Civil Case No. B-5217, entitled *Edward Potenciano v. Rogelio "Ogie" Almoro*, an ejectment case which originated from the Municipal Trial Court (MTC) of Biñan, Laguna. As soon as the complete records of said case were elevated to the RTC on appeal, Judge Francisco issued an order directing the counsels of both parties to submit their respective memoranda, after which, the case would be deemed submitted for decision. However, Cuevillas never informed Judge Francisco that the parties have already submitted their memoranda and, as a result, Judge Francisco was not able to render a decision within the prescribed period. Judge Francisco asserted that this was not the first time such an incident happened. On previous occasions, Cuevillas hid pleadings and other important documents from Judge Francisco, thus, the latter was not able to act promptly on said communications.

Cuevillas admitted in her Comment[21] that she received the memoranda of the parties in Civil Case No. B-5217 but she did not hide said pleadings from Judge Francisco. Cuevillas clarified that she was in charge of the records in criminal cases. She only received the memoranda of the parties in Civil Case No. B-5217 because Moreno, the one in charge of the records in civil cases, was not around at that time. Cuevillas averred that she turned

[20] *Id*. at 69-81.

[21] *Rollo* (A.M. No. P-10-2748), p. 5.

over the memoranda to Moreno for processing as soon as the latter arrived.

In his Reply,[22] Judge Francisco reiterated that Cuevillas intentionally concealed the memoranda. Cuevillas's story was unlikely as the parties filed their memoranda on separate dates in April 1998 and Moreno was present for the whole month.

Cuevillas, in her Rejoinder, laid the blame for the delay in the resolution of Civil Case No. B-5217 on Judge Francisco. Judge Francisco was aware that the case would be deemed submitted for decision in April 1998 whether or not the parties filed their memoranda, and the judge should have already demanded the case records from Moreno by that time. Cuevillas further denied that she intentionally failed to bring to Judge Francisco's attention several urgent matters.

A.M. No. P-10-2749

Judge Francisco filed a Letter-Complaint for *Dishonesty and Misconduct* against Alfonso, Bati, Cuevillas, Javier, Laurel, Lopez, Magat, Moreno, Orfiano, Pascual, Perez, Santos, and Sevilla, who accused the judge of falsifying his certificates of service because he was not reporting for work on Wednesdays, and yet was receiving his full monthly salary. The Complaint was docketed as **A.M. No. P-10-2749**.

In his Letter-Complaint, Judge Francisco denied the court personnel's accusation against him, averring that he always conducted hearings on Wednesdays during his detail at the RTC of Biñan, Laguna. As evidence, he presented some of the court calendar that fell on Wednesdays between January 17 to December 18, 1996.[23] Aside from conducting hearings in Biñan, Judge Francisco was also tasked to preside over Election Contest

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[22] *Id.* at 6.

[23] Court Calendar falling on a Wednesday: January 17, 1996; February 14, 21, 28, 1996; March 6, 13, 20, 27, 1996; April 10, 17, 1996; May 8, 22, 29, 1996; June 5, 26, 1996; July 3, 17, 24, 31, 1996; August 7, 14, 21, 28, 1996; September 4, 11, 18, 25, 1996; October 2, 23, 1996; December 11, 18, 1996; *rollo* (A.M. No. P-10-2749), pp. 24-63.

Nos. SC-10 and SC-11 in Sta. Cruz, which were heard every Wednesday afternoon from March 1996 until September 1997. On such days, Judge Francisco had to travel from Biñan to Sta. Cruz, with a distance of about 50 kilometers, to fulfill his assignments. Judge Francisco likewise contradicted the allegation that he was absent the day DCA Elepaño called his office, and he was actually able to talk to DCA Elepaño. Lastly, Judge Francisco claimed that Laurel was even one of the stenographers in one of the Wednesday hearings and Santos sometimes participated in the preparation of the calendar of cases for Wednesday.

In their Comment,[24] the concerned court personnel pointed out that Judge Francisco's charges against them were not corroborated by material witnesses and that the purported court calendar of cases presented by the judge were uncertified photocopies, hence, inadmissible as evidence. They insisted that Judge Francisco did not talk to DCA Elepaño when the latter called the judge's office. The truth was DCA Elepaño was able to talk to Justice Cosico who politely suggested to her that she talk personally with Judge Francisco. The court personnel reiterated their charge against Judge Francisco for falsification of his certificates of service, based on the certifications issued by Branch Clerk of Court Atty. Galeon. According to Atty. Galeon's certifications: (1) except for December 14, 1995, no other session was held every Wednesday between December 4, 1995 and January 5, 1996; and (2) no setting of cases was made between February 7, 1996 and August 27, 1997. During these periods, Judge Francisco was still detailed at the RTC of Biñan. Laguna. When the court personnel verified with the OCA, they found that no application for leave was filed by Judge Francisco for the above stated periods except for October 16, November 20 and 27, 1996. They additionally alleged that Judge Francisco made a trip abroad without approval from the Supreme Court. Finally, they accused Judge Francisco of extortion and corruption in relation to an election case he was handling in Biñan, Laguna.

[24] *Id*. at 65-72.

Judge Francisco maintained in his Reply[25] that he was present and conducting hearings from January to November 1996, except April 8, 1996. According to Judge Francisco, he had already discussed his trip abroad with Chancellor Ameurfina Melencio-Herrera of the Philippine Judicial Academy and then Court Administrator Benipayo, who were both satisfied with his explanation. Judge Francisco also asserted that the evidence introduced by the court personnel in their Comment, specifically, Atty. Galeon's certifications, were falsified documents. Consequently, Judge Francisco expressed his intention to file another administrative complaint against Atty. Galeon, Laurel, and Pascual.

A.M. No. P-10-2750
A.M. No. P-10-2751
A.M. No. P-03-1706

True enough, Judge Francisco filed three more administrative cases for *Falsification of Public Documents* docketed as: (1) **A.M. No. P-10-2750,** against Atty. Galeon and Pascual; (2) **A.M. No. P-10-2751**, against Atty. Galeon alone; and (3) **A.M. No. P-03-1706** against Atty. Galeon and Laurel.

Judge Francisco charged Atty. Galeon and Pascual in A.M. No. P-10-2750 with *Falsification of Public Documents* in relation to the photocopies of two supposed pages of the court calendar book of RTC-Branch 25 of Biñan, Laguna, which were in the handwriting of Pascual and certified by Atty. Galeon, showing that no case was set for hearing on June 11 and 18, 1997. Judge Francisco alleged that the certified photocopies in question contained untruthful narration of facts because so many cases were set for hearing and actually tried on June 11 and 18, 1997, and these could be corroborated by the minutes and TSNs of the proceedings.[26]

Judge Francisco again accused Atty. Galeon in A.M. No. P-10-2751 of *Falsification of Public Document* for issuing a certification stating that per the court calendar book, no court session was held under Presiding Judge Francisco every

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[25] *Id.* at. 192-194.

[26] *Rollo* (A.M. No. P-10-2750), pp. 1-2.

Wednesday for the period of December 4, 1995 to January 5, 1996, except December 14, 1995.[27]

In A.M. No. P-03-1706, Judge Francisco took Atty. Galeon and Laurel to task for conspiring with each other and making untruthful narration of facts in the certified photocopies of ten alleged pages of the court calendar book which showed that no case was set for hearing on August 1, 4-8, 11-15, 18-22, and 25-28 of the year 1997. The false entries in the court calendar book were written by Laurel and the photocopies of the book pages bearing said false entries were certified by Atty. Galeon. Judge Francisco insisted there were so many cases set for hearing and actually tried on the given dates, and it was only on August 22, 1997 that no hearing was conducted because he was then on leave.

The certified photocopies of the court calendar book were presented as evidence against Judge Francisco in A.M. No. P-10-2749. The said documents caused Judge Francisco damage and prejudice for they made it appear that the judge falsified his certificates of service. Judge Francisco attributed malice on the parts of Laurel and Pascual, for making false entries into the court calendar book; and on the part of Atty. Galeon, for certifying the photocopies of the falsified book pages. Pascual, as Court Interpreter, was present during the hearings held on June 11 and 18, 1997, and even prepared the minutes of the proceedings. Laurel likewise knew of the hearings held in August 1997 as she was the one who took stenographic notes in some of these proceedings. Atty. Galeon, having no personal knowledge of the schedule of hearing of cases, could not have issued certifications thereon. She was not yet even the Branch Clerk of Court in June 1997.

Expectedly, Atty. Galeon, Laurel, and Pascual denied the charges against them.

Atty. Galeon pointed out that it was her ministerial duty to issue the certifications. Moreover, she did not make any false

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[27] *Rollo* (A.M. No. P-10-2751), pp. 1-3.

narration of facts in her certifications. She merely certified that the photocopies were the faithful reproduction of the original pages of the court calendar book after careful comparison. Her certifications also did not contain any derogatory or malicious remarks against Judge Francisco. Atty. Galeon maintained that there was no malice or ill will on her part when she issued the certifications and she was not aware that these would be used by her co-employees in support of their accusations against Judge Francisco.

Laurel asserted that the charge against her is but another retaliatory act of Judge Francisco against those who petitioned his ouster from RTC- Branch 24 of Biñan, Laguna. Laurel admitted that she was the OIC Clerk of Court from June 25, 1996 to August 1997. She detailed that the court calendar book was prepared during the last quarter of 1996 because, as a matter of practice, the schedule of hearing of cases were prepared in advance and Judge Francisco was aware of such practice. Hence, Judge Francisco cannot claim that the court calendar book was manufactured and the entries therein were falsified.

Pascual acknowledged that the entries in the court calendar book were in his handwriting, but this was easily done because it was his duty to maintain and keep custody of the court calendar books.

On March 26, 2003, we issued a Resolution adopting the Report and Recommendation of the OCA and dismissing A.M. No. P-10-2750 for lack of merit. Said Resolution reads:

> Considering the Office of the Court Administrator's Report dated March 3, 2003, on the sworn complaint charging respondents with falsification of public documents, reporting as follows:
>
> > In the instant case, respondents did not make any statement in a narration of facts. What respondent Galeon did was just to certify that Annexes "A" and "B" are certified Xerox copies. Respondent can not also be held liable for falsification of public documents under paragraph 7 of Article 171 of the Revised Penal Code because what she certified were Xerox copies of pages of the calendar book in the Office of the Branch Clerk of Court. Complainant was not able to prove that the originals from where

> the certified Xerox copies were taken did not exist, or that RTC, Branch 25 of Biñan, Laguna had no calendar book when the certifications were issued.

the Court Resolved to **ADOPT** the recommendation to **DISMISS** the case for lack of merit. [28]

Not long thereafter, we issued another Resolution on April 9, 2003 dismissing A.M. No. P-10-2751 for lack of merit, to wit:

> Considering the complaint dated May 24, 2002 filed by Judge Pablo B. Francisco charging Atty. Rowena A. Malabanan-Galeon with falsification of public documents for issuing a certification dated July 2, 2001 which has relevance to [A.M. No. P-10-2749], the Court Resolves to:
>
> (a) NOTE the said complaint; and
>
> (b) DISMISS the case for lack of merit.[29]

We subsequently denied Judge Francisco's Motions for Reconsideration of the dismissal of A.M. No. P-10-2750 and A.M. No. P-10-2751 on the ground that the motions merely reiterated the same arguments earlier raised and did not present any substantial reason not previously invoked or any matter not considered and passed upon by the Court.[30]

A.M. No. RTJ-10-2214

During the investigation of A.M. No. RTJ-06-1992 and A.M. No. P-10-2745 by Justice Barrios, Arellano and Magat, both Deputy Sheriffs of the of the RTC of Biñan, Laguna, testified that Judge Francisco exerted undue influence upon them to shell out ₱1,000.00 and ₱3,000.00, respectively, to defray the salary of the judge's bodyguard Joselito Nuestro (Nuestro). Because of the said testimonies, Judge Francisco filed before the OCA an administrative complaint for *Gross Misconduct* against Arellano

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[28] *Rollo* (A.M. No. P-10-2750), p. 36.

[29] *Rollo* (A.M. No. P-10-2751), p. 49.

[30] *Rollo* (A.M. No. P-10-2750), p. 42.

and Magat, docketed as OCA I.P.I. No. 02-3331-P. This case, however, was not among those assigned to Justice Barrios for investigation.

Arellano and Magat countered with a Complaint for *Grave Misconduct* against Judge Francisco, docketed as **A.M. No. RTJ-10-2214**. Justice Barrios presented the allegations of the opposing parties in his Report, thus:

> Arellano and Magat averred that Judge Francisco personally handpicked Joselito Nuestro from Indang, Cavite to act and perform as his own security officer against the threats he was then receiving from friends and supporters of Mayor Dennis Panganiban whose electoral case was pending before him. They alleged that Judge Francisco extorted from them ₱4,000.00 for Joselito Nuestro's monthly compensation. Because he was their superior, they were obliged to accede with Arellano contributing ₱1,500.00 and Magat ₱2,000.00. This matter has been brought to the attention of the Biñan police where they both gave their statements on July 17, 1998 x x x but these were not subscribed because at that time the Prosecutors and Clerks of Court refused to take part for fear of the wrath of Judge Francisco. These were only subscribed on December 16, 2002 when Arellano and Magat were called to testify.
>
> In his Comment x x x, Judge Francisco denied that Joselito Nuestro became his bodyguard. Rather he was his personal utility worker from September 1997 to February 8, 1998, and he was constrained to hire him because Ramos was not doing the chores assigned to her. He added that he employed him also because the man needed money for his ailing father. It was PO3 Melchor Dionisio who was assigned by the Philippine National Police as his security from October 1995 to May 1999. Judge Francisco claimed that their statements were not only unsubscribed but were also inconsistent. These two sheriffs allowed themselves to become the tools of Justice Rodrigo Cosico who harbored a grudge against him because he initiated the judicial audit for Branch 24 of which he was the Presiding Judge before his promotion to the Court of Appeals. Arellano was Justice Cosico's full time driver while drawing salary from the government. As for Magat, he was the subject of a complaint filed by a certain Elizabeth Tiongco who reported to him that Magat asked for ₱2,500.00 in exchange for the implementation of the writ of execution in an ejectment case. Nothing happened to the writ but Magat failed to return the check issued to him which prompted Judge Francisco to advise Elizabeth Tiongco to file the necessary administrative complaint.

In their reply, Arellano admitted that he served as driver of Justice Rodrigo Cosico when he was still the utility worker of Branch 24, but he did not let this interfere with his duties. He drove for Justice Cosico only early in the morning in going to the court and then back to his residence in the afternoon. Magat and Arellano argued that if there were inconsistencies in the sworn statements executed in 1998 these were minor only and should not negate the fact that Judge Francisco extorted money from them.[31]

As a result of his investigation of the 11 administrative cases, Justice Barrios made the following recommendations:

WHEREFORE, it is respectfully recommended that (a) the charges/complaints docketed as OCA-I.P.I. No. 98-511-P **[A.M. No. P-10-2745]**, OCA-I.P.I. No. 00-974-P **[A.M. No. RTJ-00-1992]**, OCA-I.P.I. No. 00-963-P **[A.M. No. P-10-2746]**, OCA-I.P.I. No. 99-740-P **[A.M. No. P-10-2747]**, OCA-I.PI. No. 02-1338-P **[A.M. No. P-10-2749]**, OCA-I.P.I. No. 99-573-P **[A.M. No. P-10-2748]**, OCA-I.P.I. No. 02-1410-P **[A.M. No. P-10-2750]**, OCA-I.P.I. No. 02-1411-P **[A.M. No. P-10-2751]**, OCA-I.P.I. No. P-03-1706 (formerly OCA I.P.I. No. 02-1409-P) **[A.M. No. P-03-1706]**, and OCA-I.P.I. No. 02-1592-RTJ **[A.M. No. RTJ-10-2214]**, be **DISMISSED**, and that (b) in OCA-I.P.I. No. 98-603-RTJ **[A.M. No. RTJ-06-1992]** Judge Pablo Francisco be found **GUILTY** of Gross Ignorance of the Law and **FINED** the amount of ₱30,000.00, taking into account that he has since resigned.[32]

II

DISCUSSION AND RESOLUTION

After a careful review of Justice Barrios's Recommendation and Report, we now render judgment on the 11 administrative cases.

At the outset, we take note of the previous dismissal for lack of merit of Judge Francisco's Complaints for Falsification of Public Document in **A.M. No. P-10-2750 (against Atty. Galeon and Pascual)** and **A.M. No. P-10-2751 (against Atty.**

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[31] *Rollo* (A.M. No. P-10-2746), pp. 313-314; Report and Recommendation, pp. 75-76.

[32] *Id.* at 347; *id.* at 109.

Galeon), through our Resolutions dated March 26, 2003 and April 9, 2003, respectively. With the denial of Judge Francisco's Motion for Reconsideration, the dismissal of A.M. No. P-10-2750 and A.M. No. P-10-2751 had already become final and executory, and already beyond our power to review, modify, or set aside.

Given also that Atty. Hernandez[33] and Atty. Mane[34] had already resigned from their posts as Branch Clerks of Court long before Justice Francisco filed his complaints against them, then we deem the charges against **Atty. Hernandez in A.M. No. P-10-2746** and **Atty. Mane in A.M. No. P-10-2747** dismissed.

We further dismiss Judge Francisco's complaints against **Santos in A.M. No. P-10-2747 and A.M. No. P-10-2749**, since Judge Francisco himself denied having charged Santos:

Judge Francisco

> Your Honor please, I regret to say that he was not charged so, why we need to present him?

xxx xxx xxx

Justice Barrios

> But Judge Francisco is saying now on record that he is not charging Mr. Santos.

xxx xxx xxx

Justice Barrios

> Whatever it is, he is saying that he is not charging Mr. Santos.[35]

Having settled the foregoing, we now turn our attention to the remaining administrative matters.

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[33] *Rollo* (A.M. No. P-10-2746), p. 231.

[34] *Rollo* (A.M. No. P-10-2747), p. 39.

[35] TSN, May 30, 2003, pp. 22-24.

Judge Francisco's Issuance of the Direct Contempt Order (A.M. No. RTJ-06-1992)

At the crux of the case is the issuance by Judge Francisco of the Order dated July 14, 1998 finding Javier, Laurel, Ramos, and Pros. Nofuente guilty of direct contempt of court for allegedly disrupting the proceedings in Sp. Proc. No. B-2433 at the RTC-Branch 24 of Biñan, Laguna, on July 14, 1998, and sentencing them to a penalty of nine days imprisonment.

Contempt of court is defined as "some act or conduct which tends to interfere with the business of the court, by a refusal to obey some lawful order of the court, or some act of disrespect to the dignity of the court which in some way tends to interfere with or hamper the orderly proceedings of the court and thus lessens the general efficiency of the same." It has also been described as "a defiance of the authority, justice or dignity of the court; such conduct as tends to bring the authority and administration of the law into disrespect or to interfere with or prejudice parties litigants or their witnesses during litigation." Simply put, it is despising of the authority, justice, or dignity of the court.[36]

Direct contempt is one done "in the presence of or so near the court or judge as to obstruct the administration of justice." It is a contumacious act done *facie curiae* and may be punished summarily without hearing. In other words, one may be summarily adjudged in direct contempt at the very moment or at the very instance of the commission of the act of contumely.[37] It is governed by Rule 71, Section 1 of the Rules of Court, as amended by Administrative Circular No. 22-95, which reads:

Section 1. *Direct contempt punished summarily*. — A person guilty of misbehavior in the presence of or so near a court or judge as to obstruct or interrupt the proceedings before the same, including

[36] *Español v. Formoso,* G.R. No. 150949, June 21, 2007, 525 SCRA 216, 223-224.

[37] *Id*.

disrespect toward the court or judge, offensive personalities toward others, or refusal to be sworn or to answer as witness, or to subscribe an affidavit or deposition when lawfully required to do so, may be summarily adjudged in contempt by such court or judge and punished by a fine not exceeding two thousand pesos or imprisonment not exceeding ten (10) days, or both, if it be a superior court, or a judge thereof, or by a fine not exceeding two hundred pesos or imprisonment not exceeding one (1) day, or both, if it be an inferior court.

As previously mentioned herein, the Court of Appeals, in CA-G.R. SP No. 48356, granted the Petition for *Certiorari* of Javier, Laurel, Ramos, and Pros. Nofuente, and set aside Judge Francisco's Direct Contempt Order for having been issued in grave abuse of discretion. The Court of Appeals adjudged that:

> Considering that the acts alluded to as the basis by which the Respondent [Judge Francisco] declared the petitioners [Javier, Laurel, Ramos, and Pros. Nofuente] in contempt of court, are neither constitutive of direct or indirect contempt, this Court is of the opinion that the Order of Respondent declaring petitioners in contempt and imposing a penalty of nine (9) days imprisonment is a GRAVE ABUSE OF DISCRETION.
>
> WHEREFORE, the assailed order dated July 14, 1998 is SET ASIDE for having been issued in grave abuse of discretion.[38]

The Court of Appeals already settled in the aforementioned *certiorari* proceedings that Judge Francisco's issuance of the Direct Contempt Order was in grave abuse of his discretion. We are now called upon to determine in the present administrative proceedings whether the same act constitutes an administrative offense by Judge Francisco. A review of the records of the case leads us to rule affirmatively.

Judge Francisco's issuance of the Direct Contempt Order is completely baseless and unjustified. There is utter lack of evidence that Javier, Laurel, Ramos, and Pros. Nofuente committed any contemptuous act. Other than his own allegations,

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[38] *Rollo* (A.M. No. P-10-2745), p. 70.

Judge Francisco's only evidence to prove that Pros. Nofuente disrupted the hearing of Sp. Proc. No. B-2433 on July 14, 1998 was the TSN for said proceedings, taken down by Lopez. However, serious doubts as to the truthfulness of the said TSN arose after Lopez herself assailed the transcript. According to Lopez, she included the lines alluding to the disruption of the proceedings by Pros. Nofuente into the TSN upon Judge Francisco's order. Lopez explained that she complied out of fear that she might be subjected to a suit just as the other employees of the RTC of Biñan, Laguna. Lopez stood by her affidavit even when cross-examined by Judge Francisco. She responded to the judge's questions, thus:

Q: Let me go to Exhibit S. On page 4 of Exhibit S the court stated "please place on record that the proceedings was disturbed because of the loud voice coming from Provincial Prosecutor Alberto Nofuente who was laughing and discussing in a very loud voice certain matters with employees of branch 25 and the presiding judge has called the attention of those concerned especially employees of Branch 25 both disturbing the hearing of this case. Let it be recorded further that this is not the first time that Provincial Prosecutor Alberto Nofuente has caused such disturbance while proceedings in Branch 24 is going on." Is this an insertion?

A: That is not an insertion, sir, you manifested that.

Q: The court stated that soon after the Presiding Judge stood up and according to you approach the entrance door of the court, wasn't it?

A: Yes, sir.

Q: How long ago did the court made that statement after the Presiding Judge stood up and went to the entrance door, about 2 minutes, 3 minutes?

A: That was after the proceedings when you made that manifestation.

Q: What do you mean by after the proceedings?

A: That was after the proceedings for the drug dependence hearing. That came last.

Q: You mean to say after the Presiding Judge has finished asking questions to the witness?
A: Yes, sir. That was already after we have gone to our conference room when you said that.[39]

Lopez's testimony was corroborated by Sevilla who declared during cross-examination and re-direct examination that Judge Francisco went out of the session hall only after the hearing to find out who was making the noise. At such time, Pros. Nofuente was no longer around. Judge Francisco did not mention then that Pros. Nofuente was the one being noisy.

Q: Isn't it a fact that Judge Francisco came out of the session hall and told the persons there not to make noise in that morning of July 14, 1998?
A: No, sir. What happened was that you came out after the session and asked who were those persons making noise.

Q: At that time Fiscal Nofuente was no longer there?
A: Yes, sir.

xxx x x x x x x

Q: Isn't it a fact that Judge Francisco even talked to that lady who was the companion of Fiscal Nofuente at that time?
A: Yes, sir.

xxx xxx xxx

RE-DIRECT BY ATTY. NOE
CANGCO ZARATE

Q: When Judge Francisco came out, did he tell you as to who was the person who was then noisy?
A: No, sir.

Q: He did not mention Fiscal Nofuente?

A: No, sir.[40]

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[39] TSN, November 7, 2001, pp. 13-15.

[40] TSN, November 14, 2001, pp. 14-15.

The testimonies of Lopez and Sevilla prove that although distracted by the outside noise, Judge Francisco was still able to proceed with and finish the hearing of Spec. Proc. No. B-2433 on July 14, 1998. Moreover, during and immediately after said hearing, Judge Francisco was unaware of who made the noise, so he could not have summarily cited anyone for direct contempt.

The lack of basis for the issuance by Judge Francisco of the Direct Contempt Order is even more evident when it comes to Javier, Laurel, and Ramos, who were not mentioned at all in the TSN of the hearing of Spec. Proc. No. B-2433 on July 14, 1988. By Judge Francisco's own allegations in his Complaint, the purportedly contemptuous acts of the three court personnel were not particularly committed on July 14, 1998 nor the cause of the disruption of the proceedings at RTC-Branch 24 of Biñan, Laguna, on said date. Furthermore, Judge Francisco's averments that Pros. Nofuente's group, which included Javier, Laurel, and Ramos, engaged in raucous laughter in the judge's presence even "with nothing funny to laugh about," threw sharp glances and made faces at Judge Francisco, and engaged in boisterous conversation punctuated by laughter inside the court premises, are insufficient to constitute contumacious behavior. Contempt of court presupposes a contumacious attitude, a flouting or arrogant belligerence, a defiance of the court,[41] something that is not evident in this case. There is absolute lack of proof that the laughter, conversations, and glances of Pros. Nofuente's group were about or directed at Judge Francisco and they disrupted or obstructed proceedings before the judge.

We believe that in issuing this baseless and erroneous contempt order, Judge Francisco was prevailed upon by his personal animosity against Pros. Nofuente and his group. This can be easily fathomed from Judge Francisco's inclusion of Javier, who is Pros. Nofuente's friend, in the Direct Contempt Order when Javier was not even within court premises at the time of

[41] *Delgra, Jr. v. Gonzales,* G.R. No. L-24981, January 30, 1970, 31 SCRA 237, 244.

the hearing of Spec. Proc. No. B-2433 on July 14, 1998. Clerk of Court Ernesto Luzod, Jr. attested to this fact, thus:

[ATTY. ZARATE]

Q This Exhibit M pertains (sic) Herminia S. Javier for the month of July 1-31, in the year 1998. Please go over it and confirm this honorable Investigating Court the Daily Time Record of Herminia S. Javier?

[LUZOD, JR.]

A This is the Daily Time Record for the month of July 1 to 31, 1998. That is our usual form of our Daily Time Record.

Q Go over with Exhibit M and examine precisely the particular date of July 14, 1998. Will you please tell this Court what did you find out for that date?
A She's under half day that morning and then she attended in the afternoon 1-5:30, sir.

Q When you said half day from what time will it commence an end of the half day absence.
A Eight to Twelve, sir.

ATTY. ZARATE:

Q Would you be able to know why on July 14, 1998, Herminia S. Javier obtain leave from your former office. If you know?
A On July 14, 1998, she asked permission from me for her to go to Calamba, Laguna, Land Bank.

Q Would you be able to tell us why she went to Calamba Laguna?
A She told me that she's going to refund her tax.

Q Were she (sic) obtain her leave for half day. Would you be able to tell us what time did he asked you for leave?
A More or less passed (sic) eight.[42]

[42] TSN, February 21, 2002, pp. 5-6.

It is well-settled that the power to punish a person in contempt of court is inherent in all courts to preserve order in judicial proceedings and to uphold the orderly administration of justice. However, judges are enjoined to exercise the power judiciously and sparingly, with utmost restraint, and with the end in view of utilizing the same for correction and preservation of the dignity of the court, and not for retaliation or vindictiveness. It bears stressing that the power to declare for contempt must be exercised on the preservative, not vindictive principle, and on the corrective and not retaliatory idea of punishment.[43] This was aptly expressed in the case of *Nazareno v. Barnes:*[44]

> A judge, as a public servant, should not be so thin-skinned or sensitive as to feel hurt or offended if a citizen expresses an honest opinion about him which may not altogether be flattering to him. After all, what matters is that a judge performs his duties in accordance with the dictates of his conscience and the light that God has given him. A judge should never allow himself to be moved by pride, prejudice, passion, or pettiness in the performance of his duties. He should always bear in mind that the power of the court to punish for contempt should be exercised for purposes that are impersonal, because that power is intended as a safeguard not for the judges as persons but for the functions that they exercise.

Nevertheless, we find that in issuing the Direct Contempt Order without legal basis, Judge Francisco is more appropriately guilty of the administrative offense of grave abuse of authority, rather than gross ignorance of the law and incompetence. In point is the case of *Panaligan v. Ibay,*[45] where Judge Francisco Ibay improperly cited John Panaligan for contempt.[46] We ruled:

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[43] *Tiongco v. Salao,* A.M. No. RTJ-06-2009, July 27, 2006, 496 SCRA 575, 586.

[44] 220 Phil. 452, 463 (1985).

[45] A.M. No. RTJ-06-1972, June 21, 2006, 491 SCRA 545, 554-556.

[46] Judge Ibay arrived early in the morning at his court, RTC-Branch 135 of Makati City, only to find out that the electric supply was cut off. Panaligan, the Building Management System Operator, admitted to switching off the power supply the day before after he discovered that the lights at RTC-Branch 134 of Makati City was left on after office hours. Since he did not have a key to

The integrity of the judiciary rests not only upon the fact that it is able to administer justice but also upon the perception and confidence of the community that the people who run the system have done justice. The assumption of office by a judge places upon him duties and restrictions peculiar to his exalted position. He is the visible representation of law and justice. He must be perceived, not as a repository of arbitrary power, but as one who dispenses justice under the sanction of the rule of law. The behavior and conduct of judges must reaffirm the people's faith in the integrity of the judiciary. Justice must not merely be done but must also be seen to be done. In the present case, respondent Judge may not have been urged by ulterior motives in citing complainant in contempt and in subsequently sending him to jail for putting off the lights in the 12th floor including his *sala*; nevertheless, his actuation can easily be perceived as being a repository of arbitrary power. His actuation must never serve to fuel suspicion over a misuse of the prestige of his office to enhance his personal interest.

We cannot simply shrug off respondent Judge's failure to exercise that degree of care and temperance required of a judge in the correct and prompt administration of justice; more so in this case where the exercise of the power of contempt resulted in complainant's detention and deprivation of liberty. Respondent Judge's conduct amounts to grave abuse of authority.

We have repeatedly reminded members of the judiciary to be irreproachable in conduct and to be free from any appearance of impropriety in their personal behavior, not only in the discharge of their official duties, but also in their daily life. For no position exacts a greater demand for moral righteousness and uprightness of an individual than a seat in the judiciary. The imperative and sacred duty of each and everyone in the judiciary is to maintain its good name and standing as a temple of justice. The Court condemns and would never countenance any conduct, act or omission on the part of all those involved in the administration of justice which would violate the norm of public accountability or tend to diminish the faith of the people in the judiciary, like in the case at bar.

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get into RTC-Branch 134 to simply turn off the lights, Panaligan had to switch off the circuit breaker which said court shared with RTC-Branch 135. Judge Ibay deemed Panaligan's explanation unsatisfactory, and cited Panaligan for contempt with the penalty of imprisonment for two days.

Squarely applicable is the case of *Teodora A. Ruiz v. Judge Rolando G. How*. In this case, respondent Judge Rolando G. How cited complainant Ruiz who was an employee of the court, in direct contempt of court for alleged willful display of abusive and disrespectful language hurled by the latter. This Court disagreed with the respondent Judge in finding that the actuations of Ruiz constitute direct contempt inasmuch as when the derogatory words were uttered by complainant no proceedings were being held nor was it shown that respondent Judge was performing judicial function. Thus, respondent Judge was declared guilty of grave abuse of authority for injudiciously ordering the detention of complainant without sufficient legal ground, and was fined in the amount of ₱5,000.00 with a stern warning that the same or similar act shall be dealt with more severely.

WHEREFORE, for improperly citing complainant Panaligan for contempt and ordering his detention without sufficient legal basis, a fine of ₱5,000.00 is hereby IMPOSED upon the respondent Judge, with a STERN WARNING that a repetition of the same or similar acts in the future will be dealt with more severely.

In three more succeeding cases, we sanctioned Judge Ibay for repeatedly citing people in contempt of court even without legal basis. In *Macrohon v. Ibay*,[47] Judge Ibay was again found liable for grave abuse of authority for which he was fined ₱25,000.00. For committing the same offense once more, he was penalized in *Nuñez v. Ibay*[48] with a fine of ₱40,000.00. When we found Judge Ibay guilty of grave abuse of authority for the fourth time in *Inonog v. Ibay*,[49] we ordered him to pay another fine of ₱40,000.00.

We note that in the matter before us that Judge Francisco was previously found guilty in *Gragera v. Francisco*[50] of violating the Code of Judicial Conduct for the unauthorized practice of law, for which he was fined ₱12,000.00 with a warning that the commission

[47] A.M. No. RTJ-06-1970, November 30, 2006, 509 SCRA 75, 92.

[48] A.M. No. RTJ-06-1984, June 30, 2009, 591 SCRA 229, 243.

[49] A.M. No. RTJ-09-2175, July 28, 2009.

[50] 452 Phil. 957, 963 (2003).

of a similar or other infractions shall be dealt with severely. Despite this warning, we yet again find Judge Francisco committing another administrative offense, *i.e.*, grave abuse of authority.

Disrespectful behavior of Pros. Nofuente's group (A.M. No. P-10-2745)

Judge Francisco charged Javier, Laurel, and Ramos with grave misconduct. He averred that the three court personnel were close to Pros. Nofuente, and referred to them as Pros. Nofuente's group, who exhibited disrespectful behavior towards him.

We note that Judge Francisco's charge for grave misconduct against the three court employees is essentially based on the same allegation of facts as his Direct Contempt Order. Consequently, for the same reasons we held that Judge Francisco wrongfully issued his Direct Contempt Order against Pros. Nofuente's group, we exculpate Javier, Laurel, and Ramos from the judge's charge for Grave Misconduct.

Misconduct is "a transgression of some established and definite rule of action, more particularly, unlawful behavior or gross negligence by a public officer." The misconduct is grave if it involves any of the additional elements of corruption, willful intent to violate the law or to disregard established rules, which must be established by substantial evidence.[51]

Judge Francisco was unable to present any evidence at all to support his accusations against Javier, Laurel, and Ramos. There is no one to corroborate Judge Francisco's narration of the instances when the three court personnel purportedly disrespected him or of the supposed motives which prompted said personnel to behave so. It is difficult for us to conclude that Judge Francisco was the subject of the boisterous conversations, raucous laughter, and sharp glances of Javier, Laurel, and Ramos in the absence of substantial evidence. We are hard put to rule that they were guilty of behavior amounting

[51] *Civil Service Commission v. Ledesma,* G.R. No. 154521, September 30, 2005, 471 SCRA 589, 603.

to misconduct, much more, grave misconduct, there being no showing of any established and definite rule of action transgressed or disregarded by the charged court personnel.

Falsification of DTRs by the court personnel (A.M. Nos. P-10-2745, RTJ-00-1992, P-10-2746, and P-10-2747)

In A.M. Nos. P-10-2745, RTJ-00-1992, P-10-2746, and P-10-2747, Judge Francisco charged several employees[52] of the RTC of Biñan, Laguna, with the falsification of DTRs, among other administrative offenses. We shall jointly discuss these administrative cases in so far as they concern the charges for falsification.

It is well-settled that in administrative proceedings, the complainant has the burden of proving the allegations in the complaint with substantial evidence, *i.e.*, that amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion. It must be remembered that while this Court has the duty to ensure that judges and other court personnel perform their duties with utmost efficiency, propriety and fidelity, it is also our obligation to see to it that they are protected from unfounded suits that serve to disrupt rather than promote the orderly administration of justice.[53] Judge Francisco miserably failed in this regard.

Other than Judge Francisco's allegations, the records are bereft of any evidence establishing that the charged court employees did indeed falsify their DTRs. Judge Francisco's very own testimony before Justice Barrios during the investigation exhibits the weakness of his case against the court employees for falsification of their DTRs. Pertinent portions of said testimony are reproduced below:

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[52] Laurel and Ramos in A.M. Nos. P-10-2745 and RTJ-00-1992; Chaves, Lopez, Orfiano, and Perez in A.M. No. P-10-2746; and Alfonso, Cuevillas, Javier, Laurel, Lopez, Moreno, Orfiano, Pascual, Perez, Ramos, and Sevilla in A.M. No. P-10-2747.

[53] *Dulay v. Lelina, Jr.*, 501 Phil. 559, 565 (2005).

J. BARRIOS:

Now, these employees charged with falsification of the Daily Time Record, they're employees of which Branch of the RTC of Laguna?

JUDGE FRANCISCO:

Nicanor Alfonso is detailed at the Office of the Clerk of Court, Benedicto Pascual employee of Branch 25, Ma. Fe Lopez Branch 24, [Diosalyn] Perez Branch 25, Julieta Chaves Branch 24, Diana Ramos Branch 25, Olivia Laurel Branch 25, Andrew Santos Branch 25, Luis Sevilla Branch 25 and Herminia Javier Office of the Clerk of Court.

J. BARRIOS:

You were at some points in time the Presiding Judge assigned to Branch 24 and Branch 25?

JUDGE FRANCISCO:

Branch 25 then Branch 24, your honor.

J. BARRIOS:

Not at a single given time?

JUDGE FRANCISCO:

Not at a single given time although when J. Cosico (*sic*) promoted to the Court of Appeals I was Pairing Judge.

J. BARRIOS:

But only for a short time?

JUDGE FRANCISCO:

Only for a short time, your honor.

J. BARRIOS:

When these cases were filed against these parties for falsification were you then the Presiding Judge of Branch 24 when you filed those cases against the employees assigned to the said Branch?

JUDGE FRANCISCO:

I was still the Presiding Judge of Branch 24.

J. BARRIOS:

> And when you filed these cases against the employees assigned to Branch 25 you were the Presiding Judge of Branch 25.

JUDGE FRANCISCO:

> No more, your honor please.

J. BARRIOS:

> What was your basis in saying that you filed their DTR specifically those assigned to Branch 25 when you were no longer the Presiding Judge of Branch 25?

JUDGE FRANCISCO:

> When I became the Executive Judge in Regional Trial Court in Biñan, I was able to obtain photocopies of their leave cards with the Office of the Clerk of Court and I found out firstly, that Benedicto Pascual exhausted all his leave credits when he took the Bar Examinations. I was then surprised why he was receiving his full salary notwithstanding that he was not reporting for work. So, I conducted the investigation.

J. BARRIOS:

> So, it was of your personal knowledge that this Benedicto Pascual was not reporting for work but was placing his DTR that he was reporting for work?

JUDGE FRANCISCO:

> Yes, your honor.

J. BARRIOS:

> What about for the others?

JUDGE FRANCISCO:

> Well, with respect to the stenographers, sir, there was a serious dispute between us. They were reporting for work only once and according to them they were transcribing their note at home. Well, I told them that practice should not be tolerated and when I assumed the position of Acting Presiding Judge in Branch 24 there were hearings cancelled because no stenographer was around and so, I found out that they were receiving their full salary for the month.

J. BARRIOS:

> And they entered into the Daily Time Records entries that they were present on that date?

JUDGE FRANCISCO:

> That's the problem, your honor. That's the reason why I had been requesting the Office of the Court Administrator for copies of their Daily Time Records I was not successful but from the Finance Department I was able to determine that they were receiving their full salaries for the month.

J. BARRIOS:

> And they assumed that progression that they have falsified the time records?

JUDGE FRANCISCO:

> Yes, your honor please.

J. BARRIOS:

> You don't use a bundy clock?

JUDGE FRANCISCO:

> There was no bundy clock in RTC, Biñan. Now, I consulted with Atty. Mariane Carpina and he told me that the employee should sign in a logbook and so I issued the memorandum circular for the employees. They would comply but . . . and most of the time they falsified the entries in the logbook by signing their names between or in any available space in the logbook.

J. BARRIOS:

> Was that done in your presence and observation?

JUDGE FRANCISCO:

> Well, the making of the entries was **not done in my presence** but then I confronted them about this ***singit*** and they readily admitted it and change their DTR to conform with the correct time that became the source of dispute between me and the employees.[54] (Emphases ours.)

[54] TSN, November 15, 2002, pp. 31-34.

The questioning of Judge Francisco continued:

PROS. NOFUENTE:

> You said that you filed a criminal case of falsification of DTR against Diana Ramos, Olivia Laurel and so on and so forth. Now my question to you is, were you able to see these DTRs? When you filed these cases?

WITNESS [JUDGE FRANCISCO]:

> I was not able to see them because I was not furnished a copy of the same.

PROS. NOFUENTE:

> By that answer of yours, it is now clear that you filed a falsification cases without seeing that document which was falsified. That is a manifestation. That is not a question.

WITNESS:

> Let me answer.

PROS. NOFUENTE:

> There is no question, your Honor. That is only a manifestation.

J. BARRIOS:

> Let me ask you the question. So you are saying that there is DTR that were falsified without seeing the documents supposedly falsified?

WITNESS:

> As completed and as submitted to the Office of the Court Administrator, Your Honor. I saw them being prepared wherein every employee states that he was working from 8 to 12 then from 1 to 5 in the afternoon. And I know for a fact then that Olivia Laurel was signing these DTRs in her capacity as OIC Branch Clerk of Court.

J. BARRIOS:

> How near were you from her when you saw her preparing those DTR?

WITNESS:

I saw Olivia Laurel signing them.

J. BARRIOS:

The question is, how near were you to Olivia Laurel when you saw her prepare those DTRS.

WITNESS:

About three feet away. Your Honor please.

J. BARRIOS:

She noticed that you were present and watching?

WITNESS:

Yes, Your Honor please.

J. BARRIOS:

And she continued doing it?

WITNESS:

Yes, Your Honor please.

J. BARRIOS:

And could you read the entries that she was making?

WITNESS:

The entries were made by the employee and the DTR is submitted to Olivia Laurel for her approval, Sir.

J. BARRIOS:

So she was not entering or placing therein the entries. She was only signing the DTRs?

WITNESS:

Yes, Your Honor please.

J. BARRIOS:

So you did not see who prepared those DTRs?

WITNESS:

I know that every employee prepare his or her own DTR.

J. BARRIOS:

So it is based on your assumption?

WITNESS:

Based on the policy of the Supreme Court and based from what I sometime saw employees doing.

J. BARRIOS:

Did you actually see the entries? Did you read them? Did you perceive them distinctly?

WITNESS:

What I perceived, Your Honor, is that every employee in Branch 25 made it appear that they were reporting for work regularly from 8 to 12 then from 1 to 5 o'clock in the afternoon. Now, if there are absences they were not reflected in the DTR. So what I perceive was that these absences were supported by applications for leave of absences filed with the OCAD.

J. BARRIOS:

Were these employees absent all the time?

WITNESS:

Diana Ramos was always absent or late, Sir.

J. BARRIOS:

When you say absent you would be saying that for days on end, and for several days she is not present?

WITNESS:

Yes, Your Honor please.

J. BARRIOS:

She is not reporting for duty at all.

WITNESS:

Not reporting for duty.

J. BARRIOS:

In particular, this Diana Ramos her place of work or assigned table [was] within your view?

WITNESS:

Yes, Your Honor. Because the RTC in Biñan occupies about a hundred square meters area of the second floor of the Trojan Building so for Branch 25 about fifty square meters area portion of that second floor is assigned.

J. BARRIOS:

During your stint as Presiding Judge of Branch 25, do you have an assigned chamber?

WITNESS:

Yes, Your Honor please.

J. BARRIOS:

And is that chambers enclosed by walls or partition?

WITNESS:

Yes, Your Honor.

J. BARRIOS:

It has a ceiling?

WITNESS:

It had a ceiling, Your Honor.

J. BARRIOS:

So you would say that this place where you work is isolated from the rest of the court officers or areas occupied by your staff?

WITNESS:

I do not consider my chamber isolated, Your Honor, because I usually go to the library and go to their place. I pass through the working place of my staff.

J. BARRIOS:

What you mean is that it is physically isolated?

WITNESS:

Yes, Your Honor.

J. BARRIOS:

If you close the door you would not be able to see the employees outside?

WITNESS:

Yes, Your Honor.

J. BARRIOS:

And do you close the door during the times when you were working?

WITNESS:

Yes, Your Honor. [55]

From Judge Francisco's testimony alone, his cause of action is bound to fail. His own testimony wrote *finis* to his administrative cases against the court personnel for falsification of DTRs. Judge Francisco cannot depend on mere assumptions, suspicions, and speculations. His charges must be based on his own personal knowledge of facts, backed up by competent evidence. As correctly observed by Justice Barrios, "Judge Francisco failed to substantiate by convincing evidence that these employees committed falsification especially so as he has no personal knowledge of such act." Judge Francisco was in no position to have kept tabs on the daily attendance of all the court personnel he charged, especially those who worked at another branch or office and were not under the judge's administrative supervision.

Alfonso, one of the court personnel charged for falsification of DTR by Judge Francisco, was assigned at the Office of the Clerk of Court. We can not imagine how Judge Francisco monitored Alfonso's presence in or absence from said office. While Alfonso admitted that he was on leave for a long time, he duly filed his leave of absence. According to Alfonso:

[55] TSN, May 23, 2002, pp. 135-146.

[CROSS EXAMINATION BY
JUDGE PABLO B. FRANCISCO]

Q From 1995 up to the date Judge Francisco was detailed in Branches 25 and 24 in Biñan, you were receiving your salary from the Supreme Court, isn't it?

Atty. Zarate:

As approved by Atty. Luzod.

Judge Francisco:

Q Because you prepared your daily time record and approved by Atty. Luzod, isn't it?
A Yes, sir.

xxx xxx xxx

Q You were confined, according to you in the Lung Center of the Philippines in July 1996?
A Yes, sir.

xxx xxx xxx

Q About how many months were you confined?
A Two (2) months more or less aside from the complete rest in the house.

Q And you were able to draw your salary from the Supreme Court based on the same daily time record approved by Atty. Luzod while you were confined in the hospital?
A Yes, sir, because of the sick leave.[56]

We stress that Judge Francisco did not even have in his possession a single copy, whether original or certified photocopy, of the purportedly falsified DTRs. Without copies of the DTRs in question, there is no reasonable or logical way for us to determine whether they were indeed falsified. Additionally, the lack of details – such as the particular dates the court personnel

[56] TSN, June 16, 2003, pp. 25-26.

were supposedly absent but which they declared to have been present at the court in their DTRs – not only prevents us from verifying Judge Francisco's allegations, it also precludes the charged court personnel from preparing their explanation or defense.

Judge Francisco's claim that some of the court personnel charged, specifically, the court stenographers, admitted to falsifying their DTRs so as to correspond to the logbook, was refuted by Lopez in her testimony, to wit:

> [CROSS EXAMINATION BY
> JUDGE PABLO B. FRANCISCO]
>
> Q Did not Judge Francisco call you one by one in the court chamber?
> A Yes, you have called us one by one in your court chamber only for us to change some entries in our daily time record of July 1998. That was the time that I could very much recall that you have called the court stenographers inside your chamber.
>
> xxx xxx xxx
>
> Q Now, sometime in July 1998, did not Judge Francisco informed you that you falsified your daily time records by making it appear therein that you were reporting for work at 8:00 in the morning when in fact most of the time you were late?
> A That is what I'm referring to earlier, your Honor, when you asked me about the letter addressed to Justice Benipayo. So, I answered you that you have called us, the court stenographers, inside your courtroom particularly because of the daily time records dated July 1998 that you have requested us to change several entries in our daily time records.
>
> Q To conform with the logbook, isn't it?
> A You requested us to change the entries of our DTR.
>
> Q And you complied?
> A We complied because you are our superior, your Honor.

x x x x x x x x x

A Actually, the entries in the logbook conform but you have designated a person to change what has already been written in the logbook. You have directed or ordered one of our court personnel to change the entry in the logbook and then you asked us to change also the entry in our DTR. That is what happened, your Honor.[57]

Perez recalled the same event, testifying as follows:

[ATTY. ZARATE]:

Q Can you tell us in details that circumstances when they (sic) forced you to change your Daily Time Record?

[PEREZ]:

A *Tinawag po niya kaming isa-isa Evelyn, Ma. Fe [Lopez], Lita [Chavez] at ako [Perez]. Isa-isa po kaming tinawag tapos po galit na galit siya. Sabi niya palitan namin yung entry lagyan namin ng late tapos inisyalan namin*. I was afraid he was very insistent and I was very scared because he was shouting.

Q What was [he] shouting…?
A *Palitan mo iyan, palitan mo iyan kung hindi di ko pipirmahan iyang Daily Time Record mo.*

Q Is that all that he told you?
A That is what I can remember, sir because I was so afraid.

Q How about the other stenographers who were with you did they also comply to the request of Judge Francisco to change to amend their Daily Time Record?
A Yes, because they were also afraid.[58]

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[57] TSN, June 16, 2003, pp. 38-40.
[58] TSN, June 23, 2003, p. 10.

Since it has not been established that the DTRs of the court employees were falsified, then there is also no basis for us to hold administratively liable the immediate supervisors who approved the same. The signing by the supervisors of their subordinates' DTRs enjoys the presumption of regularity,[59] which Judge Francisco failed to contradict and overcome with evidence.

Service of summons (A.M. No. P-10-2747)

Judge Francisco accused Utility Worker Bati of serving summons upon the defendants in civil cases, with the authorization of Sheriff Magat; then Magat and Bati made it appear that the former personally served the summons. Records, however, reveal that Bati merely accompanied Magat and did not serve summons and other court processes on his own. Bati explained:

DIRECT EXAMINATION BY
ATTY. NOE CANGCO ZARATE

Q You said that you are an Aid, will you specify the duties of an Aid in the Office of the Clerk of Court?
A Performing janitorial job and all other jobs that may be assigned to me from time to time.

Q Mr. Bati, who is your immediate superior?
A Atty. Ernesto Luzod, Clerk of Court.

Q In this proceedings, Mr. Bati, you are accused by Judge Pablo B. Francisco of falsification of public document which according to him you are performing the duties of a provincial Sheriff by serving copies of summons by yourself alone; what can you say about this?
A That is not true.

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[59] According to Rule 131, Sec. 3(m):

SEC. 3. Disputable presumptions. – The following presumptions are satisfactory if uncontradicted, but may be contradicted and overcome by other evidence:

x x x x x x x x x

(m) That official duty has been regularly performed.

Q What is the truth now?
A I am just (sic) brought along by our Sheriff in serving the summons because I have a vehicle.
Q: And who was that person or Sheriff that you are referring to?
A: Arnel Magat, Sir.

Q: Why were you asked to accompany him all the time by serving summons?
A I have a vehicle, Sir.[60]

In the course of his testimony, Bati admitted serving a copy of a decision upon a party unaccompanied by Magat, but Bati was acting upon the instruction of Judge Francisco himself. According to Bati:

Q Do you know, Judge Pablo B. Francisco?
A Yes, Sir.

Q Have you had the opportunity to serve under him?
A Yes, Sir.

Q Can you recall as clear as you can if you happen to serve a copy of decision to the parties involved by order of Presiding Judge Francisco?
A I cannot remember the year.

Q Would you be able to tell us the case?
A I think that involved a decision in an election protest in Sta. Cruz.

Q What did Judge Francisco ask you to do?
A He asked me to serve the decision in Sta. Cruz.

Q How were you able to talk to him about that decision?
A He called me and told me to serve the decision.

Q Did you follow him?
A Yes, Sir.

[60] TSN, May 16, 2003, p. 4.

Q Why?
A He is the judge and he is our boss.

Q What is that decision? What is the nature of that decision, if you can recall?
A That referred to the election case of Panganiban and Bautista.

Q Where did you serve that decision?
A Sta. Cruz and Manila, Sir.

Q Would you be able to tell us the name of that person to whom you serve that decision?
A I know in court and to the lawyer of either Panganiban or was it Bautista?

Q In serving the decision, were there any other person that accompany you?
A Yes, Sir.

Q Who is that person?
A Dina Bautista, who is allegedly the niece of Mayor Bautista.[61]

Bati remained steadfast even when cross-examined:

[CROSS EXAMINATION BY
JUDGE PABLO B. FRANCISCO]

Q You also (*sic*) according to you, you were also asked by Judge Francisco to serve decision, a decision in this electoral protest case?
A Yes, Sir.

Q Where did you serve the decision?
A In court and with the lawyer of the opponent of Panganiban.

Q What is the name of the lawyer?
A I cannot remember anymore because I had a companion who brought that (*sic*) to the house.

[61] *Id*. at 5-6.

Q This copy of the decision, you serve upon the lawyer of Panganiban, is that correct?
A I am not sure whether it was the lawyer of Panganiban or Bautista because I don't know either of them.[62]

Bati testified very candidly, providing details (*i.e.*, the electoral case in which Judge Francisco ordered him to serve a copy of the decision, the parties, where he served the copy of the decision, who was his companion) which Judge Francisco was not able to refute. Bati's testimony certainly deserves more evidentiary weight than that of Judge Francisco's general allegations.

Necessarily, we also absolve Magat from any wrongdoing as there is no evidence that he unlawfully authorized Bati to serve summons and other court processes upon the parties in civil cases, and that Magat falsified the returns to make it appear that he effected personal service. As Bati testified, he did not serve summons and other court processes on party-litigants by himself. Service of summons and court processes were still personally done by Magat who only asked Bati to accompany him since the latter had a vehicle. It even appears that the only time Bati served a copy of a decision on a party by himself, it was not pursuant to Magat's authorization, but upon Judge Francisco's order.

Pleadings in the ejectment case (A.M. No. P-10-2748)

Judge Francisco asserted that he was unable to decide Civil Case No. B-5217, an ejectment case, within the prescribed period, because Cuevillas hid the fact that the parties in said case had already filed their memoranda. Cuevillas was also allegedly remiss in the performance of her duties, failing to send necessary notices to the parties, consequently, hampering court proceedings. Hence, he charged Cuevillas with Grave Misconduct.

Once more, Judge Francisco made an accusation which he did not substantiate with evidence. There is no dispute that

[62] *Id*. at 7-8.

Cuevillas received the memoranda of the parties in Civil Case No. B-5217. But, as Cuevillas clarified, she is in charge of the records for criminal cases, and it is Moreno who is responsible for the records of civil cases. Cuevillas only received the memoranda of the parties in Civil Case No. B-5217, an ejectment case, because Moreno was not around when the said pleadings were filed. It had not been established that it was still up to Cuevillas to attach the said memoranda to the records of the case, which, to emphasize, was a civil case, and to notify Judge Francisco that the said pleading had already been filed. According to Judge Francisco himself, Moreno was present at the court on the days when the memoranda were filed – an allegation which is not necessarily inconsistent with Cuevillas' narration, it being possible that Moreno was only momentarily out of the office when the parties filed their memoranda. We are perplexed as to why Judge Francisco is bent on holding Cuevillas solely liable for the omission, *i.e.*, failure to inform the judge that the parties to Civil Case No. B-5217 already filed their memoranda, and absolving Moreno who is primarily in-charge of the records for civil cases.

Furthermore, the omission, by itself, does not constitute grave misconduct on the part of Cuevillas. The records are bereft of any proof that Cuevillas intentionally hid the fact of the filing of the memoranda by the parties in Civil Case No. B-5217 from Judge Francisco.

Also, Judge Francisco cannot put the entire blame for his failure to render a decision in Civil Case No. B-5217 within the prescribed period on the lack of notice from his staff that the parties had filed their memoranda and the case was already submitted for decision. He must remember that as a trial judge, he was expected to adopt a system of record management and organize his docket in order to bolster the prompt and effective dispatch of business. Proper and efficient court management is the responsibility of the judge. It is incumbent upon judges to devise an efficient recording and filing system in their courts so that no disorderliness can affect the flow of cases and their speedy disposition.[63]

[63] *Office of the Court Administrator v. Legaspi*, A.M. No. RTJ-05-1893, March 14, 2006, 484 SCRA 584, 608.

As to her alleged failure to notify the parties in some cases, Cuevillas defended herself, thus:

DIRECT EXAMINATION BY
ATTY. NOE CANGCO ZARATE

Q: In this letter-complaint against you, you were charged that you have been remiss in the performance of your duties due to the fact that you failed to send notices to the parties and that because you failed to do so your duties, sometimes the court has been hampered for lack of notices, it is supposed to be your duty; what can you say about it?
A: With so many records that we have, there are times when I have not sent notices. Our terminal number is 400.

Q: How do you consider such situation that you now describe as your reply to his complaint to you?
A: With so many, there are times that I miss because I'm the only one handling such a volume.
Q: Do you consider that as normal in your case?
A: No, Sir because in the morning, I'm the one who would type it and in the afternoon, I would be the one to mail these.

xxx xxx xxx

Q: In your letter-reply to the charges of Judge Pablo B. Francisco, you mentioned that the motive of Judge Francisco in filing this case was you were one of the signatories in the petition to return to Sta. Cruz, is that correct?
A: Yes, Sir.

Q: Why did you sign that petition?
A: Because I felt that there was no longer harmony between the judge and the employees.[64]

During cross-examination and re-cross-examination, Cuevillas further declared:

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[64] TSN. June 16, 2003, pp. 5-6.

[CROSS EXAMINATION BY
JUDGE PABLO B. FRANCISCO]

Q: I have here a list of cases wherein you failed to notify the counsel resulting to the cancellation of the hearing of said case. Let's say the case of *People vs. Ernesto Elasegui*, Criminal Case No. 9319. The hearing was set on May 12, 1998 but it was cancelled because you failed to notify Atty. Cayetano Santos, is that correct?

A: Yes, your Honor.

Q: All right, another case. *People vs. Luis Doria*, the hearing was also cancelled because you failed to notify Atty. Norberto de Jesus, can you remember?

xxx xxx xxx

A: Yes, your Honor, but during that time, you were conducting your inventory, so we were hard put.

Q: There's another case, *People vs. Angelo Maylin*, this is Criminal Case No. 9160-B, it was supposed to be heard on May 19, 1998, again the hearing was cancelled because you failed to notify counsel for the accused.

A: Yes, your Honor, because you requested the Supreme Court to make an inventory for the month of April.[65]

[RE-CROSS EXAMINATION BY
JUDGE PABLO B. FRANCISCO]

Q: And Judge Francisco summoned you in the sala while there was a hearing and asked you why you failed to notify?

A: Yes, your Honor, because of so many records that I am handling.

Q: And you told Judge Francisco that there were so many cases, which were being set for hearing, isn't it?

A: Yes, your Honor because at that time I was also designated to work on that inventory, how can I work at the same time on the inventory as well as in the sending of notices.[66]

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[65] *Id*. at 8-9.

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

While Cuevillas herself acknowledged being remiss in the performance of her duties for a time, we deem the same to be excusable given the circumstances. She was obviously overburdened with work. An inventory of cases was being conducted in their *sala* during the months of February, March, and April of 1998. In addition, she was participating in the revision of ballots in the election case Judge Francisco was handling in the RTC of Sta. Cruz. It is not difficult to understand how Cuevillas could have missed sending notices of hearings for May 1998 to the parties in some cases, thus, resulting in the cancellation of said hearings. Nevertheless, we must remind Cuevillas that she must capably perform her duties despite the heavy workload, and we shall not be as tolerant in the future should she be remiss again. All employees in the judiciary should be examples of responsibility, competence and efficiency. As officers of the court and agents of the law, they must discharge their duties with due care and utmost diligence. Any conduct they exhibit tending to diminish the faith of the people in the judiciary will not be condoned.[67]

Certifications issued by Atty. Galeon (A.M. Nos. P-10-2749 and P-03-1706)

In A.M. No. P-10-2749 Judge Francisco charged Alfonso, Bati, Cuevillas, Javier, Lopez, Magat, Moreno, Orfiano, Pascual, Perez, Santos, and Sevilla with Dishonesty and Gross Misconduct after said court personnel accused the judge, in their Comment in A. M. No. P-10-2747, of falsifying his certificates of service by making it appear that he was present and conducted hearings on days when he was actually absent.

We dismiss A.M. No. P-10-2749 as there is no basis to hold the concerned court personnel administratively liable for dishonesty and gross misconduct. Although we are not making a categorical finding herein that Judge Francisco falsified his certificates of service as the court personnel merely alleged the same in their Comment to Judge Francisco's Letter-Complaint in A.M. No. P-10-2747, and did not formally charge the judge for the supposed offense,

[67] *Aquino v. Lavadia*, 417 Phil. 770, 776 (2001).

we find that the court personnel's claims against Judge Francisco were not completely fabricated and purely motivated by malice. They did have in their possession Certifications issued by Atty. Galeon stating that: (1) except for December 14, 1995, no other session was held every Wednesday between December 4, 1995 and January 5, 1996; and (2) no setting of cases was made between February 7, 1996 and August 27, 1997.

The charged court personnel uniformly testified:

LOPEZ:

Judge Francisco:

Q: Mrs. Lopez, you were also a signatory to a letter by court employees addressed to the Office of the Court Administrator stating among others that Judge Francisco was not holding sessions during Wednesdays at the time that he was the Presiding Judge in Branch 25, are you aware of that?
A: Yes, your Honor.

Q: Do you have personal knowledge of what you stated in that letter?
A: We only learned that Judge Francisco do not hold hearings during Wednesdays through the Certification issued by the Clerk of Court, Branch 25, Atty. Galleon.

Q: Is there a certification from Atty. Galleon that Judge Francisco was not holding session every Wednesday?
A: It is attached to the petition letter.

xxx xxx xxx

Judge Barrios:

But the witness has answered that she was one of those who made that statement, one of the signatories and that her basis was knowledge she derived from that letter.
Q: So, that is your only basis for stating that Judge Francisco did not hold office on Wednesday?

Witness:
A: Yes, your Honor x x x.

JUDGE FRANCISCO:

Q: Anyway, I have here a certification that I assumed duties on January 2, 1995 as Presiding Judge of Regional Trial Court, Branch 25, Biñan, Laguna. This is signed by Atty. Ernesto Luzod, Jr. and attested by Judge Cosico. How about after January 5, 1996, what was your basis in telling the Court Administrator that I was not holding session every Wednesday?
A: That is based on that certification.

Q: No, that certification really states that it was only up to January 5, 1996. Now, after January 5, 1996, what was your basis now?
A: Your Honor, it's not an individual petition, it's a petition signed by all the court personnel. Of course, we will gather all the documents to be attached to that petition and one of those documents is the certification issued. So, on that point, we agree that you are not holding hearings during Wednesdays based on the documents we have gathered, but we are not very specific.[68]

ORFIANO:

Q: And you also accused me in this letter in [A.M. No. P-10-2749] of not conducting trial every Wednesday of the week before Branch 25 became special court, isn't it:
A: Yes, Sir.

Q: Is your allegation now true?
A: Yes, sir.

Q: Do you have evidence to prove that I was not conducting trial every Wednesday?
A: Per your court calendar, your Honor, because we secured copies of your court calendar and the present Clerk of Court, Atty. Galleon issued a Certification to that effect x x x.

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[68] TSN, June 16, 2003, pp. 42-44.

Q: All right. You also accused me of not reporting for work the whole month of August 1997, did you not?
A: Per your court calendar, sir.[69]

PEREZ:

Q: What else did you charge against me . . . You were also a signatory to this letter to another letter (sic) submicious (sic) letter addressed to the Court Administrator accusing me of not reporting or not holding session every Wednesday. Did you not sign this letter?

xxx xxx xxx

A: Yes, sir. I signed.

JUDGE FRANCISCO:

Q: And your statements are true?
A: Yes, sir.

Q: Of your own knowledge?
A: Some of my own knowledge. Some based on Court record.

Q: Will you produce those records?
A: This records (*sic*) certified by Atty. Galleon.[70]

The court personnel merely relied on the Certifications issued by Atty. Galeon, who, as Clerk of Court, is mandated to "prepare, for any person demanding the same, a copy certified under the seal of the court of any paper, record, order, judgment, or entry in his office, proper to be certified xxx."[71] And the reliance by the court personnel on Atty. Galleon's Certifications does not constitute dishonesty or gross misconduct.

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[69] TSN, June 9, 2003, p. 43.

[70] TSN, June 23, 2003, p. 25.

[71] Revised Rules of Court, Rule 136, Section 11.

In A.M. No. P. 03-1706, Judge Francisco accused Atty. Galeon and Laurel of Falsification of Public Document for making untruthful narration of facts in another Certification which stated that the judge did not hold hearings in August 1997. According to Judge Francisco, Atty. Galeon and Laurel conspired with each other, with the former issuing a Certification based on the false entries in the calendar book made by the latter. A careful review of the records does not yield any reasonable basis for disciplinary action against Atty. Galeon and Laurel.

In falsification by false narration of facts, (1) the offender makes untruthful statements in a narration of facts; (2) he has a legal obligation to disclose the truth of the facts narrated by him; (3) the facts narrated are absolutely false; and (4) it was made with a wrongful intent to injure a third person.[72] None of these elements exists in this case.

When Atty. Galeon certified the photocopies of the 10 pages of the court calendar book, she was not making a narration of facts. She was just certifying that the photocopies were faithful reproductions of the original pages of the court calendar book. As Atty. Galeon pointed out, she affixed her signature on the photocopies only after she had compared them with the original copies and was satisfied that they were exact copies.

Also unsubstantiated is Judge Francisco's assertion of conspiracy between Atty. Galeon and Laurel. As we held in the preceding paragraph, Atty. Galeon only made her Certification based on the court calendar book presented to her. That Laurel tampered with the entries in the court calendar book was not even proven. Enlightening is the following testimony of Laurel on how the court calendar book is prepared, which renders it highly improbable for him to falsify the entries therein:

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[72] *Re: Spurious Certificate of Eligibility of Tessie G. Quires, RTC, Office of the Clerk of Court, Quezon City,* A.M. No. 05-5-268-RTC, May 4, 2006, 489 SCRA 349, 358.

[DIRECT EXAMINATION BY
ATTY. NOE CANGCO ZARATE]

Q: In preparing this Exh. "2", Laurel, would you be able to tell us when did you prepare this calendar book?
A: This logbook, Sir, is usually prepared ahead of time.

Q: When you said ahead of time, ahead of schedule?
A: Yes, Sir.

Q: More or less, what is the month, which you considered to be ahead of time?
A: This calendar book, Sir, as you can see, was prepared by the former Branch Clerk of Court, so I just continue doing this.

xxx xxx xxx

Q: When was this prepared when you said ahead of time?
A: Fiscal Casano was the Branch Clerk of Court of Branch 25 and she prepared this January 11 of 1996 and she resigned from the service in June of 1996 and her handwriting appears until December of 1996, Sir.

Justice Barrios:

> You mean to say that the entirety of that exhibit was prepared by Atty. Casano?

Witness:

> Your Honor, this was prepared by Atty. Casano in January of 1996 until December of 1996, but she resigned in June 1996, Sir.

Justice Barrios:

> So, she was preparing that during the period of January to June of 1996 but the entries covered [the] schedule up to December of 1996?

Witness:

Yes, Sir, in her handwriting, Sir.

Justice Barrios:

So that even when you were already the Officer-in-Charge, the schedules there referred to were those prepared at the time of Atty. Casano?

Witness:

Yes, Your Honor.

xxx xxx xxx

Q Now you are being charged by Atty. Francisco of Falsification of Public Document allegedly you manufacture entries in the month of August 1997 in this calendar book, what can you say about that?

A That is not true, Sir.

Q Why?

A Because as you can see, all the employees in the branch has access to this logbook. I cannot manufacture the entries because as I have explained earlier, even though Fiscal Casano was not the Branch Clerk of Court of Branch 25, she has still here her handwriting and as you can see, Sir, there are so many handwritings as appearing in this logbook.

Q Different handwriting?

A Yes, Sir.[73]

Consequently, we are likewise dismissing A.M. No. P. 03-1706.

The salary of Judge Francisco's personal security (A.M. No. RTJ-10-2214)

In their Complaint in A.M. No. RTJ-10-2214, Magat and Arellano alleged that Judge Francisco committed Grave

[73] TSN, April 27, 2004, pp. 6-9.

Misconduct for compelling them to pay for the salary of the judge's personal bodyguard, Nuestro. Similar to most of the administrative charges herein, we are dismissing A.M. No. RTJ-10-2214 for lack of merit.

In Magat's *Sinumpaang Salaysay*, he disclosed the following:

Na noong Pebrero 1998, ako ay kinausap ni Hukom Francisco at hiniling niya sa akin na kung maari ay kunin ko si Joselito Nuestro, dating alalay ni Judge Francisco bilang katulong ko sa aking nga gawain bilang Sheriff sa bayad na ₱100.00 bawat araw ng trabaho;

Na ayon kay Judge Francisco, ipinagkakatiwala na niya sa akin si Joselito Nuestro sapagkat wala na siyang pondo para sa suweldo nito;

Na wala akong malinaw na katugunan sa alok ni Judge Francisco ngunit sa paglipas ng araw ay naging katulong ko rin sa aking pagtupad sa tungkulin si Lito Nuestro at siya ay aking naatasan maglagay ng mga "Notices of Sale", magsilbi at magpadala ng aking nga liham at samahan ako sa aking mga lakad sa humigit kumulang na dalawang (2) buwan, at biniyayaan ko naman siya ng ₱3,000.00, humigit-kumulang.[74]

Magat affirmed his execution of that the aforequoted sworn statement during his cross-examination:

[CONTINUATION OF CROSS-EXAMINATION
BY JUDGE PABLO B. FRANCISCO]

Q: I'm showing to you another Sinumpaang Salaysay, this is dated July 1998. Below this Sinumpaang Salaysay above the typewritten name Arnel G. Magat, there appears to be a signature, is this your signature?
A: Yes, Your Honor.

Q: And the statements here are all correct?
A: Let me read that. Yes sir.[75]

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[74] Folder of Exhibits, Exh. 15 (for Magat and Arellano).

[75] TSN, July 1, 2004, p. 6.

Again, in their letter to the Supreme Court, Magat and Arellano wrote:

> But the charge made to us by Joselito Nuestro that he was made to work with us in three days period is true because at that time, there was no available process server, and, we gave Joselito Nuestro to conduct the posting of notice of extrajudicial foreclosure of real estate mortgage filed in our office by various banks and financial entities.[76]

As admitted by Magat and Arellano, they had actually availed themselves of Nuestro's services several times, for which, apparently, they had to pay Nuestro. While Nuestro should not have been allowed to perform the duties and functions of a court employee, there was no clear showing that Magat and Arellano were allowed or coerced by Judge Francisco to use Nuestro's services and paying Nuestro for the same.

WHEREFORE, premises considered, we *DISMISS* all charges in A.M. Nos. P-10-2745, RTJ-00-1992, P-10-2746, P-10-2747, P-10-2748, P-10-2749, P-10-2750, P-10-2751, P-03-1706, and RTJ-10-2214; while we *DECLARE* Judge Pablo B. Francisco *GUILTY* in A.M. No. RTJ-06-1992 for Abuse of Authority in issuing the Direct Contempt Order dated July 14, 1998 and *IMPOSE* upon him a *FINE* in the total amount for ₱25,000.00, to be deducted from whatever benefits may be due him in view of his resignation[77] as Presiding Judge of Regional Trial Court, Branch 26, Sta. Cruz, Laguna.

SO ORDERED.

Corona, C.J., Nachura,[*] *Peralta,*[*] and *Abad,*[*] *JJ.,* concur.

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[76] *Rollo* (A.M. No. RTJ-10-2214), pp. 2-3.

[77] Court *En Banc* Resolution dated August 19, 2003 in A.M. No. 03-7-420-RTC.

[*] Per Raffle dated June 28, 2010.

THIRD DIVISION

[G.R. No. 156797. July 6, 2010]

IN RE: RECONSTITUTION OF TRANSFER CERTIFICATES OF TITLE NOS. 303168 AND 303169 and ISSUANCE OF OWNER'S DUPLICATE CERTIFICATES OF TITLE IN LIEU OF THOSE LOST, ROLANDO EDWARD G. LIM, *petitioner*.

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; FORUM SHOPPING; NATURE, EXPLAINED.— Forum shopping is the act of a party litigant against whom an adverse judgment has been rendered in one forum seeking and possibly getting a favorable opinion in another forum, other than by appeal or the special civil action of *certiorari*, or the institution of two or more actions or proceedings grounded on the same cause or supposition that one or the other court would make a favorable disposition. Forum shopping happens when, in the two or more pending cases, there is identity of parties, identity of rights or causes of action, and identity of reliefs sought. Where the elements of *litis pendentia* are present, and where a final judgment in one case will amount to *res judicata* in the other, there is forum shopping. For *litis pendentia* to be a ground for the dismissal of an action, there must be: (*a*) identity of the parties or at least such as to represent the same interest in both actions; (*b*) identity of rights asserted and relief prayed for, the relief being founded on the same acts; and (*c*) the identity in the two cases should be such that the judgment which may be rendered in one would, regardless of which party is successful, amount to *res judicata* in the other. For forum shopping to exist, both actions must involve the same transaction, same essential facts and circumstances and must raise identical causes of action, subject matter and issues. Clearly, it does not exist where different orders were questioned, two distinct causes of action and issues were raised, and two objectives were sought.

2. ID; ID; ID; WHERE FILING OF APPLICATION FOR ADMINISTRATIVE RECONSTITUTION OF TITLE AND PETITION FOR JUDICIAL RECONSTITUTION OF TITLE INVOLVING THE SAME LAND DOES NOT CONSTITUTE FORUM SHOPPING.— Lim was not guilty of forum shopping, because the factual bases of his application for the administrative reconstitution of the TCTs and of his petition for their judicial reconstitution, and the reliefs thereby sought were not identical. When he applied for the administrative reconstitution in the LRA on July 21,1988, he still had his co-owner's duplicate copies of the TCTs in his possession, but by the time the LRA resolved his application on November 3, 1998, allowing the relief prayed for, his co-owner's duplicate copies of the TCTs had meanwhile been destroyed by fire on February 24, 1998, a fact that he had duly reported in an affidavit dated May 29, 1998 presented on June 1, 1998 to the Office of the Register of Deeds for Quezon City. The loss by fire was corroborated by the certification issued by the Chief of Fire District I of Manila to the effect that the commercial establishment for Cheer-up Foods Corporation, the petitioner's company, had been gutted by fire on February 24, 1998. Thus, the intervening loss of the owner's duplicate copies that left the favorable ruling of the LRA no longer implementable gave rise to his need to apply for judicial reconstitution in the RTC pursuant to Section 12 of Republic Act No. 26. The RTC should have easily discerned that forum shopping did not characterize the petitioner's resort to judicial reconstitution despite the previous proceeding for administrative reconstitution. Although the bases for the administrative reconstitution were the owner's duplicate copies of TCT No. 303168 and TCT No. 303169, those for judicial reconstitution would be other documents that "in the judgment of the court, are sufficient and proper basis for reconstituting the lost or destroyed certificate of title." The RTC should have also noted soon enough that his resort to judicial reconstitution was not because his earlier resort to administrative reconstitution had been denied (in fact, the LRA had resolved in his favor), but because the intervening loss to fire of the only permissible basis for administrative reconstitution of the TCTs mandated his resort to the RTC. Indeed, he came to court as the law directed him to do, unlike the litigant involved in the undesirable practice of forum shopping who would go from one court to another to

secure a favorable relief after being denied the desired relief by another court.

3. ID; ID; ID; SUBMISSION OF A FALSE CERTIFICATION OF NON-FORUM SHOPPING DOES NOT AUTOMATICALLY WARRANT THE DISMISSAL OF THE PROCEEDING.— The *motu proprio* dismissal of the petition for judicial reconstitution by the RTC although the Government did not file a motion to dismiss grounded on the petitioner's supposed failure to comply with the contents of the required certification was yet another glaring error of the RTC. A violation of the rule against forum-shopping other than a willful and deliberate forum shopping did not authorize the RTC to dismiss the proceeding without motion and hearing. Specifically, the submission of a false certification of non-forum shopping did not automatically warrant the dismissal of the proceeding, even if it might have constituted contempt of court.

APPEARANCES OF COUNSEL

Agcaoili and Associates for petitioner.

D E C I S I O N

BERSAMIN, *J.*:

Petitioner Rolando Edward Lim (Lim) seeks to reverse the decision rendered on November 23, 2000 in LRC Case No. Q-11099 (98) by the Regional Trial Court (RTC), Branch 226, in Quezon City,[1] dismissing his petition for judicial reconstitution of Transfer Certificate of Title (TCT) No. 303168 and TCT No. 303169 of the Registry of Deeds for Quezon City, and for the issuance of owner's duplicate copies of said TCTs upon a finding that Lim was guilty of forum-shopping. The RTC likewise denied Lim's motion for reconsideration.

We hold that the dismissal was unwarranted and arbitrary for emanating from an erroneous application of the rule against forum shopping. Thus, we undo the dismissal and reinstate the application for judicial reconstitution.

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[1] Penned by Presiding Judge Leah S. Domingo-Regala.

Antecedents

On December 29, 1998, Lim filed in the RTC his petition for judicial reconstitution of TCT No. 303168 and TCT No. 303169 of the Registry of Deeds for Quezon City, and for the issuance of owner's duplicate copies of said TCTs. He alleged that he was a registered co-owner of the parcels of land covered by the TCTs, and that he was filing the petition for the beneficial interest of all the registered owners thereof; that the original copies of the TCTs kept in the custody of the Registry of Deeds for Quezon City had been lost or destroyed as a consequence of the fire that had burned certain portions of the Quezon City Hall, including the Office of said Registry of Deeds, on July 11, 1988; that the originals of the owner's duplicates of the TCTs kept in his custody had also been lost or destroyed in a fire that had gutted the commercial establishment located at 250 Villalobos Street, Quiapo, Manila on February 24, 1998; and that no co-owner's, mortgagee's, or lessee's TCTs had ever been issued.

The petition prayed thus:

(1) to declare null and void, the originals of the OWNER'S DUPLICATE of TRANSFER CERTIFICATE OF TITLE nos. 303168 and 303169 which are lost;

(2) xxx after due adjudication and hearing, order and direct the Register of Deeds for Quezon City to reconstitute the original copy of Transfer Certificate Title Nos. 303168 and 303169 in the name of the registered owners, in exactly the same terms and conditions and on the basis of (i) the copies of the same Certificates of Title as previously issued by the Register of Deeds for Quezon City attached to the petition and (ii) the separate relocation plans and technical descriptions pertaining to the real estate properties covered by the Transfer Certificates of Title No. 303168 and 303169, duly approved by the Lands Management Services of the Department of Environmental and Natural Resources and once accomplished;

(3) the Registry of Deeds for Quezon City be further ordered and directed to issue OWNER'S DUPLICATES of the reconstituted

Certificates of Title to the Petitioner in lieu of the ones that were lost and/or destroyed.[2]

On April 27, 1999, the RTC issued an order, setting the petition for hearing on September 3, 1999. As the RTC required, a copy of the order was published in the Official Gazette on July 19, 1999 and July 26, 1999; and posted at the main entrance of the Quezon City Hall, and in other specified places. The Office of the Register of Deeds for Quezon City, the Land Registration Authority (LRA), the Department of Environment and Natural Resources, the Office of the City Attorney of Quezon City, the Office of the City Prosecutor of Quezon City, the Office of the Solicitor General, and the owners of the adjoining properties were each similarly duly furnished a copy of the order.

On October 15, 1999, when the petition was called for hearing, no oppositors appeared despite notice. Whereupon, Lim was allowed to present evidence *ex parte* before the Branch Clerk of Court whom the RTC appointed as commissioner for that purpose.

On November 4, 1999, Lim formally offered his documentary exhibits to prove: (*a*) his compliance with the jurisdictional requirements; (*b*) his authority to represent the registered co-owners of the parcels of land covered by the TCTs; (*c*) his and his wife's co-ownership of the parcels of land; (*d*) the facts and circumstances surrounding the loss of the originals of the owner's duplicate copies; and (*e*) the fact that the TCTs were among the records burned during the fire that razed the Quezon City Hall.

On August 23, 2000, the RTC received the report from the LRA that relevantly stated:

xxx xxx xxx

(2) Our record shows that Transfer Certificates of Title Nos. 303168 and 303169, covering Lot 7, Block 586 and Lot 5, Block 585

[2] *Rollo,* pp. 61-62.

respectively, both of the subdivision plan Psd-38199 are also applied for reconstitution of titles under Administrative Reconstitution Proceedings, (Republic Act 6732). The aforesaid TCTs are included in Administrative Reconstitution Order No. Q-577 (98) dated November 3, 1998, however, they were not reconstituted administratively, it appearing that their owner's duplicate were likewise lost.[3]

x x x x x x x x x

On the basis of the LRA report, the RTC dismissed Lim's petition on November 23, 2000, *viz*:

In view of the report of the LRA that the subject titles are also applied for reconstitution of titles under Administrative Reconstitution Proceedings, the Court resolves to dismiss the instant petition, it appearing that there is forum-shopping in the instant case, considering further the strict requirements of the law on the reconstitution of titles.

Petitioner failed to disclose that he also applied for administrative reconstitution and in fact stated in his Petition that:

xxx xxx xxx

4. To the best of the Petitioner's knowledge, no such action or proceeding is pending in the Supreme Court, the Court of Appeals, or any other tribunal or agency; and

5. If the Petitioner should thereafter learn that a similar action or proceeding has been filed or is pending before the Supreme Court, the Court of Appeals or any other tribunal or agency, the Petitioner undertakes to report that fact within five (5) days therefrom to this Court wherein the original pleading and Sworn Certification contemplated herein has been filed.

xxx xxx xxx

WHEREFORE, premises considered, the instant action is hereby DISMISSED.[4]

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[3] *Id.*, pp. 39-40.

[4] *Id.*, p. 40.

Lim's motion for reconsideration filed on January 3, 2001 was denied for lack of merit.

Hence, this appeal directly to the Court *via* petition for review on *certiorari*.

Issues

Lim poses several questions of law, namely:[5]

I.

Whether or not the subsequent filing by the petitioner of his petition for judicial reconstitution of the originals of Transfer Certificates of Title Nos. 303168 and 303169 after the said loss of the exclusive sources from which certificates of title may be administratively reconstituted under Republic Act No. 6732 is the proper legal alternative under Section 110 of Presidential Decree No. 1529 and is in accordance with the procedure under Republic Act No. 26;

II.

Whether or not under the stated facts and circumstances, petitioner can be deemed to have engaged in forum shopping;

III.

Whether or not under the stated facts and circumstances, the non-disclosure by the petitioner of the previous filing of the application for administrative reconstitution of the originals of Transfer Certificates of Title Nos. 303168 and 303169 in his Certification against Forum Shopping incorporated in the petition for judicial reconstitution is a violation of Section 5, Rule 7 of the 1997 Rules of Civil Procedure; and

IV.

Whether or not the petitioner, who had no fault at all in the destruction of the original certificates of title safekept in the Registry of Deeds for Quezon City may be unjustly deprived of his proprietary right to obtain and possess reconstituted certificates of title over the real estate properties covered by Transfer Certificates of Title Nos. 303168 and 303169 specially where he complied with all the strict requirements of judicial reconstitution under Presidential Decree No.

[5] *Id.*, pp. 22-23.

1529 and in accordance with the procedure under and requirements of Republic Act No. 26.

The foregoing issues may be restated thus: Did the RTC correctly dismiss the petition of Lim on the ground of forum shopping?

Ruling

Forum shopping is the act of a party litigant against whom an adverse judgment has been rendered in one forum seeking and possibly getting a favorable opinion in another forum, other than by appeal or the special civil action of *certiorari*, or the institution of two or more actions or proceedings grounded on the same cause or supposition that one or the other court would make a favorable disposition.[6] Forum shopping happens when, in the two or more pending cases, there is identity of parties, identity of rights or causes of action, and identity of reliefs sought.[7] Where the elements of *litis pendentia* are present, and where a final judgment in one case will amount to *res judicata* in the other, there is forum shopping.[8] For *litis pendentia* to be a ground for the dismissal of an action, there must be: (*a*) identity of the parties or at least such as to represent the

[6] *Government Service Insurance System v. Bengson Commercial Builders, Inc.*, G.R. Nos. 137448 & 141454, January 31, 2002, 375 SCRA 431, 439; *Roxas v. Court of Appeals*, G.R. No. 139337, August 15, 2001, 363 SCRA 207, 217; *MSF Tire and Rubber, Inc. v. Court of Appeals*, G.R. No. 128632, August 5, 1999, 311 SCRA 784, 790.

[7] *R & E Transport, Inc. v. Latag*, G.R. No. 155214, February 13, 2004, 422 SCRA 698, 710; *Veluz v. Court of Appeals*, G.R. No. 139951, November 23, 2000, 345 SCRA 756, 764; *International School, Inc. v. Court of Appeals*, G.R. No. 131109, June 29, 1999, 309 SCRA 474, 480; *First Philippine International Bank v. Court of Appeals*, 322 Phil 280, 306.

[8] *Cooperative Development Authority v. Dolefil Agrarian Reform Beneficiaries Cooperative, Inc.*, G.R. No. 137489, May 29, 2002, 382 SCRA 552, 575; *Republic v. Carmel Development, Inc.*, G.R. No. 142572, February 20, 2002, 377 SCRA 459, 471; *R & M General Merchandise, Inc. v. Court of Appeals*, G.R. No. 144189, October 5, 2001, 366 SCRA 679, *Prubankers Association v. Prudential Bank and Trust Company*, G.R. No. 131247, January 12, 1997, 302 SCRA 74, 83.

same interest in both actions; (*b*) identity of rights asserted and relief prayed for, the relief being founded on the same acts; and (*c*) the identity in the two cases should be such that the judgment which may be rendered in one would, regardless of which party is successful, amount to *res judicata* in the other.[9]

For forum shopping to exist, both actions must involve the same transaction, same essential facts and circumstances and must raise identical causes of action, subject matter and issues. Clearly, it does not exist where different orders were questioned, two distinct causes of action and issues were raised, and two objectives were sought.[10]

The petition has merit.

Lim was not guilty of forum shopping, because the factual bases of his application for the administrative reconstitution of the TCTs and of his petition for their judicial reconstitution, and the reliefs thereby sought were not identical.

When he applied for the administrative reconstitution in the LRA on July 21,1988,[11] he still had his co-owner's duplicate copies of the TCTs in his possession, but by the time the LRA resolved his application on November 3, 1998, allowing the relief prayed for,[12] his co-owner's duplicate copies of the TCTs had

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[9] *Cruz v. Caraos*, G.R. No. 138208, April 23, 2007, 521 SCRA 510; *R & M General Merchandise, Inc. v. Court of Appeals*, G.R. No. 144189, October 5, 2001, 366 SCRA 679; *Cebu International Finance Corp. v. Court of Appeals*, G.R. No. 123031, October 12, 1999, 316 SCRA 488.

[10] *Yulienco v. Court of Appeals*, G.R. No. 131692, June 10, 1999, 308 SCRA 206.

[11] *Rollo*, pp. 52-53.

[12] The order of the LRA states:

WHEREFORE, pursuant to Republic Act 6732 and LRA Circular No. 13 dated 26 July 1989, THE REGISTER OF DEEDS OF QUEZON CITY IS HEREBY DIRECTED TO RECONSTITUTE the original of TCT Nos. 374983, **303168, 303169**, 115896, 383006, x x x, based on the owner's duplicates certificates of titles including all subsisting restrictions, liens and encumbrances and to annotate all deeds, documents and other papers and court orders, notices of attachment, *Lis Pendens* and other adverse

meanwhile been destroyed by fire on February 24, 1998, a fact that he had duly reported in an affidavit dated May 29, 1998 presented on June 1, 1998 to the Office of the Register of Deeds for Quezon City.[13] The loss by fire was corroborated by the certification issued by the Chief of Fire District I of Manila to the effect that the commercial establishment for Cheer-up Foods Corporation, the petitioner's company, had been gutted by fire on February 24, 1998.[14] Thus, the intervening loss of the owner's duplicate copies that left the favorable ruling of the LRA no longer implementable gave rise to his need to apply for judicial reconstitution in the RTC pursuant to Section 12 of Republic Act No. 26.[15]

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claims which were presented and duly noted in the entry books and are intact in the Office of the Registry of Deeds, but the registration thereof were not accomplished at the time the certificates of titles were lost or destroyed if any, provided that no other certificates of titles covering the same parcels of land exist in the record of said registry and **provided further that after reconstitution, the owner's duplicates or co-owner's duplicate exhibited as basis for the reconstitution shall be surrendered to the Register of Deeds pursuant to Section 5 of Republic Act 6732.**

SO ORDERED.

See Record, Vol. I, pp. 205-206.

[13] Record, Vol. I, pp. 83 and 84.

[14] *Id.*, p. 86.

[15] The provision states:

Section 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 proper Court of First Instance [now 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 buildings 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 all persons who may have any interest in the property; (f) a detailed description of the encumbrances,

The RTC should have easily discerned that forum shopping did not characterize the petitioner's resort to judicial reconstitution despite the previous proceeding for administrative reconstitution. Although the bases for the administrative reconstitution were the owner's duplicate copies of TCT No. 303168 and TCT No. 303169, those for judicial reconstitution would be other documents that "in the judgment of the court, are sufficient and proper basis for reconstituting the lost or destroyed certificate of title."[16] The RTC

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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) of 3(f) of this Act, the petition shall be further be 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.

[16] Republic Act No. 26 (*An Act Providing A Special Procedure for the Reconstitution of Torrens Certificate of Title Lost or Destroyed*) provides:

Section 3. Transfer 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) The deed of transfer or other document, on file in the registry of deeds, containing the description of the property, or an authenticated copy thereof, showing that its original had been registered, and pursuant to which the lost or destroyed transfer certificate of title was issued;

(e) A document, on file in the registry of deeds, by which the property, the description of which is given in said document, is mortgaged, leased or encumbered, or an authenticated copy of said document showing that its original had been registered; and

(f) Any other document which, in the judgment of the court, is sufficient and proper basis for reconstituting the lost or destroyed certificate of title.

should have also noted soon enough that his resort to judicial reconstitution was not because his earlier resort to administrative reconstitution had been denied (in fact, the LRA had resolved in his favor),[17] but because the intervening loss to fire of the only permissible basis for administrative reconstitution of the TCTs mandated his resort to the RTC.[18] Indeed, he came to court as the law directed him to do, unlike the litigant involved in the undesirable practice of forum shopping who would go from one court to another to secure a favorable relief after being denied the desired relief by another court.[19]

Neither did the petitioner's omission from the petition for judicial reconstitution of a reference to the application for administrative reconstitution in the LRA justify the dismissal of the petition. The petition for judicial reconstitution and the application for administrative reconstitution addressed different situations and did not have identical bases. Besides, only the RTC could grant or deny any relief to him at that point.

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[17] The dispositive portion of the LRA's Order dated November 3, 1998 reads:

WHEREFORE, pursuant to Republic Act 6732 and LRA Circular No. 13 dated 26 July 1989, THE REGISTER OF DEEDS OF QUEZON CITY IS HEREBY DIRECTED TO RECONSTITUTE the original of TCT Nos. 374983, **303168, 303169**, 115896, 383006, x x x, based on the owner's duplicates certificates of titles including all subsisting restrictions, liens and encumbrances and to annotate all deeds, documents and other papers and court orders, notices of attachment, *Lis Pendens* and other adverse claims which were presented and duly noted in the entry books and are intact in the Office of the Registry of Deeds, but the registration thereof were not accomplished at the time the certificates of titles were lost or destroyed if any, provided that no other certificates of titles covering the same parcels of land exist in the record of said registry and **provided further that after reconstitution, the owner's duplicates or co-owner's duplicate exhibited as basis for the reconstitution shall be surrendered to the Register of Deeds pursuant to Section 5 of Republic Act 6732,**

SO ORDERED.

Record, Vol. I, pp. 205-206.

[18] Section 12, Republic Act No. 26, *supra*, note 15.

[19] *Philippine National Construction Corporation v. Dy*, G.R. No. 156887, October 3, 2005, 472 SCRA 1; *Roxas v. Court of Appeals*, *supra*, note 6.

The *motu proprio* dismissal of the petition for judicial reconstitution by the RTC although the Government did not file a motion to dismiss grounded on the petitioner's supposed failure to comply with the contents of the required certification was yet another glaring error of the RTC. A violation of the rule against forum-shopping other than a willful and deliberate forum shopping did not authorize the RTC to dismiss the proceeding without motion and hearing. Specifically, the submission of a false certification of non-forum shopping did not automatically warrant the dismissal of the proceeding, even if it might have constituted contempt of court, for Section 5, Rule 7, of the 1997 *Rules of Civil Procedure*, has been clear and forthright, to wit:

> Section 5. *Certification against forum shopping.*—The plaintiff or principal party shall certify under oath in the complaint or other initiatory pleading asserting a claim for relief, or in a sworn certification annexed thereto and simultaneously filed therewith: (a) that he has not theretofore commenced any action or filed any claim involving the same issues in any court, tribunal or quasi-judicial agency and, to the best of his knowledge, no such other action or claim is pending therein; (b) if there is such other pending action or claim, a complete statement of the present status thereof; and (c) if he should thereafter learn that the same or similar action or claim has been filed or is pending, he shall report that fact within five (5) days therefrom to the court wherein his aforesaid complaint or initiatory pleading has been filed.
>
> Failure to comply with the foregoing requirements shall not be curable by mere amendment of the complaint or other initiatory pleading but shall be cause for the dismissal of the case without prejudice, unless otherwise provided, **upon motion and after hearing**. **The submission of a false certification or non-compliance with any of the undertakings therein shall constitute indirect contempt of court, without prejudice to the corresponding administrative and criminal actions. If the acts of the party or his counsel clearly constitute willful and deliberate forum shopping, the same shall be ground for summary dismissal with prejudice and shall constitute direct contempt, as well as cause for administrative sanctions**.

In *Young vs. Keng Seng*,[20] which involved a false certification of non-forum shopping, the Court cogently held that:

[20] G.R. No. 143464, March 5, 2003, 398 SCRA 629.

The foregoing certification is obviously inaccurate, if not downright false, because it does not disclose the filing of the First Case. Had this violation been appropriately brought up in the Motion to Dismiss, it could have resulted in the abatement of the Second case.

Nonetheless, strengthening our ruling on the First issue, we hold that substantial justice requires the resolution of the present controversy on its merits.

By its outright and undiscerning application of the sanction against forum shopping, the RTC plunged into an unwanted limbo the petitioner's and his co-owners' ownership of the realties. A modicum of care and discernment could have avoided such a prejudicial result. We now put an end to such limbo by cautioning all judges to exercise care and discernment in their enforcement of the rule against forum shopping, that they may not unduly trench on the valuable rights of litigants.

WHEREFORE, the decision dated November 23, 2000 is set aside.

The petition for the judicial reconstitution of the petitioner's Transfer Certificate of Title No. 303168 and Transfer Certificate of Title No. 303169 of the Registry of Deeds for Quezon City, and for the issuance of the owner's duplicate copies thereof, is reinstated.

The Regional Trial Court, Branch 226, in Quezon City is directed to forthwith resume proceedings thereon, and to render its decision on the merits as soon as practicable.

No pronouncement on costs of suit.

SO ORDERED.

Carpio Morales (Chairperson), Brion, Abad,[*] and *Villarama, Jr., JJ.,* concur.

[*] Additional member per Special Order No. 843 dated May 17, 2010.

SECOND DIVISION

[G.R. No. 172200. July 6, 2010]

THE HEIRS OF REDENTOR COMPLETO and ELPIDIO ABIAD, *petitioners, vs.* **SGT. AMANDO C. ALBAYDA, JR.,** *respondent.*

SYLLABUS

1. **REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; FACTUAL FINDINGS OF TRIAL COURTS THEREON ARE GENERALLY ENTITLED TO GREAT WEIGHT ON APPEAL.—** Conclusions and findings of fact of the trial court are entitled to great weight on appeal and should not be disturbed unless for strong and cogent reasons, because the trial court is in a better position to examine real evidence, as well as to observe the demeanor of the witnesses while testifying in the case. The fact that the CA adopted the findings of fact of the trial court makes the same binding upon this Court. Well-settled is the rule that the Supreme Court is not a trier of facts. To be sure, findings of fact of lower courts are deemed conclusive and binding upon the Supreme Court, save only for clear and exceptional reasons, none of which is present in the case at bar.

2. **ID.; ID.; BURDEN OF PROOF; RESTS ON THE PLAINTIFF IN NEGLIGENCE SUITS.—** It is a rule in negligence suits that the plaintiff has the burden of proving by a preponderance of evidence the motorist's breach in his duty of care owed to the plaintiff, that the motorist was negligent in failing to exercise the diligence required to avoid injury to the plaintiff, and that such negligence was the proximate cause of the injury suffered.

3. **CIVIL LAW; OBLIGATIONS AND CONTRACTS; EXTRA-CONTRACTUAL OBLIGATIONS; QUASI-DELICT DEFINED.—** Article 2176 of the Civil Code provides that 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 preexisting contractual relation between the parties, is called a quasi-delict.

4. ID.; ID.; ID.; ID.; DUTY OF USING REASONABLE CARE; MORE CARE IS REQUIRED FROM THE MOTORIST TO FULLY DISCHARGE THE DUTY THAN FROM THE BICYCLIST.— The bicycle occupies a legal position that is at least equal to that of other vehicles lawfully on the highway, and it is fortified by the fact that usually more will be required of a motorist than a bicyclist in discharging his duty of care to the other because of the physical advantages the automobile has over the bicycle. At the slow speed of ten miles per hour, a bicyclist travels almost fifteen feet per second, while a car traveling at only twenty-five miles per hour covers almost thirty-seven feet per second, and split-second action may be insufficient to avoid an accident. It is obvious that a motor vehicle poses a greater danger of harm to a bicyclist than vice versa. Accordingly, while the duty of using reasonable care falls alike on a motorist and a bicyclist, due to the inherent differences in the two vehicles, more care is required from the motorist to fully discharge the duty than from the bicyclist. Simply stated, the physical advantages that the motor vehicle has over the bicycle make it more dangerous to the bicyclist than vice versa.

5. ID.; ID.; ID.; ID.; EMPLOYER'S LIABILITY FOR DAMAGES CAUSED BY THEIR EMPLOYEES; CEASES UPON PROOF OF EMPLOYERS' OBSERVANCE OF DILIGENCE OF A GOOD FATHER OF THE FAMILY IN THE SELECTION AND SUPERVISION OF THEIR EMPLOYEES.— Under Article 2180 of the Civil Code, the obligation imposed by Article 2176 is demandable not only for one's own acts or omissions, but also for those persons for whom one is responsible. Employers shall be liable for the damages caused by their employees, but the employers' responsibility shall cease upon proof that they observed all the diligence of a good father of the family in the selection and supervision of their employees.

6. ID.; ID.; ID.; ID.; LEGAL PRESUMPTION OF NEGLIGENCE OF EMPLOYER; ARISES WHEN AN INJURY IS CAUSED BY THE NEGLIGENCE OF AN EMPLOYEE; PRESUMPTION, HOW REBUTTED.— When an injury is caused by the negligence of an employee, a legal presumption instantly arises that the employer was negligent. This presumption may be rebutted only by a clear showing on the part of the employer that he exercised the diligence of a good father of a family in the selection and supervision of his employee. If the employer successfully overcomes the legal

presumption of negligence, he is relieved of liability. In other words, the burden of proof is on the employer.

7. ID.; ID.; ID.; ID.; CIVIL LIABILITY FOR QUASI-DELICT NATURE.— The responsibility of two or more persons who are liable for quasi-delict is solidary. The civil liability of the employer for the negligent acts of his employee is also primary and direct, owing to his own negligence in selecting and supervising his employee. The civil liability of the employer attaches even if the employer is not inside the vehicle at the time of the collision.

8. ID.; ID.; ID.; ID.; SELECTION AND SUPERVISION OF EMPLOYEES; HOW APPLIED.— In the selection of prospective employees, employers are required to examine them as to their qualifications, experience, and service records. On the other hand, with respect to the supervision of employees, employers should formulate standard operating procedures, monitor their implementation, and impose disciplinary measures for breaches thereof. To establish these factors in a trial involving the issue of vicarious liability, employers must submit concrete proof, including documentary evidence.

9. ID.; DAMAGES; ACTUAL DAMAGES; AWARDED ONLY FOR SUCH PECUNIARY LOSS THAT IS DULY PROVED.— The CA rightfully deleted the award of actual damages by the RTC because Albayda failed to present documentary evidence to establish with certainty the amount that he incurred during his hospitalization and treatment for the injuries he suffered. In the absence of stipulation, actual damages are awarded only for such pecuniary loss suffered that was duly proved.

10. ID.; ID.; TEMPERATE DAMAGES; MAY BE RECOVERED WHEN THE COURT FINDS THAT SOME PECUNIARY LOSS HAS BEEN SUFFERED BUT ITS AMOUNT CANNOT, FROM THE NATURE OF THE CASE, BE PROVED WITH CERTAINTY.— While the amount of actual damages was not duly established with certainty, the Court recognizes the fact that, indeed, Albayda incurred a considerable amount for the necessary and reasonable medical expenses, loss of salary and wages, loss of capacity to earn increased wages, cost of occupational therapy, and harm from conditions caused by prolonged immobilization. Temperate damages, more than nominal but less than compensatory damages, may be recovered when the court finds that some pecuniary loss has been suffered but its amount cannot, from the nature of the

case, be proved with certainty. Temperate damages must be reasonable under the circumstances. Thus, the Court finds the award of One Hundred Thousand Pesos (₱100,000.00) as temperate damages reasonable under the circumstances.

11. ID.; ID.; MORAL DAMAGES; AWARDED IN QUASI-DELICTS CAUSING PHYSICAL INJURIES.— Albayda suffered immeasurable pain because of the incident caused by petitioners' negligence. x x x Moral damages are awarded in quasi-delicts causing physical injuries. The permanent deformity and the scar left by the wounds suffered by Albayda will forever be a reminder of the pain and suffering that he had endured and continues to endure because of petitioners' negligence. Thus, the award of moral damages in the amount of Five Hundred Thousand Pesos (₱500,000.00) is proper.

12. ID.; ID.; INTERESTS; INTEREST RATES IMPOSED ON THE TEMPERATE AND MORAL DAMAGES IN CASE AT BAR.— An interest rate of six percent (6%) per annum is due on the amount of ₱100,000.00, as temperate damages, and ₱500,000.00, as moral damages, which we have awarded. The 6% per annum interest rate on the temperate and moral damages shall commence to run from the date of the promulgation of this Decision. Upon finality of the Decision, an interest rate of twelve percent (12%) per annum shall be imposed on the amount of the temperate and moral damages until full payment thereof.

APPEARANCES OF COUNSEL

Theodore Te for petitioners.

D E C I S I O N

NACHURA, *J.*:

Before the Court is a petition for review on *certiorari* under Rule 45 of the Rules of Court, assailing the Decision[1] dated

[1] Penned by Associate Justice Celia C. Librea-Leagogo, with Associate Justices Renato C. Dacudao and Lucas P. Bersamin (now a member of this Court), concurring; *rollo*, pp. 50-91.

January 2, 2006 and the Resolution[2] dated March 30, 2006 of the Court of Appeals (CA) in CA-G.R. CV No. 68405.

The Facts

The facts of the case are as follows:

Respondent Amando C. Albayda, Jr. (Albayda) is a Master Sergeant of the Philippine Air Force, 527th Base Security Squadron, 520th Airbase, Philippine Air Force, located at Villamor Air Base (VAB), Pasay City. Petitioner Redentor Completo (Completo), now represented by his heirs, was the taxi driver of a Toyota Corolla, bearing Plate No. PYD-128, owned and operated by co-petitioner Elpidio Abiad (Abiad).[3] Albayda and Completo figured in an accident along the intersection of 8th and 11th Streets, VAB. Albayda filed a complaint for damages before the Regional Trial Court (RTC) of Pasay City. The case was docketed as Civil Case No. 98-1333.[4]

The amended complaint alleged that, on August 27, 1997, while Albayda was on his way to the office to report for duty, riding a bicycle along 11th Street, the taxi driven by Completo bumped and sideswiped him, causing serious physical injuries. Albayda was brought to the Philippine Air Force General Hospital (PAFGH) inside VAB. However, he was immediately transferred to the Armed Forces of the Philippines Medical Center (AFPMC) on V. Luna Road, Quezon City, because there was a fracture in his left knee and there was no orthopedic doctor available at PAFGH. From August 27, 1997 until February 11, 1998, he was confined therein. He was again hospitalized at PAFGH from February 23, 1998 until March 22, 1998.[5]

Conciliation between the parties before the *barangay* failed. Thus, Albayda filed a complaint for physical injuries through reckless imprudence against Completo before the Office of

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[2] *Id.* at 93-94.

[3] Completo died pending appeal of the instant case to this Court.

[4] *Rollo*, p. 51.

[5] *Id.* 51-52.

the City Prosecutor of Pasay City. On the other hand, Completo filed a counter-charge of damage to property through reckless imprudence against Albayda. On January 13, 1998, the Office of the City Prosecutor issued a resolution,[6] recommending the filing of an information for reckless imprudence resulting in physical injuries against Completo. The counter-charge of damage to property was recommended dismissed.[7]

The case was raffled to the Metropolitan Trial Court of Pasay City, Branch 45, where Albayda manifested his reservation to file a separate civil action for damages against petitioners Completo and Abiad.[8]

Albayda alleged that the proximate cause of the incident which necessitated his stay in the hospital for approximately seven (7) months was the negligence of Completo who, at the time of the accident, was in the employ of Abiad. The pain he suffered required him to undergo medical physiotherapy for a number of years to regain normality of his left knee joint, and he claimed that he incurred actual damages totaling Two Hundred Seventy-Six Thousand Five Hundred Fifty Pesos (₱276,550.00), inclusive of his anticipated operations.[9]

He further stated that aggravating the physical sufferings, mental anguish, frights, serious anxiety, besmirched reputation, wounded feelings, moral shock, and social humiliation resulting from his injuries, his wife abandoned him in May 1998, and left their children in his custody. He thus demanded the amount of Six Hundred Thousand Pesos (₱600,000.00) as moral damages. He likewise asked for exemplary damages in the amount of Two Hundred Thousand Pesos (₱200,000.00) and attorney's fees of Twenty-Five Thousand Pesos (₱25,000.00), plus One Thousand Pesos (₱1,000.00) per court appearance.[10]

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[6] *Id.* at 117-118.

[7] *Id.* at 52.

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

[9] *Id.* at 53.

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

In his answer to the amended complaint, Completo alleged that, on August 27, 1997, he was carefully driving the taxicab along 8th Street, VAB, when suddenly he heard a strange sound from the rear right side of the taxicab. When he stopped to investigate, he found Albayda lying on the road and holding his left leg. He immediately rendered assistance and brought Albayda to PAFGH for emergency treatment.[11]

Completo also asserted that he was an experienced driver who, in accordance with traffic rules and regulations and common courtesy to his fellow motorists, had already reduced his speed to twenty (20) kilometers per hour even before reaching the intersection of 8th and 11th Streets. In contrast, Albayda rode his bicycle at a very high speed, causing him to suddenly lose control of the bicycle and hit the rear door on the right side of the taxicab.[12]

The deep indentation on the rear right door of the taxicab was caused by the impact of Albayda's body that hit the taxicab after he had lost control of the bicycle; while the slight indentation on the right front door of the taxicab was caused by the impact of the bike that hit the taxicab after Albayda let go of its handles when he had lost control of it.[13]

Completo maintained that Albayda had no cause of action. The accident and the physical injuries suffered by Albayda were caused by his own negligence, and his purpose in filing the complaint was to harass petitioners and unjustly enrich himself at their expense.[14]

After submission of the parties' respective pleadings, a pretrial conference was held. On December 8, 1998, the RTC issued a pretrial order. Thereafter, trial on the merits ensued.[15]

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[11] *Id.* at 54.

[12] *Id.* at 54-55.

[13] *Id.* at 55.

[14] *Id*.

[15] *Id*.

Albayda presented himself, Michael Navarro (Navarro), Dr. Rito Barrosa, Jr. (Dr. Barrosa), Dr. Armando Sta. Ana, Jr., Dr. Ranny Santiago, (Dr. Santiago), and Dr. Manuel Fidel Magtira (Dr. Magtira) as witnesses in open court.[16]

On direct examination, Navarro testified that, on August 27, 1997, at around 1:45 p.m., he saw a taxicab, with Plate No. PYD-128, coming from 11th Street, running at an unusual speed. The normal speed should have been twenty-five (25) kilometers per hour. He was at the corner of 9th and 8th Streets when the taxicab passed by him. The side of the bicycle was hit by the taxicab at the intersection of 11th and 8th Streets. He saw Albayda fall to the ground, grimacing in pain. The taxicab at that moment was about ten (10) meters away from Albayda. On cross-examination, Navarro reiterated that the taxicab was running quite fast. The bicycle ridden by Albayda reached the intersection of 8th and 11th Streets before the taxicab hit it.[17]

Dr. Santiago, the orthopedic surgeon who treated Albayda when the latter was admitted at AFPMC, testified that the cause of the injury was "hard impact," and recommended an operation to alleviate the suffering. On cross-examination, he said that there was a separation of the fragments of the proximal leg, the injured extremity, called levia. They placed the victim on knee traction or calcaneal traction,[18] in order to avoid further swelling. They bore the calcanean bone with a stainless steel pin so that they could put five percent (5%) of the body weight of the patient to cool down the leg. He treated Albayda for three (3) months. He recommended surgery, but the victim had other medical problems, like an increase in sugar level,

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[16] *Id*.

[17] *Id.* at 55-56.

[18] Traction is the use of a pulling force to treat muscle and skeleton disorders. Traction is usually applied to the arms and legs, the neck, the backbone, or the pelvis. It is used to treat fractures, dislocations, and long-duration muscle spasms, and to prevent or correct deformities. Traction can either be short-term, as at an accident scene, or long-term, when it is used in a hospital setting. <http://medical-dictionary.thefreedictionary.com/traction> (visited June 8, 2010.)

and they were waiting for the availability of the implant. The implant was supposed to be placed on the lateral aspect of the proximal leg or the levia, the part with the separation. It was a long implant with screws.[19]

Dr. Magtira testified that Albayda was readmitted at AFPMC on January 25, 1999 because of complaints of pain and limitation of motion on the knee joint. Upon evaluation, the pain was caused by traumatic arthritis brought about by malunion of the lateral trivial condial. An operation of the soft tissue release was conducted for him to mobilize his knee joint and attain proper range of motion. After the operation, Albayda attained functional range of motion, but because of subsisting pain, they had to do osteoplasty[20] of the malunion, which was another operation. On cross-examination, Dr. Magtira testified that he rendered free medical service at AFPMC.[21]

Albayda testified that he was thirty-six (36) years old and a soldier of the Armed Forces of the Philippines. On August 27, 1997, at around 1:40 p.m., he was riding his bike on his way to the office, located on 916 Street, VAB. He had to stop at the corner of 11th and 8th Streets because an oncoming taxicab was moving fast. However, the taxicab still bumped the front tire of his bike, hit his left knee and threw him off until he fell down on the road. The taxicab stopped about ten meters away, and then moved backwards. Its driver, Completo, just stared at him. When somebody shouted to bring him to the hospital, two (2) persons, one of whom was Dr. Barrosa, helped him and carried him into the taxicab driven by Completo, who brought him to PAFGH.[22]

Upon examination, it was found that Albayda suffered fracture in his left knee and that it required an operation. No orthopedic doctor was available at PAFGH. Thus, he was transferred that

[19] *Rollo*, pp. 56-57.
[20] Bone grafting or bone repair of the malunion.
[21] *Rollo*, p. 57.
[22] *Id.* at 57-58.

same afternoon to AFPMC, where he was confined until February 11, 1998.[23]

At AFPMC, Albayda's left leg was drilled on and attached to traction. When his leg was drilled, it was so painful that he had to shout. After his release from the hospital, he continued to suffer pain in his leg. He underwent reflexology and therapy which offered temporary relief from pain. But after some time, he had to undergo therapy and reflexology again.[24]

On January 25, 1999, Albayda was readmitted at AFPMC and operated on. On June 24, 1999, he was operated on again. Wire and screw were installed so that he could bend his knee. Nonetheless, he continued to suffer pain. As of the date of his testimony in court, he was scheduled for another operation in January 2000, when the steel that would be installed in his leg arrives.[25]

For his food, Albayda spent Thirty Pesos (₱30.00) each day during his six (6) months of confinement; for his bed pan, One Thousand Pesos (₱1,000.00); for his twice weekly reflexology, Three Hundred Pesos (₱300.00) every session since April 1997; for his caretaker, ₱300.00 per day for six months. He also asked for ₱600,000.00 in moral damages because Completo did not lend him a helping hand, and he would be suffering deformity for the rest of his life. He demanded ₱25,000.00 as attorney's fees and ₱1,000.00 for every court appearance of his lawyer.[26]

On cross-examination, Albayda testified that, on the date of the incident, he was the base guard at VAB, and his duty was from 2 p.m. to 8 p.m. That afternoon, he was not in a hurry to go to his place of work because it was only about 1:45 p.m., and his place of work was only six (6) meters away. After the accident, he was brought to PAFGH, and at 3:00 p.m., he was

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[23] *Id.* at 58.
[24] *Id*.
[25] *Id*.
[26] *Id*.

brought to the AFPMC. When he was discharged from the hospital, he could no longer walk.[27]

Dr. Barrosa's testimony during cross-examination emphasized that he was with 2 other persons when he carried Albayda into the taxicab driven by Completo. He was certain that it was not Completo who carried the victim into the taxicab. It was only a matter of seconds when he rushed to the scene of the accident. The taxicab backed up fifteen (15) seconds later. Albayda lay 2 meters away from the corner of 8th and 11th Streets.[28]

Completo, Abiad, and Benjamin Panican (Panican) testified for the defense.[29]

Completo alleged that he had been employed as taxi driver of FOJS Transport, owned by Abiad, since February 1997. On August 27, 1997, he was driving the taxicab, with Plate No. PYD-128, from 10:00 a.m. At around 1:45 p.m., he was on his way home when a bicycle bumped his taxicab at the intersection of 8th and 11th Streets, VAB. The bicycle was travelling from south to north, and he was going east coming from the west. The bicycle was coming from 11th Street, while he was travelling along 8th Street.[30]

On cross-examination, Completo testified that when Albayda hit the rear right door of the taxicab, the latter fell to the ground. When he heard a noise, he immediately alighted from the taxicab. He denied that he stopped about 10 meters away from the place where Albayda fell. He carried Albayda and drove him to the hospital.[31]

Panican testified that he worked as an airconditioner technician in a shop located on 8th Street corner 11th Street. On the date and time of the incident, he was working in front of the shop

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[27] *Id.* at 58-59.

[28] *Id.* at 59.

[29] *Id.* at 61.

[30] *Id*.

[31] *Id*.

near the roadside. He saw a bicycle bump the rear right side of the taxicab. Then, the driver of the taxicab alighted, carried Albayda, and brought him to the hospital.[32]

When questioned by the trial court, Panican testified that the bicycle was running fast and that he saw it bump the taxicab. The taxicab already passed the intersection of 11th and 8th Streets when the bicycle arrived.[33]

Abiad testified that, aside from being a soldier, he was also a franchise holder of taxicabs and passenger jeepneys. When Completo applied as a driver of the taxicab, Abiad required the former to show his bio-data, NBI clearance, and driver's license. Completo never figured in a vehicular accident since the time he was employed in February 1997. Abiad averred that Completo was a good driver and a good man. Being the operator of taxicab, Abiad would wake up early and personally check all the taxicabs.[34]

On July 31, 2000, the trial court rendered a decision,[35] the dispositive portion of which reads:

WHEREFORE, judgment is hereby rendered in favor of the plaintiff [Albayda] and against the defendants [Completo and Abiad]. Accordingly, the defendants [Completo and Abiad] are hereby ordered to pay the plaintiff [Albayda] the following sum:

1. **₱46,000.00** as actual damages;
2. **₱400,000.00** as moral damages; [and]
3. **₱25,000.00** as attorney's fees.

Costs against the defendants [Completo and Abiad].

SO ORDERED.[36]

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[32] *Id*.

[33] *Id.* at 62.

[34] *Id*.

[35] Penned by Judge Henrick F. Gingoyon, RTC, Branch 117, Pasay City; *id.* at 175-188.

[36] *Id.* at 188.

Completo and Abiad filed an appeal. The CA affirmed the trial court with modification in a Decision[37] dated January 2, 2006, *viz*.:

> WHEREFORE, premises considered, the appeal is **DENIED** for lack of merit. The assailed Decision dated 31 July 2000 rendered by the Regional Trial Court of Pasay City, Branch 117, in Civil Case No. 98-1333 is hereby **AFFIRMED** with the following **MODIFICATIONS**:
>
> 1. the award of Php 46,000.00 as actual damages is **DELETED**;
>
> 2. temperate damages in the amount of Php 40,000.00 is awarded in favor of appellee;
>
> 3. moral damages in favor of appellee is **REDUCED** to Php 200,000.00;
>
> 4. appellants Redentor Completo and Elpidio Abiad are solidarily liable to pay appellee Amando C. Albayda, Jr. said temperate and moral damages, as well as the attorney's fees in the amount of Php 25,000.00 awarded by the trial court;
>
> 5. the temperate and moral damages shall earn legal interest at 6% *per annum* computed from the date of promulgation of Our Decision;
>
> 6. upon finality of Our Decision, said moral and temperate damages shall earn legal interest at the rate of 12% *per annum*, in lieu of 6% *per annum,* until full payment. Costs against appellants.
>
> SO ORDERED.[38]

Hence, this petition.

The Issues

Petitioners presented the following issues for resolution: (1) whether the CA erred in finding that Completo was the one who caused the collision; (2) whether Abiad failed to prove that he observed the diligence of a good father of the family; and (3) whether the award of moral and temperate damages and attorney's fees to Albayda had no basis.[39]

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[37] *Supra* note 1.

[38] *Id.* at 87-88.

[39] *Rollo*, p. 325.

The Ruling of the Court

The petition is bereft of merit.

I. On Negligence

The issues raised by petitioners essentially delve into factual matters which were already passed upon by the RTC and the CA. Conclusions and findings of fact of the trial court are entitled to great weight on appeal and should not be disturbed unless for strong and cogent reasons, because the trial court is in a better position to examine real evidence, as well as to observe the demeanor of the witnesses while testifying in the case. The fact that the CA adopted the findings of fact of the trial court makes the same binding upon this Court. Well-settled is the rule that the Supreme Court is not a trier of facts.[40] To be sure, findings of fact of lower courts are deemed conclusive and binding upon the Supreme Court, save only for clear and exceptional reasons,[41] none of which is present in the case at bar.

The instant case involved a collision between a taxicab and a bicycle which resulted in serious physical injuries to the bicycle rider, Albayda. It is a rule in negligence suits that the plaintiff has the burden of proving by a preponderance of evidence the motorist's breach in his duty of care owed to the plaintiff, that the motorist was negligent in failing to exercise the diligence required to avoid injury to the plaintiff, and that such negligence was the proximate cause of the injury suffered.[42]

Article 2176 of the Civil Code provides that whoever by act or omission causes damage to another, there being fault or

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[40] *Spouses Patricio and Myrna Bernales vs. Heirs of Julian Sambaan*, G.R. No. 163271, January 15, 2010; *Poliand Industrial Limited v. National Development Company*, G.R. Nos. 143866 and 143877, August 22, 2005, 467 SCRA 500, 543.

[41] *Empire East Land Holdings, Inc. v. Capitol Industrial Construction Groups, Inc.*, G.R. No. 168074, September 26, 2008, 566 SCRA 473; *Bulay-og v. Bacalso*, G.R. No. 148795, July 17, 2006, 495 SCRA 308.

[42] 11 AMJUR POF 3d 395.

negligence, is obliged to pay for the damage done. Such fault or negligence, if there is no preexisting contractual relation between the parties, is called a quasi-delict. In this regard, the question of the motorist's negligence is a question of fact.

It was proven by a preponderance of evidence that Completo failed to exercise reasonable diligence in driving the taxicab because he was over-speeding at the time he hit the bicycle ridden by Albayda. Such negligence was the sole and proximate cause of the serious physical injuries sustained by Albayda. Completo did not slow down even when he approached the intersection of 8th and 11th Streets of VAB. It was also proven that Albayda had the right of way, considering that he reached the intersection ahead of Completo.

The bicycle occupies a legal position that is at least equal to that of other vehicles lawfully on the highway, and it is fortified by the fact that usually more will be required of a motorist than a bicyclist in discharging his duty of care to the other because of the physical advantages the automobile has over the bicycle.[43]

At the slow speed of ten miles per hour, a bicyclist travels almost fifteen feet per second, while a car traveling at only twenty-five miles per hour covers almost thirty-seven feet per second, and split-second action may be insufficient to avoid an accident. It is obvious that a motor vehicle poses a greater danger of harm to a bicyclist than vice versa. Accordingly, while the duty of using reasonable care falls alike on a motorist and a bicyclist, due to the inherent differences in the two vehicles, more care is required from the motorist to fully discharge the duty than from the bicyclist.[44] Simply stated, the physical advantages that the motor vehicle has over the bicycle make it more dangerous to the bicyclist than vice versa.[45]

Under Article 2180 of the Civil Code, the obligation imposed by Article 2176 is demandable not only for one's own acts or

[43] *Id*.

[44] *Id*.

[45] *Id*.

omissions, but also for those persons for whom one is responsible. Employers shall be liable for the damages caused by their employees, but the employers' responsibility shall cease upon proof that they observed all the diligence of a good father of the family in the selection and supervision of their employees.

When an injury is caused by the negligence of an employee, a legal presumption instantly arises that the employer was negligent. This presumption may be rebutted only by a clear showing on the part of the employer that he exercised the diligence of a good father of a family in the selection and supervision of his employee. If the employer successfully overcomes the legal presumption of negligence, he is relieved of liability. In other words, the burden of proof is on the employer.[46]

The trial court's finding that Completo failed to exercise reasonable care to avoid collision with Albayda at the intersection of 11th and 8th Streets of VAB gives rise to liability on the part of Completo, as driver, and his employer Abiad. The responsibility of two or more persons who are liable for quasi-delict is solidary.[47] The civil liability of the employer for the negligent acts of his employee is also primary and direct, owing to his own negligence in selecting and supervising his employee.[48] The civil liability of the employer attaches even if the employer is not inside the vehicle at the time of the collision.[49]

In the selection of prospective employees, employers are required to examine them as to their qualifications, experience, and service records. On the other hand, with respect to the supervision of employees, employers should formulate standard operating procedures, monitor their implementation, and impose disciplinary measures for breaches thereof. To establish these

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[46] *Skyi v. Begasa*, 460 Phil. 381 (2003); *Delsan Transport Lines, Inc. v. C & A Construction, Inc.*, 459 Phil. 156 (2003).

[47] CIVIL CODE, Art. 2194.

[48] *Cerezo v. Tuazon*, 469 Phil. 1020 (2004).

[49] *Sps. Hernandez v. Sps. Dolor*, 479 Phil. 593 (2004).

factors in a trial involving the issue of vicarious liability, employers must submit concrete proof, including documentary evidence.[50]

Abiad testified that before he hired Completo, he required the latter to show his bio-data, NBI clearance, and driver's license. Abiad likewise stressed that Completo was never involved in a vehicular accident prior to the instant case, and that, as operator of the taxicab, he would wake up early to personally check the condition of the vehicle before it is used.

The protestation of Abiad to escape liability is short of the diligence required under the law. Abiad's evidence consisted entirely of testimonial evidence, and the unsubstantiated and self-serving testimony of Abiad was insufficient to overcome the legal presumption that he was negligent in the selection and supervision of his driver.

II. On Damages

The CA rightfully deleted the award of actual damages by the RTC because Albayda failed to present documentary evidence to establish with certainty the amount that he incurred during his hospitalization and treatment for the injuries he suffered. In the absence of stipulation, actual damages are awarded only for such pecuniary loss suffered that was duly proved.[51]

While the amount of actual damages was not duly established with certainty, the Court recognizes the fact that, indeed, Albayda incurred a considerable amount for the necessary and reasonable medical expenses, loss of salary and wages, loss of capacity to earn increased wages, cost of occupational therapy, and harm from conditions caused by prolonged immobilization. Temperate damages, more than nominal but less than compensatory damages, may be recovered when the court finds that some pecuniary loss has been suffered but its amount cannot, from the nature of the case, be proved with certainty.[52]

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[50] *Skyi v. Begasa, supra* note 46.

[51] CIVIL CODE, Art. 2199.

[52] CIVIL CODE, Art. 2224.

Temperate damages must be reasonable under the circumstances.[53] Thus, the Court finds the award of One Hundred Thousand Pesos (₱100,000.00) as temperate damages reasonable under the circumstances.

Doubtless, Albayda suffered immeasurable pain because of the incident caused by petitioners' negligence. The CA explained:

> The court vicariously feels the pain the plaintiff [Albayda] suffered a number of times. After he was bumped by defendants' cab, he cried in pain. When the doctors bore holes into his left knee, he cried in pain. When he was tractioned, when he was subjected to an operation after operation he suffered pain. When he took the witness stand to testify, he walked with crutches, his left knee in bandage, stiff and unfuctional. Pain was written [on] his face. He does deserve moral damages.[54]

Moral damages are awarded in quasi-delicts causing physical injuries. The permanent deformity and the scar left by the wounds suffered by Albayda will forever be a reminder of the pain and suffering that he had endured and continues to endure because of petitioners' negligence. Thus, the award of moral damages in the amount of Five Hundred Thousand Pesos (₱500,000.00) is proper.

Finally, an interest rate of six percent (6%) per annum is due on the amount of ₱100,000.00, as temperate damages, and ₱500,000.00, as moral damages, which we have awarded. The 6% per annum interest rate on the temperate and moral damages shall commence to run from the date of the promulgation of this Decision. Upon finality of the Decision, an interest rate of twelve percent (12%) per annum shall be imposed on the amount of the temperate and moral damages until full payment thereof.[55]

The award of attorney's fees is hereby deleted for failure to prove that petitioners acted in bad faith in refusing to satisfy respondent's just and valid claim.

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[53] CIVIL CODE, Art. 2225.

[54] *Rollo*, p. 65.

[55] *Eastern Shipping Lines, Inc. v. CA*, G.R. No. 97412, July 12, 1994, 234 SCRA 78.

WHEREFORE, in view of the foregoing, the Decision dated January 2, 2006 and the Resolution dated March 30, 2006 of the Court of Appeals in CA-G.R. CV No. 68405 are hereby *AFFIRMED with MODIFICATION*, *viz.*:

(1) The estate of the late Redentor Completo and Elpidio Abiad are solidarily liable to pay One Hundred Thousand Pesos (₱100,000.00), as temperate damages, and Five Hundred Thousand Pesos (₱500,000.00), as moral damages;

(2) The temperate and moral damages hereby awarded shall earn legal interest at the rate of six percent (6%) per annum from the date of the promulgation of this Decision. Upon finality of this Decision, an interest rate of twelve percent (12%) per annum shall be imposed on the amount of the temperate and moral damages until full payment thereof.

Costs against petitioners.

SO ORDERED.

Carpio (Chairperson), Peralta, Abad, and *Mendoza, JJ.*, concur.

SECOND DIVISION

[G.R. No. 175846. July 6, 2010]

REPUBLIC OF THE PHILIPPINES, *petitioner, vs.* **ROSILA ROCHE,** *respondent.*

SYLLABUS

1. CIVIL LAW; LAND REGISTRATION; PRESIDENTIAL DECREEE 1529 (THE PROPERTY REGISTRATION DECREE); APPLICATION FOR REGISTRATION OF TITLE; REQUIREMENTS.— An application for registration of title must, under Section 14(1), P.D. 1529, meet three requirements: a) that the property is alienable and disposable land of the public

domain; b) that the applicants by themselves or through their predecessors-in-interest have been in open, continuous, exclusive and notorious possession and occupation of the land; and c) that such possession is under a *bona fide* claim of ownership since June 12, 1945 or earlier.

2. **POLITICAL LAW; CONSTITUTIONAL LAW; NATIONAL ECONOMY AND PATRIMONY; REGALIAN DOCTRINE; CONCEPT.—** Under the Regalian doctrine, all lands of the public domain belong to the State and the latter is the source of any asserted right to ownership in land. Thus, the State presumably owns all lands not otherwise appearing to be clearly within private ownership. To overcome such presumption, incontrovertible evidence must be shown by the applicant that the land subject of registration is alienable and disposable.

3. **CIVIL LAW; LAND REGISTRATION; PRESIDENTIAL DECREE 1529 (THE PROPERTY REGISTRATION DECREE); APPLICATION FOR REGISTRATION OF TITLE; THE APPLICANT BEARS THE BURDEN OF PROVING THE STATUS OF THE LAND.—** Respecting the third requirement, the applicant bears the burden of proving the status of the land. In this connection, the Court has held that he must present a certificate of land classification status issued by the Community Environment and Natural Resources Office (CENRO) or the Provincial Environment and Natural Resources Office (PENRO) of the DENR. He must also prove that the DENR Secretary had approved the land classification and released the land as alienable and disposable, and that it is within the approved area per verification through survey by the CENRO or PENRO. Further, the applicant must present a copy of the original classification approved by the DENR Secretary and certified as true copy by the legal custodian of the official records. These facts must be established by the applicant to prove that the land is alienable and disposable.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.
Licerio Sombilon Zamora, Jr. for respondent.

D E C I S I O N

ABAD, *J.*:

This case is about the need for applicant for original registration of title to prove that the land applied for is alienable or disposable land of the public domain.

The Facts and the Case

On December 5, 1996 Rosila Roche applied for registration of title[1] of her 15,353-square-meter land in Barrio Napindan, Taguig, Metro Manila,[2] denominated as Lot 8698, before the Regional Trial Court (RTC) of Pasig City, Branch 155. Roche alleged that she inherited the land in 1960 from her father, Miguel, who in turn had held the land in the concept of an owner when Roche was only about six years old. She was born on that land on January 10, 1938 and had helped her father cultivate it.[3] Roche had also paid the realty taxes on the land, which had an assessed value of ₱490,000.00.

To support her application for registration, Roche presented, among others, a certified true copy of the survey plan of the land,[4] its technical description,[5] a Certification from the Department of Environment and Natural Resources (DENR) in lieu of the Geodetic Engineer's Certificate,[6] tax declarations,[7] and real property tax receipts.[8] She also presented certifications that the Land Registration Authority (LRA) and the National Printing Office issued to show compliance with requirements

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[1] Docketed as LRC-N-11330.

[2] Pursuant to Presidential Decree 1529.

[3] TSN, January 18, 1999, pp. 5-7.

[4] Records, p. 17.

[5] *Id.* at 10.

[6] *Id.* at 147.

[7] *Id.* at 14-16.

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

of service of notice to adjoining owners and publication of notice of initial hearing.[9]

As proof of her open, continuous, and uninterrupted possession of the land, Roche presented Manuel Adriano, a former resident of Napindan who owned an unregistered property adjoining Lot 8698. Adriano testified that he had been a resident of the place where the land was located from 1949 to 1996 when he moved to Pampanga.[10] He drew a sketch showing the location of Lot 8698 in relation to his own and identified the owners of the other adjoining lots.[11] He claimed to have known Roche's father since the latter had been cultivating vegetables and rice on the land.[12]

The Republic of the Philippines (the Government), through the Office of the Solicitor General (OSG), opposed the application on the grounds a) that neither Roche nor her predecessor-in-interest had occupied the land for the required period; and b) that the land belonged to the State and is not subject to private acquisition.[13] The Laguna Lake Development Authority (LLDA) also opposed[14] Roche's application on the ground that, based on technical descriptions, her land was located below the reglementary lake elevation of 12.50 meters and, therefore, may be deemed part of the Laguna Lake bed under Section 41[15] of Republic Act (R.A.) 4850.

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[9] *Id.* at 62 & 76.

[10] TSN, March 8, 1999, pp. 3-4.

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

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

[13] Records, pp. 21-22.

[14] *Id.* at 80-83.

[15] Section 41, R.A. 4850 states: Whenever Laguna Lake or Lake is used in this Act, the same shall refer to Laguna de Bay which is that area covered by the lake water when it is at the average annual maximum lake level elevation of 12.50 meters as referred to a datum 10.0 meters below mean lower low water (MLLW). Lands located at and below such elevation are public lands which form part of the bed of said lake.

On September 7, 1999 the OSG filed a manifestation that, since Roche failed to prove that the land was part of the alienable land of the public domain, the Government did not need to present evidence in the case. It also adopted LLDA's opposition.[16]

On September 30, 1999 the RTC rendered judgment,[17] granting Roche's application. The RTC held that Roche had proved continued adverse possession of the land in the concept of an owner since June 12, 1945 or earlier, pursuant to Presidential Decree (P.D.) 1529. Assuming that the land was part of the public domain, Roche and her predecessor's occupation and cultivation of more than 30 years vested title on her, effectively segregating it from the mass of public land.[18] Moreover, the LLDA did not prove by substantial evidence that the land was inalienable and part of the Laguna Lake bed.

On appeal by the Government,[19] the Court of Appeals (CA) affirmed the decision of the RTC.[20] The OSG filed a motion for reconsideration but the CA denied the same, prompting the Government to file the present petition.

The Issue Presented

The sole issue the petition presents is whether or not the land subject of Roche's application is alienable or disposable land of the public domain.

The Ruling of the Court

The Government insists that the subject land forms part of the lake bed and that it has not been released into the mass of alienable and disposable land of the public domain. As such, Roche cannot register title to it in her name.[21]

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[16] Records, pp. 161-162.

[17] *Rollo*, pp. 111-118.

[18] *Id.* at 117.

[19] Docketed as CA-G.R. CV 65567.

[20] *Rollo*, pp. 119-127, penned by Associate Justice Sesinando E. Villon and concurred in by Associate Justices Elvi John S. Asuncion and Jose C. Mendoza (now a member of this Court).

[21] *Id.* at 88-89.

Roche points out, on the other hand, that the lot could not possibly be part of the Laguna Lake's bed since it has always been planted to crops and is not covered by water. R.A. 4850 provides that the Lake is that area covered with water when it is at the average maximum lake level of 12.50 meters. This presupposed that the lake extends only to lakeshore lands. The land in this case does not adjoin the Laguna Lake.[22]

An application for registration of title must, under Section 14(1), P.D. 1529, meet three requirements: a) that the property is alienable and disposable land of the public domain; b) that the applicants by themselves or through their predecessors-in-interest have been in open, continuous, exclusive and notorious possession and occupation of the land; and c) that such possession is under a *bona fide* claim of ownership since June 12, 1945 or earlier.[23]

Under the Regalian doctrine, all lands of the public domain belong to the State and the latter is the source of any asserted right to ownership in land. Thus, the State presumably owns all lands not otherwise appearing to be clearly within private ownership. To overcome such presumption, incontrovertible evidence must be shown by the applicant that the land subject of registration is alienable and disposable.[24]

Respecting the third requirement, the applicant bears the burden of proving the status of the land.[25] In this connection, the Court has held that he must present a certificate of land classification status issued by the Community Environment and Natural Resources Office (CENRO)[26] or the Provincial Environment and Natural Resources Office (PENRO)[27] of the DENR. He must also prove that the DENR Secretary had

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[22] *Id.* at 103-107.

[23] *Republic of the Philippines v. Court of Appeals*, 489 Phil. 405, 413 (2005).

[24] *Pagkatipunan v. Court of Appeals*, 429 Phil. 377, 386-387 (2002).

[25] See *Bracewell v. Court of Appeals*, 380 Phil. 156, 162 (2000).

[26] For lands with an area below 50 hectares.

[27] For lands with an area over 50 hectares.

approved the land classification and released the land as alienable and disposable, and that it is within the approved area per verification through survey by the CENRO or PENRO. Further, the applicant must present a copy of the original classification approved by the DENR Secretary and certified as true copy by the legal custodian of the official records. These facts must be established by the applicant to prove that the land is alienable and disposable.[28]

Here, Roche did not present evidence that the land she applied for has been classified as alienable or disposable land of the public domain. She submitted only the survey map and technical description of the land which bears no information regarding the land's classification. She did not bother to establish the status of the land by any certification from the appropriate government agency. Thus, it cannot be said that she complied with all requisites for registration of title under Section 14(1) of P.D. 1529.[29]

Since Roche was unable to overcome the presumption that the land she applied for is inalienable land that belongs to the State, the Government did not have to adduce evidence to prove it.

WHEREFORE, the Court *REVERSES* and *SETS ASIDE* the decision of the Court of Appeals dated August 31, 2006 in CA-G.R. CV 65567 as well as the decision of the Regional Trial Court of Pasig City in LRC N-11330 dated September 30, 1999 and *DENIES* respondent Rosila Roche's application for registration of title over Lot 8698 located in Barrio Napindan, Taguig, Metro Manila, without prejudice to her proving by appropriate evidence her right to registration of the same at a future time.

SO ORDERED.

Carpio (Chairperson), Peralta, Bersamin,[*] and *Del Castillo,*[*] *JJ.,* concur.

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[28] *Republic v. T.A.N. Properties, Inc.*, June 26, 2008, 555 SCRA 477, 487-489.

[29] See *Republic of the Philippines v. Lao*, 453 Phil. 189, 199 (2003).

[*] Designated as additional members in lieu of Associate Justices Antonio Eduardo B. Nachura and Jose Catral Mendoza, per raffle dated June 16, 2010.

THIRD DIVISION

[G.R. No. 179709. July 6, 2010]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **FILOMENO MAYINGQUE, GREGORIO MAYINGQUE, and TORIBIO MAYINGQUE *y* SANICO,** *defendants-appellants.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; DETERMINATION THEREOF BY THE TRIAL COURT, WHEN AFFIRMED BY THE APPELLATE COURT, IS ACCORDED GREAT RESPECT. — [I]t is fundamental that the determination by the trial court of the credibility of witnesses, when affirmed by the appellate court, is accorded full weight and credit as well as great respect, if not conclusive effect. Such determination made by the trial court proceeds from its first-hand opportunity to observe the demeanor of the witnesses, their conduct and attitude under grilling examination, thereby placing the trial court in the unique position to assess the witnesses' credibility and to appreciate their truthfulness, honesty and candor.

2. CRIMINAL LAW; JUSTIFYING CIRCUMSTANCES; SELF-DEFENSE; ELEMENTS. — [T]he essential elements of self-defense are: (*a*) unlawful aggression; (*b*) reasonable necessity of the means employed to prevent or repel it; and (*c*) lack of sufficient provocation on the part of the person defending himself.

3. ID.; ID.; ID.; BY INVOKING SELF-DEFENSE, THE ACCUSED MUST PROVE BY CLEAR AND CONVINCING EVIDENCE THE ELEMENTS OF SELF-DEFENSE; RATIONALE. — By invoking self-defense, the accused must prove by clear and convincing evidence the elements of self-defense. The rule consistently adhered to in this jurisdiction is that when the accused admitted that he was the author of the death of the victim and his defense was anchored on self-defense, it becomes incumbent upon him to prove the justifying circumstance to the satisfaction of the court. The rationale for this requirement is that the accused, having admitted the

felonious wounding or killing of his adversary, is to be held criminally liable for the crime unless he establishes to the satisfaction of the court the fact of self-defense. Thereby, however, the burden to prove guilt beyond reasonable doubt is not lifted from the shoulders of the State, which carries it until the end of the proceedings. In other words, only the *onus probandi* has shifted to him, because self-defense is an affirmative allegation that must be established with certainty by sufficient and satisfactory proof. He must now discharge the burden by relying on the strength of his own evidence, not on the weakness of that of the Prosecution, for, even if the Prosecution's evidence is weak, it cannot be disbelieved in view of the accused's admission of the killing.

4. REMEDIAL LAW; EVIDENCE; ALIBI; ELEMENTS. — *Alibi* is an inherently weak and unreliable defense, because it is easy to fabricate and difficult to disprove. To establish *alibi*, the accused must prove: (*a*) that he was actually in another place at the time of the perpetration of the crime; and (*b*) that it was physically impossible for him to be at the scene of the crime when the crime was perpetrated. Physical impossibility refers to the distance between the place where the accused was when the crime transpired and the place where the crime was committed, as well as to the facility of access between the two places.

5. CRIMINAL LAW; MURDER; PENALTY. — [T]he appellants are found guilty of murder, and accordingly punished with *reclusion perpetua* pursuant to Article 248 of the *Revised Penal Code*.

6. CIVIL LAW; DAMAGES; DEATH INDEMNITY; GRANTED WITHOUT NEED OF ANY EVIDENCE OR PROOF OF DAMAGES. — For death indemnity, the amount of ₱50,000.00 is fixed pursuant to the current judicial policy on the matter, without the need of any evidence or proof of damages.

7. ID.; ID.; MORAL DAMAGES; AWARDED EVEN IN THE ABSENCE OF ANY ALLEGATION AND PROOF OF HEIR'S EMOTIONAL SUFFERING IN VIOLENT DEATH CASES. — [T]he mental anguish of the surviving family should be assuaged by the award of appropriate and reasonable moral damages. Although the surviving family's mental anguish is not ever quantifiable with mathematical precision, the Court must nonetheless determine the amount to which the heirs of the deceased are entitled. In this case, the Court holds that the

amount of ₱50,000.00 is reasonable, which, pursuant to prevailing jurisprudence, is awarded even in the absence of any allegation and proof of the heirs' emotional suffering, simply because human nature and experience have shown that: "xxx a violent death invariably and necessarily brings about emotional pain and anguish on the part of the victim's family. It is inherently human to suffer sorrow, torment, pain and anger when a loved one becomes the victim of a violent or brutal killing. Such violent death or brutal killing not only steals from the family of the deceased his precious life, deprives them forever of his love, affection and support, but often leaves them with the gnawing feeling that an injustice has been done to them."

8. ID.; ID.; EXEMPLARY DAMAGES; IMPOSED IN CRIMINAL CASES AS PART OF THE CIVIL LIABILITY WHEN THE CRIME WAS COMMITTED WITH ONE OR MORE AGGRAVATING CIRCUMSTANCES. — The *Civil Code* provides that exemplary damages may be imposed in criminal cases as part of the civil liability "when the crime was committed with one or more aggravating circumstances." The *Civil Code* allows such damages to be awarded "by way of example or correction for the public good, in addition to the moral, temperate, liquidated or compensatory damages." In this regard, the CA and the RTC committed the plain error of failing to recognize the right of the heirs of the victim to exemplary damages by virtue of the attendance of treachery. The plain error, even if not assigned in this appeal, demands immediate rectification as a matter of law due to the killing being attended by treachery.

9. ID.; ID.; ID.; ID.; AN AGGRAVATING CIRCUMSTANCE, WHETHER ORDINARY OR QUALIFYING, ENTITLES THE OFFENDED PARTY TO AN AWARD OF EXEMPLARY DAMAGES. — As well explained in *People v. Catubig*: x x x "The term 'aggravating circumstances' used by the *Civil Code*, the law not having specified otherwise, is to be understood in its broad or generic sense. The commission of an offense has a two-pronged effect, one on the public as it breaches the social order and the other upon the private victim as it causes personal sufferings, each of which is addressed by, respectively, the prescription of heavier punishment for the accused and by an award of additional damages to the victim. The increase of the penalty or a shift to a graver felony underscores the exacerbation of the offense by the attendance of aggravating circumstances,

whether ordinary or qualifying, in its commission. **Unlike the criminal liability which is basically a State concern, the award of damages, however, is likewise, if not primarily, intended for the offended party who suffers thereby. It would make little sense for an award of exemplary damages to be due the private offended party when the aggravating circumstance is ordinary but to be withheld when it is qualifying. Withal, the ordinary or qualifying nature of an aggravating circumstance is a distinction that should only be of consequence to the criminal, rather than to the civil, liability of the offender. In fine, relative to the civil aspect of the case, 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 defendants-appellants.

D E C I S I O N

BERSAMIN, *J.*:

Appellants Toribio Mayingque *alias* Loloy (Toribio), Gregorio Mayingque *alias* Gorio (Gregorio), and Filomeno Mayingque *alias* Boy Roti (Filomeno) appeal the decision promulgated on June 15, 2007 by the Court of Appeals (CA)[1] affirming their conviction for murder that the Regional Trial Court (RTC), Branch 275, in Las Piñas City handed down, penalizing each with *reclusion perpetua*, and ordering them to pay ₱50,000.00 to the heirs of deceased Edgardo Sumalde Tusi (Edgardo), and ₱20,000.00 as burial expenses to the wife of Tusi. [2]

The appellants and one Edwin Macas (Edwin) were indicted for the murder of Edgardo under the amended information dated June 28, 1999,[3] charging them thus:

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[1] *Rollo*, pp. 2-21.

[2] CA *Rollo*, pp. 13-21.

[3] Original Records, p. 3.

That on or about the 30th day of May, 1999, in the City of Las Piñas, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating together and all of them mutually helping and aiding one another, without justifiable motive with intent to kill and by means of treachery and taking advantage of superior strength, did then and there willfully, unlawfully and feloniously assault, attack and stab one EDGARDO SUMALDE TUSI, with deadly weapons (knife and bolo), hitting the victim on the different parts of his body, thereby inflicting upon the latter multiple mortal stab wounds, which directly caused his death.

CONTRARY TO LAW.

At arraignment, the appellants pleaded *not guilty* to the information, as amended. Edwin remained at large to this date.[4]

Evidence of the Prosecution

The Prosecution presented Salvacion Tusi (Salvacion), wife of Edgardo, the victim, who testified that she knew the appellants because they usually had their drinking sessions on Sundays at Edwin's place, which was beside her residence at Pedro Sabido Street, BF Resort Village, Las Piñas City; that in one such drinking session, Edgardo, annoyed by the noise made by the appellants and Edwin, was prompted to admonish them to tone down their voices; that the appellants and Edwin resented Edgardo's admonition;[5] that while she and Edgardo were resting in front of their house at around 5 *pm* on May 30, 1999, Toribio arrived and without saying anything stabbed Edgardo twice on his side; that she shouted for help, but her cousin Ruben Bernal could not do anything because Edwin, Filomeno and Gregorio had meanwhile joined Teofilo in assaulting Edgardo.[6]

Ruben Bernal and Jaime Bernal corroborated Salvacion's recollection of the assault on Edgardo. According to them, the appellants ganged up on Edgardo, with Teofilo wielding a kitchen knife with which he stabbed Edgardo twice and Gregorio hacking

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[4] CA *Rollo,* p. 18.

[5] TSN, September 6, 1999, p. 9.

[6] *Id.*, pp. 4-6.

Edgardo on the head with a bolo while Filomeno and Edwin restrained Edgardo. They heard Edwin tell the appellants to ensure that Edgardo was lifeless before leaving him.[7]

Dr. Romeo T. Salen, Medico Legal Officer of the Western Police District (now Manila Police District) Crime Laboratory, appeared in court in representation of Dr. Emmanuel L. Aranas, and brought the following documents: (a) Request for Examination on the Cadaver of the deceased transmitted by the Las Piñas Police and received by Dr. Aranas; (b) Certification of Identification and Consent for Autopsy signed by the brother of Edgardo; (c) Post Mortem Examination or Anatomical Sketch; (d) Medico Legal Report; and (e) Death Certificate of Edgardo prepared by Dr. Aranas.[8]

Dr. Salen explained that based on Dr. Aranas' written findings, Edgardo had sustained 12 wounds in the head, neck and chest, eight of which had been fatal.[9]

Evidence of the Defense

For the Defense, the three appellants and one Agustin Tano (Tano) were presented as witnesses.

Tano was on his way home in late afternoon of May 30, 1999 when he saw Edgardo punch and then hit Toribio with a lead pipe. He next saw Toribio retaliate by successively stabbing Edgardo with a knife. Tano added that the other accused were not present during the incident.[10]

Filomeno narrated that on the day of the incident, he left his house at 9:00 *am* to attend the birthday party of his nephew in Golden Gate, Moonwalk, Las Piñas City; that at 6:30 *pm*, his wife arrived at Golden Gate, and begged him not to go home yet because Toribio had been involved in a fight with Edgardo

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[7] TSN, December 6, 1999, p. 12; September 1, 2000, pp. 8-18.

[8] TSN, February 14, 2001, pp. 4-6.

[9] *Id.*, pp. 14-33.

[10] TSN, December 4, 2003, pp. 5-11.

and in turn the family of Edgardo had threatened to retaliate against Toribio's relatives to avenge Edgardo's death; that he and his wife thus remained in Golden Gate from May 30, 1999 to July 28, 1999 out of fear that Edgardo's relatives might retaliate against him although he had nothing to do with Edgardo's death;[11] that it was when he visited Toribio in detention when a police officer invited him for questioning regarding his supposed involvement in the May 30, 1999 incident; and that he (Filomeno) was then immediately detained in the police station, but was later transferred to the Las Piñas City Jail without any investigation being conducted.[12]

Gregorio attested that on the date of the incident, he was taking care of his two-month old grandson, when his neighbor advised him to leave his house at once, because his son Toribio had been involved in a fight; that he entrusted his grandson to the care of his neighbor to go to Antipolo City, where his other son, Gregorio, Jr., was residing; that he stayed in Antipolo City for two months because of fear of Toribio's enemies in Las Piñas City; that when he returned to Las Piñas City on July 28, 1999 to fetch his wife and daughter,[13] policemen invited him for questioning; and that he was then detained for his alleged involvement in the killing of Edgardo.[14]

Toribio stated that he was proceeding on foot towards Edwin's place at around 5:00 *pm* on May 30, 1999, when he saw Edgardo, Ruben and Jaime drinking together; that the three hailed him and invited him to drink with them; that although he declined the offer initially, he relented after Edgardo got mad at him; that Edgardo then invited him to join them, but he declined the invitation and told them that he was going somewhere else; that his refusal irked Edgardo, who warned him not be a toughie; that Edgardo stood up and attacked him with a lead pipe, hitting

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[11] TSN, October 12, 2004, pp. 5-11.

[12] TSN, May 12, 2005, p. 12.

[13] TSN, August 11, 2005, pp. 11-21.

[14] *Id.*, pp. 4-10.

him in the left arm; that his injury left a scar of an inch on his left arm;[15] that he ran towards Edwin's place and stayed there for about 20 minutes; that leaving Edwin's house later on, he passed by the three, who were still drinking; that Edgardo spotted him, held him by the collar, and punched him; that Ruben and Jaime also hit him with a lead pipe and a wooden club (*dos por dos*), injuring his left chest; that he parried their blows until they reached the street, where he fell on a small table used for selling Indian mangoes; that he was able to pick up a small knife used for peeling the mangoes, and while he was about to stand up from a prostrate position, he stabbed Edgardo on the head, neck and chest with the knife; that he did not report the incident to the police, and, instead, went home; that he did not anymore submit himself for medical attention, because his wounds were only slight; that he surrendered to the Antipolo City police authorities eight days later, upon learning that the other appellants had been implicated in Eduardo's death and were being hunted down by the police.[16]

Ruling of the RTC

In its January 30, 2006 decision,[17] the RTC found the appellants guilty of murder, and sentenced each to suffer *reclusion perpetua*, and to pay to the heirs of the deceased ₱50,000.00 and to the wife of the deceased ₱20,000.00 for the burial expenses.

The RTC supported the verdict with the following findings:

> The self defense version of accused Toribio Mayingque is against the eye witness account of prosecution witnesses who told the Court that about 5:00 in the afternoon of 30th day of May, 1999 Salvacion Tusi and her husband, the victim herein, were resting in front of their house located at Pedro Sabido St. BF Resort Village, Las Piñas City, together with a cousin, Ruben Bernal.

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[15] TSN, November 3, 2005, pp. 3-7.

[16] *Id.*, pp. 7-12.

[17] Original Records, pp. 259-267.

Accused Toribio "Loloy" Mayingque arrived and without saying anything stabbed the victim two times. Salvacion shouted for help while her cousin Ruben Bernal was about to help her husband but Roly, Edwin Macas and Gregorio arrived and helped in the killing of the victim (TSN, p. 5, Sept. 6, 1999).

The four (4) continuously stabbed the victim with a bladed weapons (sic) (*Ibid.*, p. 6). Three were positively identified in court as the perpetrators, to wit: accused Toribio, Gregorio and Filomeno, all surnamed Mayingque. Salvacion incurred expenses in the amount of ₱20,000.00 as a result of the death of the victim.

The reason why they stabbed and killed the victim was because they resented the admonition by the victim to them. Toribio, Filomeno and Gregorio always had a drinking spree in the place of Edwin Macas every Sunday and were very noisy. The victim asked them not to be noisy (*Ibid.*, p. 9).

The multiple wounds suffered by the victim even belies any pretension of self defense. The victim suffered 10 stab wounds and 2 incised wounds. In all, the victim suffered 12 wounds, to wit:

No. 1 Stab Wound, parietal region, measuring 4 by 0.5 cm right of the mid-sagittal line which is on the right part of the head measuring 4 x .5 cm which is a superficial wound because there was no other organ damaged and it is not a fatal injury. This is caused by a sharp bladed weapon and that he pointed injury No. 1 in the Anatomical Sketch;

No. 2 Stab Wound, parietal region, measuring 2.5 by 0.2 cm, 10 cm right of mid-sagittal line, he described that this wound is a superficial wound which is almost the same size of injury No. 1 which was likewise caused by a sharp bladed weapon;

No. 3, stab wound, right orbital region, measuring 4 by 0.4 cm. 4 from the anterior midline, 6 cm deep, directed posterior wards and downwards, piercing the optic nerve and the adjacent soft tissues and muscles which means from front to back and it pierced the optic nerve which is responsible for the movement and for the eyes to see. Wound No. 3 is very damaging because it will cause blindness to the right eye and if the bleeding is profuse and if no medication is done, the patient could die. This is a fatal injury and is indicated in the Anatomical Sketch;

No. 4, Incised wound, right temporal region, measuring 5 by 0.7 cm, 8 cm anterior midline. This is an incised wound also a superficial injury caused by a sharp bladed instrument;

No. 5, Incised Wound, submental region, measuring 3 by 0.5 cm, 4 cm left of the anterior midline. This wound is located on the chin a superficial and non fatal injury and this injury is indicated in Exhibit "L" as injury No. 5;

No. 6, Stab wound, neck, measuring 1.5 by 1.5 cm, along the anterior midline, 7 cm deep, directed posterior wards, downwards, and lateral wards, piercing the upper lobe of the left lungs. This injury is located on the left side of the neck directed posterior ward or front to back and the upper lobe of the left lung was destroyed. This wound is fatal and caused the death of the victim. This injury is indicated in the Anatomical Sketch as Wound No. 6 and the injury was caused by sharp bladed instrument;

No. 7, Stab Wound, neck, measuring 3.5 by 1.5 cm, along the anterior midline, 7 cm deep, directed posterior wards, downwards and lateral wards, piercing the upper lobe of the left lung. This injury is located on the middle part of the neck and injured a major organ which is the lung and fatal, this is indicated in the Anatomical Sketch as Injury No. 7 and caused by a sharp bladed instrument;

No. 8, Stab Wound, left supraclavicular region, measuring 2.5 by 1.5 cm, 12 cm from the anterior midline, 5 cm deep, directed posterior wards, downwards and medial wards, piercing the upper lobe of the left lung. This wound is located at the clavicular which is the bone of the chest and directly behind the clavicular is the lungs and this injury is fatal and could cause the death of the victim and said injury is indicated in the Anatomical Sketch and the injury was caused by a sharp bladed instrument;

No. 9, Stab wound, left clavicular region, measuring 2 by 0.5 cm. 9 cm. From the anterior midline, 6 cm deep, directed poster wards, down wards and medial wards, passing thru the 1st left intercostals space, piercing the upper lobe of the left lung. This injury is located at the clavicular region and destroys the upper lobe of the left lung and this is a fatal wound caused by a bladed weapon. This injury is indicated in the Anatomical Sketch as Wound No. 9;

No. 10, Stab wound, left infraclavicular region, measuring 2 by 1 cm. 12 cm from the anterior midline, 10 cm deep, directed posterior wards, downwards and medialwards passing thru the 2nd left

intercostals space, piercing the upper lobe of the left lung. This injury is located at the clavicular region directly behind is the lung and this injury is fatal caused by a bladed instrument and the same is indicated in the Anatomical Sketch as Wound No. 10.

No. 11. Stab wound, sternal region, measuring 3 by 0.6 cm. Along the anterior midline, 10 cm. Deep, directed posteriorwards, downwards and lateralwards, piercing the upper lobe of the right lung. This injury is on the external region so from the center to the outside it hits the upper lobe of the right lung and this is a fatal wound and also indicated as Injury No. 11 in the anatomical sketch.

No. 12, Stab wound, right mammary region, measuring 3 by 2.5, 4 cm from the anterior midline, directed posteriorwards, downwards and to the right, fracturing the 3rd right thoracic rib, piercing the pericardium and the right ventricle of the heart. This injury is located on the right chest directed posteriorwards, downwards and fractured the third right thoracic rib and hit the pericardium and the right ventricle of the heart on the middle and this wound was very fatal and caused by a sharp bladed instrument and this injury is likewise indicated in the Anatomical Sketch

According to Dr. Talen, the relative position of the assailant in inflicting wounds No. 7 to 10 most probably was facing the victim and the trajectory is directed downwards and the infliction came from above. Injury Nos. 1, 2, 4 and 5 were inflicted in any position. Wound No. 3 was inflicted from up to down. Multiple stab wounds, head, neck and chest caused of death of the victim.

The foregoing 12 injuries of the victim belie the self defense of accused Toribio Mayingque. The multiple injuries of the victim support the claim of conspiracy by the prosecution. Dr. Salen told the Court that the different sizes of the wounds show that indeed more than one assailant inflicted the wounds and more than one instrument used (TSN, pp. 32-33, Feb. 14, 2001). Moreover, all three have been positively identified in court as the perpetrators. Thus, the Court can not accept the denial and alibi by the other two co-accused, namely: Gregorio Mayingque and Filomeno Mayingque.

It is clear from the testimonies of prosecution witnesses that the accused treacherously attacked the victim. They suddenly assaulted the victim. As held: "it is necessary to show that the aggressors cooperated in such a way as to secure advantage from their superiority in strength. (*People v. Casey,* see note 63, *supra* at 34 [1981] citing

People v. Elizaga, 86 Phil. 365.) There must be proof of the relative physical strength of the aggressors and the assaulted party or proof that the accused simultaneously assaulted the deceased." (*People v. Casey*, see note 63, *supra* at 34 [1981] citing *People v. Bustos, et al.*, 51 Phil. 385; *People vs. Rubia, et al.*, 52 Phil. 172, 176 [1928].)" (G.R. Nos. 120394-97, January 16, 2001, *People vs. Danilo Pablo, Et Al.*)[18]

Ruling of the CA

Through its decision dated June 15, 2007,[19] the CA affirmed the RTC, giving the following ratiocination:

The appeal is bereft of merit.

The testimonies of Salvacion, Ruben, and Jaime positively pointing to accused-appellant Loloy as the one who stabbed Tusi twice with a kitchen knife along with accused-appellants Gorio as the one who hacked Tusi on the head with a bolo and Boy Roti, as the one who held Tusi while the latter was being hacked, which are bolstered by the medico legal findings that eight (8) out of twelve (12) stabs and incise wounds sustained by Tusi are fatal wounds, belie accused-appellant Loloy's assertion of self defense.

Another factor which militates against accused-appellant Loloy's claim of self defense are the facts that he confessed his guilt in the course of his testimony before the lower court when he stated that he surrendered to the Antipolo City Police authorities because he was conscience stricken by the fact that he allegedly violated the penal and the divine laws when he stabbed Tusi successively to get even with the latter, Ruben, and Jaime who were allegedly hitting him with a lead pipe and wooden club, which is tantamount to retaliation rather than self defense; that he did not submit the injuries on his left arm and chest to medical examination to at least clearly and convincingly substantiate the alleged unlawful aggression on his person by Tusi, and that he pleaded not guilty during the arraignment because his counsel advised him to do so, but deep inside his conscience, he felt guilty as charged.

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[18] Original Records, pp. 265-267

[19] CA *rollo*, pp. 102-120; the decision was penned by Justice Remedios A. Salazar-Fernando, and concurred in by Justice Rosalinda Asuncion-Vicente and Justice Enrico A. Lanzanas (retired).

> xxx when the accused invokes self-defense, it becomes incumbent upon him to prove by clear and convincing evidence that he indeed acted in defense of himself. xxx
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> Moreover, the nature, number and location of the wounds sustained by the victim belie the assertion of self-defense since the gravity of the said wounds is indicative of a determined effort to kill and not just defend. The number of wounds was established by the physical evidence, which is a mute manifestation of truth and ranks high in the hierarchy of trustworthy evidence. xxx

The distance between accused-appellant Boy Roti's alleged whereabouts on May 30, 1999 and the crime scene could be negotiated in thirty (30) minutes by a tricycle ride so much so that it was physically possible for him to be present at the scene of the incident at that precise time. Aside from his wife Lolita who started giving her direct testimony, but subsequently died, accused-appellant Boy Roti could have presented his sister, Lina Mayingque, a certain Roberto Entosa, and his sister-in-law (*hipag*) as witnesses to prove that he was in Golden Gate, Moonwalk, Las Piñas City all the time, and to disprove the prosecution's claim of his presence in BF Resort Village where Tusi was stabbed to death on May 30, 1999. However, he did not do so. If accused-appellant Boy Roti's fear that the family of Tusi would retaliate for being a brother of accused-appellant Loloy to avenge Tusi's death, even though he had nothing to do with it, is true, he should have reported the matter to the police authorities rather than hide at his sister's house in Moonwalk until his apprehension on July 28, 1999.

Accused-appellant Gorio's alleged act of fleeing for safety from Las Piñas City to Antipolo City in order to allegedly avoid involvement in a neighborhood fight involving his son accused-appellant Loloy, entrusting his two (2)-month old grandchild to the care of a neighbor who was not that familiar to him, leaving his wife and daughter behind in Las Piñas City exposed to the purported wrath of the family of Tusi, and leaving his son, accused-appellant Loloy, to fight his alleged aggressors without doing anything to protect his son, are incredible, and contrary to human nature and experience. His conduct could no less than be construed as an implied admission of guilt.

For alibi to prosper, it is not enough for accused-appellants Loloy and Gorio to prove that they were somewhere else when the crime was committed. They must likewise prove that they could not have been physically present at the scene of the crime or its immediate vicinity at the time of its commission. Positive identification where categorical and consistent and not attended by any showing of ill motive on the part of eyewitnesses on the matter prevails over alibi and denial.

On the other hand, Tano's testimony was incongruent with the testimonies of the other defense witnesses as regards the actual date of the occurrence of the offense, and the identity of Tusi. Said testimony cast doubt on his credibility as an eyewitness and it fails to overcome the evidence for the prosecution clearly and convincingly.

The testimony of Dr. Salen as regards the Anatomical Sketch, and Medico Legal Report, among other things, prepared by Dr. Aranas falls under the exception to the hearsay rule because the said sketch and report are entries in official records made by Dr. Aranas in the performance of his duty as a Medico Legal Officer of the WPD Crime Laboratory. Dr. Aranas had personal knowledge of the facts stated by him the said sketch and report relative to the nature and number of wounds sustained by Tusi because he was the one who performed the autopsy on the cadaver of Tusi. Dr. Salen acquired such facts from the sketch and report made by his predecessor, Dr. Aranas, who had a legal duty to turn over the same to him as his successor. Such entries were duly entered in a regular manner in the official records, hence, the entries in said sketch and report are *prima facie* evidence of the facts therein stated and are admissible under Section 44, Rule 130 of the Rules of Court.

As an officer having legal custody of the said sketch and report, Dr. Salen attested that the copies presented in the lower court were the original ones prepared by Dr. Aranas.

The findings on the wounds sustained by Tusi as found on the medico legal report was written in a technical language which is not well understood by the lower court, and said matter required the special knowledge, skill, experience or training possessed by Dr. Salen as a Medico Legal Officer of the WPD Crime Laboratory to give to the lower court the meaning of the technical language used, particularly, whether or not the wounds described therein were fatal. Hence, the lower court could receive in evidence Dr. Salen's interpretation of Dr. Aranas' findings.

> The testimony of an expert witness is not indispensable to a successful prosecution for murder. While the autopsy report of a medico legal expert in cases of murder, or homicide, is preferably accepted to show the extent of the injuries suffered by the victim, it is not the only competent evidence to prove the injuries and the fact of death. The testimonies of credible witnesses are equally admissible regarding such injuries and the surrounding circumstances thereof.

On the non-offer of evidence, notwithstanding the fact that the medical legal report and the anatomical sketch were not formally offered, they are nonetheless, admissible because –

> x x x Evidence not formally offered can be considered by the court as long as they have been properly identified by testimony duly recorded and they have themselves been incorporated in the records of the case. All the documentary and object evidence in this case were properly identified, presented and marked as exhibits in court x x x. Even without their formal offer, therefore, the prosecution can still establish the case because witnesses properly identified those exhibits, and their testimonies are (sic) record. Furthermore, appellant's counsel had cross-examined the prosecution witnesses who testified on the exhibits.

In this case, the counsel of accused-appellants Loloy, Gorio, and Boy Roti had the opportunity to cross-examine Dr. Salen, but did not do so, insisting that the latter is not qualified as a medico legal expert, and that his testimony is hearsay.

Records show that Edgardo Tusi was not in a position to put up any kind of defense considering the fact that he was seated and resting underneath a tree infront of his house immediately before accused-appellant Loloy suddenly appeared and stabbed him twice with a kitchen knife.

There is treachery when the offender commits any of the crimes against persons, employing means and method or forms in the execution thereof which tend directly and especially to ensure its execution, without risk to the offender, arising from the defense which the offended party might make. The essence of treachery is the sudden and unexpected attack without the slightest provocation on the part of the person attacked.

The participation of accused-appellants Gorio and Boy Roti in killing Tusi was shown when accused-appellant Gorio subsequently hacked

Tusi on the head with a bolo, while accused-appellant Boy Roti assisted by holding Tusi right after the stabbing by accused-appellant Loloy to especially ensure the stabbing and hacking without risk to themselves.

Conspiracy exists when two or more persons come to an agreement concerning the commission of a felony and decide to commit it. In the absence of direct proof of conspiracy, it may be deduced from the mode, method and manner by which the offense was perpetrated, or inferred from the acts of the accused themselves when such point to a joint purpose and design, concerted action and community of interest.

Hence, the lower court correctly held that treachery and conspiracy attended the killing of Tusi.

Even if the voluntary surrender of accused-appellant Loloy to the Antipolo City Police would be appreciated, he would still be punished by *reclusion perpetua*, which is an indivisible penalty with a fixed duration, under Article 248 of the Revised Penal Code because the pertinent portion of Article 63 of the said Code provides that:

> In all cases in which the law prescribes a single indivisible penalty, it shall be applied by the courts regardless of any mitigating or aggravating circumstances that may have attended the commission of the deed.

Hence, the lower court correctly sentenced accused-appellants Loloy, Gorio, and Boy Roti to suffer the penalty of *reclusion perpetua*.[20]

Hence, this appeal, in which the appellants urge that the CA committed the following errors, namely:

I

THE COURT *A QUO* GRAVELY ERRED IN NOT GIVING CREDENCE TO ACCUSED-APPELLANT TORIBIO MAYINGQUE'S THEORY OF SELF-DEFENSE.

II

THE COURT *A QUO* GRAVELY ERRED IN FINDING THAT THE ACCUSED-APPELLANTS CONSPIRED TO COMMIT THE CRIME OF MURDER.

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[20] *Id.*, pp. 113-120.

III

THE COURT *A QUO* GRAVELY ERRED IN GIVING CREDENCE TO HEARSAY EVIDENCE WHICH BECAME THE BASIS FOR THE CONVICTION OF THE ACCUSED-APPELLANTS.

IV

ON THE ASSUMPTION THAT THE ACCUSED-APPELLANTS ARE GUILTY, THE COURT *A QUO*, GRAVELY ERRED IN FAILING TO APPRECIATE THE CIRCUMSTANCE OF VOLUNTARY SURRENDER, INCOMPLETE SELF-DEFENSE AND IN FINDING THAT THE CRIME WAS ATTENDED BY TREACHERY.

On June 25, 2008, Gregorio manifested in writing that he was withdrawing his appeal upon the advice and assistance of his counsel, because he intended to apply for executive clemency by reason of his advanced age of 78 years.[21]

On July 16, 2008, the Court allowed Gregorio's withdrawal of appeal, and considered the judgment final and executory as to him.[22]

Ruling

The appeal has no merit.

I

The appellants would have the Court review the CA's affirmance of their conviction by attacking the appellate court's supposed failure to accord credence to Toribio's plea of self-defense, and by assailing the appellate court's appreciation of the evidence.

The Court cannot accept the appellants' urging.

To begin with, it is fundamental that the determination by the trial court of the credibility of witnesses, when affirmed by the appellate court, is accorded full weight and credit as well as great respect, if not conclusive effect.[23] Such determination made by

[21] *Rollo,* pp. 65-69.

[22] *Id.,* p.71; the entry of judgment was made on October 3, 2008, *rollo*, pp. 73-74.

[23] *People v. Darilay*, G.R. Nos. 139751-52, January 26, 2004, 421 SCRA 45.

the trial court proceeds from its first-hand opportunity to observe the demeanor of the witnesses, their conduct and attitude under grilling examination,[24] thereby placing the trial court in the unique position to assess the witnesses' credibility and to appreciate their truthfulness, honesty and candor.[25]

In view of the foregoing, we sustain the CA's affirmance of the conviction. We have not been shown any fact or circumstance of weight and influence that the CA and the RTC overlooked that, if considered, should affect the outcome of the case.

Secondly, the essential elements of self-defense are: (*a*) unlawful aggression; (*b*) reasonable necessity of the means employed to prevent or repel it; and (*c*) lack of sufficient provocation on the part of the person defending himself.[26] By invoking self-defense, the accused must prove by clear and convincing evidence the elements of self-defense.[27] The rule consistently adhered to in this jurisdiction is that when the accused admitted that he was the author of the death of the victim and his defense was anchored on self-defense, it becomes incumbent upon him to prove the justifying circumstance to the satisfaction of the court.[28] The rationale for this requirement is that the accused, having admitted

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[24] *Gulmatico v. People,* G.R. No. 146296, October 15, 2007, 536 SCRA 82.

[25] *People v. De Guzman,* G.R. No. 177569, November 28, 2007, 539 SCRA 306; *People v. Cabugatan,* G.R. No. 172019, 12 February 2007, 515 SCRA 537; *People v. Taan,* G.R. No. 169432, October 30, 2006, 506 SCRA 219; *Perez v. People,* G.R. No. 150443, January 20, 2006, 479 SCRA 209; *People v. Tonog, Jr.*, G.R. No. 144497, June 29, 2004, 433 SCRA 13; *People v. Genita, Jr.*, G.R. No. 126171, March 11, 2004, 425 SCRA 343; *People v. Pacheco,* G.R. No. 142887, March 2, 2004, 424 SCRA 164; *People v. Abolidor,* G.R. No. 147231, February 18, 2004, 423 SCRA 260; *People v. Santiago,* G.R. Nos. 137542-43, January 20, 2004, 420 SCRA 248; *People v. Librando,* G.R. No. 132251, July 6, 2000, 335 SCRA 232; *People v. Alarcon,* G.R. Nos. 133191-93, July 11, 2000, 335 SCRA 457.

[26] Art. 11 (1), *Revised Penal Code.*

[27] *People v. Calabroso,* G.R. No. 126368, September 14, 2000, 340 SCRA 332, 338.

[28] *People v. Camacho,* G.R. No. 138629, June 20, 2001, 359 SCRA 200; *People v. Quiño,* G.R. No. 105580, May 17, 1994, 232 SCRA 400;

the felonious wounding or killing of his adversary, is to be held criminally liable for the crime unless he establishes to the satisfaction of the court the fact of self-defense. Thereby, however, the burden to prove guilt beyond reasonable doubt is not lifted from the shoulders of the State, which carries it until the end of the proceedings. In other words, only the *onus probandi* has shifted to him, because self-defense is an affirmative allegation that must be established with certainty by sufficient and satisfactory proof.[29] He must now discharge the burden by relying on the strength of his own evidence, not on the weakness of that of the Prosecution, for, even if the Prosecution's evidence is weak, it cannot be disbelieved in view of the accused's admission of the killing.[30]

Both the trial court and the CA rejected Teofilo's plea of self-defense. We hold that they did so correctly. Teofilo's evidence on self-defense was not persuasive enough, and lacked credibility. Simply stated, such evidence did not prevail over the clear showing by Salvacion and the Bernals that Teofilo and his co-conspirators had ganged up on Edgardo with a knife (Teofilo) and bolo (Gregorio) while the other two had held Edgardo to render him defenseless. Indeed, we agree with the conclusion of both lower courts that the plea of self-defense was belied by the number (12) and the different sizes of the wounds inflicted on Edgardo. The presence of a large number of wounds on the victim's body negated self-defense, and indicated, instead, a determined effort to kill the victim.[31]

People v. Capisonda, 1 Phil. 575 (1902); *People v. Baguio*, 43 Phil. 683 (1922); *People v. Silang Cruz*, 53 Phil. 625 (1929); *People v. Gutierrez*, 53 Phil. 609 (1929); *People v. Embalido*, 58 Phil. 152 (1933); *People v. Dorico*, G.R. No. 31568, November 29, 1973, 54 SCRA 172; *People v. Boholst-Caballero*, G.R. No. L-23249, November 25, 1974, 61 SCRA 180.

[29] *People v. Gelera*, G.R. No. 121377, August 15, 1997, 277 SCRA 450.

[30] *People v. Molina*, G.R. No. 59436, August 28, 1992, 213 SCRA 52; *People v. Alapide*, G.R. No. 104276, September 20, 1994, 236 SCRA 555; *People v. Albarico*, G.R. Nos. 108596-97, November 17, 1994, 238 SCRA 203; *People v. Camahalan*, G.R. No. 114032, February 22, 1995, 241 SCRA 558.

[31] *People v. Domingo*, G.R. No. 131817, August 8, 2001, 362 SCRA 338, 343; *People v. Rivero*, G.R. No. 112721, March 15, 1995, 242 SCRA 354; *People v. Nuestro*, G.R. No. 111288, January 18, 1995, 240 SCRA 221.

Toribio did not convincingly establish, first of all, that there was unlawful aggression against him. His claim that Edgardo and the Bernals had attacked him with a lead pipe and wooden club, which impelled him to stab Edgardo, became implausible to the lower courts, and to us, too, because Toribio did not even submit himself to any medical attention. He should have done so, if, truly, he had sustained injuries at the hands of the victim and his group. At any rate, the question as to who between the accused and the victim was the unlawful aggressor was a question of fact best addressed to and left with the trial court for determination based on the evidence on record.[32]

Thirdly, the CA did not err in affirming the conviction of Filomeno, whose main plea consisted of *alibi*. Filomeno's *alibi* would place him in Golden Gate, Moonwalk, Las Piñas City, at the time of the commission of the crime. The CA rejected such *alibi* by indicating that the distance between Golden Gate, Moonwalk, Las Piñas City and Pedro Sabido Street, BF Resort Village, Las Piñas City where the crime was committed could be negotiated through a 30-minute tricycle ride, which did not render impossible for Filomeno to be in the place of the crime when it was committed. The CA also cited the abject failure of Filomeno, or other witnesses to credibly establish his being in Golden Gate, Moonwalk, Las Piñas City in the entire time from the morning of May 30, 1999 till after the commission of the crime, as well as to disprove the State's positive showing that he was present in the place of the crime when it was committed.

Alibi is an inherently weak and unreliable defense, because it is easy to fabricate and difficult to disprove.[33] To establish *alibi*, the accused must prove: (*a*) that he was actually in another place at the time of the perpetration of the crime; and (*b*) that it was physically impossible for him to be at the scene of the

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[32] *Garcia v. People* , G.R. No. 144699, March 10, 2004, 425 SCRA 221.

[33] *People v. Batidor*, G.R. No. 126027, February 18, 1999, 303 SCRA 335.

crime when the crime was perpetrated.[34] Physical impossibility refers to the distance between the place where the accused was when the crime transpired and the place where the crime was committed, as well as to the facility of access between the two places.[35]

II
Penalties and Damages

As the consequence of the foregoing conclusion, the appellants are found guilty of murder, and accordingly punished with *reclusion perpetua* pursuant to Article 248 of the *Revised Penal Code*.[36]

There is a need to correct the award of damages.

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[34] *People v. Saban*, G.R. No. 110559, November 24, 1999, 319 SCRA 36, *People v. Reduca*, G.R. Nos. 126094-95, January 21, 1999, 301 SCRA 516, 534.

[35] *People v. De Labajan*, G.R. Nos. 129968-69, October 27, 1999, 317 SCRA 566, 575.

[36] Art. 248. *Murder*. - Any person who, not falling within the provisions of Article 246 shall kill another, shall be guilty of murder and shall be punished by *reclusion perpetua* to death, if committed with any of the following attendant circumstances:

1. **With treachery, taking advantage of superior strength, with the aid of armed men, or employing means to weaken the defense or of means or persons to insure or afford impunity**.

2. In consideration of a price, reward, or promise.

3. By means of inundation, fire, poison, explosion, shipwreck, stranding of a vessel, derailment or assault upon a railroad, fall of an airship, or by means of motor vehicles, or with the use of any other means involving great waste and ruin.

4. On occasion of any of the calamities enumerated in the preceding paragraph, or of an earthquake, eruption of a volcano, destructive cyclone, epidemic or other public calamity.

5. With evident premeditation.

6. With cruelty, by deliberately and inhumanly augmenting the suffering of the victim, or outraging or scoffing at his person or corpse.

The CA did not state whether the amount of ₱50,000.00 was for death indemnity or moral damages. Nonetheless, the CA should have awarded both damages, considering that they were of different kinds.[37] For death indemnity, the amount of ₱50,000.00 is fixed pursuant to the current judicial policy on the matter,[38] without the need of any evidence or proof of damages.[39] Likewise, the mental anguish of the surviving family should be assuaged by the award of appropriate and reasonable moral damages.[40] Although the surviving family's mental anguish is not ever quantifiable with mathematical precision, the Court must nonetheless determine the amount to which the heirs of the deceased are entitled. In this case, the Court holds that the amount of ₱50,000.00 is reasonable, which, pursuant to prevailing jurisprudence,[41] is awarded even in the

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[37] *Heirs of Castro v. Raymundo Bustos*, L-25913, February 28, 1969, 27 SCRA 327.

[38] *Id*.

[39] Article 2206, *Civil Code*:

Article 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 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.

[40] Article 2206, (3), in relation to Article 2217 and Article 2219, *Civil Code*, and Article 107, *Revised Penal Code*.

[41] *People v. Berondo*, G.R. No. 177827, March 30, 2009, 582 SCRA 547; *People v. Domingo*, G.R. No. 184343, March 2, 2009, 580 SCRA 436, 456-457; *People v. Osianas*, G.R. No. 182548, September 30, 2008,

absence of any allegation and proof of the heirs' emotional suffering, simply because human nature and experience have shown that:

> xxx a violent death invariably and necessarily brings about emotional pain and anguish on the part of the victim's family. It is inherently human to suffer sorrow, torment, pain and anger when a loved one becomes the victim of a violent or brutal killing. Such violent death or brutal killing not only steals from the family of the deceased his precious life, deprives them forever of his love, affection and support, but often leaves them with the gnawing feeling that an injustice has been done to them.[42]

The *Civil Code* provides that exemplary damages may be imposed in criminal cases as part of the civil liability "when the crime was committed with one or more aggravating circumstances."[43] The *Civil Code* allows such damages to be awarded "by way of example or correction for the public good, in addition to the moral, temperate, liquidated or compensatory damages."[44] In this regard, the CA and the RTC committed the plain error of failing to recognize the right of the heirs of the victim to exemplary damages by virtue of the attendance of treachery. The plain error, even if not assigned in this appeal, demands immediate rectification as a matter of law due to the killing being attended by treachery.

That treachery, being an attendant circumstance, was inseparable from murder did not matter. As well explained in *People v. Catubig*:[45]

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567 SCRA 319, 340; *People v. Buduhan*, G.R. No. 178196, August 6, 2008, 561 SCRA 337, 367-368; *People v. Salva*, G.R. No. 132351, January 10, 2002, 373 SCRA 55, 69.

[42] *People v. Panado*, G.R. No. 133439, December 26, 2000, 348 SCRA 679, 690-691.

[43] Article 2230, *Civil Code.*

[44] Article 2229, *Civil Code*.

[45] G.R. No. 137842, August 23, 2001, 363 SCRA 621, 635.

The term "aggravating circumstances" used by the *Civil Code*, the law not having specified otherwise, is to be understood in its broad or generic sense. The commission of an offense has a two-pronged effect, one on the public as it breaches the social order and the other upon the private victim as it causes personal sufferings, each of which is addressed by, respectively, the prescription of heavier punishment for the accused and by an award of additional damages to the victim. The increase of the penalty or a shift to a graver felony underscores the exacerbation of the offense by the attendance of aggravating circumstances, whether ordinary or qualifying, in its commission. **Unlike the criminal liability which is basically a State concern, the award of damages, however, is likewise, if not primarily, intended for the offended party who suffers thereby. It would make little sense for an award of exemplary damages to be due the private offended party when the aggravating circumstance is ordinary but to be withheld when it is qualifying. Withal, the ordinary or qualifying nature of an aggravating circumstance is a distinction that should only be of consequence to the criminal, rather than to the civil, liability of the offender. In fine, relative to the civil aspect of the case, 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*.**

Accordingly, ₱30,000.00 is awarded as exemplary damages. We hold that true exemplarity will not be served by a lesser amount.

Lastly, the Court retains the award of ₱20,000.00 for burial expenses, as the CA and RTC fixed, considering that the appellants have not assailed such amount. There can be no question that burial expenses were the reasonable consequence of the criminal act of the accused.

WHEREFORE, appellants *TORIBIO MAYINGQUE* and *FILOMENO MAYINGQUE* are found *GUILTY* beyond reasonable doubt of the crime of *MURDER*, and each is sentenced to suffer *reclusion perpetua*.

The appellants are ordered to pay to the heirs of Edgardo Tusi ₱50,000.00 as civil indemnity, ₱50,000.00 as moral damages, ₱30,000.00 as actual damages, and ₱20,000.00 as burial expenses.

Costs of suit to be paid by the appellants.

SO ORDERED.

Carpio Morales (Chairperson), Brion, Abad,[*] and *Villarama, Jr., JJ.,* concur.

SECOND DIVISION

[G.R. No. 179812. July 6, 2010]

ETERTON MULTI-RESOURCES CORPORATION (formerly Eternit Corporation), *petitioner, vs.* **FILIPINO PIPE AND FOUNDRY CORPORATION,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; PETITION FOR REVIEW ON *CERTIORARI* UNDER RULE 45; LIMITED TO REVIEW OF QUESTIONS OF LAW. — It is evident that the issue raised in this petition is the correctness of the factual findings of the RTC and the CA. In petitions for review on *certiorari* under Rule 45, only questions of law may be raised by the parties and passed upon by this Court. An inquiry into the veracity of the CA's factual findings and conclusions is not the function of the Supreme Court, for this Court is not a trier of facts. Neither is it our function to reexamine and weigh anew the respective evidence of the parties.

2. ID.; ID.; ID.; FACTUAL FINDINGS OF THE TRIAL COURT, WHEN ADOPTED AND CONFIRMED BY THE COURT OF APPEALS, ARE BINDING AND CONCLUSIVE ON THE SUPREME COURT, AND WILL GENERALLY NOT BE REVIEWED ON APPEAL; CASE AT BAR. — We reviewed the records before us and found no compelling reason to depart from and reverse the trial court's findings and conclusions. The findings

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[*] Additional member as per Special Order No. 843 dated May 17, 2010.

of the RTC, as affirmed by the CA, are well supported by evidence on record. We reiterate that factual findings of the trial court, when adopted and confirmed by the CA, are binding and conclusive on this Court and will generally not be reviewed on appeal. While this Court has recognized several exceptions to this rule, none of these exceptions finds application here. ETERTON failed to convince us that the trial court has overlooked, misunderstood, or misappreciated certain facts and circumstances which if considered would have altered the outcome of the case. Neither is there any proof that the findings of fact below were reached arbitrarily or capriciously. Accordingly, the CA committed no reversible error in affirming the findings of the RTC.

APPEARANCES OF COUNSEL

Eufemio Law Offices for petitioner.
Ariel M. Los Baños for respondent.

R E S O L U T I O N

NACHURA, *J.*:

At bar is a petition for review on *certiorari* under Rule 45 of the Rules of Court filed by Eterton Multi-Resources Corporation (ETERTON), challenging the May 28, 2007 Decision[1] and the October 1, 2007 Resolution[2] of the Court of Appeals (CA) in CA-G.R. CV No. 66917.

The facts:

ETERTON is a corporation engaged in the manufacture of asbestos cement pipes. On November 17, 1980, it entered into an Agreement[3] with respondent Filipino Pipe and Foundry Corporation (FPFC) wherein ETERTON undertook to deliver

[1] Penned by Associate Justice Sesinando E. Villon, with Associate Justices Renato C. Dacudao (retired) and Noel G. Tijam, concurring; *rollo*, pp. 24-32.

[2] *Rollo*, p. 33.

[3] Exh. "E"; Envelope of Exhibits.

the asbestos cement pipes needed by FPFC in its Metropolitan Waterworks and Sewerage System PG-8 Project in Novaliches, Quezon City. FPFC paid ₱1,260,521.83, but only ₱1,156,408.48 worth of asbestos cement pipes were delivered. ETERTON then refused to make delivery of asbestos cement pipes unless the price would be increased. Thus, to meet the project deadline, FPFC acquiesced to ETERTON's demand, and paid, but under protest, an additional amount of ₱125,168.03.

Thereafter, FPFC demanded from ETERTON the value of the undelivered asbestos cement pipes and the return of the overpayment it made, but the latter refused. Thus, on September 7, 1983, FPFC filed a collection suit with damages[4] against ETERTON in the Regional Trial Court (RTC) of Pasig, docketed as Civil Case No. 50163.

Traversing the complaint, ETERTON denied FPFC's allegations of short delivery and overpayment. It averred that the amount claimed by FPFC had already been applied to the price escalation and penalty charge imposed by reason of the delay in the payment of the purchases.[5]

On June 21, 1999, the RTC rendered a decision[6] disposing that:

> WHEREFORE, all the foregoing premises considered, judgment is hereby rendered ordering [petitioner] Eternit Corporation and/or Eterton Multi-Resources Corporation to pay [respondent] Filipino Pipe and Foundry Corporation the following:
>
> 1. ₱104,102.67, representing the excess payments made by [respondent] under its first cause of action with interest at [the] legal rate from date of demand until fully paid;
> 2. ₱50,000.00 as and for attorney's fees; and
> 3. Cost of suit.

[4] Records, pp. 1-6.

[5] *Id.* at 47-55.

[6] *Id.* at 597-622.

SO ORDERED.[7]

On appeal, the CA affirmed the RTC.[8] According to the CA, the records are clear that there were items in the sales invoices that were paid, but were not delivered by ETERTON. It rejected ETERTON's argument that the amount claimed by FPFC had been applied to price escalation and penalty charge, as no sufficient evidence was offered to prove the assertion. It declared FPFC's pieces of evidence sufficient to establish the claim of short delivery. The CA, however, sustained the denial by the RTC of FPFC's claim for reimbursement of the ₱125,168.03, representing the alleged overpricing of materials, as well as the claims for moral and exemplary damages and attorney's fees, for lack of ample proof. The CA disposed thus:

> WHEREFORE, in view of all the foregoing, the assailed decision dated June 21, 1999 of Branch 153, Regional Trial Court of Pasig City in Civil Case No. 50163 is hereby **AFFIRMED** with **MODIFICATION** that the award of attorney's fees is **DELETED**.
>
> SO ORDERED.[9]

ETERTON filed a motion for reconsideration, but the CA denied it on October 1, 2007.[10]

ETERTON is now before us faulting the CA for sustaining FPFC's claim for excess payment on account of short delivery. It contends that the CA was clearly oblivious of the provisions of the Letter-Agreement dated November 17, 1980 and Amendatory Letter-Agreement dated March 4, 1981 on the price escalation schedule applied for deliveries each month. It asserts that there were instances where ETERTON made deliveries of asbestos cement pipes but FPFC was not in a position to accept them. ETERTON was thus constrained to return them to their stockyards. When FPFC accepted the

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[7] *Id.* at 622.

[8] *Supra* note 1.

[9] *Id.* at 31.

[10] *Supra* note 2.

deliveries, the prices of the asbestos cement pipes had increased, and thus, it was charged based on the escalated prices. ETERTON assails the probative value and weight given by the RTC and the CA to FPFC's pieces of evidence.

The appeal lacks merit.

It is evident that the issue raised in this petition is the correctness of the factual findings of the RTC and the CA. In petitions for review on *certiorari* under Rule 45, only questions of law may be raised by the parties and passed upon by this Court. An inquiry into the veracity of the CA's factual findings and conclusions is not the function of the Supreme Court, for this Court is not a trier of facts. Neither is it our function to reexamine and weigh anew the respective evidence of the parties.[11]

Both the RTC and the CA found that there was a short delivery of ₱104,102.67. The RTC explained in this wise:

> A comparison of the quantities of goods delivered revealed that as to the goods covered by Invoice No. 71547, there is a difference of 1,980 while as to the goods covered by Invoice No. 71548, there is a difference of 1,195.
>
> [ETERTON], in its Comment/Objection to [FPFC's] formal offer of evidence contended that the gate passes and material receiving reports (Exh. "B" to "QQ" and "SS" to "FFF") are not conclusive proofs of the actual deliveries made by [ETERTON] because it can easily be distorted by not presenting one or two or more of such exhibits. However, [ETERTON] who is in possession of and from whom said gate passes originated could have easily presented concrete proof like additional gate passes to prove its contention but it failed to do so.
>
> This Court is thus convinced that the actual deliveries made by [ETERTON] to [FPFC] are those reflected in [FPFC's] Exh. "B" to "QQ" and "SS" to "FFF" which is (*sic*) less than the quantities in

[11] *Development Bank of the Philippines v. Licuanan*, G.R. No. 150097, February 26, 2007, 516 SCRA 644, 651.

the invoices. Therefore, as to quantities there is short delivery of 3,178.

In computing the prices of said short deliveries, this Court is of the opinion that the unit prices of each goods (sic) as appearing in the corresponding invoices should be the basis. We agree with [ETERTON] that pursuant to the terms and condition of the letter-agreement it entered into with [FPFC], the escalated prices of the pipes prevailing and controlling at the date of deliveries shall be the basis of the computation. This Court however believes that the unit price as appearing in the invoices is the agreed purchase price of the asbestos cement pipes for the following reasons: (1) In paragraph 3 of its Answer, [ETERTON] alleged that the parties mutually agreed that the invoice price for each delivery shall be escalated on the basis of the discount and price escalation schedule embodied in the Letter-Agreement; (2) [ETERTON] further alleged in paragraph 5 of its Answer that the Invoice Nos. 71547 and 71548 were later on amended by a Debit Memo sent by [ETERTON] to [FPFC] to cover the difference between the invoice price and the escalation price. However, the alleged Debit Memo was not even presented as evidence by [ETERTON]; (3) The acceptance by [ETERTON] of payment for Invoice No. 71547 in the amount of ₱750,495.68 (Exh. "PPPP" to "ZZZZ") and for Invoice No. 71548 in the total amount of ₱204,074.40 (Exh. "ZZZZ-A") which is the amount payable as stated in said invoices proves that the agreed purchase price is what is appearing thereon.

x x x x x x x x x

In sum, the total amount of short deliveries under Invoice No, 71547 and 71548 is ₱265,927.66. However, FPFC being honest enough admitted that although there were short deliveries, there were also over deliveries, that is deliveries which were not fully paid or no payment at all were made x x x.

x x x x x x x x x

Thus, deducting the over delivery in the amount of ₱161,824.99 from the short delivery in the amount of ₱265,927.66, the amount will be ₱104,102.67 which is the total claim to be awarded to FPFC x x x.[12]

We reviewed the records before us and found no compelling reason to depart from and reverse the trial court's findings

[12] Records, pp. 616-619.

and conclusions. The findings of the RTC, as affirmed by the CA, are well supported by evidence on record.

We reiterate that factual findings of the trial court, when adopted and confirmed by the CA, are binding and conclusive on this Court and will generally not be reviewed on appeal. While this Court has recognized several exceptions to this rule,[13] none of these exceptions finds application here. ETERTON failed to convince us that the trial court has overlooked, misunderstood, or misappreciated certain facts and circumstances which if considered would have altered the outcome of the case. Neither is there any proof that the findings of fact below were reached arbitrarily or capriciously. Accordingly, the CA committed no reversible error in affirming the findings of the RTC.

WHEREFORE, the petition is *DENIED*. The May 28, 2007 Decision and October 1, 2007 Resolution of the Court of Appeals in CA-G.R. CV No. 66917 are *AFFIRMED***.** Costs against petitioner.

SO ORDERED.

Carpio (Chairperson), Peralta, Abad, and *Mendoza, JJ.,* concur.

[13] See *Montecillo v. Pama*, G.R. No. 158557, February 4, 2008, 543 SCRA 512.

FIRST DIVISION

[G.R. No. 180285. July 6, 2010]

MA. SOCORRO MANDAPAT, *petitioner, vs.* **ADD FORCE PERSONNEL SERVICES, INC. and COURT OF APPEALS,** *respondents*.

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; TERMINATION OF EMPLOYMENT; CONSTRUCTIVE DISMISSAL; WHEN PRESENT. — Constructive dismissal exists when an act of clear discrimination, insensibility or disdain by an employer has become so unbearable to the employee leaving him with no option but to forego with his continued employment.

2. ID.; ID.; ID.; PREVENTIVE SUSPENSION; MAY BE LEGALLY IMPOSED AGAINST AN EMPLOYEE WHOSE ALLEGED VIOLATION IS THE SUBJECT OF AN INVESTIGATION; PURPOSE. — Preventive suspension may be legally imposed against an employee whose alleged violation is the subject of an investigation. The purpose of his suspension is to prevent him from causing harm or injury to the company as well as to his fellow employees. The pertinent rules dealing with preventive suspension are found in Section 8 and Section 9 of Rule XXIII, Book V of the Omnibus Rules Implementing the Labor Code, as amended by Department Order No. 9, Series of 1997 x x x .

3. ID.; ID.; ID.; ID.; WHEN CONSTRUCTIVE DISMISSAL SETS IN. — When preventive suspension exceeds the maximum period allowed without reinstating the employee either by actual or payroll reinstatement or when preventive suspension is for indefinite period, only then will constructive dismissal set in.

4. ID.; ID.; ID.; RESIGNATION; FORCED RESIGNATION DUE TO INTIMIDATION; REQUISITES; NOT ESTABLISHED IN CASE AT BAR.— Mere allegations of threat or force do not constitute evidence to support a finding of forced resignation. In order for intimidation to vitiate consent, the following requisites must concur: (1) that the intimidation caused the consent to be given; (2) that the threatened act be unjust or unlawful; (3) that the

threat be real or serious, there being evident disproportion between the evil and the resistance which all men can offer, leading to the choice of doing the act which is forced on the person to do as the lesser evil; and (4) that it produces a well-grounded fear from the fact that the person from whom it comes has the necessary means or ability to inflict the threatened injury to his person or property. None of these requisites was proven by petitioner. No demand was made on petitioner to resign. At most, she was merely given the option to either resign or face disciplinary investigation, which respondent had every right to conduct in light of the numerous infractions committed by petitioner. There is nothing irregular in providing an option to petitioner. Ultimately, the final decision on whether to resign or face disciplinary action rests on petitioner alone.

APPEARANCES OF COUNSEL

Tomas Carmelo T. Araneta for petitioner.
Esguerra & Blanco for private respondent.

D E C I S I O N

PEREZ, *J.*:

Before us is a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court, seeking to reverse and set aside the 27 July 2007 Decision[1] and the 17 October 2007 Resolution of the Court of Appeals in CA-G.R. SP No. 98868.

The factual premise of the case follows –

On 15 September 2003, petitioner Ma. Socorro Mandapat was hired as Sales and Marketing Manager for respondent Add Force Personnel Services, Inc. As detailed in her appointment letter, her duties include negotiation and consummation of contracts with clients who wanted to avail of respondent's services. She

[1] Penned by Associate Justice Ricardo R. Rosario with Associate Justices Rebecca De Guia Salvador and Magdangal M. De Leon, concurring. *Rollo*, pp. 390-402.

reported directly to the Chief Executive Officer (CEO), Colwyn Ron C. Longstaff (Longstaff).[2]

Respondent claims that during her five-month stint as sales manager, petitioner failed to close a single deal or contract with any client. In addition, petitioner issued several proposals to clients which were either grossly disadvantageous to respondent or disregarded the client's budget ceiling. Petitioner also sent out several communications to clients containing erroneous data and computations; submitted fictitious daily activity reports and reimbursement slips; and consistently failed to submit her reports, such as the daily activity report, expense report, weekly sales call plan and internet-based calendar system on time.[3]

These infractions were contained in a show-cause notice sent to petitioner on 23 February 2004, directing her to explain why she should not be disciplined for gross and habitual neglect of duties and willful breach of trust. Petitioner was also preventively suspended and was asked to turn over pending tasks and to leave the office premises. We quote the pertinent portion of the memorandum:

xxx xxx xxx

Please remember that as Sales Manager and head of the Sales Department, the company demands from you a disciplined approach on the implementation of the sales plans of the company as well as ability to lead your people by example. However, from Management's evaluation of your performance these last five (5) months, you have not only failed to set a good example to your subordinates but you have, in fact, been the first one to violate company rules and procedures.

On account of the sensitivity of the position you currently hold, please be informed that Management has decided to put you on PREVENTIVE SUSPENSION during the course of the investigation

[2] *Id.* at 209.

[3] *Id.* at 314-318.

of this matter. Accordingly, you are requested to immediately turnover to Ms. Abigail E. Villavert all of your pending tasks and, thereafter, leave the office premises.

For your information and appropriate action.

From:

MARIA CRISTINA S. SAMSON
Corporate Counsel

Approved by:

JACQUES A. DUPASQUIER
Chairman

Accompanied by her letter in response to the show-cause memorandum, petitioner tendered her resignation dated 25 February 2004 supposedly in protest of the preventive suspension meted on her.[4]

On 15 March 2004, petitioner filed a complaint for constructive dismissal with the labor arbiter.

In her position paper, petitioner alleged that she was constructively dismissed, as indicated by the following actions of respondent – first, she was illegally placed on preventive suspension; second, her access to the internet was cut off; and third, she was pressured by respondent into resigning in exchange for payment of separation pay.[5]

Petitioner also questioned as illegal her preventive suspension because she did not pose any danger to the lives of respondent's officers, as well as its properties.[6]

Petitioner denied that she was negligent and proffered that she faithfully and painstakingly performed her duties as sales manager.

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[4] *Id.* at 208.

[5] *Id.* at 366.

[6] *Id.* at 353-354.

She faulted Longstaff for his indecisiveness and the lack of support personnel and staff for the sales department.[7]

Respondent insisted that petitioner was not dismissed, that instead, she tendered her resignation. Hence, the claim for reinstatement had no basis. Respondent countered that petitioner was properly placed on preventive suspension because of the risk she posed on the property and business of respondent.[8]

On 30 September 2005, the labor arbiter rendered judgment[9] finding petitioner to have been illegally and constructively dismissed, thus:

WHEREFORE, premises considered, judgment is hereby entered finding that complainant was illegally and constructively dismissed on 2/23/04 thus, ORDERING:

1) Respondent company ADD Force Personnel Services, Inc. to pay her full backwages from date illegally dismissed on 6/23/04 until actual payment and/or finality of this decision, which as of date amounts to basic ₱1,311,360.00 (₱68,300.00 x 19.2 months), 13th month pay of ₱109,280.00, and the combined amounts of her leaves (VL & SL) of ₱107,913.68 (30 days/year x ₱2,276.66/day x 1.58 years);

2) Respondent company ADD Force Personnel Services, Inc., in lieu of complainant's reinstatement, to pay her separation pay of one (1) month per year of service/putative service reckoned from 09/15/03 until finality of this decision or actual payment which as of date, amounts to ₱136,600.00 (₱68,300.00 x 2 years);

3) Respondents ADD Force Personnel Services, Inc., JACQUES A. DUPASQUIER (Chairman), COLWYN RON C. LONGSTAFF (CEO), ATTY. CRISTINA SAMSON (Corporate Counsel), to pay her *in solido* moral damages of ₱200,000.00 and exemplary damages of ₱100,000.00;

4) Respondent ADD Force Personnel Services, Inc. to pay her proportionate 13th month pay (Jan. to 02/23/04), last month's salary (February, 01-23, 2003) and reimbursements ₱2,000.00;

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[7] *Id.* at 355.

[8] *Id.* at 320-321.

[9] Penned by Labor Arbiter Renaldo O. Hernandez. *Id.* at 229-244.

5) Respondent ADD Force Personnel Services, Inc. to pay her 10% of the total award as attorney's fees.[10]

The labor arbiter found that petitioner was illegally suspended without basis. The charges of gross and habitual neglect of duties, as well as the loss of trust and confidence were not substantiated. Thus, the labor arbiter concluded that petitioner was constructively dismissed by respondent.[11]

The National Labor Relations Commission (NLRC)[12] affirmed with modification the findings of the labor arbiter. The NLRC deleted the award of moral and exemplary damages for lack of sufficient basis. A motion for reconsideration was filed by respondent but it was denied for lack of merit.

On 21 June 2007, respondent filed a manifestation and motion stating that the NLRC had issued a writ of execution for the amount of money claims. Unable to satisfy these claims, the sheriff garnished the bank accounts of respondent.

On 27 July 2007, the Court of Appeals, to which the case was elevated, enjoined the execution of the NLRC decision and subsequently reversed its decision, as well as that of the labor arbiter's.

The dispositive portion provides:

WHEREFORE, the petition for *certiorari* is GRANTED. The Decision of the National Labor Relations Commission dated 27 November 2006 affirming the Labor Arbiter's decision; its Resolution, dated 28 February 2007, denying petitioner's motion for reconsideration; and the Decision of the Labor Arbiter, dated 30 September 2005, are SET ASIDE. Ma. Socorro Mandapat's Complaint for illegal dismissal is DISMISSED.[13]

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[10] *Id.* at 243-244.

[11] *Id.* at 241-243.

[12] Penned by Commissioner Raul T. Aquino with Commissioners Victoriano R. Calaycay and Angelita A. Gacutan (on leave) concurring. *Id.* at 86-96.

[13] *Id.* at 401.

The Court of Appeals ruled that petitioner was not constructively dismissed but that the latter chose to resign from her job. Petitioner's bare allegation that she was coerced into resigning was not given credence by the appellate court. With respect to the allegation of illegal suspension, the Court of Appeals upheld the exercise by respondent of its management prerogative in suspending petitioner pending investigation for a perceived violation of company rules.

Furthermore, the appellate court declared that the issue of preventive suspension had been rendered moot by petitioner's resignation.[14]

Petitioner moved for reconsideration but it was denied in a Resolution issued on 17 October 2007.[15]

The principal issue to be resolved in the instant petition is whether petitioner was constructively dismissed.

Constructive dismissal exists when an act of clear discrimination, insensibility or disdain by an employer has become so unbearable to the employee leaving him with no option but to forego with his continued employment.[16]

Upon perusal of the records of this case, we find no evidence to support discrimination which led to constructive dismissal.

Petitioner reiterates that she was constructively dismissed. She harps on the alleged pattern of harassment committed by respondent as tantamount to constructive dismissal, such as, illegally placing her under preventive suspension, the disconnection of her internet

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[14] *Id.* at 399.

[15] *Id.* at 411.

[16] *Formantes v. Duncan Pharmaceuticals*, G.R. No. 170661, 4 December 2009 citing *Endico v. Quantum Foods Distribution Center*, G.R. No. 161615, 30 January 2009, 577 SCRA 299, 310; *Montederamos v. Tri-Union International Corp.*, G.R. No. 176700, 4 September 2009, 598 SCRA 370, 376; *Pentagon Steel Corporation v. Court of Appeals*, G.R. No. 174141, 26 June 2009, 591 SCRA 160, 174-175 citing *Hyatt Taxi Services v. Catinoy*, 412 Phil. 295, 306 (2001).

account, and the pressure exerted by respondent to force her to resign.[17]

Petitioner claims that the preventive suspension meted upon her is illegal for being indefinite, as the duration of her suspension was not stated in the company's memorandum.

On the other hand, respondent employer argues that petitioner's preventive suspension for one day can hardly be considered indefinite, given the fact that petitioner immediately resigned one day after the suspension.

We find that there was no act of discrimination committed against petitioner that would render her employment unbearable.

Preventive suspension may be legally imposed against an employee whose alleged violation is the subject of an investigation. The purpose of his suspension is to prevent him from causing harm or injury to the company as well as to his fellow employees.

The pertinent rules dealing with preventive suspension are found in Section 8 and Section 9 of Rule XXIII, Book V of the Omnibus Rules Implementing the Labor Code, as amended by Department Order No. 9, Series of 1997, which read as follows:

Section 8. Preventive suspension. The employer may place the worker concerned under preventive suspension only if his continued employment poses a serious and imminent threat to the life or property of the employer or of his co-workers.

Section 9. Period of suspension. No preventive suspension shall last longer than thirty (30) days. The employer shall thereafter reinstate the worker in his former or in a substantially equivalent position or the employer may extend the period of suspension provided that during the period of extension, he pays the wages and other benefits due to the worker. In such case, the worker shall not be bound to reimburse the amount paid to him during the extension if the employer decides, after completion of the hearing, to dismiss the worker.

When preventive suspension exceeds the maximum period allowed without reinstating the employee either by actual or payroll

[17] *Rollo*, p. 36.

reinstatement[18] or when preventive suspension is for indefinite period,[19] only then will constructive dismissal set in.

While no period was mentioned in the show-cause memorandum, it was wrong for petitioner to infer that her suspension was for an indefinite period. It must be pointed out that the inclusion of the phrase "during the course of investigation" would lead to a reasonable and logical presumption that said suspension in fact has a duration which could very well be not more than 30 days as mandated by law. And, as the Court of Appeals correctly observed, the suspension has been rendered moot by petitioner's resignation tendered a day after the suspension was made effective.

Petitioner contests the grounds for her suspension as she denies posing a danger on the lives of the officers or employees of respondent or of their properties. Petitioner adds that she was not in a position to bind respondent to any contract, therefore, she could not and would not be able to sabotage the operations of respondent.[20] Upon the other hand, respondent asserts that preventive suspension was necessary in order to protect the assets and operations of the company pending investigation of the alleged infractions committed by the employee concerned.[21]

Respondent is correct. Indeed, as sales manager, petitioner had the power and authority to enter into contracts that would bind respondent, regardless of whether these contracts would prove to be beneficial or prejudicial to the interest of respondent. Respondent has every right to protect its assets and operations pending investigation of petitioner.

Neither could we consider the acts of disconnection of computer and internet access privileges as harassment.

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[18] *Hyatt Taxi Services, Inc. v. Catinoy*, *supra* note 16 at 305.

[19] *Pido v. National Labor Relations Commission*, G.R. No. 169812, 23 February 2007, 516 SCRA 609, 617-618.

[20] *Rollo*, pp. 27-28.

[21] *Id.* at 567.

Respondent clearly explained that the cessation of her internet and network privileges were but a consequence of the investigation against her and not for the purpose of harassment.[22] The Court of Appeals gave merit to respondent's explanation and held, thus:

> x x x while her suspension, cessation of internet privileges, and exclusion from local network access were but a consequence of the investigation against her, and were intended to prevent her from having further access to the company's network-based documents and forms.[23]

The acts respondent complains about are just measures enforced by respondent to protect itself while the investigation was ongoing.

Petitioner claims that Longstaff forced her to resign by baiting her with the promise of separation pay;[24] but respondent maintains that there was nothing illegal in giving petitioner the option to either resign or be separated for a just cause.[25]

We agree with the Court of Appeals that there was no coercion employed on petitioner. The appellate court made the following observation:

> Unfortunately, however, before the investigation could proceed to the second step of the termination process into a hearing or conference, Mandapat chose to resign from her job. Mandapat's bare allegation that she was coerced into resigning can hardly be given credence in the absence of clear evidence proving the same. No doubt, Mandapat read the writing on the wall, knew that she would be fired for her transgressions, and beat the company to it by resigning. Indeed, by the disrespectful tenor of her memorandum, Mandapat practically indicated that she was no longer interested in continuing cordial relations, much less gainful employment with Add Force.[26]

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[22] *Id.* at 570.

[23] *Id.* at 397.

[24] *Id.* at 36.

[25] *Id.* at 572.

[26] *Id.* at 399.

Mere allegations of threat or force do not constitute evidence to support a finding of forced resignation. In order for intimidation to vitiate consent, the following requisites must concur: (1) that the intimidation caused the consent to be given; (2) that the threatened act be unjust or unlawful; (3) that the threat be real or serious, there being evident disproportion between the evil and the resistance which all men can offer, leading to the choice of doing the act which is forced on the person to do as the lesser evil; and (4) that it produces a well-grounded fear from the fact that the person from whom it comes has the necessary means or ability to inflict the threatened injury to his person or property.[27]

None of these requisites was proven by petitioner. No demand was made on petitioner to resign. At most, she was merely given the option to either resign or face disciplinary investigation, which respondent had every right to conduct in light of the numerous infractions committed by petitioner. There is nothing irregular in providing an option to petitioner. Ultimately, the final decision on whether to resign or face disciplinary action rests on petitioner alone.

All told, the instances of harassment alleged by petitioner appear to be more apparent than real. We find no reason to disturb the conclusion of the Court of Appeals that petitioner resigned and was not constructively dismissed.

WHEREFORE, the petition is *DENIED*. The 27 July 2007 Decision of the Court of Appeals in CA-G.R. SP No. 98868 is *AFFIRMED*.

SO ORDERED.

Corona, C.J. (Chairperson), Velasco, Jr., Leonardo-de Castro, and *Del Castillo, JJ.,* concur.

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[27] *Vicente v. Court of Appeals*, G.R. No. 175988, 24 August 2007, 531 SCRA 240, 249 citing *St. Michael Academy v. National Labor Relations Commission*, 354 Phil. 491, 509-510 (1998).

FIRST DIVISION

[G.R. No. 181036. July 6, 2010]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **ADRIANO LEONARDO *y* DANTES,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; RAPE; RAPE THROUGH THREAT OR INTIMIDATION; DULY ESTABLISHED IN CASE AT BAR. — Article 266-A of the Revised Penal Code provides: "ART. 266-A. *Rape; When and How Committed.* – Rape is committed: 1) By a man who have **carnal knowledge** of a woman under any of the following circumstances: (a) Through **force**, **threat or intimidation**; x x x." In this case, the records reveal that the prosecution was able to prove appellant's carnal knowledge of AAA through threat or intimidation. The records support his conviction of six counts of rape. During her testimony before the trial court, AAA clearly, candidly, straightforwardly and explicitly narrated before the trial court how the appellant took advantage of her on the 1st week of April 2002, 3 May 2002, 6 May 2002, 7 May 2002, 10 May 2002 and 11 May 2002. AAA repeatedly pointed out the horrendous part of her ordeal when the appellant would command her to undress, would place himself on top of her, would insert his penis into her vagina and would make push and pull movements. She was cowed into submission to the appellant's beastly desires because the latter always had a knife tucked to his waist and whenever she would resist his sexual advances, the appellant would draw the knife from his waist and wield it on her. Considering that AAA was barely out of childhood at the time when her person was criminally violated, the mere sight of the deadly weapon in the hands of the appellant intimidated her; and easily so because appellant was a 49 year-old man of superior strength to the child. On top of these, the appellant is not just AAA's neighbor - he is also the brother of AAA's foster father. These concurring circumstances provided the occasion for the infliction of appellant's bestiality upon AAA's hapless helplessness.

2. ID.; ID.; ID.; INTIMIDATION; INCLUDES THE MORAL KIND OF INTIMIDATION OR COERCION. — It is a well-entrenched law that intimidation in rape includes the moral kind of intimidation or coercion. Intimidation is a relative term, depending on the age, size and strength of the parties, and their relationship with each other. It can be addressed to the mind as well. For rape to exist it is not necessary that the force or intimidation employed be so great or of such character as could not be resisted. It is only necessary that the force or intimidation be sufficient to consummate the purpose which the accused had in mind. Intimidation must be viewed in the light of the victim's perception and judgment at the time of the rape and not by any hard and fast rule. It is therefore enough that it produces fear — fear that if the victim does not yield to the bestial demands of the accused, something would happen to her at the moment or thereafter, as when she is threatened with death if she reports the incident. Intimidation would also explain why there are no traces of struggle which would indicate that the victim fought off her attacker.

3. ID.; SEXUAL ABUSE UNDER SECTION 5(B), ARTICLE III OF REPUBLIC ACT NO. 7610; ELEMENTS. — The prosecution likewise proved the essential elements of sexual abuse under Section 5(b), Article III of Republic Act No. 7610. x x x The elements of sexual abuse under the above provision are as follows: (1) the accused commits the act of sexual intercourse or *lascivious conduct*; (2) the said act is performed with a child exploited in prostitution or subjected to other sexual abuse; and (3) the child, whether male or female, is below 18 years of age.

4. ID.; ID.; SEXUAL ABUSE, DEFINED; LASCIVIOUS CONDUCT, DEFINED. — AAA testified that on the 2nd week of April 2002, 1 May 2002, 2 May 2002, 8 May 2002 and 9 May 2002, the appellant touched her breasts and vagina. The said incidents happened inside the house of AAA's parents whenever AAA was left alone. In all instances, there was no penetration, or even an attempt to insert appellant's penis into AAA's vagina. The aforesaid acts of the appellant are covered by the definitions of "sexual abuse" and "lascivious conduct" under Section 2(g) and (h) of the Rules and Regulations on the Reporting and Investigation of Child Abuse Cases promulgated to implement the provisions of Republic Act No. 7610: "(g) '**Sexual abuse**'

includes the employment, use, persuasion**,** inducement, enticement or coercion of a child to engage in, or assist another person to engage in, sexual intercourse or lascivious conduct or the molestation, prostitution, or incest with children; (h) '**Lascivious conduct**' means the intentional touching, either directly or through clothing, of the *genitalia*, *anus*, *groin*, *breast*, *inner thigh*, or *buttocks*, or the introduction of any object into the *genitalia*, *anus* or mouth, of any person, whether of the same or opposite sex, with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person, bestiality, masturbation, lascivious exhibition of the genitals or pubic area of a person."

5. ID.; ID.; DOES NOT MERELY COVER A SITUATION OF A CHILD BEING ABUSED FOR PROFIT, BUT ALSO ONE IN WHICH A CHILD IS COERCED TO ENGAGE IN LASCIVIOUS CONDUCT. — Section 5 of Republic Act No. 7610 does not merely cover a situation of a child being abused for profit, but also one in which a child is coerced to engage in lascivious conduct. To repeat, intimidation need not necessarily be irresistible. It is sufficient that some compulsion equivalent to intimidation annuls or subdues the free exercise of the will of the offended party. This is especially true in the case of young, innocent and immature girls who could not be expected to act with equanimity of disposition and with nerves of steel. Young girls cannot be expected to act like adults under the same circumstances or to have the courage and intelligence to disregard the threat.

6. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; ASSESSMENT THEREON BY TRIAL COURTS, GENERALLY NOT DISTURBED ON APPEAL. — It is a fundamental rule that the trial court's factual findings, especially its assessment of the credibility of witnesses, are accorded great weight and respect and binding upon this Court, particularly when affirmed by the Court of Appeals. This Court has repeatedly recognized that the trial court is in the best position to assess the credibility of witnesses and their testimonies because of its unique position of having observed that elusive and incommunicable evidence of the witnesses' deportment on the stand while testifying, which opportunity is denied to the appellate courts. Only the trial judge can observe the furtive glance, blush of conscious shame, hesitation, flippant or sneering tone, calmness, sigh, or the scant

or full realization of an oath. These are significant factors in evaluating the sincerity of witnesses, in the process of unearthing the truth. The appellate courts will generally not disturb such findings unless it plainly overlooked certain facts of substance and value that, if considered, might affect the result of the case. In this case, none of these circumstances are present.

7. ID.; ID.; ID.; CREDIBLE WITNESS AND CREDIBLE TESTIMONY ARE THE TWO ESSENTIAL ELEMENTS FOR THE DETERMINATION OF THE WEIGHT OF A PARTICULAR TESTIMONY. — Credible witness and credible testimony are the two essential elements for the determination of the weight of a particular testimony. This principle could not ring any truer where the prosecution relies mainly on the testimony of the complainant, corroborated by the medico-legal findings of a physician. Be that as it may, the accused may be convicted on the basis of the lone, uncorroborated testimony of the rape victim, provided that her testimony is clear, convincing and otherwise consistent with human nature.

8. ID.; ID.; WHERE A RAPE VICTIM'S TESTIMONY IS CORROBORATED BY THE PHYSICAL FINDINGS OF PERPETRATION, THERE IS SUFFICIENT BASIS FOR CONCLUDING THAT SEXUAL INTERCOURSE DID TAKE PLACE. — Settled is the rule that where a rape victim's testimony is corroborated by the physical findings of penetration, there is sufficient basis for concluding that sexual intercourse did take place.

9. ID.; ID.; CREDIBILITY OF WITNESSES; THE TESTIMONY OF A SINGLE WITNESS, IF CATEGORICAL AND CANDID, SUFFICES. — [C]redibility does not go with numbers. The testimony of a single witness, if categorical and candid, suffices. It is of judicial notice that the crime of rape is usually committed in a private place where only the aggressor and the rape victim are present.

10. ID.; ID.; ID.; WHEN A RAPE VICTIM'S TESTIMONY PASSES THE TEST OF CREDIBILITY, THE ACCUSED CAN BE CONVICTED ON THE BASIS THEREOF. — [N]o woman would concoct a story of defloration, allow the examination of her private parts and subject herself to public trial or ridicule if she has not, in truth, been a victim of rape and impelled to

seek justice for the wrong done to her. It is a settled jurisprudence that when a woman says that she has been raped, she says in effect all that is necessary to show that rape was indeed committed. A woman would think twice before she concocts a story of rape unless she is motivated by a patent desire to seek justice for the wrong committed against her. When her testimony passes the test of credibility, the accused can be convicted on the basis thereof. This is because from the nature of the crime, the only evidence that can be offered to establish the guilt of the accused is the complainant's testimony.

11. ID.; ID.; ID.; NOT AFFECTED BY DISCREPANCIES REFERRING TO MINOR DETAILS AND COLLATERAL MATTERS. — Time-honored is the doctrine that discrepancies referring to minor details and collateral matters do not affect the veracity of the witnesses' declarations. In fact, they strengthen, rather than impair, the witnesses' credibility, for they erase any suspicion of rehearsed testimony.

12. ID.; ID.; ID.; NOT IMPAIRED BY THE DELAY ON THE PART OF THE VICTIM IN REPORTING THE RAPE INCIDENTS. — [T]he delay on the part of AAA in reporting the rape incidents cannot cast doubt on her credibility. It must be emphasized that people may react differently to the same set of circumstances. There is no standard reaction of a victim in a rape incident. Not every victim of rape can be expected to act with reason or in conformity with the usual expectations of everyone. The workings of a human mind placed under emotional stress are unpredictable; people react differently. Some may shout, some may faint, while others may be shocked into insensibility. The delay on the part of AAA in disclosing the sexual defilement to her aunt, CCC, and to her mother is understandable. As adequately elucidated by the appellate court, AAA's complete obedience to appellant, her lack of struggle and silence about her ordeal were all brought about by a genuine fear posed upon her by the appellant who always had a knife tucked to his waist whenever he wanted to see AAA to satisfy his lust. The appellant is the brother of AAA's foster father and their houses are adjacent to each other. Well-entrenched is the rule that delay in reporting an incident of rape is not an indication of a fabricated charge, nor does it cast doubt on the credibility of a complainant. More significantly, a one-month delay cannot be regarded as unreasonable. We

have had cases where the delay in reporting the crime lasted for months, yet the testimonies of the victims therein were found to be plausible and credible.

13. ID.; ID.; ID.; NO MOTHER WOULD SUBJECT HER DAUGHTER TO A PUBLIC TRIAL FOR RAPE, IF SAID CHARGE WERE NOT TRUE. — [I]t is unnatural for a parent to use her offspring as an engine of malice if it will subject her to embarrassment and even stigma. No mother would stoop so low as to subject her daughter to the hardships and shame concomitant to a rape prosecution just to assuage her own hurt feelings, more so, of her sister. It is unthinkable that a mother would sacrifice her daughter's honor to satisfy her grudge or even her sister's grudge, knowing fully well that such an experience would certainly damage her daughter's psyche and mar her entire life. A mother would not subject her daughter to a public trial with its accompanying stigma on her as the victim of rape, if said charges were not true.

14. ID.; ID.; DENIAL AND ALIBI; CANNOT PREVAIL OVER THE POSITIVE AND CREDIBLE TESTIMONY OF THE PROSECUTION WITNESS THAT THE ACCUSED COMMITTED THE CRIME. — [B]oth denial and *alibi* are inherently weak defenses which cannot prevail over the positive and credible testimony of the prosecution witness that the accused committed the crime.

15. ID.; ID.; *ALIBI*; WHEN TO PROSPER AS A DEFENSE. — For the defense of *alibi* to prosper, it is not sufficient that appellant prove that he was somewhere else when the crime was committed, he must also show that it was physically impossible for him to be at the *locus criminis* or its immediate vicinity when the crime was perpetrated. Further, the defense of *alibi* may not prosper if it is established mainly by the accused themselves and their relatives like in this case and not by credible persons.

16. ID.; CRIMINAL PROCEDURE; JUDGMENTS; VARIANCE DOCTRINE; APPLIED IN CASE AT BAR. — This Court holds that the lower courts properly convicted the appellant in Criminal Case Nos. 546-V-02, 547-V-02, 548-V-02, 554-V-02 and 555-V-02 for five counts of sexual abuse under Section 5(b), Article III of Republic Act No. 7610 even though the charges against him in the aforesaid criminal cases were for rape in

relation to Republic Act No. 7610. The lower courts' ruling is in conformity with the **variance doctrine** embodied in Section 4, in relation to Section 5, Rule 120 of the Revised Rules of Criminal Procedure x x x. With the aforesaid provisions, the appellant can be held guilty of a lesser crime of acts of lasciviousness performed on a child, *i.e.*, sexual abuse under Section 5(b), Article III of Republic Act No. 7610, which was the offense proved because it is included in rape, the offense charged.

17. CRIMINAL LAW; ACTS OF LASCIVIOUSNESS PERFORMED ON A CHILD UNDER SECTION 5(B), ARTICLE III OF REPUBLIC ACT NO. 7610; PENALTY IN CASE AT BAR.— For acts of lasciviousness performed on a child under Section 5(b), Article III of Republic Act No. 7610, the penalty prescribed is *reclusion temporal* in its medium period to *reclusion perpetua*. Notwithstanding that Republic Act No. 7610 is a special law, the appellant may enjoy the benefits of the Indeterminate Sentence Law. Applying the Indeterminate Sentence Law, the appellant shall be entitled to a minimum term to be taken within the range of the penalty next lower to that prescribed by Republic Act No. 7610. The penalty next lower in degree is *prision mayor* medium to *reclusion temporal* minimum, the range of which is from 8 years and 1 day to 14 years and 8 months. On the other hand, the maximum term of the penalty should be taken from the penalty prescribed under Section 5(b), Article III of Republic Act No. 7610, which is *reclusion temporal* in its medium period to *reclusion perpetua*, the range of which is from 14 years, 8 months and 1 day to *reclusion perpetua*. The minimum, medium and maximum term of the same is as follows: **minimum – 14 years, 8 months and 1 day to 17 years and 4 months; medium – 17 years, 4 months and 1 day to 20 years; and maximum – *reclusion perpetua***. x x x We, thus, impose on the appellant the indeterminate sentence of 8 years and 1 day of *prision mayor* as minimum to 17 years, 4 months and 1 day of *reclusion temporal* as maximum for each count of sexual abuse under Section 5(b), Article III of Republic Act No. 7610 in Criminal Case Nos. 546-V-02, 547-V-02, 548-V-02, 554-V-02 and 555-V-02.

18. CIVIL LAW; DAMAGES; CIVIL INDEMNITY AND MORAL DAMAGES; AWARDED IN CASE AT BAR. — This Court affirms the awards of ₱50,000.00 as civil indemnity and ₱50,000.00

as moral damages given by the lower courts to AAA for each count of rape. Civil indemnity, which is actually in the nature of actual or compensatory damages, is mandatory upon the finding of the fact of rape. Moral damages in rape cases should be awarded without need of showing that the victim suffered trauma of mental, physical, and psychological sufferings constituting the basis thereof. These are too obvious to still require their recital at the trial by the victim, since we even assume and acknowledge such agony as a gauge of her credibility. In line with this Court's ruling in *Abenojar v. People*, this Court deems it proper to reduce the award of civil indemnity from ₱25,000.00 to ₱20,000.00, as well as the award of moral damages from ₱25,000.00 to ₱15,000.00 for each count of sexual abuse under Section 5(b), Article III of Republic Act No. 7610. In the same breath, in line with this Court's ruling in *People v. Sumingwa*, this Court impose a fine of ₱15,000.00 on the appellant for each count of sexual abuse under Section 5(b), Article III of Republic Act No. 7610.

APPEARANCES OF COUNSEL

The Solicitor General for plaintiff-appellee.
Mallari & Mallari Law Office for accused-appellant.

D E C I S I O N

PEREZ, *J.*:

For review is the Decision[1] dated 28 May 2007 of the Court of Appeals in CA-G.R. CR-H.C. No. 01092 affirming *in toto* the Joint Decision[2] dated 28 January 2005 of the Regional Trial Court (RTC) of Valenzuela City, Branch 172, in Criminal Case Nos. 348-V-02, 544-V-02, 545-V-02, 549-V-02, 552-V-02 and 553-V-02, finding herein appellant Adriano Leonardo *y* Dantes guilty beyond reasonable doubt of six counts of rape, and in Criminal Case Nos. 546-V-02, 547-V-02, 548-V-02, 554-V-02

[1] Penned by Associate Justice Marlene Gonzales-Sison with Associate Justices Juan Q. Enriquez, Jr. and Vicente S. E. Veloso, concurring. *Rollo*, pp. 2-23.

[2] Penned by Judge Floro P. Alejo. CA *rollo*, pp. 35-50.

and 555-V-02 for five counts of sexual abuse as defined and penalized under Section 5(b), Article III of Republic Act No. 7610,[3] committed against AAA.[4] The appellant was sentenced to suffer the penalty of *reclusion perpetua* for each count of rape and the indeterminate penalty of 8 years and 1 day of *prision mayor* as minimum to 15 years, 6 months and 20 days of *reclusion temporal* as maximum for each count of sexual abuse under Section 5(b), Article III of Republic Act No. 7610. The appellant was further ordered to pay the victim the amount of ₱50,000.00 as civil indemnity and ₱50,000.00 as moral damages for each count of rape and the amount of ₱25,000.00 as civil indemnity and ₱25,000.00 as moral damages for each count of sexual abuse under Section 5(b), Article III of Republic Act No. 7610.

In Criminal Case Nos. 550-V-02 and 551-V-02, however, the appellant was acquitted of the charges of rape for failure of the prosecution to prove his guilt beyond reasonable doubt.

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[3] Otherwise known as "The Special Protection of Children Against Child Abuse, Exploitation and Discrimination Act."

[4] This is pursuant to the ruling of this Court in *People of the Philippines v. Cabalquinto* [G.R. No. 167693, 19 September 2006, 502 SCRA 419], wherein this Court resolved to withhold the real name of the victim-survivor and to use fictitious initials instead to represent her in its decisions. Likewise, the personal circumstances of the victims-survivors or any other information tending to establish or compromise their identities, as well as those of their immediate family or household members, shall not be disclosed. The names of such victims, and of their immediate family members other than the accused, shall appear as "AAA," "BBB," "CCC," and so on. Addresses shall appear as "XXX" as in "No. XXX Street, XXX District, City of XXX."

The Supreme Court took note of the legal mandate on the utmost confidentiality of proceedings involving violence against women and children set forth in Sec. 29 of Republic Act No. 7610, otherwise known as *Special Protection of Children Against Child Abuse, Exploitation and Discrimination Act*; Sec. 44 of Republic Act No. 9262, otherwise known as *Anti-Violence Against Women and Their Children Act of 2004*; and Sec. 40 of A.M. No. 04-10-11-SC, known as *Rule on Violence Against Women and Their Children* effective 15 November 2004.

Appellant Adriano Leonardo *y* Dantes was charged in 13 separate Informations[5] with the crime of rape, in relation to Republic Act No. 7610, committed against AAA, the accusatory portion of which state:

In Criminal Case No. 348-V-02:

> That on or about [11 May 2002] in XXX City and within the jurisdiction of this Honorable Court, the above-named [appellant], with lewd design, by means of force and intimidation employed upon AAA, 12 years old, did then and there willfully, unlawfully and feloniously have carnal knowledge of said AAA, thereby subjecting the said minor to sexual abuse which debased, degraded and demeaned her intrinsic worth and dignity as a human being.[6]

In Criminal Case No. 544-V-02:

> That on or about [10 May 2002] in XXX City and within the jurisdiction of this Honorable Court, the above-named [appellant], being then the uncle-in-law of AAA, with lewd design, by means of force and intimidation employed upon AAA, 12 years old, did then and there willfully, unlawfully and feloniously have carnal knowledge of said AAA, thereby subjecting the said minor to sexual abuse which debased, degraded and demeaned her intrinsic worth and dignity as a human being.[7]

The Informations in Criminal Case Nos. 545-V-02, 546-V-02, 547-V-02, 548-V-02, 549-V-02, 550-V-02, 551-V-02, 552-V-02, 553-V-02, 554-V-02 and 555-V-02 contained similar averments except for the different dates of commission on the first week of April 2002, second week of April 2002, 1 May 2002, 2 May 2002, 3 May 2002, 4 May 2002, 5 May 2002, 6 May 2002, 7 May 2002, 8 May 2002 and 9 May 2002, respectively.

Upon arraignment, the appellant, assisted by counsel *de parte*, pleaded NOT GUILTY[8] to all the charges against him. At the

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[5] CA *rollo*, pp. 7-19.

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

[7] *Id.* at 8.

[8] As evidenced by Order dated 31 May 2002, Records, p. 10.

pre-trial conference, the prosecution and the defense stipulated[9] that AAA is a minor having been born on 28 July 1989 as evidenced by her Certificate of Live Birth.[10] After the pre-trial was terminated, trial on the merits ensued.

The prosecution presented the following witnesses, namely: AAA, the private complainant; BBB, the biological mother of AAA; Police Senior Inspector Pierre Paul F. Carpio (P/Sr. Insp. Carpio), Medico-Legal Officer of the Philippine National Police (PNP) Crime Laboratory, Camp Crame, Quezon City, who examined AAA; and CCC, the aunt of AAA who allegedly had an illicit relationship with the appellant, as rebuttal witness. The prosecution also submitted pieces of documentary evidence marked as Exhibits "A" to "H",[11] inclusive of submarkings.

The evidence for the prosecution, culled from the testimonies of the aforesaid witnesses, established that:

AAA was 12 years old when the appellant desecrated her. She was then living with her aunt, DDD, and the latter's husband, who became her foster parents from the time her biological mother, BBB, left her under their care when she was only six months old, in order to work and earn a living. Now, AAA is already under the care of her biological mother.[12]

The harrowing experience of AAA in the hands of the appellant, who is the brother-in-law of her foster mother, DDD, and the brother of her foster father, EEE,[13] began in the afternoon of the first week of April 2002. On the said date, the appellant saw AAA while he was gathering vegetables in the garden

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[9] As evidenced by a Pre-trial Order dated 14 August 2002. *Id.* at 19.

[10] Records (Indexes of Exhibits), p. 1.

[11] Exhibit "A" – Certificate of Live Birth of AAA; Exhibit "B" – Baptismal Certificate of AAA; Exhibit "C" – Sworn Statement of AAA; Exhibit "D" – String; Exhibits "E" to "G" – Photographs; and Exhibit "H" – Medico-Legal Report No. M-1477-02, Records (Indexes of Exhibits) pp. 1-6.

[12] Testimony of BBB, TSN, 14 August 2002, pp. 8-12.

[13] *Id.* at 8.

near his house. He immediately instructed AAA to buy him cigarettes and to bring the same inside the warehouse located at the back of his house. Following the instruction of the appellant, AAA brought the cigarettes inside the warehouse. Once inside, the appellant did not allow her to go out anymore; instead, he showed her a knife and he then closed the door of the warehouse. Subsequently, the appellant told AAA to undress and to lie down on a piece of lumber located in the warehouse to which she acceded because the appellant was holding a knife. While AAA was lying down, the appellant removed his shorts and showed his sex organ to AAA while still wearing his brief. Later, the appellant went on top of AAA, inserted his sex organ into AAA's vagina, touched AAA's breasts and made push and pull movements. AAA felt pain in her private part but she did not bleed. The appellant stopped what he was doing to AAA when he heard his daughter calling him. He then ordered AAA to dress up. AAA did not report to anyone the said incident because she was afraid of the appellant.[14]

Then, in the second week of April 2002 at around 4:30 in the afternoon, while AAA was alone in their house because her foster mother was working as a laundrywoman and her foster father was in a drinking spree with his friends, the appellant suddenly came in drunk and immediately closed the door of their house. The appellant then began touching AAA's breasts, however, the latter's foster mother arrived. At once, the appellant went out of the house through the back door.[15]

Again, on 1 May 2002 at around 8:30 in the morning, while AAA was left alone inside their house, the appellant surprisingly arrived thereat. Upon knowing that AAA had no other companion, he began touching AAA's breasts and vagina. Afterwards, CCC, the aunt of AAA, arrived and this prompted the appellant to leave the house.[16]

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[14] Testimony of AAA, TSN, 14 August 2002, pp. 53-56.

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

[16] *Id.* at 58-59.

The following day, or on 2 May 2002 at around 8:00 o'clock in the morning, while AAA was cleaning their house, the appellant arrived. He then inquired if there were other persons inside the house. As he found no other person thereat, except AAA, he commanded AAA to close the windows and the door located at the back of the house. He then opened the television set, increased its volume and closed the main door of the house. Thereafter, he touched the private parts of AAA and told her to remove her clothes. After removing her clothes, the appellant held her breasts and touched her vagina. However, upon hearing his daughter's voice calling and looking for him, he instantly went out of the house.[17]

On 3 May 2002 at around 2:00 o'clock in the afternoon, AAA was sleeping alone inside their house. Since the door was unlocked, the appellant entered the house, woke up AAA and asked her if there were other persons inside. He himself inspected the room of the house, finding none, he asked AAA to get him a glass of water and to buy him cigarettes. When AAA returned, the appellant requested her to turn on the television set. Then, he began touching AAA's private parts and he even instructed AAA to undress. Thereafter, the appellant told AAA to lie down on the bed inside the room to which she acceded because the appellant was holding a knife that he got from his waist. The appellant followed AAA inside the room where he removed his shorts and underwear. He then inserted his penis into AAA's vagina and made push and pull movements. After satisfying his lust, he told AAA to dress up and he went out of the house.[18]

In the afternoon of 4 May 2002, when AAA was hanging their washed clothes in the clothesline located at the back of the house of the appellant, which was only adjacent to their house, the appellant called her and asked her to buy cigarettes. After buying cigarettes, she brought the same to the appellant who was already inside the warehouse at the back of his house.

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[17] *Id.* at 59-61.

[18] *Id.* at 61-64.

While they were inside the warehouse, the appellant touched her breasts and vagina. This same incident of appellant's touching AAA's breasts and vagina was repeated the following day, 5 May 2002.[19]

Then again, on 6 May 2002 at around 3:30 o'clock in the afternoon, AAA saw the appellant circumcising children. Afterwards, the appellant went to the house of AAA who was watching television at that time. Once inside, the appellant closed the main door of the house, instructed AAA to go inside the room and to remove her clothes. The appellant then told AAA to lie down on the bed. Subsequently, the appellant went on top of AAA, inserted his penis into her vagina and made push and pull movements. After doing such bestial act, the appellant went out of the house.[20]

The next day, or on 7 May 2002, at around 7:00 o'clock in the evening while AAA's foster parents were not yet home and AAA had just finished washing the dishes, the appellant entered their house through the main door and asked AAA to buy him cigarettes as he would always do. When AAA came back, she handed the cigarettes to the appellant. The latter then ordered AAA to turn on the television and to lock the door. The appellant also told AAA to sit beside him on the sofa and he then began touching AAA's private parts. The appellant, thereafter, instructed AAA to go inside the room, to remove her shorts and panty and to lie down on the bed, to which she complied because the appellant was holding a knife. The appellant then placed the knife beside the bed, removed his shorts and undergarment, lay on top of AAA, inserted his penis into AAA's vagina and made push and pull movements. After satisfying his hideous desire, the appellant asked AAA to put on her clothes. He then proceeded to the *sala* and watched a television program. When AAA's foster mother arrived at around 9:00 o'clock in the evening, the appellant was no longer there.[21]

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[19] *Id.* at 64-65.
[20] *Id.* at 65-66.
[21] *Id.* at 66-69.

On 8 May 2002 at around 8:30 o'clock in the morning, AAA was once again left alone in their house because her foster parents and their children went to work. The appellant then went inside the house and asked AAA to buy him cigarettes. When AAA came back, she gave the cigarettes to the appellant who was then watching a television program. AAA proceeded to the kitchen to clean the table and to put the dishes outside of their house. While the appellant was still watching a television program at the *sala*, AAA went upstairs but the appellant called her and told her to go inside the room where the appellant began touching her vagina. The appellant likewise told AAA to undress and thereafter, he started fondling her breasts. Suddenly, the appellant heard AAA's cousin calling her from the outside. The appellant promptly told AAA to dress up and to go out of the room.[22]

On 9 May 2002 at around 3:30 o'clock in the afternoon, AAA was at the back of their house playing with her sister. The appellant called her and asked her if her foster mother and the latter's children were in their house to which AAA replied in the negative. The appellant again asked AAA to buy him cigarettes. AAA then brought the cigarettes at the back of their house believing that the appellant was still there. Unknowingly, the appellant was already inside their house. When AAA saw the appellant inside their house, she gave him the cigarettes and the appellant asked her to switch on the television. When AAA was about to get out of the house, the appellant prevented her, instead, he ordered AAA to go inside the room, but AAA insisted to go out as she wanted to continue playing with her sister. The appellant then showed AAA his knife and told her to remove all her clothing. Afraid, AAA could not do anything but to submit to the vicious desire of the appellant. The latter then touched AAA's breasts and vagina. Thereafter, the appellant ordered AAA to put on her clothes and left.[23]

On 10 May 2002, at around 6:30 o'clock in the afternoon, while AAA was playing in front of their house, the appellant saw her

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[22] Testimony of AAA, TSN, 2 September 2002, pp. 2-6.

[23] *Id.* at 6-9.

and commanded her to buy him cigarettes. He also told AAA to bring the same to the warehouse. Upon giving the cigarettes to the appellant, the latter instructed AAA to go inside the warehouse but she refused as she was still playing outside. The appellant, however, did not allow her to go out anymore and he, once again, showed his knife to AAA. Out of fear, AAA stayed inside the warehouse. Later, the appellant told AAA to undress and he proceeded to touch her breasts. He also inserted his finger into the vagina of AAA. Thereafter, he removed his finger into AAA's vagina and made her lie down on the floor. He then removed his shorts, mounted AAA, inserted his penis into AAA's vagina and made push and pull movements. AAA felt pain in her private organ. After being satisfied, the appellant instructed AAA to dress up and to go home.[24]

The last sexual advances of the appellant to AAA happened on 11 May 2002 at around 7:00 o'clock in the evening near the well located at the back of the house of the appellant. During that time AAA was removing their washed clothes from the clothesline at the back of the house of the appellant. The appellant, who was then taking a bath at the well near their house, saw her, called her and requested her to buy him one stick of cigarette. After she bought cigarette, she gave it to the appellant who was still taking a bath at the well. When AAA was about to go home, the appellant prevented her and showed her his knife tucked on his waist. The appellant instructed AAA to undress to which the latter obeyed because the appellant was holding a knife. When AAA was totally naked, the appellant touched her private parts and told her to lie down on the grassy ground. She felt itchy as she was lying on the grassy ground. While in that position, the appellant went on top of AAA, inserted his penis into her vagina and made push and pull movements. AAA felt pain. When the appellant heard his wife calling him, he stopped what he was doing to AAA and told the latter to put on her clothes. AAA went home. At the time this incident happened, the appellant was drunk as he just came from a birthday party.[25]

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[24] *Id.* at 10-11.

[25] Testimony of AAA, TSN, 14 August 2002, pp. 22-43.

When AAA went home, her aunt, CCC, who was there cooking, asked her why she was pale and uneasy. Her aunt also wondered why she was scratching her back. AAA did not immediately tell CCC what truly happened. However, when CCC became so persistent to know what really happened to her, AAA began to cry. She then disclosed to CCC what happened to her on that day, as well as all her harrowing experiences in the hands of the appellant.[26] CCC instantly called up AAA's biological mother, BBB, whose house was only three meters away from CCC and informed her of AAA's ordeal. Thereafter, BBB came to accompany AAA in going to the police station to report what the appellant did to her. At the police station, AAA gave her written statements against the appellant.[27]

The following day, AAA was subjected to a medical examination by P/Sr. Insp. Carpio, a medico-legal officer of the PNP Crime Laboratory in Camp Crame, Quezon City, which examination yielded the following results:[28]

EXTERNAL AND EXTRAGENITAL

PHYSICAL BUILT:	Light built.
MENTAL STATUS:	Coherent female child.
BREAST:	Conical with light brown areola and nipples from which no secretions could be pressed out.
ABDOMEN:	Flat.
PHYSICAL INJURIES:	No external signs of application of any form of trauma.

GENITAL

PUBIC HAIR:	Absent growth.
LABIA MAJORA:	Full, convex and coaptated.
LABIA MINORA:	light brown; non-hypertrophied.

[26] *Id.* at 43-45.

[27] *Id.* at 46-47. Testimony of BBB, TSN, 2 September 2002, pp. 12-13.

[28] Testimony of AAA, TSN, 14 August 2002, pp. 48-49; Testimony of AAA, TSN, 2 September 2002, pp. 12-13.

HYMEN: deep healed laceration at 8 o'clock position.
POSTERIOIR FOURCHETTE: sharp.
EXTERNAL VAGINAL ORIFICE: Offers strong resistance of the examining index finger.
VAGINAL CANAL: Narrow.
CERVIX:
PERIURETHRAL AND VAGINAL SMEARS: Negative for spermatozoa.

CONCLUSION:

Subject is in **non-virgin state** physically. There are no external signs of application of any form of trauma. [Emphasis supplied].[29]

Thereafter, 13 separate Informations for rape, in relation to Republic Act No. 7610, were filed against the appellant.

For its part, the defense presented the following witnesses, to wit: the appellant, who interposed the defense of denial and *alibi*; Candida Urbina (Candida), neighbor and cousin of the appellant; Lea Mae Leonardo (Lea Mae), niece of the appellant; and Ma. Victoria Leonardo (Ma. Victoria), wife of the appellant. The defense likewise submitted pieces of documentary evidence marked as Exhibits "1" to "6",[30] inclusive of submarkings.

When the appellant took the witness stand, he admitted that he knows AAA because she was his neighbor and her foster father who reared her since childhood is his brother, which is the reason why AAA called him *Mama Adring*, although he was not related to her by blood in any manner. The appellant even described AAA as "*gala*" as she used to roam around, and there were times that her foster father would ask him as to the whereabouts of AAA.[31]

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[29] Medico-Legal Report No. M-1477-02 dated 13 May 2002, Records (Indexes of Exhibits), p. 6.

[30] Exhibits "1" to "5" – colored photographs of the appellant while attending a birthday party in a nearby house; and Exhibit "6" – the alleged letter of AAA addressed to a certain Frankie. Records (Indexes of Exhibits), pp. 7-10.

[31] Testimony of the appellant, TSN, 1 March 2004, pp. 4, 9-11.

The appellant, however, denied all the rape charges against him and claimed that they were all lies and that he was just framed up. He argued that these cases were only filed against him by AAA upon the initiative of her aunt, CCC, with whom he had an illicit affair.[32] The appellant even professed that in April 2002, AAA's aunt, CCC, made a proposal to him to leave their respective spouses and children so that the two of them can begin to live together as husband and wife in Pampanga. The appellant claimed that CCC even offered to buy him a tricycle. When the appellant did not agree with CCC's proposal, the latter threatened him that she would file a case against him.[33]

The appellant also maintained that it was impossible for him to rape AAA on 1 May 2002 because on the said date at around 7:00 o'clock in the morning, he was in Angat, Bulacan, with his children as they had an excursion with the members of AMATODA, an association of tricycle owners and drivers in their place. It was already 10:00 o'clock in the evening when they got home.[34]

Similarly, the appellant denied having raped AAA on 2 May 2002 until 4 May 2002. The appellant stated that on 4 May 2002, he was again in an excursion in Angat, Bulacan, this time, with CCC and her mother. While in the said place, he and CCC had an intimate moment with one another.[35] On the succeeding dates beginning 5 May 2002 up to 10 May 2002, the appellant also denied having raped AAA without giving any explanations therefor.[36]

The appellant also denied having raped AAA on 11 May 2002. He avowed that as early as 9:00 o'clock in the morning of the said date, he was already at the house of his cousin,

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[32] *Id*.

[33] *Id.* at 13-14; TSN, 31 March 2004, pp. 3-5.

[34] Testimony of the appellant, TSN, 1 March 2004, pp. 6-7.

[35] *Id.* at 7 and 12.

[36] *Id.* at 8.

Candida, located at 103 NY Street, Bisalao, Bagbaguin, Valenzuela City, where he assisted in the cooking of the food for the birthday celebration of Candida's nephew. In the evening thereof, the appellant engaged in a drinking session with his cousins and friends who attended the said birthday party. He stayed there until 10:00 o'clock in the evening and then he went home. At around 11:00 o'clock in the evening, he was arrested by the police authorities because AAA had filed a complaint against him charging him with 13 counts of rape.[37]

To buttress the theory of the defense, Candida testified affirming that on 11 May 2002, the appellant was at their house as early as 9:00 o'clock in the morning as she had invited him as a cook for the birthday celebration of her nephew. She stated that the appellant stayed at their house the whole day because after the preparation of the food they had a drinking session which started at around 5:00 o'clock in the afternoon and lasted until 10:00 0'clock in the evening. To prove the same, the defense even presented pictures depicting that the appellant was among those having a drinking spree at the house of Candida. The latter admitted, however, that there was an instance on that date when the appellant left her house when she requested him to get the big casserole from the house of his sister living nearby. After less than an hour, the appellant returned. Candida also disclosed that her house was just a 15 minute-walk away from the house of the appellant.[38]

To establish that AAA is a girl of ill repute, the defense presented Lea Mae, the niece of the appellant, who testified that she knows AAA as she is her neighbor and friend. Lea Mae declared in open court that AAA has two boyfriends, one whose name is "*alias Pogi*" and the other is known to her only as "Frankie." She knew that they were AAA's boyfriends because AAA herself told her so. Lea Mae further testified that on one occasion AAA requested her to deliver a letter to "Frankie" but she was not able to do so as her mother might

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[37] *Id.* at 4-6 and 8.

[38] Testimony of Candida, TSN, 8 October 2003, pp. 3-16.

get angry. Having failed to deliver the said letter, Lea Mae, instead of giving it back to AAA, just kept the same. Later, Lea Mae gave the said letter to her aunt, the wife of the appellant, after the filing of the rape cases against the latter. Her only reason for doing so is because she trusted her aunt. Lea Mae divulged, however, that she did not see AAA writing the said letter.[39]

The defense also presented the wife of the appellant who testified that prior to the filing of the rape cases against the appellant, she and CCC had a quarrel regarding the rumor that the latter and the appellant were having an illicit affair.

On rebuttal, the prosecution presented CCC who denied having an illicit affair with the appellant. She maintained that before the rape cases against the appellant commenced, their family are in good terms as neighbors. She used to sell food and the appellant's wife used to buy from her. However, from the time the appellant was arrested and incarcerated in connection with the rape cases filed against him by her niece, AAA, both the appellant and his wife did not talk to her anymore.[40]

After trial, a Joint Decision was rendered by the court *a quo* on 28 January 2005 giving credence to the testimonies of the prosecution witnesses particularly of AAA and rejecting the defense of denial and *alibi* proffered by the appellant. The trial court thus decreed:

WHEREFORE, judgment is hereby rendered as follows:

1. In **Crim. Cases Nos. 550-V-02 and 551-V-02**, the Court finds the guilt of [appellant] ADRIANO LEONARDO not to have been proven beyond reasonable doubt and **acquits** him of the charges therein for insufficiency of evidence, with costs *de oficio*;

2. In **Crim. Cases Nos. 348-V-02, 544-V-02, 545-V-02, 549-V-02, 552-V-02 and 553-V-02**, the Court finds [appellant] ADRIANO LEONARDO **guilty beyond reasonable doubt and**

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[39] Testimony of Lea Mae, TSN, 23 July 2003, pp. 2-5.

[40] Testimony of CCC, TSN, 3 September 2004, pp. 3-5.

as principal of six (6) counts of rape without any mitigating or aggravating circumstance and hereby sentences him to suffer the penalty of *reclusion perpetua* in each case with all the accessory penalties provided for by law. Further, the [appellant] is sentenced to pay [private] complainant AAA the amount of ₱50,000.00 as indemnity, and the amount of ₱50,000.00 as moral damages in each case, without subsidiary imprisonment in case of insolvency. Finally, the [appellant] is sentenced to pay the costs of suit; and

3. In **Crim. Cases Nos. 546-V-02, 547-V-02, 548-V-02, 554-V-02 and 555-V-02** the Court finds [appellant] ADRIANO LEONARDO **guilty beyond reasonable doubt and as principal of the crime of sexual abuse as defined in and penalized under Section 5(b) of Article III of Republic Act No. 7610** without any attending mitigating or aggravating circumstance and hereby sentences him to suffer the penalty of EIGHT (8) YEARS and ONE (1) DAY of *prision mayor* as minimum to FIFTEEN (15) YEARS, SIX (6) MONTHS and TWENTY (20) DAYS of *reclusion temporal* as maximum in each case with all the accessory penalties provided for by law. Further, the [appellant] is sentenced to pay [private] complainant AAA the amount of ₱25,000.00 as indemnity and the amount of ₱25,000.00 as moral damages in each case without subsidiary imprisonment in case of insolvency. Finally, the [appellant] is sentenced to pay the costs of suit.

The [appellant] being a detention prisoner, he shall be credited the preventive imprisonment he has undergone in the service of his sentence.[41] [Emphasis supplied].

The appellant appealed his convictions to the Court of Appeals. In his brief, the appellant assigned the following errors:

1. THE TRIAL COURT SERIOUSLY ERRED IN FINDING THAT [APPELLANT] IS GUILTY BEYOND REASONABLE DOUBT IN CRIMINAL CASES NOS. 348-V-02, 544-V-02, 545-V-02, 549-V-02, 552-V-02 AND 553-V-02 WITHOUT GIVING WEIGHT AND CREDENCE TO THE EVIDENCE PRESENTED BY THE [APPELLANT].

[41] CA *rollo*, pp. 49-50.

2. THE TRIAL COURT SERIOUSLY ERRED IN FINDING THAT [APPELLANT] IS GUILTY BEYOND REASONABLE DOUBT IN CRIMINAL CASES NOS. 546-V-02, 547-V-02, 548-V-02, 554-V-02 AND 555-V-02 WITHOUT GIVING WEIGHT AND CREDENCE TO THE EVIDENCE PRESENTED BY THE [APPELLANT].

3. THE TRIAL COURT SERIOUSLY ERRED IN CONCLUDING THAT THE PROSECUTION SUFFICIENTLY PROVED THE ESSENTIAL ELEMENTS OF THE CRIME AS CHARGED. THE PROSECUTION'S EVIDENCE FELL SHORT OF THE DEGREE OF PROOF THAT IS PROOF BEYOND REASONABLE DOUBT REQUIRED BY LAW TO BE ESTABLISHED IN ORDER TO OVERCOME THE CONSTITUTIONALLY ENSHRINED PRESUMPTION OF INNOCENCE IN FAVOR OF [APPELLANT].[42]

On 28 May 2007, the Court of Appeals rendered a Decision affirming *in toto* the 28 January 2005 Joint Decision of the trial court. The appellate court ratiocinated as follows:

> Based on the records and transcript of stenographic notes taken during the proceedings of the cases, appellant has nothing to offer but denial and *alibi* for his defense. He now faults the trial court for his conviction as it allegedly relied solely on AAA's declarations in court.
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> In finding appellant guilty, it is not as if the trial court relied only on AAA's testimony, without any critical assessment at all, as appellant would like it to appear. It should be noted that the testimony of AAA was corroborated by the findings of [P/Sr. Insp. Carpio] that she was indeed violated. Where a rape victim's testimony is corroborated by the physical findings of penetration, there is sufficient basis for concluding that sexual intercourse did take place.[43] The proceedings before the trial court indicated that the trial court gave credence to her testimony only after it has satisfied itself that the same was competent and credible as shown by the manner in which she testified and her demeanor on the witness stand.

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[42] *Id.* at 74.

[43] *People v. Valdez*, 446 Phil. 116, 137 (2004).

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Anent the third assigned error, appellant insists that the prosecution failed to sufficiently establish his guilt beyond reasonable doubt of the crimes charged. It is doctrinal that the requirement of proof beyond reasonable doubt in criminal law does not mean such a degree of proof as to exclude the possibility of error and produce absolute certainty. Only moral certainty is required or that degree of proof which produces conviction in an unprejudiced mind.[44] **All the prosecution needs to prove, which it did, was carnal knowledge of the victim by the [appellant] against her will and without her consent and that she was sexually abused and molested through appellant's lascivious conduct**.[45] [Emphasis supplied].

The appellant appealed to this Court contending that his convictions for the crimes charged were based mainly on the bare allegations of AAA as there were no evidences presented to corroborate her allegations that he truly raped her. The appellant also harps on the possibility that the laceration found on AAA's vagina may be due to her having sex with her boyfriends because the prosecution did not submit or present even a single evidence or witness who actually saw that he raped AAA. Moreover, the appellant asserts that AAA's testimony contains inconsistencies that would readily show that she is not telling the truth. Also, the long delay on the part of AAA in reporting the rape incidents created doubts that she was raped by the appellant. Thus, the self-serving allegations of AAA that she was raped many times by the appellant deserved scant consideration.

The appellant further argues that the court *a quo* failed to consider that AAA was merely forced by her aunt, CCC, who has moral ascendancy and authority over her to file the rape cases against him as a form of revenge for his refusal to live with her in Pampanga.

Finally, the appellant posits that the essential elements of the crimes charged were not sufficiently proven by the

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[44] *People v. Guihama*, 452 Phil. 824, 843 (2003).

[45] *Rollo*, pp. 15-16 and 22.

prosecution and that the pieces of evidence presented by the prosecution fell short of the degree of proof required by law to convict him of the crimes charged. Therefore, the appellant strongly calls for his acquittal.

The appellant's contentions are bereft of merit.

This Court will concurrently discuss the aforesaid arguments raised by the appellant.

The appellant attempts to convince this Court of his innocence by averring that the prosecution failed to sufficiently prove the elements of the crimes of which he was convicted and that the pieces of evidence presented fell short of the degree of proof required to establish his guilt thereof.

This Court holds otherwise.

Article 266-A of the Revised Penal Code provides:

ART. 266-A. *Rape; When and How Committed*. – Rape is committed:

1) By a man who have **carnal knowledge** of a woman under any of the following circumstances:

a) Through **force**, **threat or intimidation**;

x x x [Emphasis supplied].

In this case, the records reveal that the prosecution was able to prove appellant's carnal knowledge of AAA through threat or intimidation. The records support his conviction of six counts of rape. During her testimony before the trial court, AAA clearly, candidly, straightforwardly and explicitly narrated before the trial court how the appellant took advantage of her on the 1st week of April 2002, 3 May 2002, 6 May 2002, 7 May 2002, 10 May 2002 and 11 May 2002. AAA repeatedly pointed out the horrendous part of her ordeal when the appellant would command her to undress, would place himself on top of her, would insert his penis into her vagina and would make push and pull movements. She was cowed into submission to the appellant's beastly desires because the latter always had a

knife tucked to his waist and whenever she would resist his sexual advances, the appellant would draw the knife from his waist and wield it on her. Considering that AAA was barely out of childhood at the time when her person was criminally violated, the mere sight of the deadly weapon in the hands of the appellant intimidated her; and easily so because appellant was a 49 year-old man of superior strength to the child. On top of these, the appellant is not just AAA's neighbor - he is also the brother of AAA's foster father. These concurring circumstances provided the occasion for the infliction of appellant's bestiality upon AAA's hapless helplessness.

It is a well-entrenched law that intimidation in rape includes the moral kind of intimidation or coercion. Intimidation is a relative term, depending on the age, size and strength of the parties, and their relationship with each other. It can be addressed to the mind as well. For rape to exist it is not necessary that the force or intimidation employed be so great or of such character as could not be resisted. It is only necessary that the force or intimidation be sufficient to consummate the purpose which the accused had in mind. Intimidation must be viewed in the light of the victim's perception and judgment at the time of the rape and not by any hard and fast rule. It is therefore enough that it produces fear — fear that if the victim does not yield to the bestial demands of the accused, something would happen to her at the moment or thereafter, as when she is threatened with death if she reports the incident. Intimidation would also explain why there are no traces of struggle which would indicate that the victim fought off her attacker.[46]

With the aforesaid, the prosecution, indeed, has proven beyond reasonable doubt the existence of carnal knowledge through threat or intimidation, which is enough to establish the crime of rape.

The prosecution likewise proved the essential elements of sexual abuse under Section 5(b), Article III of Republic Act No. 7610. It thus provides:

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[46] *People v. Ardon*, 407 Phil. 104, 121-122 (2001).

SEC. 5. *Child Prostitution and Other Sexual Abuse*. – Children, whether male or female, who for money, profit, or any other consideration or due to the coercion or influence of any adult, syndicate or group, indulge in sexual intercourse or lascivious conduct, are deemed to be children exploited in prostitution and other sexual abuse.

The penalty of *reclusion temporal* in its medium period to *reclusion perpetua* shall be imposed upon the following:

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(b) Those who commit the act of sexual intercourse or lascivious conduct with a child exploited in prostitution or subjected to other sexual abuse: *Provided*, That when the victim is under twelve (12) years of age, the perpetrators shall be prosecuted under Article 335, paragraph 3, for rape and Article 336 of Act No. 3815, as amended, the Revised Penal Code, for rape or lascivious conduct, as the case may be: *Provided*, That the penalty for lascivious conduct when the victim is under twelve (12) years of age shall be *reclusion temporal* in its medium period; x x x.

The elements of sexual abuse under the above provision are as follows: (1) the accused commits the act of sexual intercourse or *lascivious conduct*; (2) the said act is performed with a child exploited in prostitution or subjected to other sexual abuse; and (3) the child, whether male or female, is below 18 years of age.[47]

AAA testified that on the 2nd week of April 2002, 1 May 2002, 2 May 2002, 8 May 2002 and 9 May 2002, the appellant touched her breasts and vagina. The said incidents happened inside the house of AAA's parents whenever AAA was left alone. In all instances, there was no penetration, or even an attempt to insert appellant's penis into AAA's vagina.

The aforesaid acts of the appellant are covered by the definitions of "sexual abuse" and "lascivious conduct" under Section 2(g) and (h) of the Rules and Regulations on the Reporting and Investigation of Child Abuse Cases promulgated to implement the provisions of Republic Act No. 7610:

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[47] *Amployo v. People*, G.R. No. 157718, 26 April 2005, 457 SCRA 282, 295.

(g) "**Sexual abuse**" includes the employment, use, persuasion**,** inducement, enticement or coercion of a child to engage in, or assist another person to engage in, sexual intercourse or lascivious conduct or the molestation, prostitution, or incest with children;

(h) "**Lascivious conduct**" means the intentional touching, either directly or through clothing, of the *genitalia*, *anus*, *groin*, *breast*, *inner thigh*, or *buttocks*, or the introduction of any object into the *genitalia*, *anus* or mouth, of any person, whether of the same or opposite sex, with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person, bestiality, masturbation, lascivious exhibition of the genitals or pubic area of a person.[48]

The second element is also present. Section 5 of Republic Act No. 7610 does not merely cover a situation of a child being abused for profit, but also one in which a child is coerced to engage in lascivious conduct.[49] To repeat, intimidation need not necessarily be irresistible. It is sufficient that some compulsion equivalent to intimidation annuls or subdues the free exercise of the will of the offended party. This is especially true in the case of young, innocent and immature girls who could not be expected to act with equanimity of disposition and with nerves of steel. Young girls cannot be expected to act like adults under the same circumstances or to have the courage and intelligence to disregard the threat.[50]

The circumstances of the rapes are the same as that which occasioned the sexual abuses. AAA was a 12 year-old girl who was the object of the criminal carnality of a male adult. Access to the girl was easy for the predator is one of the folks being a neighbor and a brother of AAA's foster father. Moreover, to repeat the statement of AAA on cross-examination, she was afraid of the appellant because he was always carrying a knife and he showed it to her whenever she failed to follow his wishes. Appellant virtually enslaved AAA.

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[48] *People v. Sumingwa*, G.R. No. 183619, 13 October 2009.

[49] *Amployo v. People*, *supra* note 47 at 295-296.

[50] *Id*.

As regards the third element, it is undisputed that AAA was below 18 years of age when she was sexually abused by the appellant.

Thus, all the elements of sexual abuse under Section 5(b), Article III of Republic Act No. 7610 were also proven by the prosecution.

No significance can be given to the claim of the appellant that his convictions for the crimes charged were based mainly on the bare allegations of AAA, as there was no evidence presented to corroborate her allegations that he truly raped her.

It is a fundamental rule that the trial court's factual findings, especially its assessment of the credibility of witnesses, are accorded great weight and respect and binding upon this Court, particularly when affirmed by the Court of Appeals.[51] This Court has repeatedly recognized that the trial court is in the best position to assess the credibility of witnesses and their testimonies because of its unique position of having observed that elusive and incommunicable evidence of the witnesses' deportment on the stand while testifying, which opportunity is denied to the appellate courts. Only the trial judge can observe the furtive glance, blush of conscious shame, hesitation, flippant or sneering tone, calmness, sigh, or the scant or full realization of an oath.[52] These are significant factors in evaluating the sincerity of witnesses, in the process of unearthing the truth.[53] The appellate courts will generally not disturb such findings unless it plainly overlooked certain facts of substance and value that, if considered, might affect the result of the case.[54] In this case, none of these circumstances are present.

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[51] *People v. Mahinay*, G.R. No. 179190, 20 January 2009, 576 SCRA 777, 782.

[52] *People v. Dy*, 425 Phil. 608, 645-646 (2002).

[53] *People v. Benito*, 363 Phil. 90, 98 (1999).

[54] *People v. De Guia*, G.R. No. 123172, 2 October 1997, 280 SCRA 141, 150.

Credible witness and credible testimony are the two essential elements for the determination of the weight of a particular testimony. This principle could not ring any truer where the prosecution relies mainly on the testimony of the complainant, corroborated by the medico-legal findings of a physician. Be that as it may, the accused may be convicted on the basis of the lone, uncorroborated testimony of the rape victim, provided that her testimony is clear, convincing and otherwise consistent with human nature.[55]

Needless to say, this is a matter best assigned to the trial court which had the first-hand opportunity to hear the testimonies of the witnesses and observe their demeanor, conduct, and attitude during cross-examination. Such matters cannot be gathered from a mere reading of the transcripts of stenographic notes. Hence, the trial court's findings carry great weight and substance.[56]

As aptly stated by the Court of Appeals in its Decision, the trial court did not unthinkingly rely on the testimony of AAA in finding the appellant guilty of the crimes charged. There was a critical assessment of her testimony and the manner it was given. The first hand observation was that AAA's testimony was spontaneous, positive, straightforward and candid. Without flourish and innuendo, AAA recounted in detail how the appellant took advantage of her from the first week of April 2002 until 11 May 2002. The trial court noted that AAA was crying while testifying. The crying was a natural display of emotion indicating the pain that the victim feels when asked to recount her traumatic experience.[57] The tears indicate truth and sincerity.

Moreover, AAA's testimony that she was repeatedly raped and sexually abused by the appellant was corroborated by the medico-legal findings of the examining physician, P/Sr. Insp. Carpio. Settled is the rule that where a rape victim's testimony

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[55] *People v. Dy*, *supra* note 52 at 645.

[56] *Id*.

[57] *People v. Ancheta*, 464 Phil. 360, 371 (2004).

is corroborated by the physical findings of penetration, there is sufficient basis for concluding that sexual intercourse did take place.[58]

While it is true that aside from AAA herself, the prosecution did not present any other witness who actually saw that the appellant raped and sexually abused AAA, such fact was not fatal to the prosecution's cause. There is no claim that other witnesses saw or could have seen the crime but were not presented in court. Indeed, credibility does not go with numbers. The testimony of a single witness, if categorical and candid, suffices. It is of judicial notice that the crime of rape is usually committed in a private place where only the aggressor and the rape victim are present.[59] Further, AAA has positively identified the appellant as the person who raped and sexually abused her and this negates the theory proffered by the appellant that the laceration found on AAA's vagina could have been caused by AAA's sexual intercourse with either of her two boyfriends.

It is time once more to stress that no woman would concoct a story of defloration, allow the examination of her private parts and subject herself to public trial or ridicule if she has not, in truth, been a victim of rape and impelled to seek justice for the wrong done to her. It is a settled jurisprudence that when a woman says that she has been raped, she says in effect all that is necessary to show that rape was indeed committed. A woman would think twice before she concocts a story of rape unless she is motivated by a patent desire to seek justice for the wrong committed against her.[60] When her testimony passes the test of credibility, the accused can be convicted on the basis thereof. This is because from the nature of the crime, the only evidence that can be offered to establish the guilt of the accused is the complainant's testimony.[61]

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[58] *People v. Suarez*, G.R. Nos. 153573-76, 15 April 2005, 456 SCRA 333, 350.

[59] *People v. Dela Cruz*, G.R. No. 118458, 24 July 1997, 276 SCRA 191, 197-198.

[60] *People v. Bontuan*, 437 Phil. 233, 241 (2002).

[61] *People v. Dy*, *supra* note 52 at 645-646.

We cannot sustain appellant's contention that AAA's testimony contains inconsistencies that put her credibility in doubt. The supposed inconsistencies or contradictions refer to alleged variance in the dates and times that the appellant committed the crimes. Particularly alluded to was AAA's testimony that the two sons of her foster parents reported for work on 1 May 2002 despite the fact that it was a regular holiday. AAA testified that she was sexually assaulted by the appellant on 1 May 2002 at 8:30 o'clock in the morning, however, on the said date the appellant claimed that he left their house at 7:00 o'clock in the morning to attend an excursion and he returned home only at 10:00 o'clock in the evening. Also, AAA stated that on 11 May 2002, the appellant raped her at 7:00 o'clock in the evening but the appellant avowed that on the said date he was at the house of her cousin, Candida, from 7:00 o'clock in the morning until 10:00 o'clock in the evening. Further, AAA initially said that on 1 May 2002 the two sons of her foster parents reported for work, however, she changed her statement that they did not report for work on that date, then again, she claimed that she was not sure whether they reported for work or not but she was certain that they left the house.

The appellate court satisfactorily explained the aforesaid inconsistencies in this wise:[62]

> The perceived inconsistencies or contradictions referred to by the appellant pertain only to the date and time differences on the commission of the act which are minor and insignificant details which, even if considered, would not alter the fact that indeed appellant raped and sexually abused AAA. x x x Besides both the prosecution and the defense merely gave estimates of time as to when the act complained of happened and where the appellant was, at that particular time. x x x Moreover, the date and time are not an essential element of the crime.[63] It is not even necessary to state in the complaint or information the precise date the offense was committed except when it is a material ingredient of the offense. The offense may be alleged to have been committed on a date as near as possible to the actual date of its commission.[64]

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[62] *Rollo*, pp. 16-17.

[63] *People v. Valindo*, 429 Phil. 114, 120 (2002).

[64] Section 11, Rule 110, Revised Rules of Criminal Procedure.

Indeed, it is clear that the inconsistencies regarding the date and time of commission pointed out by the appellant are not really inconsistencies in the statement of AAA, but more of contradictions between the testimonies offered by him and by AAA. Naturally, the appellant would contradict the statements of AAA as a matter of defense to exonerate himself of the crimes charged. Further, the inconsistent statements of AAA as to whether or not the two sons of her foster parents reported for work on 1 May 2002 is too trivial and inconsequential and would not alter the fact that the appellant had raped and sexually abused AAA. Time-honored is the doctrine that discrepancies referring to minor details and collateral matters do not affect the veracity of the witnesses' declarations. In fact, they strengthen, rather than impair, the witnesses' credibility, for they erase any suspicion of rehearsed testimony.[65]

Similarly, the delay on the part of AAA in reporting the rape incidents cannot cast doubt on her credibility. It must be emphasized that people may react differently to the same set of circumstances. There is no standard reaction of a victim in a rape incident. Not every victim of rape can be expected to act with reason or in conformity with the usual expectations of everyone. The workings of a human mind placed under emotional stress are unpredictable; people react differently. Some may shout, some may faint, while others may be shocked into insensibility.[66] The delay on the part of AAA in disclosing the sexual defilement to her aunt, CCC, and to her mother is understandable. As adequately elucidated by the appellate court, AAA's complete obedience to appellant, her lack of struggle and silence about her ordeal were all brought about by a genuine fear posed upon her by the appellant who always had a knife tucked to his waist whenever he wanted to see AAA to satisfy his lust.[67] The appellant is the brother of AAA's foster father and their houses are adjacent to each other. Well-entrenched is the rule that delay in reporting an incident of rape is not an

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[65] *People v. Ugang*, 431 Phil. 552, 566 (2002).

[66] *People v. Suarez*, *supra* note 58 at 345-346.

[67] *Rollo*, p. 17.

indication of a fabricated charge, nor does it cast doubt on the credibility of a complainant.[68] More significantly, a one-month delay cannot be regarded as unreasonable. We have had cases where the delay in reporting the crime lasted for months, yet the testimonies of the victims therein were found to be plausible and credible.[69]

As regards appellant's assertions that the rape charges against him were fabricated and initiated only by the aunt of AAA in revenge for his refusal to live with her in Pampanga, the same remains unsubstantiated, thus, stands on hollow ground. Here we quote the trial court's pronouncement on this matter:

> The [appellant] would want this Court to believe that the charges against him were trumped up, borne by the desire of CCC, the sister of the [biological] mother of AAA to exact revenge upon him. The [appellant] would have it that CCC was his lover, having had carnal knowledge of her once in a local motel but became furious of him and threatened to bring the fury of hell to him when he denied her request to live with her as husband and wife in Pampanga. Such a defense burdens the imagination. It is utterly preposterous and unthinkable. Both the [appellant] and CCC are presently married to and living with their respective spouses. The Court failed to see anything so appealing on the part of the [appellant] as to drive CCC, who was already 41 years of age x x x and with six (6) children with her husband, out of her mind to make such proposal to the [appellant]. As a laundrywoman and a food vendor on the side, CCC would not be financially in a position to offer to buy for the [appellant] a passenger tricycle as their means of livelihood in Pampanga. In any event, the [appellant] failed to substantiate his said claim by document or other evidence of relationship like mementos, love letters, notes, pictures and the like.
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> Even in the remote possibility that CCC was indeed so obsessed to have the [appellant] as her live-in partner, it does not follow that she can impose her will on AAA and her mother for them to concoct a story of not just one but multiple rape alleged to have been committed against AAA. The [biological] mother of AAA would particularly not allow

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[68] *People v. Catoltol, Sr.*, G.R. No. 122359, 28 November 1996, 265 SCRA 109, 118-119.

[69] *People v. Suarez*, *supra* note 58 at 346.

her daughter to be used by her sister as an engine of malice, specially (sic) since to do so would expose her daughter to embarrassment and public trial.[70]

As has been repeatedly stated by this Court in a number of cases, it is unnatural for a parent to use her offspring as an engine of malice if it will subject her to embarrassment and even stigma. No mother would stoop so low as to subject her daughter to the hardships and shame concomitant to a rape prosecution just to assuage her own hurt feelings, more so, of her sister. It is unthinkable that a mother would sacrifice her daughter's honor to satisfy her grudge or even her sister's grudge, knowing fully well that such an experience would certainly damage her daughter's psyche and mar her entire life. A mother would not subject her daughter to a public trial with its accompanying stigma on her as the victim of rape, if said charges were not true.[71]

In contrast, the evidence presented by the defense consisted mainly of bare denials and *alibi*. As the Court has oft pronounced, both denial and *alibi* are inherently weak defenses which cannot prevail over the positive and credible testimony of the prosecution witness that the accused committed the crime.[72] For the defense of *alibi* to prosper, it is not sufficient that appellant prove that he was somewhere else when the crime was committed, he must also show that it was physically impossible for him to be at the *locus criminis* or its immediate vicinity when the crime was perpetrated.[73] Further, the defense of *alibi* may not prosper if it is established mainly by the accused themselves and their relatives like in this case and not by credible persons.[74]

In the case at bench, the appellant vehemently averred that at the time of the incidents on 1 May 2002 and on 11 May 2002 he was in Angat, Bulacan, and in Bagbaguin, Valenzuela City,

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

[71] *People v. Monfero*, 367 Phil. 675, 690-691 (1999).

[72] *People v. Veloso*, 386 Phil. 815, 825 (2000).

[73] *People v. Pedroso*, 391 Phil. 43, 55 (2000).

[74] *People v. Gopio*, 400 Phil. 217, 239 (2000).

respectively. On 1 May 2002, the appellant insisted that it was impossible for him to sexually abuse AAA at 8:30 in the morning because as early as 7:00 o'clock in the morning he already went out of his house to join the excursion of his co-drivers in Angat, Bulacan, and returned home only at 10:00 o'clock in the evening. Also, on 11 May 2002, at around 7:00 o'clock in the evening, the appellant claimed that it was not possible for him to rape AAA because as early as 9:00 o'clock in the morning he was already at the house of his cousin in Bagbaguin, Valenzuela City, to assist in the cooking of food for the birthday celebration of his cousin's nephew and he went home only at around 10:00 o'clock in the evening. However, these assertions of time and hour are bare and bereft of support. Neither is there any evidence to prove that it was physically impossible for him to be present at the place where the crimes were committed at the time they happened.

Additionally, it is worthy to note the findings of the trial court, which was affirmed by the appellate court, that from the time the appellant left his house on 1 May 2002 at 7:00 o'clock in the morning up to the time the incident of sexual abuse happened at 8:30 in the morning of the same day, there is only a time difference of one and one-half hour, thus, it was entirely possible that before leaving his house he had already committed the act complained of against AAA. Besides, the appellant can easily give a different time to make it appear that at the time of the incident he was no longer at the place where it happened. In the same breath, though the appellant was at the house of his cousin at the time the crime of rape was committed on 11 May 2002, it was not physically impossible for him to be present at the crime scene at the time it happened because the records clearly show that his cousin's house is only a 15-minute-walk away from the house of AAA.

The testimonies of the appellant's wife, cousin and niece designed to strengthen his defense of denial and *alibi* cannot be given any value for their testimonies are suspect because of their relationship to appellant. This Court has held that relatives would freely perjure themselves for the sake of their loved

ones.[75] Notably, the cousin of the appellant even admitted that on 11 May 2002 there was an instance when the appellant left her house for about an hour and then returned to continue with the drinking session. This indicates the possibility that it was during that hour that appellant raped AAA.

For failure of the appellant to support by clear and convincing evidence his defense of denial and *alibi*, and in light of the positive declaration of AAA, who in a simple and straightforward manner convincingly identified the appellant as her ravisher, the defense offered by the appellant must necessarily fail.

Given the foregoing, this Court affirms appellant's convictions in Criminal Case Nos. 545-V-02, 549-V-02, 552-V-02, 553-V-02, 544-V-02 and 348-V-02 for six counts of rape and in Criminal Case Nos. 546-V-02, 547-V-02, 548-V-02, 554-V-02 and 555-V-02 for five counts of sexual abuse under Section 5(b), Article III of Republic Act No. 7610.

This Court holds that the lower courts properly convicted the appellant in Criminal Case Nos. 546-V-02, 547-V-02, 548-V-02, 554-V-02 and 555-V-02 for five counts of sexual abuse under Section 5(b), Article III of Republic Act No. 7610 even though the charges against him in the aforesaid criminal cases were for rape in relation to Republic Act No. 7610. The lower courts' ruling is in conformity with the **variance doctrine** embodied in Section 4, in relation to Section 5, Rule 120 of the Revised Rules of Criminal Procedure, which specifically provides:

SEC. 4. *Judgment in case of variance between allegation and proof.* – When there is variance between the offense charged in the complaint or information and that proved, and the offense as charged is included in or necessarily includes the offense proved, the accused shall be convicted of the offense proved which is included in the offense charged, or of the offense charged which is included in the offense proved.

SEC. 5. *When an offense includes or is included in another.* – An offense charged necessarily includes the offense proved when some of the essential elements or ingredients of the former, as alleged

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[75] *Id*.

in the complaint or information, constitute the latter. And an offense charged is necessarily included in the offense proved, when the essential ingredients of the former constitute or form part of those constituting the latter.

With the aforesaid provisions, the appellant can be held guilty of a lesser crime of acts of lasciviousness performed on a child, *i.e.*, sexual abuse under Section 5(b), Article III of Republic Act No. 7610, which was the offense proved because it is included in rape, the offense charged.

As to penalty. This Court similarly affirms the penalty of *reclusion perpetua*[76] imposed by the lower courts against the appellant for each count of rape in Criminal Case Nos. 545-V-02, 549-V-02, 552-V-02, 553-V-02, 544-V-02 and 348-V-02.

This Court, however, modifies the penalty imposed by the lower courts against the appellant in Criminal Case Nos. 546-V-02, 547-V-02, 548-V-02, 554-V-02 and 555-V-02 for sexual abuse under Section 5(b), Article III of Republic Act No. 7610.

For acts of lasciviousness performed on a child under Section 5(b), Article III of Republic Act No. 7610, the penalty prescribed is *reclusion temporal* in its medium period to *reclusion perpetua*. Notwithstanding that Republic Act No. 7610 is a special law, the appellant may enjoy the benefits of the Indeterminate Sentence Law.[77]

Applying the Indeterminate Sentence Law, the appellant shall be entitled to a minimum term to be taken within the range of the penalty next lower to that prescribed by Republic Act No. 7610. The penalty next lower in degree is *prision mayor* medium to *reclusion temporal* minimum, the range of which is from 8 years and 1 day to 14 years and 8 months. On the other hand, the maximum term of the penalty should be taken from the penalty prescribed under Section 5(b), Article III of Republic

[76] ART. 266-B. *Penalties*. — Rape under paragraph 1 of the next preceeding article shall be punished by *reclusion perpetua*. (Revised Penal Code).

[77] *People v. Bon*, 444 Phil. 571, 585-586 (2003).

Act No. 7610, which is *reclusion temporal* in its medium period to *reclusion perpetua*, the range of which is from 14 years, 8 months and 1 day to *reclusion perpetua*. The minimum, medium and maximum term of the same is as follows: **minimum – 14 years, 8 months and 1 day to 17 years and 4 months; medium – 17 years, 4 months and 1 day to 20 years; and maximum – *reclusion perpetua***.

In this case, the trial court imposed on the appellant an indeterminate sentence of 8 years and 1 day of *prision mayor* as minimum to 15 years, 6 months and 20 days of *reclusion temporal* as maximum for each count of sexual abuse under Section 5(b), Article III of Republic Act No. 7610. The minimum term imposed is correct because it is within the range of *prision mayor* medium to *reclusion temporal* minimum, the penalty next lower in degree to that imposed by Republic Act No. 7610. But the maximum term thereof is wrong. The maximum term of the indeterminate sentence should be anywhere from 14 years, 8 months and one day to *reclusion perpetua*. We, thus, impose on the appellant the indeterminate sentence of 8 years and 1 day of *prision mayor* as minimum to 17 years, 4 months and 1 day of *reclusion temporal* as maximum for each count of sexual abuse under Section 5(b), Article III of Republic Act No. 7610 in Criminal Case Nos. 546-V-02, 547-V-02, 548-V-02, 554-V-02 and 555-V-02.

As to damages. This Court affirms the awards of ₱50,000.00 as civil indemnity and ₱50,000.00 as moral damages given by the lower courts to AAA for each count of rape. Civil indemnity, which is actually in the nature of actual or compensatory damages, is mandatory upon the finding of the fact of rape.[78] Moral damages in rape cases should be awarded without need of showing that the victim suffered trauma of mental, physical, and psychological sufferings constituting the basis thereof. These are too obvious to still require their recital at the trial by the victim, since we even assume and acknowledge such agony as a gauge of her credibility.[79]

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[78] *People v. Callos*, 424 Phil. 506, 516 (2002).

[79] *People v. Docena*, 379 Phil. 903, 917-918 (2000).

In line with this Court's ruling in *Abenojar v. People*,[80] this Court deems it proper to reduce the award of civil indemnity from ₱25,000.00 to ₱20,000.00, as well as the award of moral damages from ₱25,000.00 to ₱15,000.00 for each count of sexual abuse under Section 5(b), Article III of Republic Act No. 7610. In the same breath, in line with this Court's ruling in *People v. Sumingwa*,[81] this Court impose a fine of ₱15,000.00 on the appellant for each count of sexual abuse under Section 5(b), Article III of Republic Act No. 7610.

WHEREFORE, premises considered, the Decision of the Court of Appeals in CA-G.R. CR-H.C. No. 01092 dated 28 May 2007 finding herein appellant guilty beyond reasonable doubt in Criminal Case Nos. 545-V-02, 549-V-02, 552-V-02, 553-V-02, 544-V-02 and 348-V-02 of six counts of rape and in Criminal Case Nos. 546-V-02, 547-V-02, 548-V-02, 554-V-02 and 555-V-02 of five counts of sexual abuse under Section 5(b), Article III of Republic Act No. 7610 is hereby *AFFIRMED* with the following *MODIFICATIONS*: (1) the maximum term of the indeterminate sentence to be imposed upon the appellant for each count of sexual abuse under Section 5(b), Article III of Republic Act No. 7610 should be 17 years, 4 months and 1 day of *reclusion temporal*; (2) the awards of civil indemnity and moral damages for each count of sexual abuse under Section 5(b), Article III of Republic Act No. 7610 are reduced from ₱25,000.00 to ₱20,000.00 and from ₱25,000.00 to ₱15,000.00, respectively; and (3) a fine of ₱15,000.00 is imposed on the appellant also for each count of sexual abuse under Section 5(b), Article III of Republic Act No. 7610. Costs against appellant.

SO ORDERED.

Corona, C.J. (Chairperson), Velasco, Jr., Leonardo-de Castro, and *Del Castillo, JJ.,* concur.

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[80] G.R. No. 186441, 3 March 2010.

[81] *People v. Sumingwa, supra* note 48.

SECOND DIVISION

[G.R. No. 183101. July 6, 2010]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **NOEL CATENTAY,** *appellant.*

SYLLABUS

1. CRIMINAL LAW; ILLEGAL SALE OF DANGEROUS DRUGS; ELEMENTS. – The burden of the prosecution in a case of illegal sale of dangerous drugs is to prove (1) the identities of the buyer and the seller; (2) the sale of dangerous drugs; and (3) the existence of the *corpus delicti* or the illicit drug as evidence.

2. REMEDIAL LAW; EVIDENCE; PRESENTATION OF EVIDENCE; AUTHENTICATION OF EVIDENCE; CHAIN OF CUSTODY RULE; INTEGRITY OF SEIZED ARTICLES IN DRUG-RELATED CASES; MUST BE ESTABLISHED BY THE PROSECUTION. — The prosecution has to establish the integrity of the seized article in that it had been preserved from the time the same was seized from the accused to the time it was presented in evidence at the trial.

3. ID.; ID.; ID.; ID.; ID.; ID.; HOW PRESERVED. — The Court is guided by its ruling in *People v. Habana* which describes how the integrity of the substance seized from the accused might be preserved. Thus: **"Usually, the police officer who seizes the suspected substance turns it over to a supervising officer, who would then send it by courier to the police crime laboratory for testing. Since it is unavoidable that possession of the substance changes hand a number of times, it is imperative for the officer who seized the substance from the suspect to place his marking on its plastic container and seal the same, preferably with adhesive tape that cannot be removed without leaving a tear on the plastic container. At the trial, the officer can then identify the seized substance and the procedure he observed to preserve its integrity until it reaches the crime laboratory. If the substance is not in a plastic container, the officer should put it in one and seal the same. In this way the substance would assuredly reach the laboratory in the same condition it was seized from the accused. Further, after the**

laboratory technician tests and verifies the nature of the substance in the container, he should put his own mark on the plastic container and seal it again with a new seal since the police officer's seal has been broken. At the trial, the technician can then describe the sealed condition of the plastic container when it was handed to him and testify on the procedure he took afterwards to preserve its integrity. If the sealing of the seized substance has not been made, the prosecution would have to present every police officer, messenger, laboratory technician, and storage personnel, the entire chain of custody, no matter how briefly one's possession has been. Each of them has to testify that the substance, although unsealed, has not been tampered with or substituted while in his care."

4. ID.; ID.; ID.; ID.; ID.; UNBROKEN CHAIN OF CUSTODY, NOT ESTABLISHED IN CASE AT BAR. — In this case, although the plastic sachets that the forensic chemist received were heat-sealed and authenticated by the police officer with his personal markings, the forensic chemist broke the seal, opened the plastic sachet, and took out some of the substances for chemical analysis. No evidence had been adduced to show that the forensic chemist properly closed and resealed the plastic sachets with adhesive and placed his own markings on the resealed plastic to preserve the integrity of their contents until they were brought to court. Nor was any stipulation made to this effect. The plastic sachets apparently showed up at the pre-trial, not bearing the forensic chemist's seal, and was brought from the crime laboratory by someone who did not care to testify how he came to be in possession of the same. The evidence did not establish the unbroken chain of custody. Given the prosecution's failure to establish the integrity of the allegedly illegal substances that the police took from Catentay and presented in court, the latter's acquittal is inevitable.

VILLARAMA, *J.*, *disssenting opinion:*

1. CRIMINAL LAW; SALE OF ILLEGAL DRUGS; ELEMENTS. — 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.

2. REMEDIAL LAW; EVIDENCE; PRESENTATION OF EVIDENCE; AUTHENTICATION OF EVIDENCE; CHAIN OF CUSTODY RULE; CHAIN OF CUSTODY OF SEIZED ARTICLES, ESTABLISHED IN CASE AT BAR. — I respectfully submit with all due respect that the chain of custody of the *shabu* was established starting from the seizure made during the buy-bust operation to the turn over to the investigator, and from the latter to the chemist. In the instant case, the integrity of the drugs seized from Catentay was preserved. The evidence shows that after Quimson seized and confiscated the dangerous drugs and immediately marked the same, Catentay was immediately arrested and brought to the police station for investigation. Immediately thereafter, the two (2) heat-sealed transparent plastic sachets, bearing Quimson's markings, were submitted to the PNP Crime Laboratory for examination, with a letter of request for examination, to determine the presence of any dangerous drug. Per Chemistry Report No. D-369-2004 dated April 15, 2004, the specimen submitted, two (2) heat-sealed transparent plastic sachets having the markings "GQ" and "GQ1", contained methamphetamine hydrochloride, a dangerous drug. The examination was conducted by one (1) Engr. Jabonillo, a Forensic Chemical Officer of the PNP Crime Laboratory, whose proposed testimony was stipulated upon by the parties.

3. ID.; ID.; ID.; ID.; NON-PRESENTATION OF THE FORENSIC CHEMIST IN ILLEGAL DRUG CASES SHOULD NOT OPERATE TO ACQUIT THE ACCUSED. — I respectfully submit that the fact that the forensic chemist was not presented should not operate to acquit Catentay. As we held in *People v. Zenaida Quebral y Mateo, et al.*, "x x x This Court has held that the non-presentation of the forensic chemist in illegal drug cases is an insufficient cause for acquittal. The *corpus delicti* in dangerous drugs cases constitutes the dangerous drug itself. This means that proof beyond doubt of the identity of the prohibited drug is essential. Besides, *corpus delicti* has nothing to do with the testimony of the laboratory analyst. In fact, this Court has ruled that the report of an official forensic chemist regarding a recovered prohibited drug enjoys the presumption

of regularity in its preparation. Corollarily, under Section 44 of Rule 130, Revised Rules of Court, entries in official records made in the performance of official duty are *prima facie* evidence of the facts they state. Therefore, the report of Forensic Chemical Officer Sta. Maria that the five plastic sachets PO3 Galvez gave to her for examination contained *shabu* is conclusive in the absence of evidence proving the contrary. At any rate, as the CA pointed out, the defense agreed during trial to dispense with the testimony of the chemist and stipulated on his findings." It should be emphasized that the parties have stipulated that the forensic chemist received the two (2) transparent plastic sachets bearing Quimson's markings still heat-sealed. The chemistry report, which carries with it the presumption of regularity in the performance of duties and which is presumed to be evidence of the facts therein stated, states that the specimen received were "two (2) heat-sealed transparent plastic sachets each containing white crystalline substance having the following markings and recorded net weights: A(GQ) = 0.03gm; B(GQ1) = 0.03 gm." Said report was prepared by Jabonillo who, as stipulated, personally received the specimen. Hence, there is no doubt that the two (2) plastic sachets containing *shabu* that were seized from the accused were the same plastic sachets submitted for examination and found positive for *shabu*. The plastic sachets were identified by Quimson in court. Moreover, it was stipulated that Jabonillo would be able to "identify…the specimens he examined."

4. ID.; ID.; MOTIVE; ILL-MOTIVE ON THE PART OF THE POLICE OFFICERS, ABSENT IN CASE AT BAR. — Catentay's assertion that a serious charge was fabricated against him simply because he failed to provide information on the whereabouts of his neighbor is too frivolous to be believed as constituting ill-motive on the part of the police officers.

5. CRIMINAL LAW; SALE OF ILLEGAL DRUGS; MAY BE PERPETRATED OPENLY AND IN PUBLIC PLACES. — [T]he fact that the sale was in public does not diminish the credibility or the trustworthiness of Quimson's testimony. In *People v. Zervoulakos*, we observed that "the sale of prohibited drugs to complete strangers, openly and in public places, has become a common occurrence. Indeed, it is sad to note the effrontery and growing casualness of drug pushers in the pursuit of their illicit trade, as if it were a perfectly legitimate operation."

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 the duty of the prosecution in a prohibited drugs case to prove the integrity of the *corpus delicti* by establishing the chain of custody of the allegedly illegal substance that the police officers seized from the accused.

The Facts and the Case

On April 19, 2004 the Assistant City Prosecutor of Quezon City filed two separate informations against the accused Noel Doroja Catentay *alias* Boy (Catentay) before the Regional Trial Court (RTC) of that city in Criminal Cases Q-04-126517 and Q-04-126518 for violations of Sections 5 and 11, Article II of Republic Act (R.A.) 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002. The cases were tried together.[1]

At the pre-trial, the parties stipulated: (1) that PO1 Reyno Riparip (Riparip), the Investigator-On-Case, investigated the case before referring it to the inquest prosecutor; (2) that Riparip prepared the referral letter for inquest, the joint affidavit of the arresting officers, and the request for laboratory examination though he had no personal knowledge as to the circumstances of the arrest of Catentay or the source of the specimens; and (3) that Leonard M. Jabonillo, a forensic chemical officer, received the request for laboratory examination of the specimen involved, examined the same, and found it positive for methylamphetamine hydrochloride (*shabu*).[2]

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[1] Records, pp. 1-5.

[2] *Id.* at 28-31.

PO3 Gerardo Quimson, a police officer, testified that on April 14, 2004 his anti-illegal drugs unit received a report of drug trafficking by Catentay at a billiard hall.[3] This prompted the police to conduct a buy-bust operation at the place.

PO3 Quimson was to serve as the poseur-buyer while PO2 Valdez was to serve as pick-up officer. During the briefing, PO3 Quimson marked a 100-peso bill with his initials "GQ" to serve as buy-bust money. After the briefing, the team proceeded to the subject billiard hall with their informant. The latter introduced PO3 Quimson to Catentay as someone who wanted to buy ₱100.00 worth of *shabu*. After PO3 Quimson gave the money, Catentay took out two heat-sealed, transparent plastic sachets containing a white crystalline substance from his pocket and handed one sachet to the police officer.[4]

Upon receiving the sachet, PO3 Quimson scratched his head to signal the consummation of the transaction. PO2 Valdez then approached and with Quimson introduced themselves to Catentay as police officers.They apprised him of his constitutional rights, arrested him, and seized from him the other heat-sealed sachet and the buy-bust money. PO3 Quimson then wrote the letters "GQ" on the sachet he bought from Catentay and "GQ-1" on the other sachet they seized from him.[5]

The officers turned over Catentay and the items they got from him to the desk officer at the police station. The investigator, whom PO3 Quimson did not identify, then submitted the sachets of white crystalline substances to the Philippine National Police Crime Laboratory for examination. These were found positive for methylamphetamine hydrochloride or *shabu*.[6]

In court, PO3 Quimson identified the sachets of *shabu* he got from Catentay. Instead of presenting PO2 Valdez, the parties stipulated (1) that he was a police officer; (2) that he was

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[3] TSN, March 17, 2005, pp. 8-10.

[4] *Id.* at 18-23.

[5] *Id.* at 24-27.

[6] *Id.* at 27-29.

involved as arresting officer in the buy-bust operation; (3) that he recovered the buy-bust money from Catentay; and (4) that he can identify him and the buy-bust money used.[7]

As expected, Catentay presented the court with a different version. He claims that on April 14, 2004 he was plying his route as a tricycle driver when PO3 Quimson, PO1 Riparip, and PO2 Valdez flagged him down. They invited him to come to the police station to answer questions from their commanding officer. When he asked them what they were arresting him for, they simply replied that they wanted to ask from him the whereabouts of his neighbor, Roger Geronimo.

When Catentay arrived at the station, they brought him to a room and there blindfolded, beat, and questioned him. After removing his blindfold, PO1 Riparip showed him two plastic sachets and instructed his companions, "*Tuluyan n'yo na yan, bahala na kayo d'yan*." Catentay pleaded with the officers but they told him to just explain the matter to the prosecutor. Catentay maintains that the only reason the police charged him was his refusal to cooperate with them in their investigation of his neighbor. Aside from denying the charges, he questioned the legality of his arrest.[8]

On October 26, 2005 the trial court rendered a decision, dismissing Criminal Case Q-04-126517 since the crime of possession charged in it was absorbed by the crime of selling dangerous drugs charged in the other case as the Court enunciated in *People v. Lacerna*.[9] But, finding PO3 Quimson's testimony "credible and not doubtful x x x clear and forthright,"[10] the trial court found Catentay guilty beyond reasonable doubt in Criminal Case Q-04-126518 of violation of Section 5, Article II of R.A. 9165 or the illegal selling of 0.03 grams of methylamphetamine hydrohloride, a dangerous drug, and

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[7] Records, p. 39.

[8] TSN, June 28, 2005, pp. 3-6.

[9] 344 Phil. 100, 120 (1997).

[10] Records, p. 60.

sentenced him to the penalties of life imprisonment and fine of ₱500,000.00.[11]

Upon review, the Court of Appeals (CA) rendered a decision dated January 15, 2008, affirming in full the decision of the trial court.[12] Catentay appealed to this Court, repeating the same arguments he presented before the CA.[13]

The Issue Presented

The issue in this case is whether or not the CA erred in finding sufficient evidence that Catentay sold prohibited drugs to a police officer in a buy-bust operation in a billiard hall.

The Ruling of the Court

The burden of the prosecution in a case of illegal sale of dangerous drugs is to prove (1) the identities of the buyer and the seller; (2) the sale of dangerous drugs; and (3) the existence of the *corpus delicti* or the illicit drug as evidence.[14]

Early this year, this Court expounded on the requirement of proof of the existence of the prohibited drugs. The prosecution has to establish the integrity of the seized article in that it had been preserved from the time the same was seized from the accused to the time it was presented in evidence at the trial.[15] Here, the prosecution established through PO1 Quimson's testimony that he got the two sachets of white crystalline substances from Catentay and marked them with his initials. Since he testified that the sachets were heat-sealed and that

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[11] *Id.* at 54-62; penned by Judge Henri Jean-Paul B. Inting.

[12] CA *rollo*, pp. 96-110; penned by Associate Justice Rosmari D. Carandang, concurred in by Associate Justices Marina L. Buzon and Mariflor P. Punzalan Castillo.

[13] *Rollo*, pp. 2-17.

[14] *People of the Philippines v. Kamad*, G.R. No. 174198, January 19, 2010, citing *People v. Robles*, G.R. No. 177220, April 24, 2009, 586 SCRA 647, 654.

[15] *People of the Philippines v. Peralta*, G.R. No. 173472, February 26, 2010.

he placed his initials on them, that would have been sufficient to ensure the integrity of the substances until they shall have reached the hands of the forensic chemist.

The integrity of the seized articles would remain even if PO1 Quimson coursed their transmittal to the crime laboratory through the investigator-on-case since they had been sealed and marked. It does not matter that another person, probably a police courier would eventually deliver the sealed substances by hand to the crime laboratory. But, unfortunately, because the prosecution did not present the forensic chemist who opened the sachets and examined the substances in them, the latter was unable to attest to the fact that the substances presented in court were the same substances he found positive for *shabu*.

In his dissenting opinion, Justice Martin S. Villarama, Jr., points out that the stipulations among the parties at the pre-trial dispensed with the need to present the forensic chemist. The pertinent stipulations read:

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(2) That the said forensic chemical officer [Engr. Leonard M. Jabonillo] was the one who personally received the letter of request for laboratory examination together with the specimens subject matter of the case involving two (2) heat sealed transparent plastic sachets, each containing white crystalline substance with the following markings and recorded net weights: A(GQ)= 0.03 gram and B(GQ1)= 0.03 gram;

(3) That the purpose of the examination was to determine the presence of the dangerous drugs. Thereafter, the said forensic chemical officer, Engr. Leonard M. Jabonillo conducted a qualitative examination on the specimens that gave positive results to the test for dangerous drugs;

(4) That the result was reduced into writing and signed by the said forensic chemical officer, duly noted by the Chief of the Crime Laboratory;

(5) That the witness will identify the document as well as the specimens he examined; and

(6) That the forensic chemical officer has no personal knowledge as to the source of the specimens, subject of the case.[16]

The chemistry report, said the dissenting opinion, carried with it the presumption of truth that the seized specimen contained prohibited drugs. And since the parties stipulated that the forensic chemist personally received the specimen, undoubtedly, the two plastic sachets containing *shabu* that were seized from Catentay were the same sachets submitted for examination and found positive for *shabu*. PO3 Quimson, the police officer, identified the plastic sachets in court.

But, while Catentay stipulated that the forensic chemist examined the contents of the same plastic sachets that he personally received from the police, Catentay made no stipulation that the substance contained in the plastic sachets that were actually presented in court is the same substance that the forensic chemist examined and found positive for *shabu*. The Court is guided by its ruling in *People v. Habana*[17] which describes how the integrity of the substance seized from the accused might be preserved. Thus:

Usually, the police officer who seizes the suspected substance turns it over to a supervising officer, who would then send it by courier to the police crime laboratory for testing. Since it is unavoidable that possession of the substance changes hand a number of times, it is imperative for the officer who seized the substance from the suspect to place his marking on its plastic container and seal the same, preferably with adhesive tape that cannot be removed without leaving a tear on the plastic container. At the trial, the officer can then identify the seized substance and the procedure he observed to preserve its integrity until it reaches the crime laboratory.

If the substance is not in a plastic container, the officer should put it in one and seal the same. In this way the substance would assuredly reach the laboratory in the same condition it was seized from the accused. Further, after the laboratory technician tests

[16] Records, pp. 29-30.

[17] G.R. No. 188900, March 5, 2010.

and verifies the nature of the substance in the container, he should put his own mark on the plastic container and seal it again with a new seal since the police officer's seal has been broken. At the trial, the technician can then describe the sealed condition of the plastic container when it was handed to him and testify on the procedure he took afterwards to preserve its integrity.

If the sealing of the seized substance has not been made, the prosecution would have to present every police officer, messenger, laboratory technician, and storage personnel, the entire chain of custody, no matter how briefly one's possession has been. Each of them has to testify that the substance, although unsealed, has not been tampered with or substituted while in his care.[18]

In this case, although the plastic sachets that the forensic chemist received were heat-sealed and authenticated by the police officer with his personal markings, the forensic chemist broke the seal, opened the plastic sachet, and took out some of the substances for chemical analysis. No evidence had been adduced to show that the forensic chemist properly closed and resealed the plastic sachets with adhesive and placed his own markings on the resealed plastic to preserve the integrity of their contents until they were brought to court. Nor was any stipulation made to this effect. The plastic sachets apparently showed up at the pre-trial, not bearing the forensic chemist's seal, and was brought from the crime laboratory by someone who did not care to testify how he came to be in possession of the same. The evidence did not establish the unbroken chain of custody.

Given the prosecution's failure to establish the integrity of the allegedly illegal substances that the police took from Catentay and presented in court, the latter's acquittal is inevitable.

WHEREFORE, the Court *REVERSES and SETS ASIDE* the January 15, 2008 decision of the Court of Appeals in CA-G.R. CR-HC 01712 and *ACQUITS* the accused-appellant Noel Catentay *y* Doroja alias "Boy" for failure of the prosecution to prove his guilt beyond reasonable doubt. He is ordered

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[18] *Id.* at 7-8.

immediately *RELEASED* from detention unless he is confined for another lawful cause.

SO ORDERED.

Peralta and *Mendoza, JJ.*, concur.

Carpio, J., joins the dissenting opinion of *J.* Villarama, Jr.

Villarama, Jr.,[*] *J.*, see dissenting opinion.

DISSENTING OPINION

VILLARAMA, JR., *J.*:

Appellant Noel Doroja Catentay (Catentay) was charged with violation of Sections 5 and 11, Article II of Republic Act No. (RA) 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002, for selling and possessing illegal drugs.

The prosecution filed two separate informations against Catentay, to wit:

> That on or about the 14th day of April 2004, in Quezon City, Philippines, the said accused, not being authorized by law to possess any dangerous drug, did, then and there, willfully, unlawfully and knowingly have in his/her/their possession and control 0.03 (zero point zero three) gram of white crystalline substance containing Methylamphetamine Hydrochloride, a dangerous drug.
>
> CONTRARY TO LAW.
>
> and
>
> That on or about the 14th day of April 2004, 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, willfully and unlawfully sell, dispense, deliver, transport, distribute or act as broker in the said transaction, 0.03 (zero point

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[*] Designated as additional member in lieu of Associate Justice Antonio Eduardo B. Nachura, per raffle dated June 7, 2010.

zero three) gram of white crystalline substance containing Methylamphetamine Hydrochloride, a dangerous drug.

CONTRARY TO LAW.[1]

Catentay pleaded not guilty during his arraignment. During pre-trial, the parties stipulated that PO1 Reyno Riparip was the investigator of the case and the one (1) who prepared the request for laboratory examination. Also stipulated was the fact that Leonard Jabonillo, a forensic chemical officer, received the request for laboratory examination of the specimen involved, examined the same, and found it positive for methamphetamine hydrochloride, commonly known as *shabu*. Both parties agreed to dispense with their testimonies in open court. Trial thereafter ensued.

The prosecution presented PO3 Gerardo Quimson (Quimson) as its main witness. It was shown during trial that Quimson and his anti-illegal drugs unit received a report from its informant that Catentay was engaged in drug trafficking in a billiard hall located along Lira St., North Fairview, Quezon City, and that Quimson and his team conducted a buy-bust operation. Quimson, who served as the poseur-buyer, marked the 100-peso bill used in the operation with his initial "GQ". The informant introduced Quimson to Catentay as someone who wanted to buy ₱100 worth of *shabu*. Quimson gave the marked money to Catentay and the latter took out two (2) plastic sachet containing white crystalline substance from his pocket and handed one (1) of them to Quimson. After the sale, Quimson signaled his partner, PO2 Rey Valdez (Valdez), about the consummation of the transaction. Quimson and his partner then arrested Catentay. They seized from Catentay the other plastic sachet and the marked money. Quimson immediately wrote the letters "GQ" on the sachet he bought from Catentay and "GQ1" on the other sachet seized from Catentay. At the police station, they turned over Catentay to an investigating officer together with the seized items. The investigator was the one who submitted the white crystalline substance to the PNP Crime Laboratory for

[1] Records, pp. 2-5.

examination. When the same tested positive for *shabu*, they brought Catentay to the inquest prosecutor.

It likewise appears that the prosecution was to present Valdez as its witness but his testimony was dispensed with since the parties stipulated that he was one (1) of the back-up officers of the buy-bust team, that he was the one (1) who confiscated the buy-bust money from Catentay, and that he could identify the accused and the buy-bust money used in the operation.[2]

Catentay for his part denied the charge against him and claimed that he had been framed up. He claimed that he was plying his route as a tricycle driver when Quimson, Riparip and Valdez flagged him down and invited him to the police station. There he was asked about the whereabouts of his neighbor Roger Geronimo. The police tortured him and allegedly planted the two (2) sachets of *shabu*.

The RTC convicted Catentay for illegal selling of *shabu* but dismissed the charge of possession of dangerous drugs.[3] It found that the testimony of Quimson was credible. Quimson was able to identify the sachets he seized from Catentay, and the

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[2] Records, p. 39.

[3] CA *rollo*, pp. 19-27. Penned by Judge Henri Jean-Paul Inting. The dispositive portion reads:

WHEREFORE, the Court renders its joint decision in these cases as follows:

I. Crim. Case No. Q-04-126517 is DISMISSED.

II. In Crim. Case No. Q-04 126518, the Court finds accused NOEL CATENTAY GUILTY beyond reasonable doubt for violation of Section 5, Article II of R.A. No. 9165 or illegal selling of 0.03 gram of methylamphetamine hydrochloride (*shabu*), a dangerous drug; he is hereby sentenced to suffer the penalty of life imprisonment and pay a fine in the amount of Php500,000.00

The plastic sachets of "*shabu,*" subject matter of these case are hereby ordered forfeited in favor of the government and the Officer-in-charge of the Court is hereby ordered to safely deliver or cause the safe delivery of the same to the Philippine Drug Enforcement Agency for proper disposition.

IT IS SO ORDERED.

Chemistry Report showed that the sachets containing white crystalline substance proved to be positive of methamphetamine hydrochloride, a dangerous drug. It noted that Catentay failed to present any evidence to support his allegations that he was falsely charged by the police. Although only one (1) sachet was sold to Quimson during the buy-bust operation, it was shown that Catentay brought out two (2) sachets from his pocket and showed them to Quimson. The trial court found that it was Catentay's intention to sell the other sachet at the time of the buy-bust operation; hence, Catentay cannot be held liable for illegal possession of dangerous drugs since it was absorbed in the charge for illegal sale of dangerous drugs.

The Court of Appeals affirmed the decision of the RTC.[4] It found no reason to disturb the RTC's assessment of the credibility of the prosecution's witness, Quimson. According to the CA, the positive identification by Quimson and the physical evidence presented establish with moral certainty Catentay's guilt for illegally selling a dangerous drug. Catentay's assertion that a serious charge was fabricated against him simply because he failed to provide information on the whereabouts of his neighbor is too frivolous to be believed as constituting ill-motive on the part of the police officers.

Aggrieved, Catentay filed a notice of appeal.[5]

Catentay reiterated the assignment of errors made before the Court of Appeals,[6] to wit:

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[4] *Rollo*, pp. 2-14. The decision was penned by Associate Justice Rosmari Carandang, and concurred in by Associate Justices Marina Buzon and Mariflor Punzalan Castillo. The dispositive portion reads as follows:

WHEREFORE, premises considered, the Joint Decision of the Regional Trial Court of Quezon City, Branch 95, finding accused-appellant guilty beyond reasonable doubt for violation of Section 5, Article II of R.A. 9165 and sentencing him to suffer the penalty of life imprisonment and to pay a fine of ₱500,000.00 is AFFIRMED.

SO ORDERED.

[5] *Id.* at 17.

[6] CA *rollo*, p. 41.

I.

THE TRIAL COURT GRAVELY ERRED IN NOT FINDING THAT THE ACCUSED-APPELLANT WAS ILLEGALLY ARRESTED.

II.

THE TRIAL COURT GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY BEYOND REASONABLE DOUBT OF THE CRIMES CHARGED.

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*.[7] 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.

Here, I respectfully submit with all due respect that the chain of custody of the *shabu* was established starting from the seizure made during the buy-bust operation to the turn over to the investigator, and from the latter to the chemist. In the instant case, the integrity of the drugs seized from Catentay was preserved. The evidence shows that after Quimson seized and confiscated the dangerous drugs and immediately marked the same, Catentay was immediately arrested and brought to the police station for investigation. Immediately thereafter, the two (2) heat-sealed transparent plastic sachets, bearing Quimson's markings, were submitted to the PNP Crime Laboratory for examination, with a letter of request for examination, to determine the presence of any dangerous drug. Per Chemistry Report No. D-369-2004 dated April 15, 2004,[8] the specimen submitted, two (2) heat-sealed transparent plastic sachets having the markings "GQ" and "GQ1", contained methamphetamine hydrochloride, a dangerous drug. The examination was conducted

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[7] *People v. Peralta,* G.R. No. 173472, February 26, 2010.

[8] Records, p. 11.

by one (1) Engr. Jabonillo, a Forensic Chemical Officer of the PNP Crime Laboratory, whose proposed testimony was stipulated upon by the parties.[9] The prosecution and the defense stipulated during the pre-trial:

xxx xxx xxx

(2) That the said forensic chemical officer [Engr. Leonard Jabonillo] was the one who personally received the letter of request for laboratory examination together with the specimens subject matter of the case involving two (2) heat sealed transparent plastic sachets, each containing white crystalline substance with the following markings and recorded net weights: A(GQ)= 0.03 gram and B(GQ1)= 0.03 gram;

(3) That the purpose of the examination was to determine the presence of the dangerous drugs. Thereafter, the said forensic chemical officer, Engr. Leonard M. Jabonillo conducted a qualitative examination on the specimens that gave positive results to the test for dangerous drugs;

(4) That the result was reduced into writing and signed by the said forensic chemical officer, duly noted by the Chief of the Crime Laboratory;

(5) That the witness will identify the document as well as the specimens he examined;[10]

xxx xxx xxx

The *ponencia* acquits the appellant because the prosecution did not present the forensic chemist, and as such the latter was unable to testify as to what he did with the substance after examination: whether he properly closed and resealed the plastic sachets with adhesive and placed his own markings on the resealed plastic to preserve the integrity of their contents until they were brought to the court.

With all due respect, however, I respectfully submit that the fact that the forensic chemist was not presented should not

[9] *Id.* at 27.

[10] *Id.* at 29-30.

operate to acquit Catentay. As we held in *People v. Zenaida Quebral y Mateo, et al.*,[11]

> x x x This Court has held that the non-presentation of the forensic chemist in illegal drug cases is an insufficient cause for acquittal. The *corpus delicti* in dangerous drugs cases constitutes the dangerous drug itself. This means that proof beyond doubt of the identity of the prohibited drug is essential.
>
> Besides, *corpus delicti* has nothing to do with the testimony of the laboratory analyst. In fact, this Court has ruled that the report of an official forensic chemist regarding a recovered prohibited drug enjoys the presumption of regularity in its preparation. Corollarily, under Section 44 of Rule 130, Revised Rules of Court, entries in official records made in the performance of official duty are *prima facie* evidence of the facts they state. Therefore, the report of Forensic Chemical Officer Sta. Maria that the five plastic sachets PO3 Galvez gave to her for examination contained *shabu* is conclusive in the absence of evidence proving the contrary. At any rate, as the CA pointed out, the defense agreed during trial to dispense with the testimony of the chemist and stipulated on his findings.

It should be emphasized that the parties have stipulated that the forensic chemist received the two (2) transparent plastic sachets bearing Quimson's markings still heat-sealed. The chemistry report, which carries with it the presumption of regularity in the performance of duties and which is presumed to be evidence of the facts therein stated, states that the specimen received were "two (2) heat-sealed transparent plastic sachets each containing white crystalline substance having the following markings and recorded net weights: A(GQ) = 0.03gm; B(GQ1) = 0.03 gm." Said report was prepared by Jabonillo who, as stipulated, personally received the specimen. Hence, there is no doubt that the two (2) plastic sachets containing *shabu* that were seized from the accused were the same plastic sachets

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[11] G.R. No. 185379, November 27, 2009, pp. 6-7, citing *People v. Cervantes*, G.R. No. 181494, March 17, 2009, 581 SCRA 762, 781, *People v. Bandang*, G.R. No. 151314, June 3, 2004, 430 SCRA 570, 586-587 and *Malillin v. People*, G.R. No. 172953, April 30, 2008, 553 SCRA 619, 631-632.

submitted for examination and found positive for *shabu*. The plastic sachets were identified by Quimson in court. Moreover, it was stipulated that Jabonillo would be able to "identify…the specimens he examined."[12]

Against the evidence pointing to his culpability, Catentay could only offer bare denial. He claims that he was falsely charged because he failed to give the arresting officers any information as to the whereabouts of his neighbor, a certain Roger Geronimo. In his brief, he also questions the credibility of prosecution witness Quimson and points out that the illegal transaction could not have happened in a public place in broad daylight.[13] It should be stressed, however, that his testimony and account of what allegedly transpired was found undeserving of credence by the trial court, which finding was affirmed by the Court of Appeals. Indeed, as held by the CA, Catentay's assertion that a serious charge was fabricated against him simply because he failed to provide information on the whereabouts of his neighbor is too frivolous to be believed as constituting ill-motive on the part of the police officers. Likewise, the fact that the sale was in public does not diminish the credibility or the trustworthiness of Quimson's testimony. In *People v. Zervoulakos*,[14] we observed that "the sale of prohibited drugs to complete strangers, openly and in public places, has become a common occurrence. Indeed, it is sad to note the effrontery and growing casualness of drug pushers in the pursuit of their illicit trade, as if it were a perfectly legitimate operation."

I submit that given the evidence in this case, the prosecution was able to prove with moral certainty that Catentay is guilty of illegal selling of dangerous drugs. The evidence clearly shows that the buy-bust operation conducted by the police officers, who made use of said entrapment to capture Catentay in the act of selling a dangerous drug, was valid and legal. The Pre-operational Report[15] accomplished prior to the buy-bust operation

[12] Records, pp. 29-30.

[13] CA *rollo*, p. 49.

[14] G.R. No. 103975, 241 SCRA 625.

[15] Records, p. 9.

bolsters this fact. Moreover, the defense has failed to show any evidence of ill motive on the part of the police officers or to discharge its burden to point out any circumstance which will show that the integrity and evidentiary value of the confiscated drugs was not maintained. Additionally, Catentay is bound by the stipulations he made. The parties' stipulation to the testimonies of Valdez and Riparip would debunk Catentay's claim of frame up. During pre-trial, the parties stipulated that Riparip was the one who investigated the case and made the request for laboratory examination. Then, during the trial, **the parties stipulated that Valdez was the arresting officer in the buy-bust operation who recovered the marked money from Catentay. Clearly, appellant himself has admitted the buy-bust operation, the existence of the marked money, and the fact that the same was recovered from him.**

For these reasons, I vote to **DISMISS** the appeal and to **AFFIRM** the Decision of the Court of Appeals in CA-G.R. CR-H.C. No. 01712 finding appellant Noel Catentay guilty of the crime charged.

SECOND DIVISION

[G.R. No. 184088. July 6, 2010]

IGLESIA EVANGELICA METODISTA EN LAS ISLAS FILIPINAS (IEMELIF) (Corporation Sole), INC., REV. NESTOR PINEDA, REV. ROBERTO BACANI, BENJAMIN BORLONGAN, JR., DANILO SAUR, RICHARD PONTI, ALFREDO MATABANG and all the other members of the IEMELIF TONDO CONGREGATION of the IEMELIF CORPORATION SOLE, *petitioners, vs.* **BISHOP NATHANAEL LAZARO, REVERENDS HONORIO RIVERA, DANIEL MADUCDOC, FERDINAND MERCADO, ARCADIO CABILDO, DOMINGO GONZALES,**

ARTURO LAPUZ, ADORABLE MANGALINDAN, DANIEL VICTORIA and DAKILA CRUZ, and LAY LEADER LINGKOD MADUCDOC and CESAR DOMINGO, acting individually and as members of the Supreme Consistory of Elders and those claiming under the Corporation Aggregate, *respondents.*

SYLLABUS

1. MERCANTILE LAW; CORPORATION CODE; RELIGIOUS CORPORATIONS; CORPORATION SOLE AND CORPORATION AGGREGATE, DISTINGUISHED. — Religious corporations are governed by Sections 109 through 116 of the Corporation Code. In a 2009 case involving IEMELIF, the Court distinguished a corporation sole from a corporation aggregate. Citing Section 110 of the Corporation Code, the Court said that a corporation sole is "one formed by the chief archbishop, bishop, priest, minister, rabbi or other presiding elder of a religious denomination, sect, or church, for the purpose of administering or managing, **as trustee**, the affairs, properties and temporalities of such religious denomination, sect or church." A corporation aggregate formed for the same purpose, on the other hand**,** consists of two or more persons.

2. ID.; ID.; ID.; SHALL BE GOVERNED BY THE GENERAL PROVISIONS ON NON-STOCK CORPORATIONS; PROVISIONS ON AMENDMENT OF ARTICLES OF INCORPORATION OF NON-STOCK CORPORATIONS, APPLICABLE TO A CORPORATION SOLE. — True, the Corporation Code provides no specific mechanism for amending the articles of incorporation of a corporation sole. But x x x Section 109 of the Corporation Code allows the application to religious corporations of the general provisions governing non-stock corporations. For non-stock corporations, the power to amend its articles of incorporation lies in its members. The code requires two-thirds of their votes for the approval of such an amendment. So how will this requirement apply to a corporation sole that has technically but one member (the head of the religious organization) who holds in his hands its broad corporate powers over the properties, rights, and interests of his religious organization? Although a non-stock corporation

has a personality that is distinct from those of its members who established it, its articles of incorporation cannot be amended solely through the action of its board of trustees. The amendment needs the concurrence of at least two-thirds of its membership. If such approval mechanism is made to operate in a corporation sole, its one member in whom all the powers of the corporation technically belongs, needs to get the concurrence of two-thirds of its membership. The one member, here the General Superintendent, is but a trustee, according to Section 110 of the Corporation Code, of its membership.

3. ID.; ID.; ID.; CORPORATION SOLE; DISSOLUTION THEREOF IS NOT REQUIRED TO ENABLE THE CORPORATION AGGREGATE TO EMERGE FROM IT. — There is no point to dissolving the corporation sole of one member to enable the corporation aggregate to emerge from it. Whether it is a non-stock corporation or a corporation sole, the corporate being remains distinct from its members, whatever be their number. The increase in the number of its corporate membership does not change the complexion of its corporate responsibility to third parties. The one member, with the concurrence of two-thirds of the membership of the organization for whom he acts as trustee, can self-will the amendment. He can, with membership concurrence, increase the technical number of the members of the corporation from "sole" or one to the greater number authorized by its amended articles.

4. ID.; ID.; INCORPORATION AND ORGANIZATION OF PRIVATE CORPORATIONS; AMENDMENT OF ARTICLES OF INCORPORATION; REQUIREMENTS; AMENDMENT, WHEN DISAPPROVED. — The amendment of the articles of incorporation x x x requires merely that a) the amendment is not contrary to any provision or requirement under the Corporation Code, and that b) it is for a legitimate purpose. Section 17 of the Corporation Code provides that amendment shall be disapproved if, among others, the prescribed form of the articles of incorporation or amendment to it is not observed, or if the purpose or purposes of the corporation are patently unconstitutional, illegal, immoral, or contrary to government rules and regulations, or if the required percentage of ownership is not complied with. These impediments do not appear in the case of IEMELIF.

5. POLITICAL LAW; ADMINISTRATIVE LAW; ADMINISTRATIVE AGENCIES; SECURITIES AND EXCHANGE COMMISSION (SEC); SEC'S INTERPRETATION AND APPLICATION OF THE CORPORATION CODE IS ACCORDED GREAT WEIGHT. — [T]he IEMELIF worked out the amendment of its articles of incorporation upon the initiative and advice of the SEC. The latter's interpretation and application of the Corporation Code is entitled to respect and recognition, barring any divergence from applicable laws. Considering its experience and specialized capabilities in the area of corporation law, the SEC's prior action on the IEMELIF issue should be accorded great weight.

CARPIO, *J., separate concurring oipinion:*

1. MERCANTILE LAW; CORPORATION CODE; RELIGIOUS CORPORATIONS; CORPORATION SOLE AND CORPORATION AGGREGATE, DISTINGUISHED. — Section 110 of the Corporation Code defines a corporation sole as one formed by the chief archbishop, bishop, priest, minister, rabbi or other presiding elder of a religious denomination, sect or church for the purpose of administering and managing, as trustee, the affairs, property and temporalities of such religious denomination, sect or church. It is a special form of corporation designed to facilitate the exercise of the functions of ownership carried on by the clerics for and on behalf of the church which is regarded as the property owner. As its designation implies, a corporation sole "consists of a **single member**." It consists of one person only, and his successors (who will always be one at a time) in some particular station, incorporated by law to be given some legal capacities and advantages, particularly that of perpetuity, so that the successor becomes the corporation on the person's death or resignation. A corporation aggregate, on the other hand, is a religious corporation composed of two or more persons. The creation of a corporation aggregate or religious society is sanctioned by Section 116 of the Corporation Code.

2. ID.; ID.; ID.; CONVERSION OF A CORPORATION SOLE TO A CORPORATION AGGREGATE; CAN BE DONE THROUGH A MERE AMENDMENT OF THE ARTICLES OF INCORPORATION OF THE CORPORATION SOLE. — To convert a corporation sole to a corporation aggregate is to increase corporate membership from one to two or more, and

to transfer the duties of administering and managing the affairs, properties and temporalities of the religious entity, from one to several trustees. I agree with the majority opinion that the conversion can be done through a mere amendment of the articles of incorporation of the corporation sole. No dissolution of the corporation is necessary. The resulting changes from such a conversion, carried out in accordance with law, will not affect the corporation's responsibilities to third parties.

3. ID.; ID.; ID.; CORPORATION SOLE; POWERS. — Section 110 of the Corporation Code provides that a corporation sole administers and manages, as trustee, the affairs, properties and temporalities of the religious denomination, sect or church. As a trustee, a corporation sole can exercise such corporate powers as maybe necessary to carry out its duties of administering and managing the affairs, properties and temporalities of the religious organization, provided that such powers are not inconsistent with the law and the Constitution. One of the powers authorized under Section 36 of the Corporation Code is the power to amend the articles of incorporation.

4. ID.; ID.; ID.; ID.; A CORPORATION SOLE, AS THE LONE TRUSTEE AND MEMBER OF THE CORPORATION, CAN AMEND ITS ARTICLES OF INCORPORATION; EXPLAINED. — Section 109 of the Code allows the application to religious corporations of the general provisions governing non-stock corporations, insofar as they may be applicable. The lack of specific provision on amendments of articles of incorporation of a corporation sole calls for the suppletory application of relevant provisions on non-stock corporations. Thus, Section 16 of the Code applies x x x. Section 16 requires the majority vote of the board of trustees and the vote or written assent of at least two-thirds of the members of a non-stock corporation. Applying this, **a corporation sole, as the lone trustee and member of the corporation, can amend its articles of incorporation.** Section 16 refers to the members of the corporation. Again, in the case of a corporation sole, there is only one member—the chief archbishop, bishop, priest, minister, rabbi or presiding elder—who is also the trustee of the corporation. The religious denomination, sect or church represented by the corporation sole has members who are distinct and different from the member of the corporation sole. The members of the religious organization should not be

considered for purposes of Section 16. Thus, the votes of those members are not necessary in amending the articles of incorporation of the corporation sole, the vote of the latter being sufficient in effecting the amendment.

5. ID.; ID.; ID.; CONVERSION OF A CORPORATION SOLE TO A CORPORATION AGGREGATE; EFFECT. — [O]nce the conversion from corporation sole to corporation aggregate is perfected, the provisions of the Corporation Code specifically designed for a corporation sole cease to apply to the corporation aggregate, and the latter shall be governed by the relevant provisions on non-stock or even stock corporations. For instance, the rules on the sale of properties of a corporation sole are governed by Section 113 of the Code. The corporation sole may sell or mortgage real properties held by it *in accordance with the rules, regulations and discipline of the religious denomination, sect or church concerned*. It is only in the absence of such rules that court intervention becomes necessary, and real properties are sold or mortgaged by obtaining an order from the Regional Trial Court of the province where the property is situated. On the other hand, the sale or other disposition of all or substantially all of the properties and assets of a corporation aggregate shall be governed by Section 40 of the Code which applies to stock and non-stock corporations. Under this section, the sale, lease, exchange, mortgage, pledge or disposition of all or substantially all of the properties and assets of the corporation may generally be done through a majority vote of its board of trustees, and the vote of at least two-thirds of its members in a members' meeting duly called for that purpose. Hence, unlike in the case of a corporation sole, a corporation aggregate may not apply its own rules, regulations and discipline in selling all or substantially all of its properties, as this process shall be governed by secular principles and rules of law.

APPEARANCES OF COUNSEL

Aritao & Aritao Law Office for petitioners.
Elmer G. Pedregon for respondents.

D E C I S I O N

ABAD, *J.*:

The present dispute resolves the issue of whether or not a corporation may change its character as a corporation sole into a corporation aggregate by mere amendment of its articles of incorporation without first going through the process of dissolution.

The Facts and the Case

In 1909, Bishop Nicolas Zamora established the petitioner Iglesia Evangelica Metodista En Las Islas Filipinas, Inc. (IEMELIF) as a corporation sole with Bishop Zamora acting as its "General Superintendent." Thirty-nine years later in 1948, the IEMELIF enacted and registered a by-laws that established a Supreme Consistory of Elders (the Consistory), made up of church ministers, who were to serve for four years. The by-laws empowered the Consistory to elect a General Superintendent, a General Secretary, a General Evangelist, and a Treasurer General who would manage the affairs of the organization. For all intents and purposes, the Consistory served as the IEMELIF's board of directors.

Apparently, although the IEMELIF remained a corporation sole on paper (with all corporate powers theoretically lodged in the hands of one member, the General Superintendent), it had always acted like a corporation aggregate. The Consistory exercised IEMELIF's decision-making powers without ever being challenged. Subsequently, during its 1973 General Conference, the general membership voted to put things right by changing IEMELIF's organizational structure from a corporation sole to a corporation aggregate. On May 7, 1973 the Securities and Exchange Commission (SEC) approved the vote. For some reasons, however, the corporate papers of the IEMELIF remained unaltered as a corporation sole.

Only in 2001, about 28 years later, did the issue reemerge. In answer to a query from the IEMELIF, the SEC replied on

April 3, 2001 that, although the SEC Commissioner did not in 1948 object to the conversion of the IEMELIF into a corporation aggregate, that conversion was not properly carried out and documented. The SEC said that the IEMELIF needed to amend its articles of incorporation for that purpose.[1]

Acting on this advice, the Consistory resolved to convert the IEMELIF to a corporation aggregate. Respondent Bishop Nathanael Lazaro, its General Superintendent, instructed all their congregations to take up the matter with their respective members for resolution. Subsequently, the general membership approved the conversion, prompting the IEMELIF to file amended articles of incorporation with the SEC. Bishop Lazaro filed an affidavit-certification in support of the conversion.[2]

Petitioners Reverend Nestor Pineda, *et al*., which belonged to a faction that did not support the conversion, filed a civil case for "*Enforcement of Property Rights of Corporation Sole, Declaration of Nullity of Amended Articles of Incorporation from Corporation Sole to Corporation Aggregate with Application for Preliminary Injunction and/or Temporary Restraining Order*" in IEMELIF's name against respondent members of its Consistory before the Regional Trial Court (RTC) of Manila.[3] Petitioners claim that a complete shift from IEMELIF's status as a corporation sole to a corporation aggregate required, not just an amendment of the IEMELIF's articles of incorporation, but a complete dissolution of the existing corporation sole followed by a re-incorporation.

Unimpressed, the RTC dismissed the action in its October 19, 2005 decision.[4] It held that, while the Corporation Code on Religious Corporations (Chapter II, Title XIII) has no provision governing the amendment of the articles of incorporation of a corporation sole, its Section 109 provides that religious

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[1] *Rollo,* p. 36.

[2] *Id*. at 575-576.

[3] Docketed as Civil Case 03-018777.

[4] *Rollo,* pp. 76-89.

corporations shall be governed additionally "by the provisions on non-stock corporations insofar as they may be applicable." The RTC thus held that Section 16 of the Code[5] that governed amendments of the articles of incorporation of non-stock corporations applied to corporations sole as well. What IEMELIF needed to authorize the amendment was merely the vote or written assent of at least two-thirds of the IEMELIF membership.

Petitioners Pineda, *et al*. appealed the RTC decision to the Court of Appeals (CA).[6] On October 31, 2007 the CA rendered a decision,[7] affirming that of the RTC. Petitioners moved for reconsideration, but the CA denied it by its resolution of August 1, 2008,[8] hence, the present petition for review before this Court.

The Issue Presented

The only issue presented in this case is whether or not the CA erred in affirming the RTC ruling that a corporation sole may be converted into a corporation aggregate by mere amendment of its articles of incorporation.

The Court's Ruling

Petitioners Pineda, *et al*. insist that, since the Corporation Code does not have any provision that allows a corporation

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[5] Sec. 16. Amendment of Articles of Incorporation. - Unless otherwise prescribed by this Code or by special law, and for legitimate purposes, any provision or matter stated in the articles of incorporation may be amended by a majority vote of the board of directors or trustees and the vote or written assent of the stockholders representing at least two-thirds (2/3) of the outstanding capital stock, without prejudice to the appraisal right of dissenting stockholders in accordance with the provisions of this Code, or the vote or written assent of at least two-thirds (2/3) of the members if it be a non-stock corporation.

[6] Docketed as CA-G.R. SP 92640.

[7] *Rollo*, pp. 32-43; penned by Associate Justice Portia Aliño-Hormachuelos, with the concurrence of Associate Justices Lucas P. Bersamin (now an Associate Justice of this Court) and Estela M. Perlas-Bernabe.

[8] *Id*. at 45-46; penned by Associate Justice Portia Aliño-Hormachuelos, with the concurrence of Associate Justices Lucas P. Bersamin (now an Associate Justice of this Court) and Estela M. Perlas-Bernabe.

sole to convert into a corporation aggregate by mere amendment of its articles of incorporation, the conversion can take place only by first dissolving IEMELIF, the corporation sole, and afterwards by creating a new corporation in its place.

Religious corporations are governed by Sections 109 through 116 of the Corporation Code. In a 2009 case involving IEMELIF, the Court distinguished a corporation sole from a corporation aggregate.[9] Citing Section 110 of the Corporation Code, the Court said that a corporation sole is "one formed by the chief archbishop, bishop, priest, minister, rabbi or other presiding elder of a religious denomination, sect, or church, for the purpose of administering or managing, **as trustee**, the affairs, properties and temporalities of such religious denomination, sect or church." A corporation aggregate formed for the same purpose, on the other hand**,** consists of two or more persons.

True, the Corporation Code provides no specific mechanism for amending the articles of incorporation of a corporation sole. But, as the RTC correctly held, Section 109 of the Corporation Code allows the application to religious corporations of the general provisions governing non-stock corporations.

For non-stock corporations, the power to amend its articles of incorporation lies in its members. The code requires two-thirds of their votes for the approval of such an amendment. So how will this requirement apply to a corporation sole that has technically but one member (the head of the religious organization) who holds in his hands its broad corporate powers over the properties, rights, and interests of his religious organization?

Although a non-stock corporation has a personality that is distinct from those of its members who established it, its articles of incorporation cannot be amended solely through the action of its board of trustees. The amendment needs the concurrence of at least two-thirds of its membership. If such approval mechanism is made to operate in a corporation sole, its one

[9] *Iglesia Evangelica Metodista en las Islas Filipinas, Inc. v. Juane*, G.R. No. 172447, September 18, 2009, 600 SCRA 555.

member in whom all the powers of the corporation technically belongs, needs to get the concurrence of two-thirds of its membership. The one member, here the General Superintendent, is but a trustee, according to Section 110 of the Corporation Code, of its membership.

There is no point to dissolving the corporation sole of one member to enable the corporation aggregate to emerge from it. Whether it is a non-stock corporation or a corporation sole, the corporate being remains distinct from its members, whatever be their number. The increase in the number of its corporate membership does not change the complexion of its corporate responsibility to third parties. The one member, with the concurrence of two-thirds of the membership of the organization for whom he acts as trustee, can self-will the amendment. He can, with membership concurrence, increase the technical number of the members of the corporation from "sole" or one to the greater number authorized by its amended articles.

Here, the evidence shows that the IEMELIF's General Superintendent, respondent Bishop Lazaro, who embodied the corporation sole, had obtained, not only the approval of the Consistory that drew up corporate policies, but also that of the required two-thirds vote of its membership.

The amendment of the articles of incorporation, as correctly put by the CA, requires merely that a) the amendment is not contrary to any provision or requirement under the Corporation Code, and that b) it is for a legitimate purpose. Section 17 of the Corporation Code[10] provides that amendment shall be disapproved if, among others, the prescribed form of the articles

[10] Sec. 17. Grounds when articles of incorporation or amendment may be rejected or disapproved. - The Securities and Exchange Commission may reject the articles of incorporation or disapprove any amendment thereto if the same is not in compliance with the requirements of this Code: Provided, That the Commission shall give the incorporators a reasonable time within which to correct or modify the objectionable portions of the articles or amendment. The following are grounds for such rejection or disapproval:

1. That the articles of incorporation or any amendment thereto is not substantially in accordance with the form prescribed herein;

of incorporation or amendment to it is not observed, or if the purpose or purposes of the corporation are patently unconstitutional, illegal, immoral, or contrary to government rules and regulations, or if the required percentage of ownership is not complied with. These impediments do not appear in the case of IEMELIF.

Besides, as the CA noted, the IEMELIF worked out the amendment of its articles of incorporation upon the initiative and advice of the SEC. The latter's interpretation and application of the Corporation Code is entitled to respect and recognition, barring any divergence from applicable laws. Considering its experience and specialized capabilities in the area of corporation law, the SEC's prior action on the IEMELIF issue should be accorded great weight.

WHEREFORE, the Court *DENIES* the petition and *AFFIRMS* the October 31, 2007 decision and August 1, 2008 resolution of the Court of Appeals in CA-G.R. SP 92640.

SO ORDERED.

Nachura, Peralta, and *Mendoza, JJ.,* concur.

Carpio, J. (Chairperson), see separate concurring opinion.

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2. That the purpose or purposes of the corporation are patently unconstitutional, illegal, immoral, or contrary to government rules and regulations;

3. That the Treasurer's Affidavit concerning the amount of capital stock subscribed and/or paid if false;

4. That the percentage of ownership of the capital stock to be owned by citizens of the Philippines has not been complied with as required by existing laws or the Constitution.

No articles of incorporation or amendment to articles of incorporation of banks, banking and quasi-banking institutions, building and loan associations, trust companies and other financial intermediaries, insurance companies, public utilities, educational institutions, and other corporations governed by special laws shall be accepted or approved by the Commission unless accompanied by a favorable recommendation of the appropriate government agency to the effect that such articles or amendment is in accordance with law.

SEPARATE CONCURRING OPINION

CARPIO, *J.*:

I concur in the result of the majority opinion that IEMELIF, a corporation sole, may be converted into a corporation aggregate by a mere amendment of its articles of incorporation. However, I maintain that the amendment can be effected by the corporation sole without the concurrence of two-thirds of the members of the religious denomination, sect or church that the corporation sole represents.

Section 110 of the Corporation Code[1] defines a corporation sole as one formed by the chief archbishop, bishop, priest, minister, rabbi or other presiding elder of a religious denomination, sect or church for the purpose of administering and managing, as trustee, the affairs, property and temporalities of such religious denomination, sect or church. It is a special form of corporation designed to facilitate the exercise of the functions of ownership carried on by the clerics for and on behalf of the church which is regarded as the property owner.[2]

As its designation implies, a corporation sole "consists of a **single member**."[3] It consists of one person only, and his successors (who will always be one at a time) in some particular station, incorporated by law to be given some legal capacities and advantages, particularly that of perpetuity, so that the successor becomes the corporation on the person's death or resignation.[4]

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[1] Batas Pambansa Blg. 68.

[2] *The Roman Catholic Apostolic Administration of Davao, Inc. v. The Land Registration Commission and the Register of Deeds of Davao City*, 102 Phil. 596, 603 (1957).

[3] *Iglesia Evangelica Metodista En Las Islas Filipinas (IEMELIF), Inc. v. Juane*, G.R. Nos. 172447 and 179404, 18 September 2009.

[4] *The Roman Catholic Apostolic Administration of Davao, Inc. v. The Land Registration Commission and the Register of Deeds of Davao City*, *supra* note 2; 66 Am. Jur. 2d Religious Societies § 3; *Doe v. Gelineau*, 732 A.2d 43 (1999).

A corporation aggregate, on the other hand, is a religious corporation composed of two or more persons.[5] The creation of a corporation aggregate or religious society is sanctioned by Section 116 of the Corporation Code.

To convert a corporation sole to a corporation aggregate is to increase corporate membership from one to two or more, and to transfer the duties of administering and managing the affairs, properties and temporalities of the religious entity, from one to several trustees. I agree with the majority opinion that the conversion can be done through a mere amendment of the articles of incorporation of the corporation sole. No dissolution of the corporation is necessary. The resulting changes from such a conversion, carried out in accordance with law, will not affect the corporation's responsibilities to third parties.

The majority opinion, however, holds that the amendment of the articles of incorporation can be executed by the corporation sole, albeit with the concurrence of at least two thirds of the members of the religious entity.

I do not subscribe to this view.

First, Section 110 of the Corporation Code provides that a corporation sole administers and manages, as trustee, the affairs, properties and temporalities of the religious denomination, sect or church. As a trustee, a corporation sole can exercise such corporate powers as maybe necessary to carry out its duties of administering and managing the affairs, properties and temporalities of the religious organization, provided that such powers are not inconsistent with the law and the Constitution. One of the powers authorized under Section 36 of the Corporation Code is the power to amend the articles of incorporation.[6]

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[5] *Iglesia Evangelica Metodista En Las Islas Filipinas (IEMELIF), Inc. v. Juane*, *supra* note 3.

[6] Section 36 of the Corporation Code provides: "Every corporation incorporated under this Code has the power and capacity: x x x 4. To amend its articles of incorporation in accordance with the provisions of this Code; x x x 11. To exercise such other powers as may be essential or necessary to carry out its purpose or purposes as stated in the articles of incorporation."

Second, as pointed out in the majority opinion, Section 109 of the Code allows the application to religious corporations of the general provisions governing non-stock corporations, insofar as they may be applicable. The lack of specific provision on amendments of articles of incorporation of a corporation sole calls for the suppletory application of relevant provisions on non-stock corporations. Thus, Section 16 of the Code applies, to wit:

> Sec. 16. Amendment of Articles of Incorporation. Unless otherwise prescribed by this Code or by special law, and for legitimate purposes, *any provision or matter stated in the articles of incorporation may be amended by a majority vote of the board of directors or trustees and* the vote or written assent of the stockholders representing at least two-thirds (2/3) of the outstanding capital stock, without prejudice to the appraisal right of dissenting stockholders in accordance with the provisions of this Code, *or the vote or written assent of at least two-thirds (2/3) of the members if it be a non-stock corporation.* x x x (Italics supplied)

The majority opinion holds that applying the above provision, amendment can be made by the corporation sole with the concurrence of at least two-thirds of the members of the religious organization it represents.

I do not agree. Section 16 requires the majority vote of the board of trustees and the vote or written assent of at least two-thirds of the members of a non-stock corporation. Applying this, **a corporation sole, as the lone trustee and member of the corporation, can amend its articles of incorporation.**

Section 16 refers to the members of the corporation. Again, in the case of a corporation sole, there is only one member—the chief archbishop, bishop, priest, minister, rabbi or presiding elder—who is also the trustee of the corporation.

The religious denomination, sect or church represented by the corporation sole has members who are distinct and different from the member of the corporation sole. The members of the religious organization should not be considered for purposes of

Section 16. Thus, the votes of those members are not necessary in amending the articles of incorporation of the corporation sole, the vote of the latter being sufficient in effecting the amendment.

It bears emphasizing that once the conversion from corporation sole to corporation aggregate is perfected, the provisions of the Corporation Code specifically designed for a corporation sole cease to apply to the corporation aggregate, and the latter shall be governed by the relevant provisions on non-stock or even stock corporations.[7]

For instance, the rules on the sale of properties of a corporation sole are governed by Section 113 of the Code.[8] The corporation sole may sell or mortgage real properties held by it *in accordance with the rules, regulations and discipline of the religious denomination, sect or church concerned*. It is only in the

[7] Section 87 of the Corporation Code provides that "the provisions governing stock corporations, when pertinent, shall be applicable to non-stock corporations x x x."

[8] Section 113 of the Corporation Code provides:

Sec. 113. *Acquisition and alienation of property*. Any corporation sole may purchase and hold real estate and personal property for its church, charitable, benevolent or educational purposes, and may receive bequests or gifts for such purposes. Such corporation may sell or mortgage real property held by it by obtaining an order for that purpose from the Court of First Instance of the province where the property is situated upon proof made to the satisfaction of the court that notice of the application for leave to sell or mortgage has been given by publication or otherwise in such manner and for such time as said court may have directed, and that it is to the interest of the corporation that leave to sell or mortgage should be granted. The application for leave to sell or mortgage must be made by petition, duly verified, by the chief archbishop, bishop, priest, minister, rabbi or presiding elder acting as corporation sole, and may be opposed by any member of the religious denomination, sect or church represented by the corporation sole: Provided, That in cases where the rules, regulations and discipline of the religious denomination, sect or church, religious society or order concerned represented by such corporation sole regulate the method of acquiring, holding, selling and mortgaging real estate and personal property, such rules, regulations and discipline shall control, and the intervention of the courts shall not be necessary.

absence of such rules that court intervention becomes necessary, and real properties are sold or mortgaged by obtaining an order from the Regional Trial Court of the province where the property is situated. On the other hand, the sale or other disposition of all or substantially all of the properties and assets of a corporation aggregate shall be governed by Section 40 of the Code which applies to stock and non-stock corporations. Under this section, the sale, lease, exchange, mortgage, pledge or disposition of all or substantially all of the properties and assets of the corporation may generally be done through a majority vote of its board of trustees, and the vote of at least two-thirds of its members in a members' meeting duly called for that purpose. Hence, unlike in the case of a corporation sole, a corporation aggregate may not apply its own rules, regulations and discipline in selling all or substantially all of its properties, as this process shall be governed by secular principles and rules of law.

Accordingly, I vote to **DENY** the petition.

SECOND DIVISION

[G.R. No. 184812. July 6, 2010]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **ERMILITO ALEGRE *y* LAMOSTE,** *appellant.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; FINDINGS THEREON BY TRIAL COURTS DESERVE THE HIGHEST RESPECT. — [T]he settled rule based on reason and experience is that the trial court's findings respecting the credibility of witnesses and their testimonies deserve the highest respect. Since the trial judge saw and heard the witnesses and observed how they testified under intense questioning, he was in a better position to weigh what they said.

2. ID.; ID.; ID.; NOT IMPAIRED BY INCONSISTENCIES IN THE TESTIMONY OF THE WITNESS ON MINOR DETAILS OF THE CRIME; CASE AT BAR. — Alegre improperly appreciated VON's testimony. Actually, she maintained that he raped her before stabbing her on the chest. In any case, any error in the sequence in which the rape victim narrated these two successive turn of events cannot erode the value of her testimony. For the most part, VON remained consistent under repeated questioning regarding these details. One must understand that rape is not just an assault upon a woman's body; it is also a derogation of her dignity. If there were inconsistencies in minute details, they may be attributed to the emotions brought to the surface by the need for her to repeatedly narrate in detail the brutality inflicted on her. The Court's impression is that VON never once faltered in her declaration that Alegre sexually molested her. Dr. Aguirre corroborated her claim with her testimony regarding VON's hymenal lacerations. Dr. Lagapa testified on her multiple stab wounds. Inevitably, when the rape victim's straightforward testimony is consistent with the physical evidence of the injuries she received, sufficient basis exists for concluding that she has told the truth.

3. ID.; ID.; DENIAL; MUST BE BUTTRESSED BY STRONG EVIDENCE OF NON-CULPABILITY OR BY THE ESSENTIAL WEAKNESS OF THE COMPLAINANT'S ALLEGATIONS. — Alegre did not present any evidence, other than his testimony denying the grave charges against him. But to be believed, his denial needed to be buttressed by strong evidence of non-culpability or by the essential weakness of the complainant's allegations. These do not exist here.

4. CRIMINAL LAW; RAPE; RAPE WITH THE USE OF A DEADLY WEAPON; PENALTY. — Regarding the penalty, both the CA and the RTC failed to take into account Alegre's use of a deadly weapon in the rape case, a fact specifically averred in the information and proved during the trial. This qualifies the rape he committed. Article 266-B of the Revised Penal Code provides that the penalty for rape committed with the use of a deadly weapon should be *reclusion perpetua* to death. But in view of the enactment of Republic Act 9346 which prohibits the imposition of the death penalty, the penalty of *reclusion perpetua* without eligibility for parole as provided by Act 4103 should instead be imposed.

5. CIVIL LAW; DAMAGES; CIVIL INDEMNITY AND MORAL DAMAGES; AWARDED IN CASE AT BAR. — With regard to the damages, in line with recent jurisprudence the civil indemnity must be increased from ₱50,000.00 to ₱75,000.00 and the moral damages from ₱50,000.00 to ₱75,000.00.

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 shows a stark contrast in credibility between the testimony of the complainant who was raped and left for dead and that of the accused who offered only an uncorroborated alibi.

The Facts and the Case

The City Prosecutor of Manila charged accused Ermilito L. Alegre (Alegre) before the Regional Trial Court (RTC) of that city with frustrated murder in Criminal Case 03-213343 and with qualified rape in Criminal Case 03-213344.[1]

The evidence for the prosecution shows that VON[2] and the accused Alegre were acquaintances.[3] Alegre owned the house where his family and VON's relatives lived. On the evening of September 14, 2002 VON went to Alegre's house to visit her relatives. In the course of that visit, Alegre asked her to join him for drinks inside a jeep. After finishing a small bottle of gin pomelo, VON returned to her relatives' quarters and

[1] Records, p. 2.

[2] Pursuant to *People v. Cabalquinto*, G.R. No. 167693, September 19, 2006, 502 SCRA 419, the real name and address of the victim and her relatives have been replaced with fictitious initials.

[3] TSN, October 15, 2003, p. 3; TSN, February 3, 2004, p. 19.

told her cousin that she was going home. But, as VON stepped out, Alegre invited her to meet his girl friends.[4] She could not say whether he was under the influence of drugs at that time.[5]

Alegre and VON walked along a nearby street until they reached a fenced house. Alegre climbed the fence and told VON to do likewise as his girl friends were in the house. But when she entered the house, it was empty. She hastily went out when Alegre did not respond to her query about his girl friends who were supposed to be there. She tried to go over the fence to get to the street but Alegre warned her that the *barangay tanods* might see her. When VON did not heed Alegre's warning, he punched her on the back and repeatedly stabbed her with an ice pick until she fell to the ground on her back.[6]

Alegre tore VON's polo and sando and then stripped her of shorts and underwear. She fought back and succeeded in grabbing the ice pick but he choked her, forcing her to drop the weapon. He picked it up and proceeded to sexually ravish her. She felt pain. Afterwards, he stabbed her again on her chest and arms. She had become so weak at this point that she ceased to fight back. Alegre stopped assaulting her when she turned over, facing the ground. VON did not move for some time but, as she coughed, Alegre returned and stabbed her thrice on the back. She suppressed her cough so he would not return.[7]

When VON felt that Alegre had left, she tried to stand but could not because of muscle cramps in her left leg. She shouted for help but nobody responded. She watched vehicles pass by the street. Finally, in the early morning of the following day, September 15, 2002, she spotted two *barangay tanods* and they heard her shouts for help.[8]

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[4] *Id.* at 4-5; *id.* at 24.

[5] TSN, February 3, 2004, p. 25.

[6] TSN, October 15, 2003, pp. 5-8.

[7] *Id.* at 9-12.

[8] *Id.* at 13.

Romeo dela Cruz, a *barangay kagawad*, testified that at about 2:00 in the morning of September 15, 2002, he got a call, informing him that shouts for help had been heard from an abandoned house. Dela Cruz hastily went to the site. He found VON lying naked on the ground, covered with mud and blood. He called the police and, with his nephew's help, got VON into a police car. They brought VON to the Lourdes Hospital, where they did a life-saving procedure on her before moving her to the Philippine General Hospital (PGH)[9] for surgical operation.[10]

Dr. Edwin Paul Lagapa, the doctor who attended to VON at the PGH, found 18 stab wounds all over her body, four of which pierced her heart, caused by a very small, fine pointed instrument. Her forehead suffered injury from a fall. Dr. Lagapa said that she could have died had she not been treated on time. Indeed, he had to perform several life-saving operations on VON.[11]

On the same day, upon an inter-departmental referral, Dr. Claire Aguirre conducted a gynecological examination of VON. Dr. Aguirre found several abrasions and hymenal lacerations. She found no sperm. Although she could not identify the age of the lacerations, she explained it would take at least seven days for them to heal.[12]

For his defense, Alegre claimed that he was at Abad Santos, Bacood, Sta. Mesa, on September 14, 2002 with the owner of a jeepney he was repairing. After taking a bath, he rode with his brother in a jeepney that the latter was driving. They went home together at about 10:30 in the evening. After eating, Alegre went to her sister's house, just next to his brother's house, and watched television there. Contrary to VON's story, it was she who invited Alegre to a drink. Consistent with VON's

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[9] TSN, May 24, 2004, pp. 3-4; TSN, October 15, 2003, p. 13; TSN, February 3, 2004, p. 9.

[10] TSN, October 15, 2003, p. 13; TSN, February 3, 2004, pp. 9-10.

[11] TSN, February 3, 2004, pp. 8-13.

[12] TSN, November 4, 2004, pp. 3-7.

testimony, he said that they pooled their money to buy a bottle of gin pomelo, which they drank in front of his sister's house. He went home afterwards to sleep. VON did not return to his sister's or brother's house.[13]

Alegre claims that at 4:30 in the morning of September 15, 2002 (about three hours after he left VON), he went with his brother to Mindoro as earlier planned. In Mindoro, his uncle, Ronald Rom, arrested him without a warrant allegedly for a robbery case. He later learned at the police precinct that they were charging him with frustrated murder and rape. Alegre believed that VON filed the cases because he had stabbed her cousin a long time ago. Further, VON's brother had accused him of theft of his VCD player, resulting in his arrest and detention.[14]

On September 25, 2006 the RTC found Alegre guilty beyond reasonable doubt of frustrated murder and sentenced him to suffer a minimum indeterminate penalty of 9 years and 4 months of *prision mayor* in its medium period to 17 years and 4 months of *reclusion temporal* in its medium period as maximum. The RTC also ordered him to indemnify VON in the amount of ₱25,000.00 as moral damages and ₱25,000.00 as temperate damages.

The RTC also found Alegre guilty beyond reasonable doubt of the rape of VON and sentenced him to suffer the penalty of *reclusion perpetua* and to pay VON ₱50,000.00 in civil indemnity and ₱50,000.00 in moral damages.

On appeal to the Court of Appeals (CA) in CA-G.R. CR-HC 02583, the latter court rendered judgment on April 28, 2008, affirming *in toto* the decision of the RTC.[15] This prompted Alegre to appeal to this Court.[16]

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[13] TSN, March 28, 2005, pp. 2-4.

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

[15] *Rollo*, pp. 12-13. Penned by Associate Justice Andres B. Reyes, Jr. and concurred in by Associate Justice Jose C. Mendoza (now a member of this Court) and Associate Justice Arturo G. Tayag.

[16] *Id.* at 22.

The Issue Presented

The sole issue presented in this case is whether or not the CA erred in affirming the RTC's finding that there is sufficient evidence to show that Alegre raped and nearly murdered VON as she claimed.

The Ruling of the Court

The cornerstone of Alegre's appeal is the lack of credibility of VON, given the contradictions in her testimony.[17] But the settled rule based on reason and experience is that the trial court's findings respecting the credibility of witnesses and their testimonies deserve the highest respect. Since the trial judge saw and heard the witnesses and observed how they testified under intense questioning, he was in a better position to weigh what they said.[18] Here, the trial court, concurred in by the CA, found VON's testimony credible. It was, according to the trial court, "clear, direct, honest and could only inspire belief."[19] Dr. Lagapa and Dr. Aguirre also bolstered her testimony.

On the other hand, the RTC found Alegre's testimony too weak and insufficient to overcome that of VON. His alibi and his claim that VON filed the charges in retaliation for a past offense he committed against a relative remained uncorroborated or supported by some other evidence. There is also no showing that the trial court overlooked, misunderstood, or misapplied facts or circumstances which would affect the outcome of the case.

The conflict in VON's testimony that Alegre refers to concerns the position of her body when she fell on the ground and the order that the rape and the stabbing followed.[20] Alegre points out that, on direct examination, VON said that she fell to the

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[17] CA *rollo*, p. 41.

[18] *People of the Philippines v. Ofemiano*, G.R. No. 187155, February 1, 2010.

[19] CA *rollo*, p. 52.

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

ground on her back and that Alegre stabbed her on the chest after raping her but, on cross-examination, she said that she fell to the ground on her stomach and Alegre stabbed her on the chest only after he stripped her of clothing.

But Alegre improperly appreciated VON's testimony. Actually, she maintained that he raped her before stabbing her on the chest. In any case, any error in the sequence in which the rape victim narrated these two successive turn of events cannot erode the value of her testimony. For the most part, VON remained consistent under repeated questioning regarding these details. One must understand that rape is not just an assault upon a woman's body; it is also a derogation of her dignity. If there were inconsistencies in minute details, they may be attributed to the emotions brought to the surface by the need for her to repeatedly narrate in detail the brutality inflicted on her.

The Court's impression is that VON never once faltered in her declaration that Alegre sexually molested her. Dr. Aguirre corroborated her claim with her testimony regarding VON's hymenal lacerations. Dr. Lagapa testified on her multiple stab wounds. Inevitably, when the rape victim's straightforward testimony is consistent with the physical evidence of the injuries she received, sufficient basis exists for concluding that she has told the truth.[21]

Notably, Alegre did not present any evidence, other than his testimony denying the grave charges against him. But to be believed, his denial needed to be buttressed by strong evidence of non-culpability or by the essential weakness of the complainant's allegations.[22] These do not exist here.

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[21] *People of the Philippines v. Ofemiano*, *supra* note 18, citing *People v. Malibiran*, G.R. No. 173471, March 17, 2009, 581 SCRA 655, 668-669; *People v. Corpuz*, G.R. No. 168101, February 13, 2006, 482 SCRA 435, 448; *People v. Bañares*, G.R. No. 127491, May 28, 2004, 430 SCRA 81, 92-93.

[22] *People of the Philippines v. Estrada*, G.R. No. 178318, January 15, 2010.

Regarding the penalty, both the CA and the RTC failed to take into account Alegre's use of a deadly weapon in the rape case, a fact specifically averred in the information and proved during the trial. This qualifies the rape he committed. Article 266-B of the Revised Penal Code provides that the penalty for rape committed with the use of a deadly weapon should be *reclusion perpetua* to death. But in view of the enactment of Republic Act 9346 which prohibits the imposition of the death penalty, the penalty of *reclusion perpetua* without eligibility for parole as provided by Act 4103 should instead be imposed.

With regard to the damages, in line with recent jurisprudence the civil indemnity must be increased from ₱50,000.00 to ₱75,000.00 and the moral damages from ₱50,000.00 to ₱75,000.00.[23]

WHEREFORE, the Court *DENIES* the appeal and *AFFIRMS* the decision of the Court of Appeals in CA-G.R. CR-HC 02583 dated April 28, 2008, which upheld the decision of the Regional Trial Court of Manila in Criminal Cases 03-213343 and 03-213344, with the *MODIFICATIONS* a) that the penalty of *reclusion perpetua* be without eligibility for parole and b) that the award of ₱50,000.00 in civil indemnity and ₱50,000.00 in moral damages in relation to the case of qualified rape be both increased to ₱75,000.00.

SO ORDERED.

Carpio (Chairperson), Velasco, Jr.,[*] *Nachura,* and *Peralta, JJ.,* concur.

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[23] *People v. Araojo*, G.R. No. 185203, September 17, 2009, 600 SCRA 295, 309.

[*] Designated as additional member in lieu of Associate Justice Jose Catral Mendoza, per raffle dated June 16, 2010.

SECOND DIVISION

[G.R. No. 188570. July 6, 2010]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **CHRISTOPHER DE MESA and EMMANUEL GONZALES,** *appellants.*

SYLLABUS

1. CRIMINAL LAW; ILLEGAL SALE OF DANGEROUS DRUGS; ELEMENTS. — In a prosecution for illegal sale of dangerous drugs, the following elements must be proven: (1) that the transaction or sale took place; (2) that the *corpus delicti* or the illicit drug was presented as evidence; and (3) that the buyer and seller were identified. The presence of these elements is sufficient to support the trial court's finding of appellants' guilt. What is material is the proof that the transaction or sale actually took place, coupled with the presentation in court of the prohibited or regulated drug. The delivery of the contraband to the poseur-buyer and the receipt of the marked money consummate the buy-bust transaction between the entrapping officers and the accused. The presentation in court of the *corpus delicti* — the body or substance of the crime – establishes the fact that a crime has actually been committed.

2. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; FACTUAL FINDINGS OF TRIAL COURTS, GENERALLY ACCORDED GREAT RESPECT ON APPEAL; CASE AT BAR. — [T]he trial court found that the arresting officers testified in a straightforward manner such that the court was convinced that "no ill motive or wrong doing could be ascribed" to the latter. The trial court also held that "unlike in many other cases tried before this Court where certain irregularities were committed by police operatives that cast doubt on the credibility of the operations, this operation appears to have been made without abuse and in a regular manner." In cases involving violations of the Dangerous Drugs Law, appellate courts tend to rely heavily on the trial court's assessment of the credibility of witnesses, because the latter had the unique opportunity, denied to the appellate courts, to observe the witnesses and to note their demeanor, conduct, and attitude under direct and cross-examination. Hence, its factual findings are accorded great

respect, even finality, absent any showing that certain facts of weight and substance bearing on the elements of the crime have been overlooked, misapprehended, or misapplied.

3. CRIMINAL LAW; REPUBLIC ACT NO. 9165; REQUIREMENTS ON THE PROPER HANDLING AND CUSTODY OF DANGEROUS DRUGS SEIZED; NON-COMPLIANCE THEREWITH WILL NOT RENDER THE ACCUSED'S ARREST ILLEGAL OR MAKE THE ITEMS SEIZED INADMISSIBLE. — As this Court has held in a number of previous cases, non-compliance with Section 21 [of R.A. No. 9165] is not fatal and will not render an accused's arrest illegal or make the items seized inadmissible. What is of utmost importance is the preservation of the integrity and evidentiary value of the seized items.

4. REMEDIAL LAW; EVIDENCE; PRESUMPTIONS; PRESUMPTION OF REGULARITY IN THE HANDLING OF EXHIBITS BY PUBLIC OFFICERS; HOW REBUTTED. — The integrity of the evidence is presumed to have been preserved unless there is a showing of bad faith, ill will, or proof that the evidence has been tampered with. Appellants in this case bear the burden of showing that the evidence was tampered or meddled with in order to overcome a presumption of regularity in the handling of exhibits by public officers and a presumption that public officers properly discharged their duties. Appellants in this case failed to present any plausible reason to impute ill motive on the part of the arresting officers. Thus, the testimonies of the apprehending officers deserve full faith and credit.

APPEARANCES OF COUNSEL

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

D E C I S I O N

NACHURA, *J.*:

Before this Court is an appeal by Christopher de Mesa and Emmanuel Gonzales, accused in Criminal Case No. 04-0445,

filed before the Regional Trial Court of Parañaque City. Appellants were charged with and convicted of Illegal Sale of Dangerous Drugs, punishable under Republic Act (R.A.) No. 9165.[1] Their conviction was affirmed by the Court of Appeals (CA) in a Decision dated February 27, 2009.[2]

The prosecution's evidence showed that, at around 10:00 a.m. of April 7, 2004, while Police Officer 2 (PO2) Peter Sistemio was at the Philippine Drug Enforcement Agency (PDEA) office in Quezon City, one of their confidential informants arrived and notified their team leader, Police Senior Inspector Jaime Santos (S/Insp. Santos), of the illegal drug activities of a certain "Pulo," later identified as appellant De Mesa. S/Insp. Santos immediately instructed the confidential informant to contact De Mesa by cellular phone, and order 50 grams of *shabu*. The confidential informant and "Pulo" agreed to meet at KFC, Redemptorist Road, Baclaran, Parañaque City, at around 1:00 p.m. of the same date.[3]

S/Insp. Santos then formed a team to undertake a buy-bust operation. During their briefing, PO2 Sistemio was designated to act as a poseur-buyer, while Police Officer 1 (PO1) Reywin Bariuad was to act as his immediate backup. S/Insp. Santos also handed PO2 Sistemio one piece of genuine Five Hundred Peso (₱500.00) bill, on which the latter wrote his initials ("PVS"), and some boodle money to be used for the purchase of the *shabu*.[4]

The team then proceeded to the target area. The members of the team positioned themselves in their designated places. De Mesa, *alias* "Pulo," and his companion, a certain "Kamote," who was later identified as appellant Emmanuel Gonzales, arrived and approached PO2 Sistemio and the confidential informant. PO1 Bariuad, on the other hand, positioned himself four tables

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[1] Penned by Judge Zosimo V. Escano; records, pp. 268-274.

[2] Penned by Associate Justice Apolinario D. Bruselas, Jr., with Associate Justices Remedios A. Salazar-Fernando and Fernanda Lampas Peralta, concurring; *rollo,* pp. 2-14.

[3] *Id.* at 4.

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

away from appellants. After the confidential informant introduced PO2 Sistemio as the buyer of *shabu*, De Mesa asked if the latter had the money. PO2 Sistemio answered in the affirmative. De Mesa then handed to PO2 Sistemio a blue SM Department Store plastic bag containing 10 plastic sachets of white crystalline substance suspected to be *shabu*. De Mesa then ordered Gonzales to take the money from PO2 Sistemio. Gonzales then allegedly told PO2 Sistemio, "*First class yan, pare, direkta kasi kami*."[5] At that instance, PO2 Sistemio introduced himself as a PDEA agent, and PO1 Bariuad closed in. The police officers then arrested appellants and brought them first to a *barangay* hall at the back of Baclaran Church before they proceeded to the PDEA office.[6]

At the PDEA office, the arresting officers prepared documents for inquest proceedings, as well as a letter-request for the laboratory examination of the specimen.[7] Upon examination at the Philippine National Police (PNP) Crime Laboratory, it was learned that the white crystalline specimen, weighing 45.79 grams, recovered from appellants was positive as Methylamphetamine Hydrochloride or *shabu*.[8]

PO1 Bariuad corroborated PO2 Sistemio's testimony.[9]

The defense, on the other hand, presented its own version of the facts. Appellant De Mesa narrated that, at around 12 noon of April 7, 2004, he and Gonzales went to the KFC restaurant on Redemptorist Road, Baclaran, Parañaque City, to have lunch. While they were eating, a man (first man) approached them and asked if he could occupy the vacant seat at their table. Noticing that there was no longer any vacant seat in the restaurant, De Mesa acceded to the man's request. Then, another man (second man) arrived and sat on the seat in front of the

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[5] *Id.* at 5.

[6] *Id.* at 6.

[7] *Id.* at 5.

[8] Records, p. 9.

[9] *Supra* note 2, at 6.

first man. After a short conversation, De Mesa saw the first man handing over a blue plastic bag to the second man. Moments later, De Mesa was surprised when the second man introduced himself as a police officer, arrested the first man, then arrested him and Gonzales. The arresting officer then brought them to a *barangay* hall where they were asked by one of the arresting officers if the man who handed the plastic bag to the police officer (first man) was their companion. Despite their vehement denial, the arresting officers required them to sign a blank piece of paper. Thereafter, the arresting officers brought them to the PDEA office where they were detained.[10]

Appellant Gonzales corroborated De Mesa's testimony. Gonzales added that the arresting officers frisked them after they were arrested but no illegal drugs were recovered from them. After their arrest, they were brought to the PDEA office. While they were detained, a certain Captain Santos asked ₱100,000.00 from each of them in exchange for dropping the charges. When they failed to produce the amount, Captain Santos beat them.[11]

After trial, the court rendered a decision dated August 14, 2006, finding appellants guilty beyond reasonable doubt of the crime charged. The dispositive portion of the decision reads:

> WHEREFORE, **PREMISES CONSIDERED**, finding both accused **GUILTY** beyond reasonable doubt for Violation of Section 5 in relation to Section 26, ART. II RA 9165 for selling without authority 45.79 grams of Methylamphetamine Hydrochloride, this Court hereby sentenced **Christopher de Mesa and Emmanuel Gonzales** to suffer the penalty of life imprisonment and to pay a fine of ₱500,000.00 each.
>
> The Clerk of Court is hereby directed to forward the specimen subject of this case to the Philippine Drugs (sic) Enforcement Agency (PDEA) for proper disposition and to prepare the Mittimus for the immediate transfer of both accused to the New Bilibid Prisons Muntinlupa.
>
> SO ORDERED.[12]

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[10] *Id.* at 6-7.

[11] *Id.* at 7.

[12] *Supra* note 1, at 274.

Appellants appealed their conviction to the CA. On February 27, 2009, the CA rendered judgment dismissing the appeal and affirming the trial court's decision.[13]

In their Supplemental Brief,[14] appellants reiterated their arguments before the CA. They aver that the prosecution failed to indubitably establish that the *shabu* presented in court as evidence was the very same white crystalline substance allegedly sold by and seized from them. They allege that the police officers failed to strictly abide by the requirements of the law on the proper handling and custody of dangerous drugs in the course of the alleged buy-bust operation. They claim that no photographs of the seized items were taken and no inventory report was made by the apprehending officers. They also claim that the police officers' testimonies failed to establish when and where the seized items were marked.

The appeal has no merit and must be dismissed.

In a prosecution for illegal sale of dangerous drugs, the following elements must be proven: (1) that the transaction or sale took place; (2) that the *corpus delicti* or the illicit drug was presented as evidence; and (3) that the buyer and seller were identified.[15] The presence of these elements is sufficient to support the trial court's finding of appellants' guilt.[16] What is material is the proof that the transaction or sale actually took place, coupled with the presentation in court of the prohibited or regulated drug. The delivery of the contraband to the poseur-buyer and the receipt of the marked money consummate the buy-bust transaction between the entrapping officers and the accused.[17] The presentation in court of the

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[13] *Supra* note 2, at 14. '

[14] *Rollo*, pp. 33-39.

[15] *People v. Orteza*, G.R. No. 173051, July 31, 2007, 528 SCRA 750, 757, citing *People v. Bandang*, 430 SCRA 570, 579 (2004).

[16] *People v. Miranda*, G.R. No. 174773, October 2, 2007, 534 SCRA 552, 567.

[17] *People v. Nazareno*, G.R. No. 174771, September 11, 2007, 532 SCRA 630, 636-637; *People v. Orteza*, *supra* note 15, at 758.

corpus delicti — the body or substance of the crime – establishes the fact that a crime has actually been committed.[18]

Records disclose that the prosecution successfully established the elements of the crime.

Appellants tried to pin the crime on an unknown third person, who was allegedly the actual target of the buy-bust operation, and claimed that they were erroneously implicated in the crime. The claim, however, is incredible. There is no proof that they were merely picked up with the "true" suspect who was allegedly released from detention before they were arraigned. Appellants have not satisfactorily explained why this person was not charged along with them.

Moreover, nothing in the record even remotely indicates that there was indeed a third person arrested with them. Immediately after their arrest, appellants were brought to a *barangay* hall where a *barangay* official witnessed the inventory of the items seized, and signed the Certification.[19] The Certification contains only the names of herein appellants De Mesa and Gonzales, along with the name and signature of Reynaldo Go, Executive Officer of Barangay Baclaran. Even if, as appellants claim, the third person arrested with them made a "deal" with the PDEA officers later on, this third person's arrest should have likewise been reflected in all the documents pertaining to their arrest, which were all executed before such deal was allegedly made. In addition, the request for physical examination[20] and drug dependency examination[21] of appellants indicates the names of only the two appellants.[22]

Likewise, the letter of S/Insp. Santos, requesting appropriate legal action by the city prosecutor dated April 8, 2004, states

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[18] *People v. Gutierrez*, G.R. No. 179213, September 3, 2009, 598 SCRA 92, 101, citing *People v. Del Mundo*, 510 SCRA 554, 562 (2006).

[19] Records, p. 14.

[20] *Id.* at 10.

[21] *Id.* at 12.

[22] *Id.* at 11.

that there were only two suspects.[23] The joint affidavit of arrest[24] prepared by PO2 Sistemio and PO1 Bariuad narrated the buy-bust operation and arrest of appellants as the only two suspects in the case. All in all, the evidence clearly and convincingly proves that herein appellants were the subject of the buy-bust operation conducted by PDEA operatives on April 7, 2004.

In contrast, the trial court found that the arresting officers testified in a straightforward manner[25] such that the court was convinced that "no ill motive or wrong doing could be ascribed" to the latter.[26] The trial court also held that "unlike in many other cases tried before this Court where certain irregularities were committed by police operatives that cast doubt on the credibility of the operations, this operation appears to have been made without abuse and in a regular manner."[27]

In cases involving violations of the Dangerous Drugs Law, appellate courts tend to rely heavily on the trial court's assessment of the credibility of witnesses, because the latter had the unique opportunity, denied to the appellate courts, to observe the witnesses and to note their demeanor, conduct, and attitude under direct and cross-examination. Hence, its factual findings are accorded great respect, even finality, absent any showing that certain facts of weight and substance bearing on the elements of the crime have been overlooked, misapprehended, or misapplied.[28]

Next, appellants contend that the police officers failed to strictly abide by the requirements of the law as regards the proper handling and custody of dangerous drugs seized in the course of an alleged buy-bust operation.[29]

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[23] *Id.* at 3.

[24] *Id.* at 5.

[25] *Supra* note 1, at 273.

[26] *Id*.

[27] *Id*.

[28] *People v. Almendras*, 449 Phil. 587, 604 (2003). (Citations omitted.)

[29] *Rollo*, p. 33.

This contention is likewise unmeritorious.

Section 21 of R.A. No. 9165 states:

Sec. 21. *Custody and Disposition of Confiscated, Seized, and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/Paraphernalia and/or Laboratory Equipment*. – The PDEA shall take charge and have custody of all dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment so confiscated, seized and/or surrendered, for proper disposition in the following manner:

> (1) The apprehending team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof[.]

On the other hand, the Implementing Rules and Regulations (IRR) of R.A. No. 9165 states:

SECTION 21. ***Custody and Disposition of Confiscated, Seized and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/Paraphernalia and/or Laboratory Equipment.*** – The PDEA shall take charge and have custody of all dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment so confiscated, seized and/or surrendered, for proper disposition in the following manner:

> (a) The apprehending officer/team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a

> copy thereof: Provided, that the physical inventory and photograph shall be conducted at the place where the search warrant is served; or at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizures; Provided, further, that non-compliance with these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures of and custody over said items[.]

As this Court has held in a number of previous cases, non-compliance with Section 21 is not fatal and will not render an accused's arrest illegal or make the items seized inadmissible. What is of utmost importance is the preservation of the integrity and evidentiary value of the seized items.[30]

Contrary to appellants' assertion, the prosecution presented an unbroken chain of custody of the dangerous drugs seized from appellants at the time of the buy-bust operation until the items seized were examined at the PNP Crime Laboratory, all of which took place in only a matter of hours. The request for laboratory examination was given on the same day, April 7, 2004.[31] The Initial Laboratory Report on the items seized was also issued on the same day.[32] The laboratory report was signed by no less than three police officers.

The integrity of the evidence is presumed to have been preserved unless there is a showing of bad faith, ill will, or proof that the evidence has been tampered with. Appellants in this case bear the burden of showing that the evidence was tampered or meddled with in order to overcome a presumption of regularity in the handling of exhibits by public officers and a presumption that public officers properly discharged their duties.[33] Appellants in this case failed to present any plausible

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[30] *People v. Concepcion*, G.R. No. 178876, June 27, 2008, 556 SCRA 421, 436-437, citing *People v. Del Monte*, 552 SCRA 627, 637 (2008).

[31] Records, p. 8.

[32] *Id.* at 9.

[33] *People v. Miranda*, *supra* note 16, at 568-569.

reason to impute ill motive on the part of the arresting officers. Thus, the testimonies of the apprehending officers deserve full faith and credit.[34]

WHEREFORE, the foregoing premises considered, the appeal is hereby *DISMISSED* and the Decision of the Court of Appeals in CA-G.R. CR-H.C. No. 02581 dated February 27, 2009 is *AFFIRMED*.

SO ORDERED.

Carpio (Chairperson), Leonardo-de Castro,[*] *Abad,* and *Mendoza, JJ.,* concur.

FIRST DIVISION

[G.R. No. 134269. July 7, 2010]

THE LEARNING CHILD, INC. and SPS. FELIPE and MARY ANNE ALFONSO, *petitioners, vs.* **AYALA ALABANG VILLAGE ASSOCIATION, SPOUSES ERNESTO and ALMA ARZAGA, MARIA LUISA QUISUMBING, ARTURO SENA, KSL CORPORATION, SLV MANAGEMENT CORPORATION and LAWPHIL, INC.,** *respondents.*

[G.R. No. 134440. July 7, 2010]

JOSE MARIE V. AQUINO, minor and represented by his parents DR. ERROL AQUINO and ATTY. MARILYN AQUINO; LORENZO MARIA E. VELASCO, minor and represented by his parents FRANCISCO VELASCO and ROSANNA VELASCO;

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[34] See *People v. Macabalang,* G.R. No. 168694, November 27, 2006, 508 SCRA 282.

[*] Additional member in lieu of Associate Justice Diosdado M. Peralta per raffle dated June 21, 2010.

CHRISTOPHER E. WALMSLEY, minor and represented by his parents GERALD WALMSLEY and MA. TERESA WALMSLEY; JOANNA MARIE S. SISON, minor and represented by her parents BONIFACIO SISON and JOSEPHINE SISON; and MATTHEW RAPHAEL C. ARCE, minor and represented by his parents RAPHAEL ARCE and MA. ERISSA ARCE, *petitioners, vs.* **AYALA ALABANG VILLAGE ASSOCIATION, SPOUSES ERNESTO and ALMA ARZAGA, MARIA LUISA QUISUMBING, ARTURO SENA, KSL CORPORATION and LAWPHIL, INC.,** *respondents.*

[G.R. No. 144518. July 7, 2010]

AYALA ALABANG VILLAGE ASSOCIATION, SPOUSES ERNESTO and ALMA ARZAGA, MARIA LUISA QUISUMBING, ARTURO SENA, KSL CORPORATION, SLV MANAGEMENT CORPORATION and LAWPHIL, INC., *petitioners, vs.* **MUNICIPALITY (now CITY) OF MUNTINLUPA, THE LEARNING CHILD, INC., SPOUSES FELIPE and MARY ANNE ALFONSO, and THE HON. COURT OF APPEALS (SPECIAL FIFTEENTH DIVISION),** *respondents.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; LOCAL GOVERNMENT CODE; LOCAL LEGISLATION; MUNTINLUPA RESOLUTION NO. 94-179; A MERE CORRECTIVE ISSUANCE WHICH IS NOT INVALIDATED BY THE LACK OF NOTICE AND HEARING. — The purpose of Muntinlupa Resolution No. 94-179 is clearly set forth in its whereas clauses: *"SAPAGKAT, ang Sanguniang Bayan ng Muntinlupa ay pinagtibay ang Kautusang Bayan Bilang 91-39 na nagsasaad ng bagong pagreresona ng Bayan ng Muntinlupa; SAPAGKAT, sa pagrerepaso sa nabanggit na kautusang bayan ay napag-alamang nagkaroon ng isang*

"typographical error sa Appendix B" nito; SAPAGKAT, sa halip na Lot 25, Block 3, Phase V, Ayala Alabang, ang nailagay o nai-type sa hindi sinasadyang dahilan ay Lot 25, Block 1, Phase V, Ayala Alabang; SAPAGKAT, ang pagtatamang ito sa teksto ng Appendix B na nakapaloob sa institutional zone ay hindi makakaapekto sa ibang bahagi o kabuuang nilalaman at itinatakda sa kautusang bayan bilang 91-39." Even more telling that there was indeed a typographical error in Appendix B of Ordinance No. 91-39 is the fact that **both** the Official Zoning Map of Muntinlupa and that of the Ayala Alabang Village show that the subject property, described as "Lot 25, Block 3, Phase V of Ayala Alabang" is classified as "institutional." On the other hand, **neither** the Official Zoning Map of Muntinlupa nor that of the Ayala Alabang Village classify "Lot 25, Block 1, Phase V of Ayala Alabang" as institutional. The official zoning map is an indispensable and integral part of a zoning ordinance, without which said ordinance would be considered void. Indeed, Section 3 of Ordinance No. 91-39 expressly provides that the Official Zoning Map of Muntinlupa shall be made an integral part of said ordinance. Both the MMC and the HLURB Board of Commissioners approved the Official Zoning Map of Muntinlupa. Furthermore, the very reason for the enactment of Muntinlupa Zoning Ordinance No. 91-39 is the need to accomplish an updated zoning map x x x. It is furthermore noted that TLC's and the spouses Alfonso's claim that Lot 25, Block 1, Phase 5 of Ayala Alabang has been and remains to be a residential lot has never been rebutted by AAVA. As regards the comment that Blocks 1 and 3 are not even near the map, we agree with TLC and the spouses Alfonso that this bolsters their position even more, as the distance would make it difficult to commit an error on the map. It is much more plausible to mistype a single digit than to mistake an area for another that is far away from it. It is therefore crystal clear that there was a typographical error in Muntinlupa Zoning Ordinance No. 91-39. x x x Muntinlupa Resolution No. 94-179, being a mere corrective issuance, is not invalidated by the lack of notice and hearing as AAVA contends.

2. ID.; STATE; PRINCIPLE OF SEPARATION OF POWERS; NOT VIOLATED WHERE THE COURT MERELY AFFIRMS THE CORRECTION MADE BY THE SAME ENTITY WHICH

COMMITTED THE ERROR. — *Resins* was decided on the principle of separation of powers, that the judiciary should not interfere with the workings of the executive and legislative branches of government x x x. In *Resins*, it was a taxpayer who alleged that there was an error in the printing of the statute, unlike in the case at bar where it is the Municipality (now City) of Muntinlupa itself which seeks to correct its own error in the printing of the ordinance. While it would be a violation of the principle of separation of powers for the courts to interfere with the wordings of a statute, there would be no violation of said principle for the court to merely affirm the correction made by the same entity which committed the error. In *Resins*, there is a presumption of regularity in favor of the enrolled bill, which the courts should not speculate on. In the case at bar, it is the curative Muntinlupa Resolution No. 94-179 which is entitled to a presumption of regularity.

3. ID.; ADMINISTRATIVE LAW; LOCAL GOVERNMENT CODE; LOCAL LEGISLATION; MUNTINLUPA RESOLUTION NO. 94-179; APPROVAL THEREOF BY THE METROPOLITAN MANILA COMMISSION SHOULD BE GIVEN MORE WEIGHT THAN THE DISAPPROVAL OF THE HOUSING AND LAND USE REGULATORY BOARD. — We should remind AAVA that the Court of Appeals, the court that was first to reexamine the case at bar, affirmed the Decision of the Office of the President, which had set aside the HLURB ruling. The authority of the HLURB is certainly subordinate to that of the Office of the President and the acts of the former may be set aside by the latter. Furthermore, while it is true that courts will not interfere in matters which are addressed to the sound discretion of government agencies entrusted with the regulation of activities coming under the special technical knowledge and training of such agencies, it should be noted that the HLURB and the then MMC were both tasked to regulate the rezoning of the Metropolitan Manila area. The then Municipality of Muntinlupa submitted Resolution No. 94-179 to both the HLURB and the MMC for their appropriate action. The MMC approved Muntinlupa Resolution No. 94-179, and this approval should be given more weight than the disapproval of the HLURB since it was the MMC itself which issued the Uniform Guidelines for the Rezoning of the Metropolitan Manila Area (MMC Resolution

No. 12, Series of 1991), the issuance alleged by AAVA to have been violated by the Municipality of Muntinlupa.

4. REMEDIAL LAW; ACTIONS; MOOT CASES; DENIAL OF THE MOTION FOR LEAVE TO INTERVENE IS PROPER WHERE THE PARTIES' INTEREST IN THE CASE IS ALREADY MOOT; CASE AT BAR. — Aquino, *et al*., premised their intervention on their being grade school students in the School of the Holy Cross, wherein they allegedly benefit from the full-inclusion program of said school. Under said full-inclusion program, Aquino, *et al*., who claim to suffer from various learning disabilities and behavioral disorders, are enrolled full-time in educational settings enjoyed by regular, typically developing children. Aquino, *et al.*, alleges that TLC is the only educational institution in the Philippines that offers a full-inclusion program, adding that other schools offer only partial integration programs wherein children with special needs join their typically developing classmates only in certain classes. Considering the date of the Motion for Leave to Intervene, February 5, 1998, it is apparent that Aquino, *et al*., would not still be in grade school at this time, thus rendering their alleged interest in this case moot. Neither could Aquino, *et al*., claim to represent other special children since the Motion for Reconsideration filed with the Motion for Leave to Intervene bore no indication that it was intended as a class action; they merely sought to represent themselves. Since the interest of Aquino, *et al*., in the instant case is already moot, it is but proper for us to affirm the denial of their Motion for Leave to Intervene before the trial court.

5. ID.; CIVIL PROCEDURE; INTERVENTION; MAY BE FILED AT ANY TIME BEFORE THE RENDITION OF JUDGMENT BY THE TRIAL COURT. — The ground for the denial of Aquino, *et al*.'s, Petition is Section 2, Rule 19 of the 1997 Rules on Civil Procedure, which provides: "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." This section is derived from the former Section 2, Rule 12, which then provided that the motion to intervene may be filed "before or during a trial." Said former phraseology gave rise to ambiguous doctrines on the interpretation of the word "trial," with one decision holding that said Motion may be filed up to the day the case is submitted for decision, while

another stating that it may be filed at any time before the rendition of the final judgment. This ambiguity was eliminated by the present Section 2, Rule 19 by clearly stating that the same may be filed "at any time before rendition of the judgment by the trial court," in line with the second doctrine above-stated. The clear import of the amended provision is that intervention cannot be allowed when the trial court has already rendered its Decision, and much less, as in the case at bar, when even the Court of Appeals had rendered its own Decision on appeal.

6. POLITICAL LAW; ADMINISTRATIVE LAW; LOCAL GOVERNMENT CODE; LOCAL GOVERNMENT UNITS; POLICE POWER; ZONING ORDINANCES; THE ZONING ORDINANCE AND THE PROVISIONS OF THE DEED OF RESTRICTIONS MAY BE RECONCILED IN CASE AT BAR. — A careful study of the pertinent documents yields the conclusion that there is indeed a way to harmonize the seemingly opposing provisions in the Deed of Restrictions and the assailed zoning ordinance. To recall, the annotation at the back of TCT No. 149166 covering the subject property x x x limits the use of the subject property for preparatory (nursery and kindergarten) school, without regard to the number of classrooms. The two-classroom limit is actually imposed, not by the Deed of Restrictions, but by MMC Ordinance No. 81-01, otherwise known as the Comprehensive Zoning Ordinance for the National Capital Region, which classified Ayala Alabang Village as a low density residential area or an "R-1 zone." The principal permitted uses of a "low-density residential area" or "R-1 zone," the classification of the subject property if not for the correction under Muntinlupa Municipal Resolution No. 94-179, is listed in Comprehensive Zoning Ordinance No. 81-01 as follows: "In R-1 districts, no building, structure or land used, and no building or structure shall be erected or altered in whole or in part except for one or more of the following: x x x **Nursery and kindergarten schools, provided that they do not exceed two (2) classrooms** x x x." On the other hand, the following are the principal uses of an institutional site, the classification of the subject property by virtue of Ordinance No. 91-39 as corrected by Muntinlupa Municipal Resolution No. 94-179: "Institutional Principal Uses x x x 5. **Nursery and kindergarten schools** x x x." In the case at bar, as observed by the Court of Appeals, the subject property, though declared as an institutional lot,

nevertheless lies within a residential subdivision and is surrounded by residential lots. Verily, the area surrounding TLC did not undergo a radical change similar to that in *Ortigas* but rather remained purely residential to this day. Significantly, the lot occupied by TLC is located along one of the smaller roads (less than eight meters in width) within the subdivision. It is understandable why ALI, as the developer, restricted use of the subject lot to a smaller, preparatory school that will generate less traffic than bigger schools. With its operation of both a preparatory and grade school, TLC's student population had already swelled to around 350 students at the time of the filing of this case. Foreseeably, the greater traffic generated by TLC's expanded operations will affect the adjacent property owners enjoyment and use of their own properties. AAVA's and ALI's insistence on (1) the enforcement of the Deed of Restrictions or (2) the obtainment of the approval of the affected residents for any modification of the Deed of Restrictions is reasonable. On the other hand, the then Municipality of Muntinlupa did not appear to have any special justification for declaring the subject lot as an institutional property. On the contrary, Engr. Hector S. Baltazar, the Municipal Planning and Development Officer of Muntilupa, testified that in declaring the subject property as institutional the municipality simply adopted the classification used in a zoning map purportedly submitted by ALI itself. In other words, the municipality was not asserting any interest or zoning purpose contrary to that of the subdivision developer in declaring the subject property as institutional. It is therefore proper to reconcile the apparently conflicting rights of the parties herein pursuant to the x x x *Co* case.

7. REMEDIAL LAW; EVIDENCE; ADMISSIBILITY; ADMISSIONS AND CONFESSIONS; *RES INTER ALIOS ACTA* RULE; EXCEPTION; CASE AT BAR. — TLC and the spouses Alfonso's main argument against the enforcement of the Deed of Restrictions on their property is the AAVA had allegedly abrogated said restrictions by its own acts. TLC and the spouses Alfonso proceeded to enumerate acts allegedly constituting a setting aside of said restrictions: 1. AAVA Village Manager Frank Roa admitted before the trial court that AAVA had previously approved the proposed construction of a school building with 24 classrooms, which approval is further

evidenced by a stamp mark of AAVA on the Site Development Plan with the signature of Frank Roa himself. 2. While the case was submitted for resolution with the Court of Appeals, AAVA, through its president Jesus M. Tañedo, authorized through a letter the construction of a new "school building extension." 3. ALI itself requested the reclassification of the subject property as institutional, as allegedly proven by the testimony of then Municipal Planning and Development Officer Engineer Hector S. Baltazar x x x. TLC and the spouses Alfonso point out that the subject property was considered institutional in the Official Zoning Map, thereby implying that the submission of the latter constitutes an intent to have the subject property reclassified as institutional. 4. ALI assented to the reclassification of the subject property to institutional, as shown by its letter dated July 24, 1991 x x x. Numbers 3 and 4 are acts allegedly performed by ALI. AAVA claims that these acts cannot be considered in the case at bar under the *res inter alios acta* rule, as ALI is not a party to the case. Section 28, Rule 130 of the Rules of Court embodies said rule: "Sec. 28. *Admission by third party*. — The rights of a party cannot be prejudiced by an act, declaration, or omission of another, except as hereinafter provided." We have to clarify that ALI's statements, if damaging to AAVA, would be binding on the latter. The general Ayala Alabang Village "Deed Restrictions," which was attached to the Deed of Restrictions on the title of the subject property, expressly state that: "2. Compliance with the said restrictions, reservation, easements and conditions maybe enjoined and/or enforced by Court action by Ayala Corporation and/or the Ayala Alabang Village Association, their respective successors and assigns, or by any member of the Ayala Alabang Village Association." As such, it appears that Ayala Corporation is jointly interested with AAVA in an action to enforce the Deed of Restrictions, and is therefore covered under the following exception to the *res inter alios acta* rule: "Sec. 29. *Admission by copartner or agent*. — The act or declaration of a partner or agent of the party within the scope of his authority and during the existence of the partnership or agency, may be given in evidence against such party after the partnership or agency is shown by evidence other than such act or declaration. The same rule applies to the act or declaration of a joint owner, joint debtor, **or other person jointly interested with the party**." However, the acts of ALI are not at all damaging to the position of AAVA.

The act in number 1 concerns the alleged assent of ALI to the reclassification of the subject property as institutional which, as we have already ruled, does not amount to a nullification of the Deed of Restrictions. As regards the act in number 2, the statement in ALI's July 24, 1991 letter that it believes the expansion of TLC is a "worthy undertaking," it should be pointed out that ALI's purported assent came with conditions x x x.

8. ID.; ACTIONS; DOCTRINE OF ESTOPPEL; ESTOPPEL BY DEED, DEFINED. — Estoppel by deed is "a bar which precludes one party from asserting as against the other party and his privies any right or title in derogation of the deed, or from denying the truth of any material facts asserted in it." We have previously cautioned against the perils of the misapplication of the doctrine of estoppel: "Estoppel has been characterized as harsh or odious, and not favored in law. When misapplied, estoppel becomes a most effective weapon to establish an injustice, inasmuch as it shuts a man's mouth from speaking the truth and debars the truth in a particular case. Estoppel cannot be sustained by mere argument or doubtful inference; it must be clearly proved in all its essential elements by clear, convincing and satisfactory evidence. x x x."

APPEARANCES OF COUNSEL

Zulueta Puno & Associates for The learning Child, Inc. and Sps. Felipe and Mary Anne Alfonso.

Carpio and Villaraza Law Offices for Ayala Alabang Village Association, *et al.*

Sycip Salazar Hernandez & Gatmaitan for Jose Marie V. Aquino, *et al.*

Jovito M. Salvador for Municipality of Muntinlupa.

D E C I S I O N

LEONARDO-DE CASTRO, *J.*:

At bar are three consolidated Petitions for Review on *Certiorari* all concerning the operation of a preparatory and grade school located in Ayala Alabang Village, more particularly

on a parcel of land covered by Transfer Certificate of Title (TCT) No. 149166. The Petitions in G.R. Nos. 134269 and 134440 assail the Decision[1] and Resolution[2] of the Court of Appeals in CA-G.R. CV No. 51096, dated November 11, 1997 and July 2, 1998, respectively, which enjoined said school's continued operation on the ground that the same is in violation of the Deed of Restrictions annotated on the title of the subject property that limits the use of the lot to the establishment thereon of a preparatory (nursery and kindergarten) school. The Petition in G.R. No. 144518 challenges the Court of Appeals' Decision[3] dated August 15, 2000 in CA-G.R. SP No. 54438, which upheld the validity of a Muntinlupa Municipal Resolution correcting an alleged typographical error in a zoning ordinance. The zoning ordinance, as corrected by the challenged Muntinlupa Municipal Resolution, classifies the subject property as "institutional" where the operation of a grade school is allowed.

FACTS

The factual and procedural antecedents of these consolidated cases are as follows:

Sometime in 1984, subdivision developer Ayala Land, Inc. (ALI) sold a parcel of land to the spouses Jose and Cristina Yuson. In 1987, the spouses Yuson sold the same to the spouses Felipe and Mary Anne Alfonso. A Deed of Restrictions was annotated in TCT No. 149166 issued to the spouses Alfonso, as had been required by ALI. The Deed of Restrictions indicated that:

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[1] Penned by Associate Justice Lourdes Tayao-Jaguros with Associate Justices Ricardo P. Galvez and Oswaldo D. Agcaoli, concurring. *Rollo* (G.R. No. 134269), pp. 62-71; *rollo* (G.R. No. 134440), pp. 83-93.

[2] Penned by Associate Justice Oswaldo D. Agcaoili with Associate Justices Angelina S. Gutierrez and Ricardo P. Galvez, concurring. *Id.* at 73-74; *id.* at 99-100.

[3] Penned by Associate Justice Ruben T. Reyes with Associate Justices Andres B. Reyes, Jr. and Jose L. Sabio, Jr., concurring. *Rollo* (G.R. No. 144518), pp. 80-97.

> 2.2 USE AND OCCUPANCY - The property shall be used exclusively for the establishment and maintenance thereon of a preparatory (nursery and kindergarten) school, which may include such installations as an office for school administration, playground and garage for school vehicles.[4]

ALI turned over the right and power to enforce the restrictions on the properties in the Ayala Alabang Village, including the above restrictions on TCT No. 149166, to the association of homeowners therein, the Ayala Alabang Village Association (AAVA).

In 1989, the spouses Alfonso opened on the same lot The Learning Child Center Pre-school (TLC), a preparatory school which initially consisted of nursery and kindergarten classes. In 1991, TLC was expanded to include a grade school program, the School of the Holy Cross, which provided additional grade levels as the pupils who initially enrolled advanced.

AAVA wrote several letters to TLC and the spouses Alfonso, essentially (1) protesting the TLC's and the spouses Alfonso's violation of the Deed of Restrictions, (2) requesting them to comply with the same, and (3) ordering them to desist from operating the grade school and from operating the nursery and kindergarten classes in excess of the two classrooms allowed by the ordinance.[5]

Injunction Case

On October 13, 1992, AAVA filed with the Regional Trial Court (RTC) of Makati City an action for injunction against TLC and the spouses Alfonso, alleging breach of contract by the defendant spouses, particularly of the Deed of Restrictions, the contents of which likewise appear in the Deed of Absolute Sale. It also alleged violation of Metropolitan Manila Commission Ordinance No. 81-01 (MMC No. 81-01), otherwise known as the Comprehensive Zoning Ordinance for the National Capital Region and Barangay Ordinance No. 03, Series of 1991. MMC

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[4] Records, Vol. VI, p. 2281.

[5] *Id.* at 2296-3313; Exhibits G, H, I, J, K, M, P and R.

No. 81-01 classified Ayala Alabang Village for zoning purposes as a low-density residential area, or R-1, thereby limiting the use of the subject property to the establishment or operation of a nursery and kindergarten school, which should not exceed two classrooms. The aforementioned *barangay* ordinance, on the other hand, prohibited parking on either side of any street measuring eight meters in width. TLC is adjacent to Balabac and Cordillera Streets, which are both less than eight meters in width. AAVA prayed that defendants be restrained from continuing the operation of the school. The Complaint was docketed as Civil Case No. 92-2950, and was raffled to Branch 65.

On November 24, 1992, owners of properties within the vicinity of TLC, namely the spouses Ernesto and Alma Arzaga, Maria Luisa Quisumbing, Arturo Sena, KSL Corporation, and LawPhil, Inc. (hereinafter referred to as the adjacent property owners), filed a Complaint-in-Intervention, seeking the same relief as AAVA and prayed for damages.

On July 22, 1994, the RTC rendered its Decision in favor of AAVA, disposing of the case as follows:

> WHEREFORE, defendants are ordered to cease and desist at the end of the schoolyear 1994-95 from operating The Learning Child School beyond nursery and kindergarten classes with a maximum of two (2) classrooms in accordance with the Deed of Restrictions, and to pay the plaintiff the following:
>
> 1) ₱20,000.00 in attorney's fees
>
> 2) costs of this suit.
>
> The complaint-in-intervention is dismissed for failure of the plaintiffs-in-intervention to show by preponderance of evidence that they are entitled to the damages prayed for.[6]

The RTC ruled that the operation of the grade school and the nursery and kindergarten classes in excess of two classrooms was in violation of a contract to which the defendants are bound. The RTC emphasized that the restrictions were in reality an

[6] Records, Vol. II, p. 720.

easement which an owner of a real estate may validly impose under Article 688 of the Civil Code. The RTC also agreed with the plaintiffs therein that by allowing parking on either side of the streets adjacent to the school, the defendants likewise violated Barangay Ordinance No. 3, Series of 1991.

On August 19, 1994, TLC and the spouses Alfonso filed a Motion for Reconsideration of the said Decision. They alleged in the Motion that with the passage of Muntinlupa Zoning Ordinance No. 91-39 reclassifying the subject property as "institutional," there ceased to be a legal basis for the RTC to uphold the Deed of Restrictions on the title of the spouses Alfonso. The adjacent property owners did not move for a reconsideration of, nor appeal from, the said Decision insofar as it dismissed their Complaint-in-Intervention.

In an Order dated March 1, 1995, the RTC agreed with the spouses Alfonso and set aside its earlier Decision. The decretal portion of the RTC Order reads:

> WHEREFORE, the Decision of this Court dated 22 July 1995 is hereby reconsidered and set aside and the Complaint and Complaint-in-Intervention filed on 13 October 1992 and 24 November 1992, respectively, are dismissed.[7]

The RTC ruled that with the reclassification by Muntinlupa Zoning Ordinance No. 91-39 of the subject property, the earlier residential classification can no longer be enforced. Citing *Ortigas & Co. Limited Partnership v. Feati Bank & Trust Co.*,[8] it decreed that while non-impairment of contracts is constitutionally guaranteed, the rule is not absolute since it has to be reconciled with the legitimate exercise of police power by the municipality.

On March 22, 1995, AAVA moved for a reconsideration of the above RTC Order. On July 21, 1995, the RTC denied the said Motion.

AAVA filed a Notice of Appeal on August 4, 1995. The Appeal was docketed as CA-G.R. CV No. 51096.

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[7] *Id.* at 1421.

[8] 183 Phil. 176 (1979).

On November 11, 1997, the Court of Appeals rendered its Decision setting aside the March 1, 1995 RTC Resolution:

> WHEREFORE, the appealed order dated March 1, 1995 of the lower court in Civil Case No. 92-2950 is hereby SET ASIDE. The earlier decision of the said court dated July 22, 1994 is Reinstated. Costs against defendants-appellees.[9]

On December 4, 1997, TLC and the spouses Alfonso moved for a reconsideration of the said Decision. On February 5, 1998, petitioners in G.R. No. 134440, namely, Jose Marie V. Aquino, Lorenzo Maria E. Velasco, Christopher E. Walmsley, Joanna Marie S. Sison, and Matthew Raphael C. Arce (Aquino, *et al.*), alleging that they are minor children who suffer from various learning disabilities and behavioral disorders benefiting from TLC's full-inclusion program, filed a Motion for Leave to Intervene and their own Motion for Reconsideration with the Court of Appeals.

On July 2, 1998, the Court of Appeals promulgated the assailed Resolution denying the Motion for Reconsideration filed by TLC and the spouses Alfonso. In the same Resolution, the Court of Appeals denied the Motion to Intervene filed by Aquino, *et al*., for being proscribed by Section 2, Rule 19[10] of the 1997 Rules on Civil Procedure.

TLC and the spouses Alfonso on one hand, and Aquino, *et al.*, on the other, filed separate Petitions for Review with this Court challenging the July 2, 1998 Resolution of the Court of Appeals. The Petition of TLC and the spouses Alfonso, filed on July 9, 1998, was docketed as G.R. No. 134269. The Petition of Aquino, *et al*., filed within the extended period on August 21, 1998, was docketed as G.R. No. 134440.

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[9] *Rollo* (G.R. No. 134269), p. 70.

[10] 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.

Zoning Ordinance Case

In the meantime, on October 3, 1994, while the Motion for Reconsideration of TLC and the spouses Alfonso was still pending in the RTC, the Municipality of Muntinlupa, through its Sangguniang Bayan, passed Resolution No. 94-179 correcting an alleged typographical error in the description of a parcel of land under the heading "Institutional Zone" in Appendix B of Ordinance No. 91-39, adjusting the description "Lot 25, Block **1**, Phase V, Ayala Alabang" to "Lot 25, Block **3**, Phase V, Ayala Alabang." This is the same ordinance which was used as basis by the Makati RTC in Civil Case No. 92-2950, when it reversed its own Decision on Motion for Reconsideration in its Order dated March 1, 1995. Lot 25, Block 3, Phase V is the subject property wherein TLC is located.

On November 29, 1994, the Municipality of Muntinlupa wrote a letter to the Metropolitan Manila Zoning Administration Office, informing the latter of the enactment of Muntinlupa Resolution No. 94-179. On December 1, 1994, the Municipality of Muntinlupa filed a Petition for the approval of Muntinlupa Resolution No. 94-179 with the Housing and Land Use Regulatory Board (HLURB). AAVA and the adjacent property owners filed an Opposition.

On June 26, 1995, the HLURB issued its Resolution on the Petition of the Municipality of Muntinlupa, the dispositive part of which states:

> WHEREFORE, PREMISES CONSIDERED, we defer action to the Muntinlupa SB Resolution No. 94-179 and remand the same to the Sanguniang Bayan of Muntinlupa for the conduct of the required public hearings as mandated by Resolution No. 12, Series of 1991, of the Metro Manila Council entitled "Uniform Guidelines for Rezoning of the Metro Manila Area."[11]

According to the HLURB, Muntinlupa Resolution No. 94-179 is not a case of a mere correction of an error but an actual rezoning of the property into an institutional area, and therefore

[11] *Rollo* (G.R. No. 144518), p. 435.

remanded the same to the Sanguniang Bayan of Muntinlupa for the conduct of the required public hearings. The Municipality of Muntinlupa, TLC and the spouses Alfonso appealed the HLURB Resolution to the Office of the President.

On July 27, 1999, the Office of the President rendered its Decision, which held that Muntinlupa Resolution No. 94-179 is a mere rectifying issuance to an alleged typographical error in Ordinance No. 91-39, and therefore does not need for its validity compliance with the mandatory requirements of notice and hearing pursuant to Resolution No. 12, series of 1991,[12] of the Metropolitan Manila Council:

> WHEREFORE, the appealed Resolution of the Board of Commissioners, Housing and Land Use Regulatory Board, dated June 26, 1995 is hereby SET ASIDE. Accordingly, Resolution No. 94-179 of the Sanguniang Bayan (now Sangguniang Panglungsod) of Muntinlupa is declared valid.[13]

In said Decision, the Office of the President likewise turned down the alternative prayer of oppositors AAVA and the adjacent property owners that the Office of the President should recognize the Deed of Restrictions on the subject property and restrict the use thereof in accordance therewith. The Office of the President ruled on this matter that:

> **Turning to the alternative relief being sought by the oppositor [that the Office of the President should recognize the Deed of Restrictions], the same cannot be granted.** The reason is simple. No less than Ayala Corporation – in consenting to the transfer from the Yusons to the Alfonsos of the subject property – agreed that the "*lot (shall) be used for school and related activities*", thereby effectively freeing the appellants from the deed restriction that the "*Lots (shall) be used exclusively for residential purposes*." This is not all. Prior to its sale, the property in question was already used for school purposes.
>
> **Further the aforementioned Muntinlupa Zoning Ordinance itself classifies the area occupied by the appellants' school as an "institutional**

[12] Otherwise known as the "Uniform Guidelines for the Rezoning of the Metropolitan Manila Area."

[13] *Rollo* (G.R. No. 144518), p. 194.

zone" and not a residential area. And the fact that TLC is not the only school operating within the AAV – De la Salle-Zobel, Benedictine Abbey School, Woodrose School, to name a few, conduct classes within the plush village – renders unpersuasive appellees' line that "x x x Through the illegal operation of their school, the parties-in-interest appellants spouses Alfonso have effectively violated the dignity, personality, privacy and peace of mind of the residents of the Village x x x."[14] (Boldfacing supplied; underscoring and italization are present in the original.)

AAVA and the adjacent property owners filed a Petition for Review with the Court of Appeals. The Petition was docketed as CA-G.R. SP No. 54438.

On August 15, 2000, the Court of Appeals rendered its Decision slightly modifying the Decision of the Office of the President:

> WHEREFORE, the petition is partly GRANTED. The Decision appealed from is AFFIRMED, with the MODIFICATION that the ruling therein passing upon the effect of Ordinance No. 91-39 on the Deed of Restrictions imposed on the subject property is hereby VACATED.[15]

The Court of Appeals agreed with the Office of the President that being merely a rectifying issuance and not a rezoning enactment, the questioned Resolution did not have to comply with the mandatory requirements of notice and hearing.[16] However, the Court of Appeals found the Office of the President to have exceeded its authority when it ruled[17] that the Deed of Restrictions had lost its force and effect in view of the passage of Ordinance No. 91-39. According to the Court of Appeals, the Office of the President effectively overruled said appellate court's Decision in CA-G.R. CV No. 51096 wherein it ruled that the reclassification under Ordinance No. 91-39 does not

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[14] *Id.* at 193.

[15] *Id.* at 95-96.

[16] *Id.* at 92.

[17] Boldfaced portion of the above-quoted paragraphs of the Decision of the Office of the President.

have the effect of nullifying the Deed of Restrictions at the back of the title of the subject property, inasmuch as there is no conflict between the Ordinance and the Deed of Restrictions.[18]

On October 3, 2000, AAVA and the adjacent property owners filed the third consolidated Petition for Review on *Certiorari* with this Court assailing the above Court of Appeals Decision. This Petition was docketed as G.R. No. 144518.

ISSUES

Though later in time, we shall first determine the issue in G.R. No. 144518, as the validity of Muntinlupa Resolution No. 94-179 impinges on the issue of the legality of operating a grade school in the subject property, which is the main issue in G.R. Nos. 134269 and 134440. We shall then resolve the issue in G.R. No. 134440 on whether Aquino, *et al.*, should be allowed to intervene in the injunction case against TLC. Thereafter, we shall rule on the merits of G.R. Nos. 134269 and 134440 by deciding once and for all whether or not TLC and the spouses Alfonso should be enjoined from continuing the operation of a grade school in the subject property.

The main issues to be decided by this Court, culled from the consolidated Petitions, are therefore the following:

1. Whether or not the Court of Appeals is correct in upholding the validity of Muntinlupa Resolution No. 94-179;
2. Whether or not the Court of Appeals was correct in denying Aquino, *et al.*'s Motion to Intervene; and
3. Whether or not TLC and the spouses Alfonso should be enjoined from continuing the operation of a grade school in the subject property.

As regards the third and decisive issue, the parties further exchanged their views on the following two sub-issues:

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[18] *Rollo* (G.R. No. 144518), pp. 94-95.

a. Whether or not Muntinlupa Municipal Ordinance No. 91-39, as allegedly corrected by Muntinlupa Resolution No. 91-179, has the effect of nullifying the provisions of the Deed of Restrictions on the subject property; and

b. Whether or not AAVA is estopped from enforcing the Deed of Restrictions.

RULINGS

Validity of Muntinlupa Resolution No. 94-179

AAVA claims that the Court of Appeals erred in affirming the Decision of the Office of the President that Muntinlupa Resolution No. 94-179 was merely a rectifying issuance and not a rezoning enactment, and therefore did not have to comply with the requirements of notice and hearing which are required for zoning ordinances. Notice and hearing are required under the Uniform Guidelines for the Rezoning of the Metropolitan Manila Area, contained in Resolution No. 12, series of 1991, of the then Metropolitan Manila Commission (MMC).

In asserting that Muntinlupa Resolution No. 94-179 is not a mere rectifying enactment, AAVA faults the Office of the President and the Court of Appeals in allegedly accepting hook, line and sinker the assertion of the ENCRFO Regional Officer and the Municipality (now City) of Muntinlupa itself that Muntinlupa Resolution No. 94-179 was passed merely to correct a typographical error in Appendix B of Ordinance No. 91-39.[19] AAVA adopts the HLURB finding that it was allegedly:

> [H]ard to believe that the denomination in the text of Block 1 and instead of Block 3 as an institutional zone was an accident of (sic) mere oversight, the numbers 1 & 3 are not adjoining each other, but are separated by the number 2. TLC's position would have been worth considering had the erroneous phrase typed been Block 2 for then it is more plausible and probable for the typist to have mistyped a "2" instead of a "3." Besides, Blocks 1 and 3 are not even near each other on the map. Finally, if it were an error, it is surprising that no one noticed it until after a

[19] *Id.* at 56.

court had ruled against a party, who now seeks to use said correcting ordinance in its defense.[20]

We are not persuaded.

The purpose of Muntinlupa Resolution No. 94-179 is clearly set forth in its whereas clauses:

SAPAGKAT, ang Sanguniang Bayan ng Muntinlupa ay pinagtibay ang Kautusang Bayan Bilang 91-39 na nagsasaad ng bagong pagreresona ng Bayan ng Muntinlupa;

SAPAGKAT, sa pagrerepaso sa nabanggit na kautusang bayan ay napag-alamang nagkaroon ng isang "typographical error sa Appendix B" nito;

SAPAGKAT, sa halip na Lot 25, Block 3, Phase V, Ayala Alabang, ang nailagay o nai-type sa hindi sinasadyang dahilan ay Lot 25, Block 1, Phase V, Ayala Alabang;

SAPAGKAT, ang pagtatamang ito sa teksto ng Appendix B na nakapaloob sa institutional zone ay hindi makakaapekto sa ibang bahagi o kabuuang nilalaman at itinatakda sa kautusang bayan bilang 91-39.[21]

Even more telling that there was indeed a typographical error in Appendix B of Ordinance No. 91-39 is the fact that **both** the Official Zoning Map of Muntinlupa and that of the Ayala Alabang Village show that the subject property, described as "Lot 25, Block 3, Phase V of Ayala Alabang" is classified as "institutional." On the other hand, **neither** the Official Zoning Map of Muntinlupa nor that of the Ayala Alabang Village classify "Lot 25, Block 1, Phase V of Ayala Alabang" as institutional. The official zoning map is an indispensable and integral part of a zoning ordinance, without which said ordinance would be considered void.[22] Indeed, Section 3 of Ordinance No. 91-39 expressly provides that the Official Zoning Map of Muntinlupa shall be made an integral part of said ordinance. Both the MMC and the HLURB Board of Commissioners approved the Official

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[20] *Id.* at 434.

[21] Records, Vol. VII, p. 2894.

[22] 82 Am. Jur. 2d 79, p. 521.

Zoning Map of Muntinlupa. Furthermore, the very reason for the enactment of Muntinlupa Zoning Ordinance No. 91-39 is the need to accomplish an updated zoning map, as shown by the following clause in MMC's Resolution No. 2, series of 1992:

> WHEREAS, the Sanguniang Bayan of Muntinlupa, Metro Manila, **approved on 10 December 1991 Municipal Ordinance No. 91-39** rezoning the entire municipality (as shown in the accompanying zoning map and described in the attached Appendix "B") **as a response to the need to have an updated zoning map**. x x x.[23] (Emphases supplied.)

It is furthermore noted that TLC's and the spouses Alfonso's claim that Lot 25, Block 1, Phase 5 of Ayala Alabang has been and remains to be a residential lot[24] has never been rebutted by AAVA. As regards the comment that Blocks 1 and 3 are not even near the map, we agree with TLC and the spouses Alfonso that this bolsters their position even more, as the distance would make it difficult to commit an error on the map. It is much more plausible to mistype a single digit than to mistake an area for another that is far away from it.

It is therefore crystal clear that there was a typographical error in Muntinlupa Zoning Ordinance No. 91-39. AAVA, however, furthermore claims that even assuming *arguendo* that there was a typographical error in the said zoning ordinance, the proper remedy is to legislate a new zoning ordinance, following all the formalities therefor, citing the leading case of *Resins, Incorporated v. Auditor General*.[25]

Again, we disagree.

Resins was decided on the principle of separation of powers, that the judiciary should not interfere with the workings of the executive and legislative branches of government:

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[23] Records, Vol. II, p. 943.

[24] Comment of The Learning Child, Inc. and the spouses Felipe and Mary Anne Alfonso, p. 18; *rollo* (G.R. No. 144518), pp. 1179-1210.

[25] 134 Phil. 697 (1968).

If there has been any mistake in the printing of the bill before it was certified by the officers of Congress and approved by the Executive – on which we cannot speculate, without jeopardizing the principle of separation of powers and undermining one of the cornerstones of our democratic system – the remedy is by amendment or curative legislation, not by judicial decree.[26]

In *Resins*, it was a taxpayer who alleged that there was an error in the printing of the statute, unlike in the case at bar where it is the Municipality (now City) of Muntinlupa itself which seeks to correct its own error in the printing of the ordinance. While it would be a violation of the principle of separation of powers for the courts to interfere with the wordings of a statute, there would be no violation of said principle for the court to merely affirm the correction made by the same entity which committed the error. In *Resins*, there is a presumption of regularity in favor of the enrolled bill, which the courts should not speculate on. In the case at bar, it is the curative Muntinlupa Resolution No. 94-179 which is entitled to a presumption of regularity.

Finally, AAVA claims that the power to evaluate, approve or disapprove zoning ordinances lies with the HLURB under Article IV, Section 5(b) of Executive Order No. 648.[27] AAVA reminds us that the decisions of administrative agencies on matters pertaining to their jurisdiction will generally not be disturbed by the courts.[28]

We should remind AAVA that the Court of Appeals, the court that was first to reexamine the case at bar, affirmed the Decision of the Office of the President, which had set aside the HLURB ruling. The authority of the HLURB is certainly subordinate to that of the Office of the President and the acts of the former may be set aside by the latter. Furthermore, while it is true that courts will not interfere in matters which are

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[26] *Id.* at 700.

[27] *Rollo* (G.R. No. 144518), p. 55.

[28] *San Luis v. Court of Appeals*, G.R. No. 80160, June 26, 1989, 174 SCRA 258, 271-272.

addressed to the sound discretion of government agencies entrusted with the regulation of activities coming under the special technical knowledge and training of such agencies,[29] it should be noted that the HLURB and the then MMC were both tasked to regulate the rezoning of the Metropolitan Manila area. The then Municipality of Muntinlupa submitted Resolution No. 94-179 to both the HLURB and the MMC for their appropriate action. The MMC approved Muntinlupa Resolution No. 94-179, and this approval should be given more weight than the disapproval of the HLURB since it was the MMC itself which issued the Uniform Guidelines for the Rezoning of the Metropolitan Manila Area (MMC Resolution No. 12, Series of 1991), the issuance alleged by AAVA to have been violated by the Municipality of Muntinlupa.

In sum, Muntinlupa Resolution No. 94-179, being a mere corrective issuance, is not invalidated by the lack of notice and hearing as AAVA contends.

Motion to Intervene of Aquino, *et al.*

It is recalled that the Motion for Leave to Intervene of Aquino, *et al.*, was filed on February 5, 1998, which was three months after the Special Third Division of the Court of Appeals had already rendered its Decision dated November 11, 1997 setting aside the RTC Resolution which had been in favor of TLC and the spouses Alfonso.

Aquino, *et al.*, premised their intervention on their being grade school students in the School of the Holy Cross, wherein they allegedly benefit from the full-inclusion program of said school. Under said full-inclusion program, Aquino, *et al.*, who claim to suffer from various learning disabilities and behavioral disorders, are enrolled full-time in educational settings enjoyed by regular, typically developing children. Aquino, *et al.*, alleges that TLC is the only educational institution in the Philippines that offers

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[29] *First Lepanto Ceramics, Inc. v. Court of Appeals*, 323 Phil. 657, 664 (1996), citing *Felipe Ysmael, Jr. & Co., Inc. v. Deputy Executive Secretary*, G.R. No. 79538, October 18, 1990, 190 SCRA 673, 680.

a full-inclusion program, adding that other schools offer only partial integration programs wherein children with special needs join their typically developing classmates only in certain classes.

Considering the date of the Motion for Leave to Intervene, February 5, 1998, it is apparent that Aquino, *et al.*, would not still be in grade school at this time, thus rendering their alleged interest in this case moot. Neither could Aquino, *et al.*, claim to represent other special children since the Motion for Reconsideration filed with the Motion for Leave to Intervene bore no indication that it was intended as a class action; they merely sought to represent themselves. Since the interest of Aquino, *et al.*, in the instant case is already moot, it is but proper for us to affirm the denial of their Motion for Leave to Intervene before the trial court.

Assuming, however, for the sake of argument, that Aquino, *et al.*'s, interest in the injunction suit had not yet been mooted, we nevertheless find no reversible error in the Court of Appeals' denial of their Motion for Leave to Intervene.

The Motion to Intervene filed by Aquino, *et al.*, was denied in the same Resolution wherein the Court of Appeals denied the Motion for Reconsideration of TLC and the spouses Alfonso. The ground for the denial of Aquino, *et al.*'s, Petition is Section 2, Rule 19 of the 1997 Rules on Civil Procedure, which provides:

> 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. (Emphasis supplied.)

This section is derived from the former Section 2, Rule 12, which then provided that the motion to intervene may be filed "before or during a trial." Said former phraseology gave rise to ambiguous doctrines on the interpretation of the word "trial," with one decision holding that said Motion may be filed up to the day the case is submitted for decision,[30] while another stating

[30] *Vigan Electric Light Co., Inc. v. Arciaga*, 157 Phil. 201, 210 (1974).

that it may be filed at any time before the rendition of the final judgment.[31] This ambiguity was eliminated by the present Section 2, Rule 19 by clearly stating that the same may be filed "at any time before rendition of the judgment by the trial court," in line with the second doctrine above-stated. The clear import of the amended provision is that intervention cannot be allowed when the trial court has already rendered its Decision, and much less, as in the case at bar, when even the Court of Appeals had rendered its own Decision on appeal.

Aquino, *et al*., claim that they could not have intervened in the case earlier, as the full-inclusion program was allegedly commenced by defendants TLC and the spouses Alfonso only in 1997. However, said defendants cannot be benefited by their allegedly recent introduction of a full-inclusion program. While we sympathize with the plight of the minor intervenors, we cannot allow that a program commenced by the defendants way beyond the institution of the case in 1992 could be considered as a valid defense. To do so would put into the hands of the defendant in a case the power to introduce new issues to a litigation on appeal with the assistance of intervenors.

Injunction against the operation of the School of the Holy Cross

Effect of Ordinance No. 91-39, as corrected by Resolution No. 94-179 to the Deed of Restrictions

In reversing itself on Motion for Reconsideration, the RTC cited the *Ortigas*[32] case and held that the earlier residential classification can no longer be enforced due to the reclassification by Muntinlupa Municipal Ordinance No. 91-39 of the subject property.

In *Ortigas*, the restriction of exclusive use for residential purposes was contained in the Deeds of Sale of the subject properties at the insistence of developer Ortigas & Co. and was annotated

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[31] *Lichauco v. Court of Appeals*, 159 Phil. 737, 747 (1975).

[32] *Ortigas & Co. Limited Partnership v. Feati Bank and Trust Co.*, *supra* note 8.

in the corresponding titles thereof. Therein defendant Feati Bank and Trust Co. eventually acquired the subject properties from the successor-in-interest of the original buyers; the deeds of sale and the TCTs issued likewise reflected the same restriction. However, the then Municipal Council of Mandaluyong, Rizal passed a Resolution declaring the area to which the subject property is situated as an industrial and commercial zone. Ortigas & Co. later on sued Feati Bank, seeking an injunction to restrain the latter from completing a commercial bank building on the premises. This Court held that the Mandaluyong Resolution was passed in the exercise of police power.[33] Since the motives behind the passage of the questioned resolution is reasonable, and it being a legitimate response to a felt public need, not whimsical or oppressive, the non-impairment of contracts clause of the Constitution will not bar the municipality's exercise of police power.[34]

As previously stated, the Court of Appeals set aside the RTC Resolution and reinstated the original RTC Decision enjoining TLC and the spouses Alfonso from the operation of the school beyond nursery and kindergarten classes with a maximum of two classrooms. The Court of Appeals held that there is no conflict between the Deed of Restrictions, which limited the use of the property for the establishment of a preparatory school, and the provisions of the Muntinlupa Zoning Ordinance No. 91-39, which reclassified the subject property as "institutional." The Court of Appeals continued that there are valid grounds for it not to apply the *Ortigas* case cited by the RTC Resolution, holding that while the subject property in said case was found in an area classified as industrial and commercial, "a study of the location of defendants' school would clearly reveal that the same is situated within a residential area – the exclusive Ayala Alabang Village."[35]

TLC and the spouses Alfonso insist on the applicability of *Ortigas* in the case at bar, and likewise cited *Presley v. Bel-Air Village*

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[33] *Id*.

[34] *Id*.

[35] *Rollo* (G.R. No. 134269), p. 70.

Association, Inc.[36] in order to drive home its point that reclassification of properties is a valid exercise of the state's police power, with which contractual obligations should be reconciled.

AAVA counters that even where the exercise of police power is valid, the same does not operate to automatically negate all other legal relationships in existence since the better policy is to reconcile the conflicting rights and to preserve both instead of nullifying one against the other, citing the case of *Co v. Intermediate Appellate Court*.[37] AAVA thus adopt the finding of the Court of Appeals that even assuming that the subject property has been validly reclassified as an institutional zone, there is no real conflict between the Deed of Restrictions and said reclassification.

A careful study of the pertinent documents yields the conclusion that there is indeed a way to harmonize the seemingly opposing provisions in the Deed of Restrictions and the assailed zoning ordinance.

To recall, the annotation at the back of TCT No. 149166 covering the subject property provides:

> PE-222/T-134042 – RESTRICTIONS – The property cannot be subdivided for a period of fifty (50) years from the date of sale. The property **shall be used exclusively for the establishment and maintenance thereon of a preparatory (nursery and kindergarten) school which may include such installations as an office for school administration, playground and garage for school vehicles.** x x x.[38] (Emphasis ours.)

It is noted that the above restriction limits the use of the subject property for preparatory (nursery and kindergarten) school, without regard to the number of classrooms. The two-classroom limit is actually imposed, not by the Deed of Restrictions, but by MMC Ordinance No. 81-01, otherwise known as the Comprehensive Zoning Ordinance for the National Capital Region, which classified Ayala Alabang Village as a low density residential area or an "R-1 zone." The principal permitted uses of a "low-density residential

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[36] G.R. No. 86774, August 21, 1991, 201 SCRA 13.

[37] 245 Phil. 347 (1988).

[38] Records, Vol. V, p. 2103.

area" or "R-1 zone," the classification of the subject property if not for the correction under Muntinlupa Municipal Resolution No. 94-179, is listed in Comprehensive Zoning Ordinance No. 81-01 as follows:

> In R-1 districts, no building, structure or land used, and no building or structure shall be erected or altered in whole or in part except for one or more of the following:
>
> Principal Uses
>
> 1. One-family dwellings;
> 2. Duplex type buildings;
> 3. Churches or similar places of worship and dwelling for the religious and seminaries;
> 4. **Nursery and kindergarten schools, provided that they do not exceed two (2) classrooms;**
> 5. Clubhouses, lodges and other social centers;
> 6. Parks, playgrounds, pocket parks, parkways, promenades and playlots;
> 7. Recreational uses such as golf courses, tennis courts, baseball diamonds, swimming pools and similar uses operated by the government or private individuals as membership organizations for the benefit of their members, families or guests not primarily for gain;
> 8. Townhouses.[39] (Emphasis supplied.)

On the other hand, the following are the principal uses of an institutional site, the classification of the subject property by virtue of Ordinance No. 91-39 as corrected by Muntinlupa Municipal Resolution No. 94-179:

> Institutional
>
> Principal Uses

[39] MMC Ordinance No. 81-01, Appendix "C", referred to in Article IV, Section 5 of the same ordinance.

1. Barangay health centers;
2. Day-care centers;
3. Puericulture centers;
4. Clinics, family planning clinics and children's clinics;
5. **Nursery and kindergarten schools**;
6. Elementary schools;
7. Elementary and high school;
8. Local civic centers, local auditoriums, halls and exhibition centers;
9. Churches, temples and mosques;
10. Chapels;
11. *Barangay* centers;
12. Maternity hospitals;
13. National executive, judicial, legislative and related facilities and activities;
14. Government buildings;
15. Tertiary and provincial hospitals and medical center;
16. National museums and galleries;
17. Art galleries;
18. Planetarium;
19. Colleges or universities;
20. Vocational and technical schools, special training;
21. Convents and seminaries;
22. Welfare and charitable institutions;
23. Municipal buildings;
24. Fire and police station buildings;
25. Local museum and libraries;
26. University complexes; and
27. Penal institutions.[40] (Emphasis supplied.)

The jurisprudence cited by TLC and the spouses Alfonso requires a meticulous review. We find that a clarification of the doctrines laid down in the aforestated cases of *Co*, *Ortigas*, and *Presley* is in order.

In the *Ortigas* case which had been interpreted differently by the RTC and the Court of Appeals, this Court, in upholding the exercise of police power attendant in the reclassification of the

[40] MMC Ordinance No. 81-01, Appendix "C", referred to in Article IV, Section 5 of the same ordinance.

subject property therein over the Deed of Restrictions over the same property, took into consideration the prevailing conditions in the area:

> Resolution No. 27, s-1960 declaring the western part of Highway 54, now E. de los Santos Avenue (EDSA, for short) from Shaw Boulevard to the Pasig River as an industrial and commercial zone, was obviously passed by the Municipal Council of Mandaluyong, Rizal in the exercise of police power to safeguard or promote the health, safety, peace, good order and general welfare of the people in the locality. **Judicial notice may be taken of the conditions prevailing in the area, especially where lots Nos. 5 and 6 are located. The lots themselves not only front the highway; industrial and commercial complexes have flourished about the place. EDSA, a main traffic artery which runs through several cities and municipalities in the Metro Manila area, supports an endless stream of traffic and the resulting activity, noise and pollution are hardly conducive to the health, safety or welfare of the residents in its route.** Having been expressly granted the power to adopt zoning and subdivision ordinances or regulations, the municipality of Mandaluyong, through its Municipal Council, was reasonably, if not perfectly, justified under the circumstances, in passing the subject resolution.[41] (Emphasis supplied.)

Near the end of the *Ortigas* Decision, this Court added:

> Applying the principle just stated to the present controversy, We can say that **since it is now unprofitable, nay a hazard to the health and comfort, to use Lots Nos. 5 and 6 for strictly residential purposes, defendants-appellees should be permitted, on the strength of the resolution promulgated under the police power of the municipality, to use the same for commercial purposes.** In *Burgess v. Magarian, et al.*, it was held that "restrictive covenants running with the land are binding on all subsequent purchasers x x x." However, Section 23 of the zoning ordinance involved therein contained a *proviso* expressly declaring that the ordinance was not intended "to interfere with or abrogate or annul any easements, covenants or other agreement between parties." In the case at bar, no such *proviso* is found in the subject resolution. (Emphasis supplied.)

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[41] *Ortigas & Co. Limited Partnership v. Feati Bank and Trust Co.*, *supra* note 8 at 189.

In the case at bar, as observed by the Court of Appeals, the subject property, though declared as an institutional lot, nevertheless lies within a residential subdivision and is surrounded by residential lots. Verily, the area surrounding TLC did not undergo a radical change similar to that in *Ortigas* but rather remained purely residential to this day. Significantly, the lot occupied by TLC is located along one of the smaller roads (less than eight meters in width) within the subdivision. It is understandable why ALI, as the developer, restricted use of the subject lot to a smaller, preparatory school that will generate less traffic than bigger schools. With its operation of both a preparatory and grade school, TLC's student population had already swelled to around 350 students at the time of the filing of this case. Foreseeably, the greater traffic generated by TLC's expanded operations will affect the adjacent property owners enjoyment and use of their own properties. AAVA's and ALI's insistence on (1) the enforcement of the Deed of Restrictions or (2) the obtainment of the approval of the affected residents for any modification of the Deed of Restrictions is reasonable. On the other hand, the then Municipality of Muntinlupa did not appear to have any special justification for declaring the subject lot as an institutional property. On the contrary, Engr. Hector S. Baltazar, the Municipal Planning and Development Officer of Muntilupa, testified that in declaring the subject property as institutional the municipality simply adopted the classification used in a zoning map purportedly submitted by ALI itself. In other words, the municipality was not asserting any interest or zoning purpose contrary to that of the subdivision developer in declaring the subject property as institutional.

It is therefore proper to reconcile the apparently conflicting rights of the parties herein pursuant to the aforementioned *Co* case. In *Co*, agricultural tenant Roaring, facing a demolition order, filed a complaint for maintenance of possession with the Court of Agrarian Relations of Quezon City. The landowner challenged the jurisdiction of the court arguing that the classification of the subject property therein from agricultural to a light industrial zone. This Court denied the applicability of the reclassification, and clarified *Ortigas*:

This is not to suggest that a zoning ordinance cannot affect existing legal relationships for it is settled that it can legally do so, being an exercise of the police power. As such, it is superior to the impairment clause. In the case of *Ortigas & Co. v. Feati Bank*, for example, we held that a municipal ordinance establishing a commercial zone could validly revoke an earlier stipulation in a contract of sale of land located in the area that it could be used for residential purposes only. In the case at bar, fortunately for the private respondent, no similar intention is clearly manifested. Accordingly, we affirm the view that the zoning ordinance in question, while valid as a police measure, was not intended to affect existing rights protected by the impairment clause.

It is always a wise policy to reconcile apparently conflicting rights under the Constitution and to preserve both instead of nullifying one against the other. x x x.[42] (Emphasis supplied.)

In *Presley*, the Deed of Restrictions of Bel-Air subdivision likewise restricted its use for a residential purpose. However, the area (Jupiter Street) where the lot was located was later reclassified into a high density commercial (C-3) zone. Bel-Air Village Association (BAVA) sought to enjoin petitioner therein from operating its Hot Pan de Sal Store, citing the Deed of Restrictions. We allowed the operation of the Hot Pan de Sal Store despite the Deed of Restrictions, but not without examining the surrounding area like what we did in *Ortigas*:

Jupiter Street has been highly commercialized since the passage of Ordinance No. 81-01. The records indicate that commercial buildings, offices, restaurants, and stores have already sprouted in this area. We, therefore, see no reason why the petitioner should be singled out and prohibited from putting up her hot pan de sal store. Thus, in accordance with the ruling in the *Sangalang* case, the respondent court's decision has to be reversed.[43]

Furthermore, we should also take note that in the case of *Presley*, there can be no reconciliation between the restriction to use of the property as a residential area and its reclassification as a high density commercial (C-3) zone wherein the use of

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[42] *Co v. Intermediate Appellate Court, supra* note 37 at 354.

[43] *Presley v. Bel-Air Village Association, Inc., supra* note 36 at 20.

the property for residential purposes is not one of the allowable uses.

Alleged estoppel on the part of AAVA from enforcing the Deed of Restrictions

TLC and the spouses Alfonso's main argument against the enforcement of the Deed of Restrictions on their property is the AAVA had allegedly abrogated said restrictions by its own acts. TLC and the spouses Alfonso proceeded to enumerate acts allegedly constituting a setting aside of said restrictions:

> 1. AAVA Village Manager Frank Roa admitted before the trial court that AAVA had previously approved the proposed construction of a school building with 24 classrooms, which approval is further evidenced by a stamp mark of AAVA on the Site Development Plan with the signature of Frank Roa himself.[44]
>
> 2. While the case was submitted for resolution with the Court of Appeals, AAVA, through its president Jesus M. Tañedo, authorized through a letter the construction of a new "school building extension."[45]
>
> 3. ALI itself requested the reclassification of the subject property as institutional, as allegedly proven by the testimony of then Municipal Planning and Development Officer Engineer Hector S. Baltazar, who said:

Engineer Baltazar:

There was a publication, your Honor, the developer of the Ayala Alabang Village, in fact, was the one who submitted this map of theirs. In deference to the Ayala Land, Inc. which is the developer of the Ayala Alabang Village whom we know "*na maayos naman ang*

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[44] TLC and the spouses Alfonso's Memorandum, pp. 25-26; *rollo,* Vol. II (G.R. No. 134269), pp. 2512-2513.

[45] *Id.* at 26; *id.* at 2513.

kanilang zoning," we just adopted what they submitted to us. Whereas, the other areas are "*talagang pinag-aralan pa namin*."[46]

TLC and the spouses Alfonso point out that the subject property was considered institutional in the Official Zoning Map, thereby implying that the submission of the latter constitutes an intent to have the subject property reclassified as institutional.

4. ALI assented to the reclassification of the subject property to institutional, as shown by its letter dated July 24, 1991, wherein it stated:

This refers to the 26 June 1991 letter of Mr. Manuel Luis C. Gonzales concerning the proposed expansion of the school curriculum to grade school of the Learning Child Pre-school owned by Mrs. Mary Anne Alfonso.

Insofar as an evaluation of such proposed expansion of the school is concerned, we believe that it is a worthy undertaking that will definitely benefit the community, and thus interpose no objection to such proposal as long as the conditions mentioned below are met.[47]

We are not convinced.

Estoppel by deed is "a bar which precludes one party from asserting as against the other party and his privies any right or title in derogation of the deed, or from denying the truth of any material facts asserted in it."[48] We have previously cautioned against the perils of the misapplication of the doctrine of estoppel:

Estoppel has been characterized as harsh or odious, and not favored in law. When misapplied, estoppel becomes a most effective weapon to establish an injustice, inasmuch as it shuts a man's mouth from speaking the truth and debars the truth in a particular case. Estoppel cannot be sustained by mere argument or doubtful inference; it must be clearly proved in all its essential elements by clear, convincing and satisfactory evidence. x x x.[49]

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[46] *Id.* at 30-31; *id.* at 2517-2518, quoting TSN, January 20, 1995, pp. 7-9.

[47] *Id.* at 31; *id.* at 2518, quoting Exhibit F.

[48] *Lopez v. Court of Appeals*, 446 Phil. 722, 741 (2003).

[49] *Kalalo v. Luz*, 145 Phil. 152, 161 (1970).

TLC and the spouses Alfonso failed to prove by clear and convincing evidence the gravity of AAVA's acts so as to bar the latter from insisting compliance with the Deed of Restrictions.

In numbers 1 and 2 above, TLC and the spouses Alfonso claim that the previous approvals by AAVA of the construction of additional classrooms allegedly constitute a revocation of the Deed of Restrictions. However, as we have previously discussed, the two-classroom restriction is not imposed in the Deed of Restrictions but rather in MMC Ordinance No. 81-01. The alleged assent of AAVA to the construction of additional classrooms is not at all inconsistent with the provisions of the Deed of Restrictions, which merely limit the use of the subject property "exclusively for the establishment and maintenance thereon of a preparatory (nursery and kindergarten) school which may include such installations as an office for school administration, playground and garage school vehicles."

The circumstances around the enumerated acts of AAVA also show that there was no intention on the part of AAVA to abrogate the Deed of Restrictions nor to waive its right to have said restrictions enforced. Frank Roa's signature in the Site Development Plan came with the note: "APPROVED SUBJECT TO STRICT COMPLIANCE OF CAUTIONARY NOTICES APPEARING ON THE PLAN AND TO RESTRICTIONS ENCUMBERING THE PROPERTY REGARDING THE USE AND OCCUPANCY OF THE SAME."[50] The Site Development Plan itself was captioned "The LEARNING CHILD PRE-SCHOOL,"[51] showing that the approval was for the construction of a pre-school, not a grade school. AAVA's letter dated March 20, 1996 contained an even more clear cut qualification; it expressly stated that the approval is "subject to the conditions stipulated in the Deed of Restrictions covering your above-mentioned property, which states, among others, that the property shall be used exclusively for the establishment and maintenance thereon of a

[50] Exhibit 2.

[51] *Id*.

PREPARATORY (NURSERY AND KINDERGARTEN) SCHOOL."

We furthermore accept AAVA's explanation as regards the March 20, 1996 letter that at it had to allow the construction of the new school building extension in light of the trial court's Orders dated March 9, 1995 and August 3, 1995. It should be noted here that AAVA was the party appealing to the Court of Appeals as the trial court decision favorable to them had been reversed by the same court on Motion for Reconsideration.

Numbers 3 and 4 are acts allegedly performed by ALI. AAVA claims that these acts cannot be considered in the case at bar under the *res inter alios acta* rule, as ALI is not a party to the case. Section 28, Rule 130 of the Rules of Court embodies said rule:

> Sec. 28. *Admission by third party*. — The rights of a party cannot be prejudiced by an act, declaration, or omission of another, except as hereinafter provided.

We have to clarify that ALI's statements, if damaging to AAVA, would be binding on the latter. The general Ayala Alabang Village "Deed Restrictions," which was attached to the Deed of Restrictions on the title of the subject property, expressly state that: "2. Compliance with the said restrictions, reservation, easements and conditions maybe enjoined and/or enforced by Court action by Ayala Corporation and/or the Ayala Alabang Village Association, their respective successors and assigns, or by any member of the Ayala Alabang Village Association."[52] As such, it appears that Ayala Corporation is jointly interested with AAVA in an action to enforce the Deed of Restrictions, and is therefore covered under the following exception to the *res inter alios acta* rule:

> Sec. 29. *Admission by copartner or agent*. — The act or declaration of a partner or agent of the party within the scope of his authority and during the existence of the partnership or agency, may be given in evidence against such party after the partnership or agency is

[52] Records, Vol. V, p. 1984.

shown by evidence other than such act or declaration. The same rule applies to the act or declaration of a joint owner, joint debtor, **or other person jointly interested with the party**.[53] (Emphasis supplied.)

However, the acts of ALI are not at all damaging to the position of AAVA. The act in number 1 concerns the alleged assent of ALI to the reclassification of the subject property as institutional which, as we have already ruled, does not amount to a nullification of the Deed of Restrictions. As regards the act in number 2, the statement in ALI's July 24, 1991 letter that it believes the expansion of TLC is a "worthy undertaking," it should be pointed out that ALI's purported assent came with conditions:

> Insofar as an evaluation of such proposed expansion of the school is concerned, we believe that it is a worthy undertaking that will definitely benefit the community, and thus interpose no objection to such proposal **as long as the conditions mentioned below are met.**
>
> It is true that the Ayala Alabang Village Association (AAVA) Board does not have the authority on its own to alter the Deed of Restrictions for Ayala Alabang Village, and the approval of Ayala is an indispensable condition precedent to any change in the restrictions. However, we feel that any change in the restrictions for Ayala Alabang should be concurred to by the AAVA Board on the premise that any change in the restrictions affects the general welfare of the community which is the primary concern of the AAVA Board. **On this same premise, we have imposed as an additional condition to our approval of the change in restrictions, that such change should be approved by the residents of the Village or by the residents of the particular district where the school is situated, at the option of the Board. We feel that the concurrence of not only the AAVA Board but also of the residents of the Village or of the affected district (as the case may be) is fair and reasonable under the circumstances**.[54] (Emphases supplied.)

As previously stated, a majority of AAVA's members, on April 5, 1992, voted to ratify the Board of Governors' resolutions

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[53] Rule 130, Rules of Court.

[54] *Id.* at 1990.

that the Deed of Restrictions should be implemented. Therefore, the conditions for ALI's approval of the alteration of the Deed of Restrictions, namely the concurrence of the AAVA Board and the approval of the affected residents of the village, were clearly not met.

Finally, a thorough examination of the records of the case furthermore shows that AAVA consistently insisted upon compliance with the Deed of Restrictions:

1. Petitioner Mary Anne Alfonso, as directress of TLC, wrote AAVA on May 20, 1991 requesting "reconsideration and approval to modify the restrictions at our property at 111 Cordillera to include the establishment and maintenance of a grade school" and avowed to make a similar representation to ALI.[55] AAVA replied on June 26, 1991 with a letter stating that the matter of interpretation or relaxation of the Deed of Restrictions is not within its power, but of ALI, and thus referred the request to the latter.[56] ALI wrote AAVA on July 24, 1991 stating that while it interposes no objection to the modification of the restrictions on the subject property, any change on such restrictions should be concurred in by AAVA's Board of Governors and approved by the residents of the village, particularly the residents of the district where the school is situated.[57] AAVA's Board of Governors, during its regular meeting on August 27, 1991, voted unanimously to retain the restrictions and recommended said retention to ALI.[58]

2. The spouses Alfonso wrote AAVA on October 25, 1991 requesting a reconsideration of the decision of AAVA's Board of Governors.[59] On October 31, 1991, AAVA wrote ALI to inquire about the reasons for the restrictions.[60] ALI

[55] Records, Vol. I, pp. 116-117.
[56] *Id.* at 118-119.
[57] *Id.* at 120-121.
[58] *Id.* at 122.
[59] *Id.* at 123-124.
[60] *Id.* at 125.

replied that the restrictions were imposed because the school sites located along small roads had to be limited to small nursery schools since the latter generate less traffic than bigger schools. ALI reiterated that the residents should be consulted prior to any change in the restrictions.[61] In the meantime, TLC proceeded to operate a grade school on the subject property. On February 27, 1992, AAVA's former counsel wrote TLC a letter demanding that they suspend the enrollment of students other than for pre-school.[62]

3. The spouses Alfonso wrote AAVA on March 11, 1992, reiterating their request to operate a grade school in the subject property. [63] On March 24, 1992, the Board of Governors of AAVA affirmed its earlier decision to retain the restrictions. On March 27, 1992, AAVA replied to the spouses Alfonso's letter informing them of the denial.[64]

4. On April 5, 1992, during AAVA's annual membership meeting, the spouses Alfonso appealed directly to the members of AAVA. Majority of AAVA's members voted to ratify the Board of Governor's Resolutions.[65]

5. On April 24, 1992, the spouses Alfonso wrote AAVA another letter requesting that it be allowed to continue holding classes for Grades I to III at their premises for at least the coming school year, since they needed time to relocate the same outside the village.[66] AAVA replied on April 30, 1992, explaining that the Board of Governors has to follow the April 5, 1992 decision of the members and demanded that the TLC close its grade school in the coming school year.[67]

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[61] *Id.* at 126.

[62] *Id.* at 127.

[63] *Id.* at 128-129.

[64] *Id.* at 130.

[65] *Id.* at 131-135.

[66] *Id.* at 126.

[67] *Id.* at 137.

6. On June 4, 1992, the spouses Alfonso wrote to AAVA again, appealing to be allowed to continue in their premises for three more months, June to August, after which they solemnly promised to move the grade school out of the village, possibly in TLC's former school site in B.F. Homes Parañaque.[68] AAVA replied on June 16, 1992 denying their request, and demanded that TLC cease its operation of a grade school on the subject property.[69]

7. In view of the continued operation of the grade school, AAVA sent letters to TLC on August 17 1992 and September 4, 1992 demanding that the latter immediately cease and desist from continuing and maintaining a grade school in the subject property.[70]

From the foregoing, it cannot be said that AAVA abrogated the Deed of Restrictions. Neither could it be deemed estopped from seeking the enforcement of said restrictions.

DISPOSITION

This Court hereby resolves to affirm with modification the Decision and Resolution of the Court of Appeals in CA-G.R. CV No. 51096 insofar as they reinstated the July 22, 1994 RTC Decision ordering the defendants in Civil Case No. 92-2950 to cease and desist from the operation of the Learning Child School beyond nursery and kindergarten classes. Pursuant to Muntinlupa Ordinance No. 91-39, as corrected under Muntinlupa Municipal Resolution No. 94-179, we therefore delete the two-classroom restriction from said Decision.

This Court, however, understands the attendant difficulties this Decision could cause to the current students of the School of the Holy Cross, who are innocent spectators to the litigation in the case at bar. We therefore resolve that the current students of the School of the Holy Cross be allowed to finish their

[68] *Id.* at 138.

[69] *Id.* at 141.

[70] *Id*.

elementary studies in said school up to their graduation in their Grade 7. The school, however, shall no longer be permitted to accept new students to the grade school.

WHEREFORE, the Court rules on the consolidated Petitions as follows:

1. The Petition in G.R. No. 134269 is *PARTIALLY GRANTED.* The Decision and Resolution of the Court of Appeals in CA-G.R. CV No. 51096 dated November 11, 1997 and July 2, 1998, respectively, insofar as they reinstated the July 22, 1994 RTC Decision ordering the defendants in Civil Case No. 92-2950 to cease and desist from the operation of the Learning Child School beyond nursery and kindergarten classes with a maximum of two classrooms, is hereby *AFFIRMED* with the *MODIFICATION* that (1) the two-classroom restriction is deleted, and (2) the current students of the School of the Holy Cross, the Learning Child School's grade school department, be allowed to finish their elementary studies in said school up to their graduation in their Grade 7. The enrollment of new students to the grade school shall no longer be permitted.

2. The Petition in G.R. No. 134440 is *DISMISSED* on the ground of mootness. The Resolution of the Court of Appeals in CA-G.R. CV No. 51096 dated July 2, 1998, insofar as it dismissed the Motion for Leave to Intervene filed by Jose Marie V. Aquino, Lorenzo Maria E. Veloso, Christopher E. Walmsley, Joanna Marie S. Sison, and Matthew Raphael C. Arce is hereby *AFFIRMED*.

3. The Petition in G.R. No. 144518 is *DENIED*. The Decision of the Court of Appeals in CA-G.R. SP No. 54438, dated August 15, 2000, which upheld the validity of a Mandaluyong Municipal Resolution correcting an alleged typographical error in a zoning ordinance is hereby *AFFIRMED*.

No pronouncement as to costs.

SO ORDERED.

Corona, C.J. (Chairperson), Velasco, Jr., Del Castillo, and *Perez, JJ.,* concur.

SECOND DIVISION

[G.R. No. 138696. July 7, 2010]

FELIZARDO S. OBANDO and JUAN S. OBANDO, *petitioners, vs.* **PEOPLE OF THE PHILIPPINES**, *respondent*.

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; FACTUAL FINDINGS OF TRIAL COURTS ARE GENERALLY ACCORDED HIGH RESPECT IF NOT CONCLUSIVE EFFECT. — The rule is that the findings of fact of the trial court, its calibration of the testimonies of the witnesses and its assessment of the probative weight thereof, as well as its conclusions anchored on said findings, are accorded high respect if not conclusive effect. This is more true if such findings were affirmed by the appellate court. When the trial court's findings have been affirmed by the appellate court, said findings are generally binding upon this Court unless when that determination is clearly without evidentiary support on record, or when the judgment is based on misapprehension of facts or overlooked certain relevant facts which, if properly considered, would justify a different conclusion, which we do not find in this case.

2. ID.; ID.; ADMISSIBILITY; TESTIMONIAL EVIDENCE; OPINION RULE; EXPERT OPINIONS; NOT ORDINARILY CONCLUSIVE.— Expert opinions are not ordinarily conclusive. They are generally regarded as purely advisory in character. The courts may place whatever weight they choose upon and may reject them, if they find them inconsistent with the facts in the case or otherwise unreasonable. When faced with conflicting expert opinions, as in this case, courts give more weight and credence to that which is more complete, thorough, and scientific. The value of the opinion of a handwriting expert depends not upon his mere statements of whether a writing is genuine or false, but upon the assistance he may afford in pointing out distinguishing marks, characteristics and discrepancies in and between genuine and false specimens of writing which would ordinarily escape notice or detection from an unpracticed observer.

3. CRIMINAL LAW; FALSIFICATION OF PUBLIC DOCUMENT; ELEMENTS; PRESENT IN CASE AT BAR. — We find the elements of falsification of public document present in this case. Essentially, the elements of the crime of Falsification of Public Document under Article 172 (1) of the Revised Penal Code (RPC) are: (1) that the offender is a private individual; (2) that the offender committed any of the acts of falsification enumerated under Article 171; and (3) that the act of falsification is committed in a public document. Under paragraph 2 of Article 171, a person may commit falsification of a public document by causing it to appear in a document that a person or persons participated in an act or proceeding, when such person or persons did not, in fact, so participate in the act or proceeding. In this case, petitioners are private individuals who presented the alleged will to the probate court and made it appear that Alegria signed the alleged will disposing of her rights and interest in the real properties, as well as all of her personal properties to petitioners when in fact petitioners knew that Alegria never signed such alleged will as her signatures therein were forged.

4. ID.; ESTAFA UNDER ARTICLE 315(1)(B) OF THE REVISED PENAL CODE; ELEMENTS. — The elements of *estafa* under Article 315, par. 1 (b) of the RPC are as follows: (1) that money, goods or other personal property is received by the offender in trust, or on commission, or for administration, or under any other obligation involving the duty to make delivery of or to return the same; (2) that there be misappropriation or conversion of such money or property by the offender or denial on his part of such receipt; and (3) that such misappropriation or conversion or denial is to the prejudice of another.

5. ID.; ESTAFA THROUGH FALSIFICATION OF PUBLIC DOCUMENT; PENALTY; CASE AT BAR. — The crime committed was estafa through falsification of public document. Being a complex crime, the penalty for the most serious crime shall be imposed in its maximum period. x x x The amount of damages is the basis of the penalty for estafa. However, we note that the prosecution failed to satisfactorily show that the amount of jewelry misappropriated was indeed two million pesos. The only evidence on record which would establish the amount of the jewelry was the inventory submitted in 1966 by Alegria where she listed the jewelry in the amount of ₱2,150.00. Since the amount misappropriated by petitioners was established to

be only in the amount of ₱2,150.00, the applicable provision is paragraph (3) of Article 315 of the Revised Penal Code, which imposes the penalty of *arresto mayor* in its maximum period to *prision correccional* in its minimum period, where the amount defrauded is over ₱200.00 but does not exceed ₱6,000.00. Thus, in this case, it appears that the most serious crime, which should be the basis of penalty for the complex crime of estafa through falsification of public document, would be the falsification and, under Article 172 of the Revised Penal Code, the penalty is *prision correccional* in its medium and maximum periods and a fine of not more than ₱5,000.00. Thus, the maximum penalty to be imposed in this case is the medium period of *prision correccional* in its medium and maximum periods, there being no mitigating or aggravating circumstances. Applying the Indeterminate Sentence Law, the minimum penalty should be taken from the penalty next lower in degree which is *arresto mayor* maximum to *prision correccional* minimum in any of its period.

APPEARANCES OF COUNSEL

Gatmaytan Law Office for petitioners.
Ernesto C. Jacinto for private complainant.

D E C I S I O N

PERALTA, *J.*:

Before us is a petition for review on *certiorari* filed by petitioners Felizardo and Juan Obando seeking to annul and set aside the Decision[1] dated August 13, 1998 and the Resolution[2] dated May 17, 1999 of the Court of Appeals (CA) in CA-G.R. CR No. 20187.

The antecedent facts are as follows:

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[1] Penned by Associate Justice Teodoro P. Regino, with Associate Justices Quirino D. Abad Santos, Jr. and Conrado M. Vasquez, Jr., concurring; *rollo,* pp. 411-438.

[2] *Id.* at 440.

Sometime in 1964, Alegria Strebel *Vda. de* Figueras (Alegria), together with Eduardo and Francisco Figueras, sons of her husband Jose Figueras by previous marriage, filed a petition for the intestate proceedings of the estate of Jose Figueras, docketed as Special Proceedings No. 61567. Alegria was named administratrix of Jose's estate without opposition from her stepsons.

While the settlement of Jose's estate was still pending considerations in the Regional Trial Court (RTC), Alegria died in May 1979. Eduardo was issued new Letters of Administration with the duty to administer both Jose's and Alegria's estates. Fritz Strebel, as brother of Alegria, came forth claiming part of Alegria's estate as Alegria died without issue which the Figueras brothers made no opposition.

Subsequently, the Figueras brothers and Fritz Strebel were served with copies of a Petition for Probate of the alleged last will and testament of Alegria filed by petitioner Felizardo Obando, which petition was docketed as Special Proceeding No. 123948. In his petition, petitioner Felizardo asked to be named as executor of Alegria's last will and testament, which bequeathed Alegria's rights and interest in the real properties left by the Figueras couple, as well as personal properties, including all her pieces of jewelry to petitioners Felizardo and Juan, and their families. The Figueras brothers opposed the probate of the alleged will, as well as petitioner Felizardo's prayer for the issuance of a letter of administration, on the ground that the alleged will was done either under duress or the same was a forgery.

Later, both Special Proceeding Nos. 61567 and 123948 were consolidated under Branch 17 of the RTC of Manila which, after hearing, denied petitioner Felizardo's prayer to be named as executor. Petitioner Felizardo appealed the matter to the CA which partially reversed the RTC by appointing Eduardo and petitioner Felizardo as co-administrators of the joint estates of Jose and Alegria Figueras.

Eduardo and Fritz still opposed the probate of the alleged Alegria's will, insisting that the will was a forgery. Subsequently,

these conflicting parties agreed to submit the alleged will to the National Bureau of Investigation (NBI) for examination and comparison with the common standard signatures of Alegria.[3]

After the examination and comparison of the submitted documents, NBI Document Examiner Zenaida Torres submitted her report[4] dated March 26, 1990, with the findings that the questioned and standard sample signatures of Alegria S. *Vda. de* Figueras were NOT written by one and same person.

By reason of the forged will which was the basis of the CA in appointing Felizardo as co-administrator of the Figueras estates, petitioners had taken possession of the pieces of jewelry, furniture and other personal properties enumerated in the alleged will, as well as the rentals of the Figueras residence in Gilmore Street, Quezon City being leased to the Community of Learners.

Eduardo and Fritz questioned these acts of petitioner Felizardo and, since the latter could not account for these properties which were under his possession when the probate court required him to do so, they sued him for Estafa thru Falsification of Public Document since the alleged will which petitioner Felizardo submitted for probate was found to be forged.

On July 26, 1990, an Information was filed with the RTC of Manila, charging petitioners Felizardo S. Obando and Juan S. Obando, together with the persons who signed in the alleged will, namely, Cipriano C. Farrales, Mercedes B. Santos, Victorino Cruz, and Franklin A. Cordon, with the crime of estafa thru falsification of public document, committed as follows:

> That on or about November 11, 1978, and for sometime prior or subsequent thereto, in the City of Manila, Philippines, the said accused Felizardo S. Obando, Juan S. Obando, Mercedes B. Santos, [Victorino] Cruz and Franklin A. Cordon, being then private individuals, and accused Cipriano C. Farrales, a Notary Public, conspiring and confederating together and helping one another, did then and there

[3] Consolidated Submission of Standard Specimen Signatures signed by the parties' counsels.

[4] *Id.* at 104-105.

willfully, unlawfully and feloniously defraud Eduardo F. Figueras thru falsification of public document in the following manner, to wit: the said accused forged and falsified or caused to be forged and falsified, a document denominated as the Last Will and Testament of Alegria Strebel *Vda. de* Figueras, dated November 11, 1978, duly notarized by accused Cipriano C. Farrales and, therefore, a public document, by stating in said Last Will and Testament, among others, that the said Alegria Strebel *Vda. de* Figueras had bequeathed to her nephews, herein accused Felizardo S. Obando and Juan S. Obando, all her rights and interests over all her jewelries (sic), except those given to her other relatives, with an aggregate total value of ₱2,000,000.00, that she had appointed accused Felizardo S. Obando as the sole executor of her Last Will and Testament and the exclusive administrator of her estate, and thereafter, feigning, simulating and counterfeiting or causing to be feigned, simulated and counterfeited the signature of the said Alegria Strebel *Vda. de* Figueras appearing on the left hand margin of pages 1 and 2 and over the typewritten name Alegria Strebel *Vda. de* Figueras on page 3 of said document, thus making it appear, as it did appear, that the said Alegria Strebel *Vda. de* Figueras had, in fact, bequeathed all her rights and interests over the said jewelries (sic) to accused Felizardo S. Obando and Juan S. Obando, and that she had appointed the said Felizardo S. Obando as the sole executor of her Last Will and Testament and the exclusive Administrator of her estate, and causing it to appear further that the said Alegria Strebel *Vda. de* Figueras participated and intervened in the signing of said document when in truth and in fact as the said accused well knew, such was not the case in that the said Last Will and Testament is an outright forgery; that the late Alegria Strebel *Vda. de* Figueras did not bequeath all her rights or interests over the aforementioned jewelries to accused Felizardo S. Obando and Juan S. Obando, that she did not appoint accused Felizardo S. Obando as the sole executor of her Last Will and Testament and the exclusive Administrator of her estate, and that she did not participate and intervene in the signing of said document, much less did she authorize the said accused, or anybody else, to sign her name or affix her signature thereon; that once the said document has been forged and falsified in the manner above set forth, the said accused Felizardo S. Obando and Juan S. Obando presented the same for probate with the Regional Trial Court of Manila wherein an ensuing litigation which ultimately reached the Court of Appeals, said accused Felizardo S. Obando was appointed co-administrator of said Eduardo F. Figueras, and who, as such co-administrator, forthwith took possession of the jewelries mentioned

above which the said accused subsequently, with intent to defraud, misappropriated, misapplied and converted to their own personal use and benefit to the damage and prejudice of the said Eduardo F. Figueras in the aforesaid amount of ₱2,000,000.00, Philippine currency.

Contrary to law.[5]

Notary Public Farrales asked for a re-investigation claiming innocence and good faith and was, subsequently, deleted from the Information.

When arraigned, all the accused, with the exception of Franklin Cordon who is at-large, assisted by counsel *de parte*, pleaded not guilty to the charge. They posted bail for their temporary liberty.

Trial thereafter ensued.

In its Order dated October 10, 1992, the RTC stated that the parties stipulated that whatever testimony of witnesses utilized in the intestate and probate proceedings of the will, as well as the documentary evidence submitted therein, shall be utilized in the criminal case *in toto* subject to further cross of the defense lawyer only on matters not touched in the former proceedings.[6]

On October 7, 1996, the RTC rendered its Decision,[7] the dispositive portion of which reads, thus:

WHEREFORE, PREMISES CONSIDERED, this Court holds accused FELIZARDO S. OBANDO and JUAN S. OBANDO GUILTY of violating Article 315, paragraph 1, sub-paragraph (b) of the Revised Penal Code, in relation to Article 172, paragraph 1, Revised Penal Code, their culpability having been proven beyond reasonable doubt and are hereby sentenced to suffer the penalty of *reclusion temporal* in its maximum period, from seventeen (17) years, four (4) months, and one (1) day to twenty (20) years. Finding no evidence of culpability in their persons, accused MERCEDES B. SANTOS and VICTORINO CRUZ are hereby ACQUITTED.

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

[6] Records, p. 149.

[7] *Rollo*, pp. 402-409.

With respect to accused FRANKLIN A. CORDON, who remains at-large up to the present, this case against him is hereby ordered ARCHIVED, to be revived upon his apprehension. Let an Alias Warrant of Arrest be issued against accused Franklin A. Cordon for his immediate apprehension.

SO ORDERED.[8]

In so ruling, the RTC found that: the fact of damage was sufficiently established with the testimonies of Felizardo and Juan that Alegria's rights and interests in the real and personal properties of the Figueras couple were to go to them, and that they already gave the pieces of jewelry to their sister, to Juan's wife and his two daughters, and Felizardo's daughter which showed that they had already profited from the estate of the Figueras couple even before the same was brought to the court for settlement. As to the matter of forgery, the RTC gave more credence to the findings of NBI Document Examiner Zenaida Torres than that of PNP Document Section Chief Francisco Cruz, since (1) Torres was the common choice of all the parties, thus by which act, petitioners became bound to the results of said findings; (2) Torres was definite in her conclusion that the question and standard/ sample signatures of Alegria S. *Vda. de* Figueras were not written by one and same person unlike Cruz's report stating that no definite conclusion can be made due to the limited amount of appropriate standard signatures for comparison; and (3) Torres was not paid for her services and, therefore, impartial while Cruz received honorarium from Juan Obando; that while petitioners presented copies of pictures showing Alegria allegedly signing the will in the presence of Mercedes Santos Cruz, Victorino Cruz and Franklin Cordon, nothing would establish what document was being held by them.

The RTC found petitioners to have conspired to commit forgery as established by the following evidence, to wit: (a) Felizardo admitted that the last will and testament which Alegria voiced out to him was dictated by him to a certain Atty. Alcantara; (b) that Felizardo retained the services of Atty. Alcantara and

[8] *Id.* at 409.

Atty. Farrales who notarized the alleged will; (c) Juan was the one who enticed Mercedes Santos Cruz, his sister-in-law, and Victorino Cruz into acting as attesting witnesses and Juan's taking pictures of the entire signing ceremony which was a sign of evil intention because it was an expectancy of future rift or trouble; (d) Felizardo held and kept the alleged will from the time of alleged signing up to Alegria's death which possession and control lasted for several months; (e) the testimony of Torres that the first two pages of Exhibit "A", which contained the dispositions of the properties of the Figueras estates, as well as the forged signatures were substitutes for the originals; and (g) that petitioners and their respective families gained enormously by reason of said will.

The RTC said that even if the alleged will was found to be authentic, it will still be contested as the dispositions made therein were contrary to law most particularly that portion bequeathing to petitioners the whole residential property of the spouses Jose and Alegria Figueras, which was conjugal, to the exclusion of Eduardo and Francisco Figueras and Fritz Strebel who are forced heirs; that because of such disposition, the RTC was convinced that the alleged will was not that of Alegria but of petitioners, since Alegria being the administratrix of the estate of her husband Jose would be the last person to give this property outside of the Figueras family. Mercedes Santos and Victorino Cruz were acquitted for lack of evidence.

Petitioners filed their appeal with the CA.

On August 13, 1988, the CA issued its assailed Decision affirming *in toto* the decision of the RTC.

Petitioners' motion for reconsideration was denied in a Resolution dated May 17, 1999.

Hence, this petition for review filed by petitioners on the following grounds:

A. THE HONORABLE COURT OF APPEALS HAD OVERLOOKED AND FAILED TO CONSIDER THE SIGNIFICANT FACTS AND CIRCUMSTANCES OF THIS CASE WHICH, IF PROPERLY

CONSIDERED, SHOULD HAVE DRAWN A DIFFERENT CONCLUSION AND WHICH SHALL CONSIDERABLY AFFECT THE RESULT OF THIS CASE.

B. THE NON-PRODUCTION AND/OR NON-PRESENTATION OF THE ORIGINAL COPY OF THE ALLEGED FALSIFIED LAST WILL AND TESTAMENT OF ALEGRIA STREBEL *VDA. DE* FIGUERAS BEFORE THE TRIAL COURT IS A FATAL DEFECT WHICH ENTITLES HEREIN APPELLANTS TO ACQUITTAL.

C. THERE IS ABSOLUTELY NO CONSPIRACY TO WARRANT CONVICTION OF FELIZARDO AND [JUAN] OBANDO.

D. THE WILL OF ALEGRIA STREBEL *VDA. DE* FIGUERAS DISPOSES ONLY OF HER RIGHTS AND INTERESTS OVER THE PROPERTIES BEQUEATHED TO FELIZARDO AND JUAN OBANDO.

E. CONFLICTING EXPERT TESTIMONIES, COUPLED WITH THE POSITIVE EVIDENCE AS TO THE DUE EXECUTION AND AUTHENTICITY OF THE WILL SHOULD FAVOR APPELLANTS.

F. THE ABSENCE IN THE NBI FINDINGS (EXHIBIT "D-1") AS TO THE GENUINENESS AND/OR FALSITY OF THE SIGNATURES OF MERCEDES SANTOS CRUZ, VICTORINO CRUZ AND ATTY. FRANKLIN CORDON ON THE "LAST WILL AND TESTAMENT" (EXHIBIT "A"), NEGATES THE FALSIFICATION AND/OR SUBSTITUTION OF THE FIRST AND SECOND PAGES OF THE SAID "LAST WILL AND TESTAMENT OF DOÑA ALEGRIA STREBEL *VDA. DE* FIGUERAS."

G. THERE IS NO ESTAFA COMMITTED BY APPELLANTS, NEITHER DID THE PROSECUTION PROVE THE COMPLEX CRIME OF ESTAFA THROUGH FALSIFICATION OF PUBLIC DOCUMENT.[9]

Petitioners contend that the non-presentation of the original copy of the alleged falsified will before the RTC was a fatal defect which entitles them to an acquittal.

We are not persuaded.

We note that during the trial of this case, petitioners did not raise any objection when the alleged will was presented and testified to by NBI Document Examiner Torres. We also note

[9] *Id.* at 27-30.

that in the Offer of Prosecution Evidence,[10] where the machine copy of the alleged will was marked as Exhibit "A", the prosecution, in the last paragraph of such offer, stated that "all these (documents) form the bulk of evidence in Special Proceeding Nos. 123948 and 61567 and were simply reproduced here as agreed upon by the parties. We are compelled to mention this so that the accused will have no reason for questioning their authenticity."[11] In their Comment/Objection to the Offer of Prosecution Evidence,[12] petitioners merely stated that: "If this particular document is the original copy of the Last Will and Testament of Doña Alegria Strebel *Vda. de* Figueras, which was marked as Exhibits "J", "J-1" to "J-17" in Special Proceedings Nos. 61567 and 123948, then the accused admits not only of its existence but also its validity, authenticity and due execution of said Last Will and Testament," but nowhere did they object to such submission of the machine copy. In fact, petitioners never sought reconsideration when the RTC admitted the machine copy of the alleged will.

More importantly, we note that a duplicate original copy of the alleged will was formally offered in evidence[13] as one of petitioners' documentary evidence and the same was already admitted by the RTC. Thus, a duplicate original copy of the alleged will was already admitted in the records of the case which the RTC used for comparison of the questioned signatures with that of the standard signatures of Alegria.

Petitioners fault the RTC and the CA for giving more weight to the findings of NBI Document Examiner Torres that the signature in the alleged will was forged as against the findings of PNP Document Examination Chief Cruz that the questioned signature was genuine.

The rule is that the findings of fact of the trial court, its calibration of the testimonies of the witnesses and its assessment

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

[11] *Id.* at 89.

[12] *Id.* at 303-309.

[13] Petitioners' Exhibit "4"; records, pp. 1911-1913; *rollo*, p. 314.

of the probative weight thereof, as well as its conclusions anchored on said findings, are accorded high respect if not conclusive effect. This is more true if such findings were affirmed by the appellate court. When the trial court's findings have been affirmed by the appellate court, said findings are generally binding upon this Court unless when that determination is clearly without evidentiary support on record, or when the judgment is based on misapprehension of facts or overlooked certain relevant facts which, if properly considered, would justify a different conclusion,[14] which we do not find in this case.

In examining the questioned signatures of Alegria, Torres used the standard specimen signatures submitted by petitioners, Eduardo and Fritz, the parties in the probate proceedings. Torres found that the questioned and standard/sample signatures of Alegria were not written by one and the same person. However, as petitioners did not agree with such findings, petitioners moved for another examination of the same documents together with three additional documents to be conducted by the PNP. PNP Document Examiner Chief Francisco Cruz submitted his report where he found that the questioned signatures and the standard signatures executed in 1978 indicated that they were written by one person. Both Torres and Cruz testified in court.

Torres, in her direct and cross-examinations, thoroughly explained her findings by establishing the fundamental differences in the writing characteristics and habits existing in the questioned and standard signatures.

First, in the alignment characteristics, *i.e.*, the relationship of the letters in the name with the base line or where the letters rest. She pointed out that in the standard signatures, all the letters in the name were written in an even straight base notwithstanding that some of the standard signatures were written without the horizontal line. In the questioned signatures, the name Alegria S. *Vda. de* Figueras was written either in a going up or going down direction, *i.e.*, there was no even placement of the letters.[15]

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[14] G.R. No. 168437.

[15] TSN, August 16, 1990, pp. 30-32.

Second, in the arrangement characteristics, *i.e.*, the position of the written signature in relation to the typewritten name. Torres found that the one who wrote the questioned signatures had the habit of affixing the signatures across and covering the entire typewritten name. While in the standard signatures, the writer affixed the signatures above the typewritten name and there was no instance where the signature crossed the typewritten name. Torres intimated that such arrangement characteristic in handwriting identification was very significant, because it was considered to be an inconspicuous characteristic which meant that even the writers themselves would not notice that manner of signing.[16]

Third, the slight but consistent difference in the slant of the letter "g" in the name Alegria. Torres stated that slant meant the slope of the letter in relation to the base line. She found that in the standard signatures, the slopes of the letter "g" in Alegria formed an angle of less than 90 degrees; that the letter "g" was slanting to the right. While in the questioned signatures, the slopes of letter "g" formed an angle of more than 90 degrees.[17]

Fourth, the proportion characteristic which meant the relationship of one letter to the next letter.[18]

Fifth, the manner of execution of the questioned signatures was different from that of the standard signatures. Torres found that in the questioned signatures, there were presence of hesitations, tremors, slow drawing movement, and consciousness which were not found in the standard signatures, which she had explained in details in her testimony.

On the other hand, PNP Document Examiner Cruz stated that there was a wide range of variations existing between the questioned signatures made in 1978 and the standard signatures executed in 1974, 1976 and 1978, indicating that there was a radical change in the physical condition of the writer wherein

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[16] *Id.* at 32-34.

[17] TSN, October 8, 1990, pp. 5-6.

[18] *Id.* at 7.

the muscle and nerves were affected resulting in the loss of muscular control. He also stated that while the questioned signatures and the standard signatures were dissimilar in the manner of execution, quality of lines, alignment and size of letter, no definite conclusion can be reached in view of the wide gap of execution. He then stated that the questioned signatures executed on November 11, 1978 and the standard signature executed in December 1978, which was most contemporaneous to the date of the execution of the questioned signatures, he found they were similar and showed that they were written by one person.[19]

We note that Cruz's findings as to the loss of muscular control in Alegria's hand allegedly due to her physical condition was contradicted by Torres' testimony that the standard signature executed by Alegria in December 1978, *i.e.*, one month after the alleged will was executed, showed that she was in good physical condition, because her signature was smooth with flowing strokes with an even alignment which indicated that Alegria had good muscular control and coordination.[20] Notably, Dr. Elena Cariaso, the doctor who was tasked by the probate court to examine the physical and mental condition of Alegria in December 1978, testified that Alegria was physically and mentally fit with only a weakness in her lower extremities; thus, corroborating Torres' finding that Alegria's hand had good muscular control and coordination. In fact, Torres established that the standard signatures written in 1966, 1974, 1976 and in December 1978, all showed that the signatures were made in a continuous, spontaneous and unconscious manner[21] unlike that of the questioned signatures.

Expert opinions are not ordinarily conclusive. They are generally regarded as purely advisory in character. The courts may place whatever weight they choose upon and may reject them, if they find them inconsistent with the facts in the case

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[19] TSN, January 29, 1996.

[20] TSN, December 15, 1978, p. 27.

[21] *Id*. at 29.

or otherwise unreasonable. When faced with conflicting expert opinions, as in this case, courts give more weight and credence to that which is more complete, thorough, and scientific.[22] The value of the opinion of a handwriting expert depends not upon his mere statements of whether a writing is genuine or false, but upon the assistance he may afford in pointing out distinguishing marks, characteristics and discrepancies in and between genuine and false specimens of writing which would ordinarily escape notice or detection from an unpracticed observer.[23]

We agree with the RTC and the CA in giving more weight and credence to the testimony of Torres as the examination conducted by Torres was complete, thorough and scientific. We find that the RTC had the opportunity to examine the relevant documents and make comparisons thereof. In fact, upon our own comparison of the questioned signatures and the standard signatures taking into consideration inconspicuous differences noted by Torres on the questioned and standard signatures, we find that the questioned signatures showed substantial differences with that of the standard signatures of Alegria.

Petitioner claims that the testimonies of the notary public, as well as the two attesting witnesses that they saw Alegria sign the will in their presence, should have outweighed the testimony of Torres.

We are not persuaded.

In his testimony, Notary Public Farrales testified that when he, together with another lawyer, Atty. Cordon, went inside the room of Alegria who was in bed, he presented to her copies of the will which he brought from his office;[24] that Alegria read the same and called in petitioner Felizardo to bring some small board where she could write; after Felizardo handed the same, he again left the room. Farrales said that Alegria signed the will in his presence, as well as in the presence of Atty.

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[22] G.R. No. 173192.

[23] *Id*.

[24] November 11, 1978, p. 6.

Cordon and the other attesting witnesses, Mercedes and Victorino; that petitioner Felizardo was just outside the room when the signing was on-going;[25] that Farrales was the one who assisted Alegria in turning the pages of the documents and was the one who pointed to her the portion where she was to affix her signatures;[26] and that after the signing and notarization of the will, Alegria requested them to call on petitioner Felizardo and once Felizardo was inside the room, Alegria gave the documents to the latter who placed the will in an envelope.[27]

On the other hand, Mercedes testified that when she and Victorino entered Alegria's room, she saw Alegria, Felizardo, Attys. Farrales and Cordon; that Alegria instructed petitioner Felizardo to read aloud the will which Felizardo did;[28] and that Alegria and the other witnesses signed the will in the presence of each other and was duly notarized; and that she saw Felizardo keep the will inside the vault.[29]

Victorino testified that when he and Mercedes entered Alegria's room, he saw Atty. Farrales, Cordon, Felizardo and Alegria who was in a reclined position in her bed; that Alegria asked Felizardo to get the sealed document from a cabinet;[30] that Alegria told petitioner Felizardo to give each one of them a copy of the document and instructed petitioner Felizardo to read the contents of the will aloud;[31] and that he saw Alegria signed the will in their presence.

Notably, their testimonies showed material inconsistencies which affected their credibilities. Farrales testified that the copies of the alleged will came from his office and he was the one

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[25] *Id.* at 8.

[26] *Id*.

[27] *Id.* at 12.

[28] TSN, September 20, 1995, p. 13.

[29] *Id.* at 15.

[30] TSN, March 4, 1996, p. 26.

[31] *Id.* at 28.

who gave the same to Alegria which, however, was contrary to Victorino's claim that petitioner Felizardo got the alleged will from the cabinet. Farrales testified that petitioner Felizardo was not inside the room when the signing was ongoing which was again contrary to the claims of both Mercedes and Victorino that petitioner Felizardo was inside the room while the signing was on-going; and that Alegria even instructed Felizardo to read aloud the contents of the same to them. Notably, Farrales testified that he was the one who turned the pages of the will and was also the one who pointed to Alegria the portion where to affix her signatures and that no other person rendered such assistance except him.[32] However, in petitioner Felizardo's testimony, he said that he was present when the will was being signed by Alegria.[33] In fact, petitioner Felizardo submitted photographs which were admittedly taken by co-petitioner Juan to prove the former's presence during the signing and to show that he was the one assisting Alegria in signing the will.

Such contradictory statements coming from persons who allegedly were present when the will was executed render doubtful the genuineness of the alleged forged will. Thus, we find no error committed by the RTC in not giving credence to their testimonies.

We find the elements of falsification of public document present in this case. Essentially, the elements of the crime of Falsification of Public Document under Article 172 (1) of the Revised Penal Code (RPC) are: (1) that the offender is a private individual; (2) that the offender committed any of the acts of falsification enumerated under Article 171; and (3) that the act of falsification is committed in a public document. Under paragraph 2 of Article 171, a person may commit falsification of a public document by causing it to appear in a document that a person or persons participated in an act or proceeding, when such person or persons did not, in fact, so participate in the act or proceeding.

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[32] TSN, November 11, 1978, p. 8.

[33] *Id.* at 5.

In this case, petitioners are private individuals who presented the alleged will to the probate court and made it appear that Alegria signed the alleged will disposing of her rights and interest in the real properties, as well as all of her personal properties to petitioners when in fact petitioners knew that Alegria never signed such alleged will as her signatures therein were forged.

We find *apropos* the findings of the RTC that petitioners conspired to perpetuate such forgery, to wit:

1. The so-called Will and Testament was admitted by Felizardo S. Obando in open hearing to have been dictated by him to a certain Atty. Alcantara allegedly as voiced out to him by Alegria;
2. He said he procured the service of said lawyer and the very notary public, one Atty. C. Farrales to notarize it;
3. Juanito Obando enticed the couple Mercedes B. Santos and Victorino Cruz into acting as witnesses, Mercedes being his sister-in-law, and his taking pictures of the entire ceremony of signing such document. This taking of such pictures is itself a sign of evil intention, because it is an expectancy of future rift or trouble;
4. Felizardo held and kept the questioned document with him from its inception to its alleged signing and up to Alegria's death which possession and complete control lasted for several months;
5. Felizardo and Juanito Obando and their respective families again by their joint admissions, gained enormously and by reason of said will.

The crime of falsification of public document was the means for petitioners to commit estafa. The elements of *estafa* under Article 315, par. 1 (b) of the RPC[34] are as follows: (1) that money, goods or other personal property is received by the

[34] Article 315(1)(b) of the Revised Penal Code punishes estafa committed as follows:

1. With unfaithfulness or abuse of confidence, namely:

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offender in trust, or on commission, or for administration, or under any other obligation involving the duty to make delivery of or to return the same; (2) that there be misappropriation or conversion of such money or property by the offender or denial on his part of such receipt; and (3) that such misappropriation or conversion or denial is to the prejudice of another.

Petitioner Felizardo argued that he already had in his possession the personal properties of Alegria which included the pieces of jewelry by virtue of an alleged general power of attorney executed by Alegria in his favor. However, as correctly argued by the Solicitor General, such agency between Alegria and petitioner Felizardo, was terminated upon Alegria's death; thus, he had no basis for taking possession and custody of Alegria's properties after her death. However, by virtue of the falsified will which petitioners presented for probate, and by which petitioner Felizardo became a co-administrator of the estate of the Figueras couple, and had gained possession of the jewelry, he was not able to account for the same when ordered to do so by the probate court.

On the other hand, co-petitioner Juan admitted that the pieces of jewelry went to his daughters and nieces, while the real properties were already sold even while the intestate and probate proceedings were still pending in court.

Petitioners' misappropriation of the jewelry was to the prejudice of Eduardo Figueras who also has the right to Alegria's jewelry in general which were part of the declared conjugal estate of his father Jose and Alegria Figueras. Notably, Alegria, as administratrix of the estate of Jose, submitted in 1966 an inventory of the conjugal real and personal properties of the Figueras couple and one of those listed under conjugal personal properties was jewelry in the amount of ₱2,150.00. Such inventory was

(b) By misappropriating or converting, to the prejudice of another, money, goods, or any other personal property received by the offender in trust or on commission, or for administration, or under any other obligation involving the duty to make delivery of or to return the same, even though such obligation be totally or partially guaranteed by a bond; or by denying having received such money, goods, or other property.

contained in the Order dated September 10, 1980 of the probate court and which was submitted in evidence by petitioners.

The crime committed was estafa through falsification of public document. Being a complex crime, the penalty for the most serious crime shall be imposed in its maximum period.[35] While we sustain the conviction of petitioners of the crime charged, we found, however, that the penalty imposed by the trial court and affirmed by the Court of Appeals was not proper.

The amount of damages is the basis of the penalty for estafa. However, we note that the prosecution failed to satisfactorily show that the amount of jewelry misappropriated was indeed two million pesos. The only evidence on record which would establish the amount of the jewelry was the inventory submitted in 1966 by Alegria where she listed the jewelry in the amount of ₱2,150.00.

Since the amount misappropriated by petitioners was established to be only in the amount of ₱2,150.00, the applicable provision is paragraph (3) of Article 315 of the Revised Penal Code, which imposes the penalty of *arresto mayor* in its maximum period to *prision correccional* in its minimum period, where the amount defrauded is over ₱200.00 but does not exceed ₱6,000.00. Thus, in this case, it appears that the most serious crime, which should be the basis of penalty for the complex crime of estafa through falsification of public document, would be the falsification and, under Article 172 of the Revised Penal Code, the penalty is *prision correccional* in its medium and maximum periods and a fine of not more than ₱5,000.00.

Thus, the maximum penalty to be imposed in this case is the medium period of *prision correccional* in its medium and maximum periods, there being no mitigating or aggravating

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[35] Art. 48 of the Revised Penal Code provides:

Art. 48. *Penalty for complex crimes*. - When a single act constitutes two or more grave or less grave felonies, or when an offense is a necessary means for committing the other, the penalty for the most serious crime shall be imposed, the same to be applied in its maximum period. (As amended by Act No. 4000).

circumstances. Applying the Indeterminate Sentence Law, the minimum penalty should be taken from the penalty next lower in degree which is *arresto mayor* maximum to *prision correccional* minimum in any of its period.

WHEREFORE, the petition is *DENIED*. The Decision dated August 13, 1998 and the Resolution dated May 17, 1999 of the Court of Appeals are *AFFIRMED* with *MODIFICATION* as to the penalty imposable. Petitioners are hereby sentenced to suffer the penalty of one (1) year and one (1) day of *prision correccional*, as minimum, to four (4) years, nine (9) months and ten (10) days of *prision correccional*, as the maximum, and to pay a fine of ₱5,000.00.

SO ORDERED.

Carpio (Chairperson), Nachura, Abad, and *Mendoza, JJ.,* concur.

SPECIAL THIRD DIVISION

[G.R. Nos. 147925-26. July 7, 2010]

ELPIDIO S. UY, doing business under the name and style of EDISON DEVELOPMENT & CONSTRUCTION, *petitioner, vs.* **PUBLIC ESTATES AUTHORITY,** *respondent.*

SYLLABUS

1. CIVIL LAW; OBLIGATIONS AND CONTRACTS; LANDSCAPING AND CONSTRUCTION AGREEMENT; AWARD FOR STANDBY EQUIPMENT COSTS; FORMULA; CASE AT BAR.— In computing the award for standby equipment cost. The award must, therefore, be modified using the following formula: Actual period of delay (18.2 months) x average rate per ACEL x number of equipment. However, we cannot simply accept in full Uy's claim that he is entitled to ₱71,009,557.95 as standby equipment cost. The records show that not all of the equipment were operational; several were under repair. Accordingly, we find it necessary to remand the records of the case to the Construction Industry

Arbitration Commission (CIAC), which decided the case in the first instance, for the proper computation of the award of standby equipment cost based on the foregoing formula.

2. ID.; HUMAN RELATIONS; PRINCIPLE OF UNJUST ENRICHMENT; WHEN INAPPLICABLE. — We stress that the principle of unjust enrichment cannot be validly invoked by a party who, through his own act or omission, took the risk of being denied payment for additional costs by not giving the other party prior notice of such costs and/or by not securing their written consent thereto, as required by law and their contract.

3. REMEDIAL LAW; CIVIL PROCEDURE; JUDGMENTS; PRINCIPLE OF *RES JUDICATA*; A PARTY, EITHER BY VARYING THE FORM OF ACTION OR BY BRINGING FORWARD IN A SECOND CASE ADDITIONAL PARTIES OR ARGUMENTS, CANNOT ESCAPE THE EFFECTS OF *RES JUDICATA* WHEN THE FACTS REMAIN THE SAME; CASE AT BAR. — [W]e find no cogent reason to lift the injunction issued in CIAC Case No. 03-2001. We are not persuaded by Uy's argument that the claims under CIAC Case No. 03-2001 are different from his claims in CIAC Case No. 02-2000. As we explained in our Decision, there is only one cause of action running through Uy's undertakings – the violation of his alleged right under the Landscaping and Construction Agreement. Therefore, the landscaping agreement is indispensable in the prosecution of his claims in both CIAC Cases No. 02-2000 and No. 03-2001. We reiterate that a party, either by varying the form of action or by bringing forward in a second case additional parties or arguments, cannot escape the effects of *res judicata* when the facts remain the same, at least where such new parties or matter could have been impleaded or pleaded in the prior action.

4. ID.; ID.; ID.; ID.; NOT VIOLATED IN CASE AT BAR. — PEA insists that our Decision in this case transgresses the principle of *res judicata*. It asserts that the propriety of Uy's monetary claims against PEA had already been considered and passed upon by this Court in G.R. Nos. 147933-34. The argument is specious. In G.R. Nos. 147933-34, this Court was very explicit in its declaration that its Decision was independent of, and without prejudice to, the appeal filed by Uy, *viz.*: "However, in order not to prejudice the deliberations of the Court's Second Division in G.R. Nos. 147925-26, it should be stated that the findings made in this case, especially as regards the correctness of the findings of the CIAC,

are limited to the arbitral awards granted to respondent Elpidio S. Uy and to the denial of the counterclaims of petitioner Public Estates Authority. Our decision in this case does not affect the other claims of respondent Uy which were not granted by the CIAC in its questioned decision, the merits of which were not submitted to us for determination in the instant petition." Indubitably, this Court's Decision in G.R. Nos. 147933-34 will not bar the grant of additional award to Uy.

APPEARANCES OF COUNSEL

Lucas C. Carpio for petitioner.
Office of the Government Corporate Counsel for respondent.

R E S O L U T I O N

NACHURA, *J.*:

Before us are (i) the Motion for Partial Reconsideration filed by petitioner Elpidio S. Uy (Uy), doing business under the name and style of Edison Development & Construction (EDC), and (ii) the Motion for Reconsideration filed by respondent Public Estates Authority (PEA) of our June 8, 2009 Decision, the *fallo* of which reads:

> WHEREFORE, the petition is **PARTIALLY GRANTED**. The assailed Joint Decision and Joint Resolution of the Court of Appeals in CA-G.R. SP Nos. 59308 and 59849 are **AFFIRMED** with **MODIFICATIONS**. Respondent Public Estates Authority is ordered to pay Elpidio S. Uy, doing business under the name and style Edison Development and Construction, ₱55,680,492.38 for equipment rentals on standby; ₱2,275,721.00 for the cost of idle manpower; and ₱6,050,165.05 for the construction of the nursery shade net area; plus interest at 6% per annum to be computed from the date of the filing of the complaint until finality of this Decision and 12% per annum thereafter until full payment. Respondent PEA is further ordered to pay petitioner Uy 10% of the total award as attorney's fees.
>
> SO ORDERED.[1]

[1] *Rollo*, p. 995.

Uy seeks partial reconsideration of our Decision. He argues that:

I

x x x THE HONORABLE COURT ERRED IN THE COMPUTATION OF THE DAMAGES DUE THE PETITIONER FOR THE STANDBY EQUIPMENT COST.

II

x x x PETITIONER SHOULD BE REIMBURSED FOR COSTS INCURRED FOR ADDITIONAL HAULING DISTANCE OF TOPSOIL ALSO BECAUSE THE EVIDENCE ON RECORD CONFIRMS THE EXISTENCE OF RESPONDENT PEA'S WRITTEN CONSENT, AND THE FACT THAT IT IS INDESPENSABLE TO COMPLETING THE PROJECT. WITHOUT SUCH ASSURANCE OF REIMBURSEMENT, PETITIONER WOULD NOT HAVE TAKEN SUCH PRUDENT ACTION.

III

x x x PETITIONER SHOULD BE ALLOWED TO RECOVER THE COSTS HE INCURRED FOR THE MOBILIZATION OF WATER TRUCKS ALSO BECAUSE RESPONDENT BREACHED ITS OBLIGATIONS UNDER THE CONTRACT.

IV

WITH REGARD TO THE COURT OF APPEALS' ILLEGAL INJUNCTION PREVENTING PETITIONER FROM RECOVERING HIS CLAIMS AGAINST RESPONDENT PEA IN CIAC CASE NO. 03-2001, THIS SHOULD HAVE BEEN LIFTED SINCE IT INVOLVES CLAIMS SEPARATE AND DISTINCT FROM THE CASE *A QUO*.[2]

PEA, on the other hand, assails the Decision on the following grounds:

I.

THE FACTUAL FINDINGS AND CONCLUSIONS OF THE CONSTRUCTION INDUSTRY ARBITRATION COMMISSION (CIAC) INSOFAR AS THE ARBITRAL AWARD TO PETITIONER IS CONCERNED, WHICH THE COURT OF APPEALS AND THE FIRST DIVISION OF THIS HONORABLE COURT AFFIRMED, HAS LONG BECOME FINAL AND EXECUTORY.

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[2] *Id*. at 999.

II.

THE CIAC ARBITRAL AWARD HAD ALREADY BEEN IMPLEMENTED UNDER WRIT OF EXECUTION DATED 19 SEPTEMBER 2000, WRIT OF EXECUTION DATED 31 AUGUST 2001 AND SUPPLEMENTAL WRIT OF EXECUTION DATED 10 APRIL 2002.[3]

We will deal first with Uy's motion.

Uy objects to the factor rate used in the computation of the award for standby equipment costs. He points out that the actual number of equipment deployed and which remained on standby, occasioned by the delay in delivery of work areas, has not been considered in the computation. The Association of Carriers and Equipment Lessors (ACEL) rate or the factor rate used was only the total average rate, without regard to the actual number of equipment deployed. He, therefore, insists that an increase in the award is in order.

We find Uy's argument on this point meritorious; and this Court is swayed to modify the formula used in the computation of the award.

The Certification,[4] dated December 6, 1996, shows that EDC mobilized the following equipment for the Heritage Park Project, *viz.*:

Description	Number
Road Grader	2
Pay Loader	2
Dump Trucks	10
Tractor with attachments	2
Backhoe	2
Delivery Trucks	3
Rolo-tiller	0
Concrete Mixer	4
Bar Cutter	2

[3] *Id*. at 1047.

[4] Exhibit "J"; Folder No. 2, CIAC Case No. 02-2002.

Welding Machine	2
Roller	1
Bulldozer	1
Concrete Cutter	2
Plate Compactor	2
Compressor/Jack Hammer	3
Genset – 5KVA	1
Electric drill/ Holesaw	4

These equipment remained in the project site on the days that EDC was waiting for the turnover of additional work areas.[5] Thus, we agree with Uy that the actual number of equipment mobilized should be included in computing the award for standby equipment cost. The award must, therefore, be modified using the following formula:

Actual period of delay (18.2 months) x average rate per ACEL x number of equipment

However, we cannot simply accept in full Uy's claim that he is entitled to ₱71,009,557.95 as standby equipment cost. The records show that not all of the equipment were operational; several were under repair.[6] Accordingly, we find it necessary to remand the records of the case to the Construction Industry Arbitration Commission (CIAC), which decided the case in the first instance, for the proper computation of the award of standby equipment cost based on the foregoing formula.

On the claim for costs for additional hauling distance of topsoil and for mobilization of water truck, we maintain our ruling that a written approval of PEA's general manager was indispensable before the claim for additional cost can be granted. In this case, the additional costs were incurred without the written approval of PEA. The denial of Uy's claims was, therefore, appropriate.

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[5] See Exhibits "F", "H-1" to "H-29", "I"; *id*.

[6] See Exhibit "C-1", *id*.

We cannot sustain this claim that is premised mainly on the principle of unjust enrichment. We stress that the principle of unjust enrichment cannot be validly invoked by a party who, through his own act or omission, took the risk of being denied payment for additional costs by not giving the other party prior notice of such costs and/or by not securing their written consent thereto, as required by law and their contract.[7]

Similarly, we find no cogent reason to lift the injunction issued in CIAC Case No. 03-2001. We are not persuaded by Uy's argument that the claims under CIAC Case No. 03-2001 are different from his claims in CIAC Case No. 02-2000. As we explained in our Decision, there is only one cause of action running through Uy's undertakings – the violation of his alleged right under the Landscaping and Construction Agreement. Therefore, the landscaping agreement is indispensable in the prosecution of his claims in both CIAC Cases No. 02-2000 and No. 03-2001. We reiterate that a party, either by varying the form of action or by bringing forward in a second case additional parties or arguments, cannot escape the effects of *res judicata* when the facts remain the same, at least where such new parties or matter could have been impleaded or pleaded in the prior action.

In fine, except for the claim for standby equipment costs, this Court finds no cogent reason to depart from our June 8, 2009 Decision.

We now go to PEA's motion.

PEA insists that our Decision in this case transgresses the principle of *res judicata*. It asserts that the propriety of Uy's monetary claims against PEA had already been considered and passed upon by this Court in G.R. Nos. 147933-34.

The argument is specious.

In G.R. Nos. 147933-34, this Court was very explicit in its declaration that its Decision was independent of, and without prejudice to, the appeal filed by Uy, *viz.*:

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[7] *Powton Conglomerate, Inc. v. Agcolicol*, 448 Phil. 643 (2003).

However, in order not to prejudice the deliberations of the Court's Second Division in G.R. Nos. 147925-26, it should be stated that the findings made in this case, especially as regards the correctness of the findings of the CIAC, are limited to the arbitral awards granted to respondent Elpidio S. Uy and to the denial of the counterclaims of petitioner Public Estates Authority. Our decision in this case does not affect the other claims of respondent Uy which were not granted by the CIAC in its questioned decision, the merits of which were not submitted to us for determination in the instant petition.[8]

Indubitably, this Court's Decision in G.R. Nos. 147933-34 will not bar the grant of additional award to Uy.

WHEREFORE, Uy's Motion for Partial Reconsideration is *PARTLY GRANTED*. PEA's Motion for Reconsideration, on the other hand, is *DENIED* with *FINALITY*. The assailed Decision dated June 8, 2009 is *AFFIRMED* with *MODIFICATION* as to the award of standby equipment cost. The case is hereby *REMANDED* to the Construction Industry Arbitration Commission solely for the purpose of computing the exact amount of standby equiptment cost pursuant to the formula herein specified. The CIAC is *DIRECTED* to compute the award and effect payment thereof within thirty (30) days from receipt of the records of this case.

No further pleadings will be entertained.

SO ORDERED.

Corona, C.J.,[*] *Velasco, Jr.,*[**] *Brion,*[***] and *Peralta, JJ., concur.*

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[8] *Public Estates Authority v. Uy*, 423 Phil. 407, 419 (2001).

[*] Designated member vice Associate Justice Minita V. Chico-Nazarino (ret.) per Special Order No. 631 dated April 29, 2009.

[**] Designated member vice Associate Justice Conchita Carpio Morales per Special Order No. 649 dated May 25, 2009.

[***] Designated member vice Justice Consuelo Ynares-Santiago (ret.) per raffle dated October 21, 2009.

SECOND DIVISION

[G.R. No. 161849. July 7, 2010]

WALLEM PHILIPPINES SHIPPING, INC., *petitioner, vs.* **S.R. FARMS, INC.,** *respondent.*

SYLLABUS

1. MERCANTILE LAW; TRANSPORTATION LAW; CARRIAGE OF GOODS BY SEA ACT; SHORTAGE, LOSS OF OR DAMAGE TO CARGOES SUSTAINED DURING TRANSIT; NOTICE OF LOSS OR DAMAGE; THREE-DAY NOTICE; NON-COMPLIANCE THEREWITH WILL NOT BAR RECOVERY IF SUIT IS FILED WITHIN THE ONE-YEAR PERIOD OF LIMITATION. – Under Section 3 (6) of the COGSA, notice of loss or damages must be filed within three days of delivery. Admittedly, respondent did not comply with this provision. Under the same provision, however, a failure to file a notice of claim within three days will not bar recovery if a suit is nonetheless filed within one year from delivery of the goods or from the date when the goods should have been delivered. In *Loadstar Shipping Co., Inc. v. Court of Appeals,* the Court ruled that a claim is not barred by prescription as long as the one-year period has not lapsed.

2. REMEDIAL LAW; CIVIL PROCEDURE; AMENDED AND SUPPLEMENTAL PLEADINGS; THE FILING OF AN AMENDED PLEADING DOES NOT RETROACT TO THE DATE OF THE FILING OF THE ORIGINAL; EXCEPTION; INAPPLICABLE TO THE PARTY IMPLEADED FOR THE FIRST TIME IN THE AMENDED COMPLAINT. – The settled rule is that the filing of an amended pleading does not retroact to the date of the filing of the original; hence, the statute of limitation runs until the submission of the amendment. It is true that, as an exception, this Court has held that an amendment which merely supplements and amplifies facts originally alleged in the complaint relates back to the date of the commencement of the action and is not barred by the statute of limitations which expired after the service of the original complaint. The exception, however, would not apply to the party impleaded for the first time in the amended complaint. The rule on the non-applicability

of the curative and retroactive effect of an amended complaint, insofar as newly impleaded defendants are concerned, has been established as early as in the case of *Aetna Insurance Co. v. Luzon Stevedoring Corporation*. In the said case, the defendant *Barber Lines Far East Service* was impleaded for the first time in the amended complaint which was filed after the one-year period of prescription. The order of the lower court dismissing the amended complaint against the said defendant on ground of prescription was affirmed by this Court.

APPEARANCES OF COUNSEL

Del Rosario & Del Rosario for petitioner.
Linsangan Linsangan & Linsangan Law Office for petitioner.

D E C I S I O N

PERALTA, *J.*:

Assailed in the present petition for review on *certiorari* are the Decision[1] and Resolution[2] of the Court of Appeals (CA) dated June 2, 2003 and January 15, 2004, respectively, in CA-G.R. CV No. 65857. The CA Decision reversed and set aside the Decision[3] dated October 8, 1999 of the Regional Trial Court (RTC) of Manila, Branch 11, in Civil Case No. 93-65021, while the CA Resolution denied petitioners' Motion for Reconsideration.

The facts of the case, as found by the RTC and affirmed by the CA, are as follows:

x x x On March 25, 1992, Continental Enterprises, Ltd. loaded on board the vessel M/V "Hui Yang," at Bedi Bunder, India, a shipment

[1] Penned by Associate Justice Jose L. Sabio, Jr., with Associate Justices B.A. Adefuin-de la Cruz and Hakim S. Abdulwahid, concurring; *rollo*, pp. 110-123.

[2] *Rollo*, pp. 157-158.

[3] Records, pp. 533-538.

of Indian Soya Bean Meal, for transportation and delivery to Manila, with plaintiff [herein respondent] as consignee/notify party. The said shipment is said to weigh 1,100 metric tons and covered by Bill of Lading No. BEDI 4 dated March 25, 1992 (Exhibit A; also Exhibit I). The vessel is owned and operated by defendant Conti-Feed, with defendant [herein petitioner] Wallem as its ship agent.

The subject cargo is part of the entire shipment of Indian Soya Bean Meal/India Rapeseed Meal loaded in bulk on board the said vessel for delivery to several consignees. Among the consignees were San Miguel Corporation and Vitarich Corporation, including the herein plaintiff (Exhibit A; Exhibits 1 to 6; TSN, p. 13, June 28, 1996).

On April 11, 1992, the said vessel, M/V "Hui Yang" arrived at the port of Manila, Pier 7 South Harbor. Thereafter, the shipment was discharged and transferred into the custody of the receiving barges, the NorthFront-333 and NorthFront-444. The offloading of the shipment went on until April 15, 1992 and was handled by [Ocean Terminal Services, Inc.] OTSI using its own manpower and equipment and without the participation of the crew members of the vessel. All throughout the entire period of unloading operation, good and fair weather condition prevailed.

At the instance of the plaintiff, a cargo check of the subject shipment was made by one Lorenzo Bituin of Erne Maritime and Allied Services, Co. Inc., who noted a shortage in the shipment which was placed at 80.467 metric tons based on draft survey made on the NorthFront-33 and NorthFront-444 showing that the quantity of cargo unloaded from the vessel was only 1019.53 metric tons. Thus, per the bill of lading, there was an estimated shortage of 80.467.

Upon discovery thereof, the vessel chief officer was immediately notified of the said short shipment by the cargo surveyor, who accordingly issued the corresponding Certificate of Discharge dated April 15, 1992 (Exhibit D). The survey conducted and the resultant findings thereon are embodied in the Report of Superintendence dated April 21, 1992 (Exhibits C to C-2) and in the Barge Survey Report both submitted by Lorenzo Bituin (Exhibits C-3 and C-4). As testified to by Lorenzo Bituin, this alleged shortage of 80.467 metric tons was arrived at using the draft survey method which calls for the measurement of the light and loaded condition of the barge in relation to the weight of the water supposedly displaced.[4]

[4] *Id.* at 534-535.

Petitioner then filed a Complaint for damages against Conti-Feed & Maritime Pvt. Ltd., a foreign corporation doing business in the Philippines and the owner of *M/V* "Hui Yang"; RCS Shipping Agencies, Inc., the ship agent of Conti-Feed; Ocean Terminal Services, Inc. (OTSI), the arrastre operator at Anchorage No. 7, South Harbor, Manila; and Cargo Trade, the customs broker.[5]

On June 7, 1993, respondent filed an Amended Complaint impleading herein petitioner as defendant alleging that the latter, and not RCS, was the one which, in fact, acted as Conti-Feed's ship agent.[6]

On June 22, 1993, the complaint against Cargo Trade was dismissed at the instance of respondent on the ground that it has no cause of action against the former.[7]

Subsequently, upon motion of RCS, the case against it was likewise dismissed for lack of cause of action.[8]

Meanwhile, defendant OTSI filed its Answer with Counterclaim and Crossclaim[9] denying the material allegations of the Complaint and alleging that it exercised due care and diligence in the handling of the shipment from the carrying vessel unto the lighters; no damage or loss whatsoever was sustained by the cargo in question while being discharged by OTSI; petitioner's claim had been waived, abandoned or barred by laches or estoppels; liability, if any, is attributable to its co-defendants.

For its part, petitioner denied the allegations of respondent claiming, among others, that it is not accountable nor responsible for any alleged shortage sustained by the shipment while in the possession of its co-defendants; the alleged shortage was due to negligent or faulty loading or unloading of the cargo by the

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[5] *Id.* at 1.

[6] *Id.* at 37.

[7] *Id.* at 50.

[8] *Id.* at 164.

[9] *Id.* at 18-20.

stevedores/shipper/consignee; the shortage, if any, was due to pre-shipment damage, inherent nature, vice or defect of the cargo for which herein petitioner is not liable; respondent's claim is already barred by laches and/or prescription.[10]

Conti-Feed did not file an Answer.

Pre-Trial Conference was conducted, after which trial ensued.

On October 8, 1999, the RTC rendered its Decision[11] dismissing respondent's complaint, as well as the opposing parties' counterclaims and crossclaims.

Aggrieved by the RTC Decision, respondent filed an appeal with the CA.

On June 2, 2003, the CA rendered its presently assailed Decision disposing as follows:

> WHEREFORE, the decision appealed from is hereby REVERSED and SET ASIDE and another one entered ordering defendants-appellees Conti-Feed and Maritime Pvt. Ltd. and Wallem Philippines Shipping, Inc., to pay the sum representing the value of the 80.467 metric tons of Indian Soya Beans shortdelivered, with legal interest from the time the judgment becomes final until full payment, plus attorney's fees and expenses of litigation of ₱10,000.00, as well as the cost of suit.
>
> SO ORDERED.[12]

Petitioner filed a Motion for Reconsideration.

On July 8, 2003, respondent filed a Motion for a More Definite Dispositive Portion[13] praying that the value of the 80.467 metric tons of Indian Soya Beans, which petitioner and Conti-Feed were ordered to pay, be specified in the dispositive portion of the CA Decision.

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[10] *Id.* at 67-73.

[11] *Rollo*, pp. 66-71.

[12] *Id.* at 122.

[13] CA *rollo*, pp. 185-194.

Petitioner filed its Comment/Opposition[14] to private respondent's Motion.

On January 15, 2004, the CA issued a Resolution denying petitioner's Motion for Reconsideration and modifying the dispositive portion of its Decision, thus:

> WHEREFORE, the decision appealed from is hereby REVERSED and SET ASIDE and another one entered ordering defendants-appellees Conti-Feed and Maritime Pvt. Ltd. and Wallem Shipping, Inc., to pay the sum of $19,070.06 representing the value of the 80.467 metric tons of Indian Soya Beans shortdelivered, with legal interest from the time the judgment becomes final until full payment, plus attorney's fees and expenses of litigation of ₱10,000.00, as well as the costs of suit.
>
> SO ORDERED.[15]

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

I

THE COURT OF APPEALS ERRED IN APPLYING THE PRESUMPTION OF NEGLIGENCE UNDER ARTICLE 1735 OF THE CIVIL CODE. THIS PROVISION DOES NOT APPLY IN THIS CASE BECAUSE THERE WAS NO LOSS OR SHORTAGE OR SHORTDELIVERY.

II

THE COURT OF APPEALS ERRED IN GIVING DUE COURSE TO THE CASE CONSIDERING THAT:

A. THE CLAIM WAS ALREADY TIME-BARRED WHEN THE CASE WAS FILED AGAINST HEREIN PETITIONER ON 8 MAY 1993, AS PROVIDED IN SECTION 3 (6) OF THE COGSA. THE ONE-YEAR PRESCRIPTIVE PERIOD COMMENCED ON 15 APRIL 1992 WHEN THE SUBJECT SHIPMENT WAS DELIVERED TO PRIVATE RESPONDENT AND LAPSED ON 15 APRIL 1993; AND

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[14] *Id.* at 217-223.

[15] *Id.* at 231-232.

B. [RESPONDENT] WAIVED ITS RIGHT OF ACTION WHEN IT DID NOT GIVE A WRITTEN NOTICE OF LOSS TO THE PETITIONER WITHIN THREE (3) DAYS FROM DISCHARGE OF THE SUBJECT SHIPMENT AS PROVIDED IN SECTION 3 (6) OF THE COGSA.

III

IN THE REMOTE POSSIBILITY OF LOSS OR SHORTAGE OR SHORTDELIVERY, THE COURT OF APPEALS ERRED IN IMPUTING NEGLIGENCE AGAINST THE PETITIONER WHICH WAS NOT RESPONSIBLE IN LOADING AND/OR DISCHARGING THE SUBJECT SHIPMENT.

IV

THE COURT OF APPEALS ERRED IN GRANTING [RESPONDENT'S] MOTION FOR A MORE DEFINITE DISPOSITIVE PORTION WITHOUT STATING IN THE DECISION, THE LEGAL BASES FOR DOING SO.

V

THE COURT OF APPEALS ERRED IN GRANTING THE MOTION FOR A MORE DEFINITE DISPOSITIVE PORTION BECAUSE [RESPONDENT] FILED SAID MOTION MORE THAN FIFTEEN (15) DAYS AFTER [RESPONDENT] RECEIVED THE DECISION OF THE COURT OF APPEALS. THE COURT OF APPEALS FURTHER ERRED IN INSERTING A DEFINITE MONETARY VALUE OF THE ALLEGED SHORTAGE BECAUSE THERE WAS NO FACTUAL FINDING, BOTH IN THE TRIAL COURT AND IN THE COURT OF APPEALS, AS TO THE SPECIFIC AMOUNT OF THE ALLEGED SHORTDELIVERED CARGO.[16]

The Court finds it proper to resolve first the question of whether the claim against petitioner was timely filed.

With respect to the prescriptive period involving claims arising from shortage, loss of or damage to cargoes sustained during transit, the law that governs the instant case is the Carriage of Goods by Sea Act[17] (COGSA), Section 3 (6) of which provides:

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[16] *Rollo*, pp. 13-14.

[17] *Loadstar Shipping Co., Inc. v. Court of Appeals*, 373 Phil. 976, 989 (1999).

Unless notice of loss or damage and the general nature of such loss or damage be given in writing to the carrier or his agent at the port of discharge or at the time of the removal of the goods into the custody of the person entitled to delivery thereof under the contract of carriage, such removal shall be *prima facie* evidence of the delivery by the carrier of the goods as described in the bill of lading. If the loss or damage is not apparent, the notice must be given within three days of delivery.

Said notice of loss or damage may be endorsed upon the receipt for the goods given by the person taking delivery thereof.

The notice in writing need not be given if the state of the goods has at the time of their receipt been the subject of joint survey or inspection.

In any event, the carrier and the ship shall be discharged from all liability in respect of loss or damage unless suit is brought within one year after delivery of the goods or the date when the goods should have been delivered; *Provided,* That, if a notice of loss or damage, either apparent or concealed, is not given as provided for in this section, that fact shall not affect or prejudice the right of the shipper to bring suit within one year after the delivery of the goods or the date when the goods should have been delivered.

In the case of any actual or apprehended loss or damage, the carrier and the receiver shall give all reasonable facilities to each other for inspecting and tallying the goods.

Petitioner claims that pursuant to the above-cited provision, respondent should have filed its Notice of Loss within three days from delivery. It asserts that the cargo was fully discharged from the vessel on April 15, 1992, but that respondent failed to file any written notice of claim. Petitioner also avers that, pursuant to the same provision of the COGSA, respondent's claim had already prescribed because the complaint for damages was filed more than one year after the shipment was discharged.

The Court agrees.

Under Section 3 (6) of the COGSA, notice of loss or damages must be filed within three days of delivery. Admittedly, respondent did not comply with this provision.

Under the same provision, however, a failure to file a notice of claim within three days will not bar recovery if a suit is nonetheless filed within one year from delivery of the goods or from the date when the goods should have been delivered.[18]

In *Loadstar Shipping Co., Inc. v. Court of Appeals*,[19] the Court ruled that a claim is not barred by prescription as long as the one-year period has not lapsed. Thus, in the words of the *ponente,* Chief Justice Hilario G. Davide Jr.:

> Inasmuch as neither the Civil Code nor the Code of Commerce states a specific prescriptive period on the matter, the Carriage of Goods by Sea Act (COGSA) — which provides for a one-year period of limitation on claims for loss of, or damage to, cargoes sustained during transit — may be applied suppletorily to the case at bar.[20]

In the instant case, the Court is not persuaded by respondent's claim that the complaint against petitioner was timely filed. Respondent argues that the suit for damages was filed on March 11, 1993, which is within one year from the time the vessel carrying the subject cargo arrived at the Port of Manila on April 11, 1993, or from the time the shipment was completely discharged from the vessel on April 15, 1992.

There is no dispute that the vessel carrying the shipment arrived at the Port of Manila on April 11, 1992 and that the cargo was completely discharged therefrom on April 15, 1992. However, respondent erred in arguing that the complaint for damages, insofar as the petitioner is concerned, was filed on March 11, 1993.

As the records would show, petitioner was not impleaded as a defendant in the original complaint filed on March 11, 1993.[21] It was only on June 7, 1993 that the Amended Complaint, impleading petitioner as defendant, was filed.

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[18] *Belgian Overseas Chartering and Shipping N.V. v. Philippine First Insurance Co., Inc.,* 432 Phil. 567, 585 (2002).

[19] *Supra* note 17.

[20] *Id*.

[21] See Complaint, records, p. 1.

Respondent cannot argue that the filing of the Amended Complaint against petitioner should retroact to the date of the filing of the original complaint.

The settled rule is that the filing of an amended pleading does not retroact to the date of the filing of the original; hence, the statute of limitation runs until the submission of the amendment.[22] It is true that, as an exception, this Court has held that an amendment which merely supplements and amplifies facts originally alleged in the complaint relates back to the date of the commencement of the action and is not barred by the statute of limitations which expired after the service of the original complaint.[23] The exception, however, would not apply to the party impleaded for the first time in the amended complaint.[24]

The rule on the non-applicability of the curative and retroactive effect of an amended complaint, insofar as newly impleaded defendants are concerned, has been established as early as in the case of *Aetna Insurance Co. v. Luzon Stevedoring Corporation*.[25] In the said case, the defendant *Barber Lines Far East Service* was impleaded for the first time in the amended complaint which was filed after the one-year period of prescription. The order of the lower court dismissing the amended complaint against the said defendant on ground of prescription was affirmed by this Court.

In the instant case, petitioner was only impleaded in the amended Complaint of June 7, 1993, or one (1) year, one (1) month and twenty-three (23) days from April 15, 1992, the

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[22] *Republic v. Sandiganbayan*, G.R. No. 119292, July 31, 1998, 293 SCRA 440, 466.

[23] *Verzosa v. Court of Appeals*, G.R. Nos. 119511-13, November 24, 1998, 299 SCRA 100, 111; *Sunga v. Commission on Elections*, G.R. No. 125629, March 25, 1998, 288 SCRA 76, 85.

[24] *Seno v. Mangubat*, G.R. No. L-44339, December 2, 1987, 156 SCRA 113, 122; *Republic v. Sandiganbayan*, G.R. Nos. 112708-09, March 29, 1996, 255 SCRA 438, 490.

[25] G.R. No. L-25266, January 15, 1975, 62 SCRA 11.

date when the subject cargo was fully unloaded from the vessel. Hence, reckoned from April 15, 1992, the one-year prescriptive period had already lapsed.

Having ruled that the action against petitioner had already prescribed, the Court no longer finds it necessary to address the other issues raised in the present petition.

WHEREFORE, the petition is *PARTLY GRANTED*. The Decision of the Court of Appeals dated June 2, 2003 and its Resolution dated January 15, 2004 in CA-G.R. CV No. 65857 are *MODIFIED* by dismissing the complaint against petitioner. In all other respects, the challenged Decision and Resolution of the CA are *AFFIRMED*.

SO ORDERED.

Carpio (Chairperson), Nachura, Abad, and *Mendoza, JJ.*, concur.

THIRD DIVISION

[G.R. No. 163835. July 7, 2010]

COMMISSIONER OF INTERNAL REVENUE, *petitioner, vs.* **EASTERN TELECOMMUNICATIONS PHILIPPINES, INC.,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; RULE AGAINST RAISING NEW ISSUES ON APPEAL; QUESTIONS THAT MAY BE RAISED ON APPEAL; RATIONALE. — The general rule is that appeals can only raise questions of law or fact that (a) were raised in the court below, and (b) are within the issues framed by the parties therein. An issue which was neither averred in the pleadings nor raised during trial in the court below cannot be raised for the first time on appeal. The

rule was made for the benefit of the adverse party and the trial court as well. Raising new issues at the appeal level is offensive to the basic rules of fair play and justice and is violative of a party's constitutional right to due process of law. Moreover, the trial court should be given a meaningful opportunity to consider and pass upon all the issues, and to avoid or correct any alleged errors before those issues or errors become the basis for an appeal.

2. ID.; ID.; ID.; ID.; EXCEPTIONS. — The rule against raising new issues on appeal is not without exceptions; it is a procedural rule that the Court may relax when compelling reasons so warrant or when justice requires it. What constitutes good and sufficient cause that would merit suspension of the rules is discretionary upon the courts. Former Senator Vicente Francisco, a noted authority in procedural law, cites an instance when the appellate court may take up an issue for the first time: "**The appellate court may, in the interest of justice, properly take into consideration in deciding the case *matters of record* having some bearing on the issue submitted which the parties failed to raise or the lower court ignored, although they have not been specifically raised as issues by the pleadings.** This is in consonance with the liberal spirit that pervades the Rules of Court, and the modern trend of procedure which accord the courts broad discretionary power, consistent with the orderly administration of justice, in the decision of cases brought before them." x x x Another exemption from the rule against raising new issues on appeal is when the question involves matters of public importance.

3. TAXATION; THE NATIONAL INTERNAL REVENUE CODE OF 1977; VALUE-ADDED TAX (VAT); VAT-EXEMPT TRANSACTIONS; NATURE. — Section 103 of the Tax Code is an enumeration of transactions exempt from VAT. Explaining the relation between exempt transactions in Section 103 and claims for tax refunds, the Court declared in *CIR v. Toshiba Equipment (Phils.), Inc*. that: "Section 103 x x x of the Tax Code of 1977, as amended, relied upon by petitioner CIR, relates to VAT-exempt transactions. **These are transactions exempted from VAT** by special laws or international agreements to which the Philippines is a signatory. **Since such transactions are not subject to VAT, the sellers** cannot pass on any output VAT to the purchasers of goods,

properties, or services, and they **may not claim tax credit/refund of the input VAT they had paid thereon.**"

4. ID.; ID.; TAX REFUNDS; A TAX REFUND IS IN THE NATURE OF A TAX EXEMPTION AND THE RULE OF STRICT INTERPRETATION AGAINST THE TAXPAYER-CLAIMANT APPLIES. — The power of taxation is an inherent attribute of sovereignty; the government chiefly relies on taxation to obtain the means to carry on its operations. Taxes are essential to its very existence; hence, the dictum that "taxes are the lifeblood of the government." For this reason, the right of taxation cannot easily be surrendered; statutes granting tax exemptions are considered as a derogation of the sovereign authority and are strictly construed against the person or entity claiming the exemption. Claims for tax refunds, when based on statutes granting tax exemption or tax refund, partake of the nature of an exemption; thus, the rule of strict interpretation against the taxpayer-claimant similarly applies.

5. ID.; ID.; ID.; TAXPAYER'S BURDEN OF PROVING COMPLIANCE WITH THE REQUIREMENTS FOR TAX REFUND; CANNOT BE OFFSET BY THE NON-OBSERVANCE OF PROCEDURAL TECHNICALITIES BY THE GOVERNMENT'S TAX AGENTS; CONDITION; CASE AT BAR. — The taxpayer is charged with the heavy burden of proving that he has complied with and satisfied all the statutory and administrative requirements to be entitled to the tax refund. This burden cannot be offset by the non-observance of procedural technicalities by the government's tax agents when the non-observance of the remedial measure addressing it does not in any manner prejudice the taxpayer's due process rights, as in the present case. Eastern cannot validly claim to have been taken by surprise by the CIR's arguments on the relevance of Section 104(A) of the Tax Code, considering that the arguments were based on the reported exempt sales in the VAT returns that Eastern itself prepared and formally offered as evidence. Even if we were to consider the CIR's act as a lapse in the observance of procedural rules, such lapse does not work to entitle Eastern to a tax refund when the established and uncontested facts have shown otherwise. Lapses in the literal observance of a rule of procedure may be overlooked when they have not prejudiced the adverse party and especially when

they are more consistent with upholding settled principles in taxation.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.
Salvador Guevarra and Associates for respondent.

D E C I S I O N

BRION,[*] *J.*:

Through a petition for review on *certiorari*,[1] petitioner Commissioner of Internal Revenue (*CIR*) seeks to set aside the decision dated October 1, 2003[2] and the resolution dated May 26, 2004[3] of the Court of Appeals (*CA*) in CA G.R. SP No. 61157. The assailed CA rulings affirmed the decision dated July 17, 2000[4] of the Court of Tax Appeals (*CTA*) in CTA Case No. 5551, partially granting respondent Eastern Telecommunications Philippines, Inc.'s (*Eastern's*) claim for refund of unapplied input tax from its purchase and importation of capital goods.

THE FACTUAL ANTECEDENTS

Eastern is a domestic corporation granted by Congress with a telecommunications franchise under Republic Act (*RA*) No.

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[*] Designated Acting Chairperson of the Third Division, in view of the leave of absence of Associate Justice Conchita Carpio Morales, per Special Order No. 849 dated June 29, 2010.

[1] Filed under Rule 45 of the Rules of Court; *rollo*, pp. 8-25.

[2] Penned by Associate Justice Perlita J. Tria Tirona, and concurred in by Associate Justice Portia Aliño-Hormachuelos and Associate Justice Rosalinda Asuncion-Vicente; *id.* at 29-34.

[3] *Id.* at 35.

[4] Penned by Judge (now Associate Justice) Amancio Q. Saga, and concurred in by Judge (now Associate Justice) Ernesto D. Acosta and Judge now (Associate Justice) Ramon O. De Veyra; *id.* at 36-43.

7617 on June 25, 1992. Under its franchise, Eastern is allowed to install, operate, and maintain telecommunications system throughout the Philippines.

From July 1, 1995 to December 31, 1996, Eastern purchased various imported equipment, machineries, and spare parts necessary in carrying out its business activities. The importations were subjected to a 10% value-added tax (*VAT*) by the Bureau of Customs, which was duly paid by Eastern.

On September 19, 1997, **Eastern filed with the CIR a written application for refund or credit of unapplied input taxes** it paid on the imported equipment during the taxable years 1995 and 1996 amounting to ₱22,013,134.00. In claiming for the tax refund, Eastern principally relied on Sec. 10 of RA No. 7617, which allows Eastern to pay 3% of its gross receipts in lieu of all taxes on this franchise or earnings thereof.[5] In the alternative, Eastern cited Section 106(B) of the National Internal Revenue Code of 1977[6] (*Tax Code*) which authorizes a VAT-registered taxpayer to claim for the issuance of a tax credit certificate or a tax refund of input taxes paid on capital

[5] *Id.* at 57; Sec. 10. Tax provisions. – The grantee shall be liable to pay the same taxes on their real estate, buildings, and personal property exclusive of this franchise, as other persons or telecommunications entities are now or hereafter may be required by law to pay. In addition thereto, the grantee shall pay to the Bureau of Internal Revenue each year, three *per centum* (3%) of the gross receipts of its regulated telecommunication services transacted under this franchise, and the said percentage shall be in lieu of all taxes on this franchise or earnings thereof; *Provided*, that the grantee shall continue to be liable for income taxes payable under Title II of the National Internal Revenue Code pursuant to Section 2 of Executive Order No. 72 unless the later enactment is amended or repealed, in which case the amendment or repeal shall be applicable thereto.

[6] Presidential Decree No. 1158, enacted on June 3, 1977. The 1977 Tax Code has been superseded by Republic Act No. 8424 (*1997 Tax Code*), enacted on December 11, 1997.

goods imported or purchased locally to the extent that such input taxes[7] have not been applied against its output taxes.[8]

To toll the running of the two-year prescriptive period under the same provision, Eastern filed an appeal with the CTA on September 25, 1997 without waiting for the CIR's decision on its application for refund. The CIR filed an Answer to Eastern's appeal in which it raised the following special and affirmative defenses:

> 6. [Eastern's] claim for refund/tax credit is pending administrative investigation;
>
> x x x x x x x x x
>
> 8. [Eastern's] exempting clause under its legislative franchise x x x should be understood or interpreted as written, meaning, the 3% franchise tax shall be collected as substitute for any internal revenue taxes x x x imposed on its franchise or gross receipts/earnings thereof x x x;
>
> 9. The [VAT] on importation under Section 101 of the [1977] Tax Code is neither a tax on franchise nor on gross receipts or earnings thereof. It is a tax on the privilege of importing goods whether or not the taxpayer is engaged in business, and regardless of whether the imported goods are intended for sale, barter or exchange;
>
> 10. The VAT under Section 101(A) of the Tax Code x x x replaced the advance sales tax and compensating tax x x x. Accordingly, the 3% franchise tax did not substitute the 10% [VAT] on [Eastern's] importation of equipment, machineries and spare parts for the use of its telecommunication system;
>
> 11. Tax refunds are in the nature of tax exemptions. As such, they are regarded in derogation of sovereign authority and

[7] The term "input tax" means the value-added tax due from or paid by a VAT-registered person in the course of his trade or business on importation of goods or local purchase of goods or services, including lease or use of property, from a VAT-registered person (Section 104, 1977 Tax Code).

[8] The term "output tax" means the value-added tax due on the sale or lease of taxable goods or properties or services by any person registered or required to register under Section 236 of this Code (Section 104, 1977 Tax Code).

to be construed in *strictissimi juris* against the person or entity claiming the exemption. The burden is upon him who claims the exemption in his favour and he must be able to justify his claim by the clearest grant of organic or statute law and cannot be permitted to exist upon vague implication x x x;

12. Taxes paid and collected are presumed to have been made in accordance with the laws and regulations; and

13. It is incumbent upon the taxpayer to establish its right to the refund and failure to sustain the burden is fatal to the claim for refund.[9]

Ruling in favor of Eastern, the **CTA found that Eastern has a valid claim for the refund/credit of the unapplied input taxes**, not on the basis of the *"in lieu of all taxes"* provision of its legislative franchise,[10] but rather, on Section 106(B) of the Tax Code, which states:

SECTION 106. ***Refunds or tax credits of input tax.***

x x x x x x x x x

(b) Capital goods. - A **VAT-registered person** may apply for the issuance of a tax credit certificate or refund of **input taxes paid on capital goods imported or locally purchased, to the extent that such input taxes have not been applied against output taxes**. The

[9] *Rollo*, pp. 37-38.

[10] See *rollo*, pp. 39-40, where the CTA reasoned:

> The "in lieu of all taxes" proviso found [in Eastern's legislative franchise] has been superseded by the passage of x x x the Expanded VAT Law x x x. [The Expanded VAT Law amended,] among others, x x x the Tax Code to *exclude* [franchises] on telephone and telegraph systems, and radio broadcasting stations and other [franchises] *from payment of the franchise tax, [and instead subjected] these companies to pay the VAT* x x x.
>
> Since [Eastern], being a holder of a telecommunications franchise, is no longer subject to franchise tax by the enactment of [the Expanded VAT Law] and is now made liable to pay VAT, the "in lieu of all taxes" proviso under its franchise is no longer a valid legal basis for its claim for refund. [Emphasis supplied.]

application may be **made only within two (2) years after the close of the taxable quarter when the importation or purchase was made.**[11] [Emphases supplied.]

The CTA ruled that Eastern had satisfactorily shown that it was entitled to the claimed refund/credit as all the elements of the above provision were present: (1) Eastern was a VAT-registered entity which paid 10% input taxes on its importations of capital equipment; (2) this input VAT remained unapplied as of the first quarter of 1997; and (3) Eastern seasonably filed its application for refund/credit within the two-year period stated in the law. However, the CTA noted that Eastern was able to substantiate only ₱21,487,702.00 of its claimed amount of ₱22,013,134.00. The difference represented input taxes that were allegedly paid but were not supported by the corresponding receipts, as found by an independent auditor. Moreover, it excluded ₱5,360,634.00 in input taxes on imported equipment for the year 1995, even when these were properly documented as they were already booked by Eastern as part of the cost. Once input tax becomes part of the cost of capital equipment, it necessarily forms part of depreciation. Thus, to grant the refund of the 1995 creditable input tax amounts to twice giving Eastern the tax benefit. Thus, in its July 17, 2000 decision, the CTA granted in part Eastern's appeal by declaring it entitled to a tax refund of ₱16,229,100.00, representing unapplied input taxes on imported capital goods for the taxable year 1996.[12]

The CIR filed, on August 3, 2000, a motion for reconsideration[13] of the CTA's decision. About a month and a half later, it filed a supplemental motion for reconsideration dated September 15, 2000.[14] The CTA denied the CIR's motion for reconsideration in its resolution dated September 20, 2000.[15] The CIR then

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[11] Now Section 112(B) of the 1997 Tax Code.

[12] *Rollo*, p. 43.

[13] CA *rollo*, pp. 62-65.

[14] *Id.* at 68-70.

[15] *Id.* at 26-28

elevated the case to the CA through a petition for review under Rule 43 of the Rules of Court. **The CA affirmed the CTA ruling** through its decision dated October 1, 2003[16] and its resolution dated May 26, 2004,[17] denying the motion for reconsideration. Hence, the present petition.

THE PETITIONER'S ARGUMENTS

The CIR takes exception to the CA's ruling that Eastern is entitled to the *full* amount of unapplied input taxes paid for its purchase of imported capital goods that were substantiated by the corresponding receipts and invoices. The CIR posits that, applying Section 104(A) of the Tax Code on apportionment of tax credits, Eastern is entitled to a tax refund of only ₱8,814,790.15, instead of the ₱16,229,100.00 adjudged by the CTA and the CA. Section 104(A) of the Tax Code states:

> **SEC. 104.** ***Tax Credits.*** **–**
>
> **(a)** ***Creditable Input tax.*** -
>
> **A VAT-registered person who is also engaged in transactions not subject to the value-added tax shall be allowed input tax credit as follows:**
>
> (A) Total input tax which can be directly attributed to transactions subject to value-added tax; and
>
> **(B) A ratable portion of any input tax which cannot be directly attributed to either activity.**[18] [Emphases supplied.]

To be entitled to a tax refund of the full amount of ₱16,229,100.00, the CIR asserts that Eastern must prove that (a) it was engaged in purely VAT taxable transactions and (b) the unapplied input taxes it claims as refund were directly

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[16] *Supra* note 2.

[17] *Supra* note 3.

[18] Now Section 110(A) (3) of the 1997 Tax Code.

attributable to transactions subject to VAT. **The VAT returns of Eastern for the 1st, 2nd, 3rd, and 4th quarters of 1996, however, showed that it earned income from both transactions subject to VAT and transactions exempt from VAT**;[19] **the returns reported income earned from taxable sales, zero-rated sales, and exempt sales** in the following amounts:

1996	**Taxable Sales**	**Zero-Rated Sales**	**Exempt Sales**
1st Quarter	820,673.70	- - -	- - -
2nd Quarter	3,361,618.59	225,088,899.07	140,111,655.85
3rd Quarter	2,607,168.96	169,821,537.80	187,712,657.16
4th Quarter	1,134,942.71	162,530,947.40	147,717,028.53
TOTAL	***7,924,403.96***	***557,441,384.27***	**475,541,341.54**
		Total Amount of Sales	**1,040,907,129.77**

The taxable sales and zero-rated sales are considered transactions subject to VAT,[20] while exempt sales refer to transactions not subject to VAT.

Since the VAT returns clearly reflected income from exempt sales, the CIR asserts that this constitutes as an admission on Eastern's part that it engaged in transactions not subject to VAT. Hence, the proportionate allocation of the tax credit to VAT and non-VAT transactions provided in Section 104(A) of the Tax Code should apply. Eastern is then entitled to only ₱8,814,790.15 as the ratable portion of the tax credit, computed in the following manner:

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[19] *Rollo*, pp. 80-90.

[20] A zero-rated sale is still considered a taxable transaction for VAT purposes, although the VAT rate applied is 0%. A sale by a VAT-registered taxpayer of goods and/or services taxed at 0% shall not result in any output VAT, while the input VAT on its purchases of goods or services related to such zero-rated sale shall be available as tax credit or refund; *Atlas Consolidated Mining and Development Corporation v. CIR*, G.R. Nos. 141104 and 148763, June 8, 2007, 524 SCRA 73, 98.

Taxable Sales + Zero-rated Sales / *Total Sales*	x	*Input Tax as found by the CTA*	= ***Refundable input tax***
7,924,403.96 + 557,445,384.97 / 1,040,907,129.77	x	16,229,100.00	= **₱8,814,790.15**

THE RESPONDENT'S ARGUMENTS

Eastern objects to the arguments raised in the petition, alleging that these have not been raised in the Answer filed by the CIR before the CTA. In fact, **the CIR only raised the applicability of Section 104(A) of the Tax Code in his supplemental motion for reconsideration of the CTA's ruling** which, notably, was filed a month and a half after the original motion was filed, and thus beyond the 15-day reglementary period.[21] Accordingly, **the applicability of Section 104(A) was never validly presented as an issue before the CTA**; this, Eastern presumes, is the reason why it was not discussed in the CTA's resolution denying the motion for reconsideration. Eastern claims that for the CIR to raise such an issue now would constitute a violation of its right to due process; following settled rules of procedure and fair play, the CIR should not be allowed at the appeal level to change his theory of the case.

Moreover, in raising the question of whether Eastern was in fact engaged in transactions not subject to VAT and whether the unapplied input taxes can be directly attributable to transactions subject to VAT, Eastern posits that the CIR is effectively raising factual questions that cannot be the subject of an appeal by *certiorari* before the Court.

Even if the CIR's arguments were considered, Eastern insists that the petition should nevertheless be denied since the CA found that there was no evidence in the claim that it was engaged in non-VAT transactions. The CA has ruled that:

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[21] A motion for reconsideration must be filed within the same period for taking an appeal, *i.e.*, 15 days from notice of judgment. Section 1, Rule 37, in relation to Section 4, Rule 43 of the Rules of Court.

The following requirements must be present before [Section 104(A)] of the [1977 Tax Code] can be applied, to wit:

1. The person claiming the creditable input tax must be VAT-registered;
2. Such person is engaged in a transaction subject to VAT;
3. The person is also engaged in other transactions not subject to VAT; and
4. The ratable portion of any input tax cannot be directly attributed to either activity.

In the case at bar, the third and fourth requisites are not extant. It is undisputed that [Eastern] is VAT-registered and the importation of [Eastern's] telecommunications equipment, machinery, spare parts, fiber optic cables, and the like, as found by the CTA, is a transaction subject to VAT. **However, there is no evidence on record that would evidently show that respondent is also engaged in other transactions that are not subject to VAT.** [Emphasis supplied.][22]

Given the parties' arguments, the issue for resolution is ***whether the rule in Section 104(A) of the Tax Code on the apportionment of tax credits can be applied in appreciating Eastern's claim for tax refund, considering that the matter was raised by the CIR only when he sought reconsideration of the CTA ruling?***

THE COURT'S RULING

We find the CIR's petition meritorious.

The Rules of Court prohibits raising new issues on appeal; the question of the applicability of Section 104(A) of the Tax Code was already raised but the tax court did not rule on it

Section 15, Rule 44 of the Rules of Court embodies the rule against raising new issues on appeal:

[22] *Rollo*, p. 32.

SEC. 15. *Questions that may be raised on appeal.* – Whether or not the appellant has filed a motion for new trial in the court below, he may include in his assignment of errors any question of law or fact that has been raised in the court below and which is within the issues framed by the parties.

The general rule is that appeals can only raise questions of law or fact that (a) were raised in the court below, and (b) are within the issues framed by the parties therein.[23] An issue which was neither averred in the pleadings nor raised during trial in the court below cannot be raised for the first time on appeal.[24] The rule was made for the benefit of the adverse party and the trial court as well. Raising new issues at the appeal level is offensive to the basic rules of fair play and justice and is violative of a party's constitutional right to due process of law. Moreover, the trial court should be given a meaningful opportunity to consider and pass upon all the issues, and to avoid or correct any alleged errors before those issues or errors become the basis for an appeal.[25]

Eastern posits that since the CIR raised the applicability of Section 104(A) of the Tax Code only in his **supplemental motion for reconsideration** of the CTA decision (which was even belatedly filed), the issue was not properly and timely raised and, hence, could not be considered by the CTA. By raising the issue in his appeal before the CA, the CIR has violated the above-cited procedural rule.

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[23] *People v. Echegaray*, G.R. No. 117472, February 7, 1997, 267 SCRA 682, 689-690.

[24] *Dela Santa v. CA, et al.*, 224 Phil. 195, 209 (1985), and *Dihiansan, et al. v. CA, et al.*, 237 Phil. 695, 701-702 (1987).

[25] L. Bersamin, *Appeal and Review in the Philippines* (2nd ed.), p. 378, citing *Soriano v. Ramirez*, 44 Phil. 475, *Toribio v. Decasa*, 55 Phil. 461, *San Agustin v. Barrios*, 68 Phil. 475, *US v. Paraiso*, 11 Phil. 799, *US v. Rosa*, 14 Phil. 394, *Pico v. US*, 40 Phil. 1117, and *Dela Rama v. Dela Rama*, 41 Phil. 980.

Contrary to Eastern's claim, we find that the CIR has previously questioned the nature of Eastern's transactions insofar as they affected the claim for tax refund in his motion for reconsideration of the CTA decision, although it did not specifically refer to Section 104(A) of the Tax Code. We quote relevant portions of the motion:

> [W]e maintain that [Eastern's] claims are not creditable input taxes under [Section 104(A) of the Tax Code]. What the law contemplates as creditable input taxes are only those paid on purchases of goods and services specifically enumerated under [Section 104 (A)] and that such input tax must have been paid by a VAT[-]registered person/ entity in the course of trade or business. It must be noted that **[Eastern] failed to prove that such purchases were used in their VAT[-]taxable business.** [Eastern's pieces of] evidence are not purchases of capital goods and do not fall under the enumeration x x x.
>
> It is significant to point out here that **refund of input taxes on capital goods shall be allowed only to the extent that such capital goods are used in VAT[-]taxable business. x x x a perusal of the evidence submitted before [the CTA] does not show that the alleged capital goods were used in VAT[-]taxable business of [Eastern] x x x.** [Emphases supplied.][26]

In raising these matters in his motion for reconsideration, the CIR put forward the applicability of Section 104(A) because, essentially, the applicability of the provision boils down to the question of whether the purchased capital goods which a taxpayer paid input taxes were also used in a VAT-taxable business, *i.e.*, transactions that were subject to VAT, in order for them to be refundable/creditable. Once proved that the taxpayer used the purchased capital goods in a both VAT taxable and non-VAT taxable business, the proportional allocation of tax credits stated in the law necessarily applies. This rule is also embodied in Section 4.106-1 of Revenue Regulation No. 7-95, entitled *Consolidated Value-Added Tax Regulations*, which states:

[26] *Rollo*, pp. 208-210.

SEC. 4.106-1. *Refunds or tax credits of input tax.* – x x x

(b) Capital Goods. – Only a VAT-registered person may apply for issuance of a tax credit certificate or refund of input taxes paid on capital goods imported or locally purchased. The refund shall be allowed to the extent that such input taxes have not been applied against output taxes. The application should be made within two (2) years after the close of the taxable quarter when the importation or purchase was made.

Refund of input taxes on capital goods shall be allowed only to the extent that such capital goods are used in VAT taxable business. If it is also used in exempt operations, the input tax refundable shall only be the ratable portion corresponding to the taxable operations. [Emphasis supplied.]

That the CTA failed to rule on this question when it resolved the CIR's motion for reconsideration should not be taken against the CIR. It was the CTA which committed an error when it failed to avail of that "meaningful opportunity to avoid or correct any alleged errors before those errors become the basis for an appeal."[27]

Exceptions to the general rule; Eastern's VAT returns reporting income from exempt sales are matters of record that the tax court should have considered

The rule against raising new issues on appeal is not without exceptions; it is a procedural rule that the Court may relax when compelling reasons so warrant or when justice requires it. What constitutes good and sufficient cause that would merit suspension of the rules is discretionary upon the courts.[28] Former Senator Vicente Francisco, a noted authority in procedural law, cites an instance when the appellate court may take up an issue for the first time:

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[27] *Supra* note 25.

[28] *CIR v. Mirant Pagbilao Corporation*, G.R. No. 159593, October 16, 2003, 504 SCRA 484, 496.

The appellate court may, in the interest of justice, properly take into consideration in deciding the case *matters of record* having some bearing on the issue submitted which the parties failed to raise or the lower court ignored, although they have not been specifically raised as issues by the pleadings. This is in consonance with the liberal spirit that pervades the Rules of Court, and the modern trend of procedure which accord the courts broad discretionary power, consistent with the orderly administration of justice, in the decision of cases brought before them.[29] [Emphasis supplied.]

As applied in the present case, even without the CIR raising the applicability of Section 104(A), the CTA should have considered it since all four of **Eastern's VAT returns** corresponding to each taxable quarter of 1996 **clearly stated that it earned income from exempt sales, *i.e.*, non-VAT taxable sales.** Eastern's quarterly VAT returns are matters of record. In fact, Eastern included them in its formal offer of evidence before the CTA "to prove that [it is] engaged in VAT taxable, ***VAT exempt***, and VAT zero-rated sales." By declaring income from exempt sales, Eastern effectively admitted that it engaged in transactions not subject to VAT. **In VAT-exempt sales, the taxpayer/seller shall not bill any output tax on his sales to his customers and, corollarily, is not allowed any credit or refund of the input taxes he paid on his purchases.**[30] This non-crediting of input taxes in exempt transactions is the underlying reason why the Tax Code adopted the rule on apportionment of tax credits under Section 104(A) whenever a VAT-registered taxpayer engages in both VAT taxable and non-VAT taxable sales. In the face of these disclosures by Eastern, we thus find the CA's conclusion that "there is no evidence on record that would evidently show that [Eastern] is also engaged in other transactions that are not subject to VAT" to be questionable.[31]

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[29] The Revised Rules of Court in the Philippines, Civil Procedure, Rules 40-56, Volume III, pp. 650-651 (1968 ed.).

[30] *CIR v. Seagate Technology Philippines*, G.R. No. 153866, February 11, 2005, 451 SCRA 132, 145; and *Contex Corporation v. CIR*, G.R. No. 151135, July 2, 2004, 433 SCRA 376.

[31] *Rollo*, p. 32.

Also, we disagree with the CA's declaration that:

> **The mere fact that [Eastern's] Quarterly VAT Returns confirm that [Eastern's] transactions involved** zero-rated sales and **exempt sales do not sufficiently establish that the same were derived from [Eastern's] transactions that are not subject to VAT.** On the contrary, **the transactions from which [Eastern's] sales were derived are subject to VAT but are** either zero[-]rated (0%) or otherwise **exempted for falling within the transactions enumerated in** [Section 102(B) or **Section 103] of the Tax Code.**[32] [Emphasis supplied.]

Section 103 of the Tax Code[33] is an enumeration of transactions exempt from VAT. Explaining the relation between exempt transactions in Section 103 and claims for tax refunds, the Court declared in *CIR v. Toshiba Equipment (Phils.), Inc*. that:

> Section 103 x x x of the Tax Code of 1977, as amended, relied upon by petitioner CIR, relates to VAT-exempt transactions. **These are transactions exempted from VAT** by special laws or international agreements to which the Philippines is a signatory. **Since such transactions are not subject to VAT, the sellers** cannot pass on any output VAT to the purchasers of goods, properties, or services, and they **may not claim tax credit/refund of the input VAT they had paid thereon.**[34]

The mere declaration of exempt sales in the VAT returns, whether based on Section 103 of the Tax Code or some other special law, should have prompted the CA to apply Section 104(A) of the Tax Code to Eastern's claim. It was thus erroneous for the appellate court to rule that the declaration of exempt sales in Eastern's VAT return, which may correspond to exempt transactions under Section 103, does not indicate that Eastern was also involved in non-VAT transactions.

Exception to general rule; taxpayer claiming refund has the duty to prove entitlement thereto

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[32] *Ibid.*

[33] Now Section 109 of the 1997 Tax Code.

[34] G.R. No. 150154, August 9, 2005, 466 SCRA 211, 223.

Another exemption from the rule against raising new issues on appeal is when the question involves matters of public importance.[35]

The power of taxation is an inherent attribute of sovereignty; the government chiefly relies on taxation to obtain the means to carry on its operations. Taxes are essential to its very existence;[36] hence, the dictum that "taxes are the lifeblood of the government." For this reason, the right of taxation cannot easily be surrendered; statutes granting tax exemptions are considered as a derogation of the sovereign authority and are strictly construed against the person or entity claiming the exemption. Claims for tax refunds, when based on statutes granting tax exemption or tax refund, partake of the nature of an exemption; thus, the rule of strict interpretation against the taxpayer-claimant similarly applies.[37]

The taxpayer is charged with the heavy burden of proving that he has complied with and satisfied all the statutory and administrative requirements to be entitled to the tax refund. This burden cannot be offset by the non-observance of procedural technicalities by the government's tax agents when the non-observance of the remedial measure addressing it does not in any manner prejudice the taxpayer's due process rights, as in the present case.

Eastern cannot validly claim to have been taken by surprise by the CIR's arguments on the relevance of Section 104(A) of the Tax Code, considering that the arguments were based on the reported exempt sales in the VAT returns that Eastern itself prepared and formally offered as evidence. Even if we were to consider the CIR's act as a lapse in the observance of

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[35] *Supra* note 25.

[36] *CIR v. Solidbank Corporation*, G.R. No. 148191, November 25, 2003, 416 SCRA 436, 457.

[37] *CIR v. Fortune Tobacco Corporation*, G.R. Nos. 167274-75, July 21, 2008, 559 SCRA 160.

procedural rules, such lapse does not work to entitle Eastern to a tax refund when the established and uncontested facts have shown otherwise. Lapses in the literal observance of a rule of procedure may be overlooked when they have not prejudiced the adverse party and especially when they are more consistent with upholding settled principles in taxation.

WHEREFORE, we *GRANT* the petitioner's petition for review on *certiorari*, and *REVERSE* the decision of the Court of Appeals in CA G.R. SP No. 61157, promulgated on October 1, 2003, as well as its resolution of May 26, 2004. We order the *REMAND* of the case to the Court of Tax Appeals to determine the proportionate amount of tax credit that respondent is entitled to, consistent with our ruling above. Costs against the respondent.

SO ORDERED.

Carpio,[**] *Abad,*[***] *Villarama, Jr.,* and *Mendoza,*[****] *JJ.,* concur.

[**] Designated additional Member of the Third Division, in view of the leave of absence of Associate Justice Lucas P. Bersamin, per Special Order No. 859 dated July 1, 2010.

[***] Designated additional Member of the Third Division, in view of the retirement of former Chief Justice Reynato S. Puno, per Special Order No. 843 dated May 17, 2010.

[****] Designated additional Member of the Third Division, in view of the leave of absence of Associate Justice Conchita Carpio Morales, per Special Order No. 850 dated June 29, 2010

FIRST DIVISION

[G.R. No. 170375. July 7, 2010]

REPUBLIC OF THE PHILIPPINES, *petitioner, vs.* **HON. MAMINDIARA P. MANGOTARA, in his capacity as Presiding Judge of the Regional Trial Court, Branch 1, Iligan City, Lanao del Norte, and MARIA CRISTINA FERTILIZER CORPORATION, and the PHILIPPINE NATIONAL BANK,** *respondents.*

[G.R. No. 170505. July 7, 2010]

LAND TRADE REALTY CORPORATION, *petitioner, vs.* **NATIONAL POWER CORPORATION and NATIONAL TRANSMISSION CORPORATION (TRANSCO),** *respondents.*

[G.R. Nos. 173355-56. July 7, 2010]

NATIONAL POWER CORPORATION, *petitioner, vs.* **HON. COURT OF APPEALS (Special Twenty-Third Division, Cagayan de Oro City), and LAND TRADE REALTY CORPORATION,** *respondents.*

[G.R. No. 173401. July 7, 2010]

REPUBLIC OF THE PHILIPPINES, *petitioner, vs.* **DEMETRIA CACHO, represented by alleged Heirs DEMETRIA CONFESOR VIDAL and/or TEOFILO CACHO, AZIMUTH INTERNATIONAL DEVELOPMENT CORPORATION and LAND TRADE REALTY CORPORATION,** *respondents.*

[G.R. Nos. 173563-64. July 7, 2010]

NATIONAL TRANSMISSION CORPORATION, *petitioner, vs.* **HON. COURT OF APPEALS (Special**

Twenty-Third Division, Cagayan de Oro City), and LAND TRADE REALTY CORPORATION as represented by Atty. Max C. Tabimina, *respondents.*

[G.R. No. 178779. July 7, 2010]

LAND TRADE REALTY CORPORATION, *petitioner, vs.* **DEMETRIA CONFESOR VIDAL and AZIMUTH INTERNATIONAL DEVELOPMENT CORPORATION,** *respondents.*

[G.R. No. 178894. July 7, 2010]

TEOFILO CACHO and/or ATTY. GODOFREDO CABILDO, *petitioner, vs.* **DEMETRIA CONFESOR VIDAL and AZIMUTH INTERNATIONAL DEVELOPMENT CORPORATION,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; THE REMEDIES OF APPEAL AND *CERTIORARI* ARE MUTUALLY EXCLUSIVE AND NOT ALTERNATIVE OR SUCCESSIVE; PETITION FOR *CERTIORARI*, WHEN TREATED AS FILED UNDER RULE 45. — In *Nunez v. GSIS Family Bank*, the Court elucidated: "In *Ligon v. Court of Appeals* where the therein petitioner described her petition as 'an appeal under Rule 45 and at the same time as a special civil action of *certiorari* under Rule 65 of the Rules of Court,' this Court, in frowning over what it described as a '*chimera*,' reiterated that the remedies of appeal and *certiorari* are mutually exclusive and not alternative nor successive. To be sure, the distinctions between Rules 45 and 65 are far and wide. However, the most apparent is that errors of jurisdiction are best reviewed in a special civil action for *certiorari* under Rule 65 while errors of judgment can only be corrected by appeal in a petition for review under Rule 45." But in the same case, the Court also held that: "This Court, x x x, in accordance with the liberal spirit which pervades the Rules of Court and in the

interest of justice may treat a petition for *certiorari* as having been filed under Rule 45, more so if the same was filed within the reglementary period for filing a petition for review." It is apparent in the case at bar that the Republic availed itself of the wrong mode of appeal by filing Consolidated Petitions for Review under Rule 45 and for *Certiorari* under Rule 65, when these are two separate remedies that are mutually exclusive and neither alternative nor successive. Nevertheless, the Court shall treat the Consolidated Petitions as a Petition for Review on *Certiorari* under Rule 45 and the allegations therein as errors of judgment. As the records show, the Petition was filed on time under Rule 45. Before the lapse of the 15-day reglementary period to appeal under Rule 45, the Republic filed with the Court a motion for extension of time to file its petition. The Court, in a Resolution dated January 23, 2006, granted the Republic a 30-day extension, which was to expire on December 29, 2005. The Republic was able to file its Petition on the last day of the extension period.

2. ID.; ID.; APPEALS; PETITION FOR REVIEW ON *CERTIORARI* UNDER RULE 45; LIMITED TO REVIEW OF QUESTIONS OF LAW; QUESTION OF LAW AND QUESTION OF FACT, DISTINGUISHED. — According to Rule 41, Section 2(c) of the Rules of Court, a decision or order of the RTC may be appealed to the Supreme Court by petition for review on *certiorari* under Rule 45, provided that such petition raises only questions of law. A question of law exists when the doubt or controversy concerns the correct application of law or jurisprudence to a certain set of facts; or when the issue does not call for an examination of the probative value of the evidence presented, the truth or falsehood of facts being admitted. A question of fact exists when the doubt or difference arises as to the truth or falsehood of facts or when the query invites calibration of the whole evidence considering mainly the credibility of the witnesses, the existence and relevancy of specific surrounding circumstances, as well as their relation to each other and to the whole, and the probability of the situation.

3. ID.; ID.; PARTIES TO CIVIL ACTIONS; SUBSTITUTION OF PARTIES; NOT RENDERED VOID IN CASE AT BAR.— The right of the Republic to be substituted for ISA as plaintiff in Civil Case No. 106 had long been affirmed by no less than this Court in the *ISA case*. x x x The *ISA case* had already become

final and executory, and entry of judgment was made in said case on August 31, 1998. The RTC-Branch 1, in an Order dated November 16, 2001, effected the substitution of the Republic for ISA. The failure of the Republic to actually file a motion for execution does not render the substitution void. A writ of execution requires the sheriff or other proper officer to whom it is directed to enforce the terms of the writ. The November 16, 2001 Order of the RTC-Branch 1 should be deemed as voluntary compliance with a final and executory judgment of this Court, already rendering a motion for and issuance of a writ of execution superfluous. Besides, no substantive right was violated by the voluntary compliance by the RTC-Branch 1 with the directive in the *ISA case* even without a motion for execution having been filed. To the contrary, the RTC-Branch 1 merely enforced the judicially determined right of the Republic to the substitution. While it is desirable that the Rules of Court be faithfully and even meticulously observed, courts should not be so strict about procedural lapses that do not really impair the administration of justice. If the rules are intended to insure the orderly conduct of litigation it is because of the higher objective they seek which is the protection of the substantive rights of the parties.

4. ID.; SPECIAL CIVIL ACTIONS; EXPROPRIATION; DEFENDANTS IN AN EXPROPRIATION CASE ARE NOT LIMITED TO THE OWNERS OF THE PROPERTY TO BE EXPROPRIATED, AND JUST COMPENSATION IS NOT DUE TO THE PROPERTY OWNER ALONE. — Rule 67, Section 1 of the then Rules of Court described how expropriation proceedings should be instituted x x x. For sure, defendants in an expropriation case are not limited to the owners of the property to be expropriated, and just compensation is not due to the property owner alone. As this Court held in *De Knecht v. Court of Appeals:* **"The defendants in an expropriation case are not limited to the owners of the property condemned. They include all other persons owning, occupying or claiming to own the property. When [property] is taken by eminent domain, the owner x x x is not necessarily the only person who is entitled to compensation.**"

5. ID.; CIVIL PROCEDURE; PARTIES TO CIVIL ACTIONS; MISJOINDER AND NON-JOINDER OF PARTIES; NOT A GROUND FOR DISMISSAL OF AN ACTION. — Dismissal is

not the remedy for misjoinder or non-joinder of parties. According to Rule 3, Section 11 of the Rules of Court: "SEC. 11. *Misjoinder and non-joinder of parties.* – Neither misjoinder nor non-joinder of parties is ground for dismissal of an action. **Parties may be dropped or added by order of the court** on motion of any party or on its own initiative at any stage of the action and on such terms as are just. Any claim against a misjoined party may be severed and proceeded with separately."

6. ID.; ID.; ID.; INDISPENSABLE PARTY; DEFINED; THE OWNER OF THE PROPERTY IS NOT NECESSARILY AN INDISPENSABLE PARTY IN AN EXPROPRIATION CASE. — An indispensable party is a party-in-interest without whom no final determination can be had of an action. Now, is the owner of the property an indispensable party in an action for expropriation? Not necessarily. Going back to Rule 67, Section 1 of the Rules of Court, expropriation proceedings may be instituted even when "title to the property sought to be condemned appears to be in the Republic of the Philippines, although occupied by private individuals." The same rule provides that a complaint for expropriation shall name as defendants "all persons owning or claiming to own, **or occupying**, any part thereof or interest" in the property sought to be condemned. Clearly, when the property already appears to belong to the Republic, there is no sense in the Republic instituting expropriation proceedings against itself. It can still, however, file a complaint for expropriation against the private persons occupying the property. In such an expropriation case, the owner of the property is not an indispensable party. x x x Assuming for the sake of argument that the owner of the property is an indispensable party in the expropriation proceedings, the non-joinder of said party would still not warrant immediate dismissal of the complaint for expropriation. In *Vda. De Manguerra v. Risos*, the Court applied Rule 3, Section 11 of the Rules of Court even in case of non-joinder of an indispensable party, *viz*: "[F]ailure to implead an indispensable party is not a ground for the dismissal of an action. In such a case, the remedy is to implead the non-party claimed to be indispensable. Parties may be added by order of the court, on motion of the party or on its own initiative at any stage of the action and/or such times as are just. **If the petitioner/plaintiff refuses to implead an indispensable party despite the order of**

the court, the latter may dismiss the complaint/petition for the petitioner's/plaintiff's failure to comply."

7. ID.; ID.; FORUM SHOPPING; WHEN PRESENT. — In *NBI-Microsoft Corporation v. Hwang*, the Court laid down the circumstances when forum shopping exists: "Forum-shopping takes place when a litigant files multiple suits involving the same parties, either simultaneously or successively, to secure a favorable judgment. Thus**,** it exists where the elements of *litis pendentia* are present, namely: (a) identity of parties**,** or at least such parties who represent the same interests in both actions; (b) identity of rights asserted and relief prayed for, the relief being founded on the same facts; and (c) the identity with respect to the two preceding particulars in the two cases is such that any judgment that may be rendered in the pending case, regardless of which party is successful, would amount to *res judicata* in the other case. Forum-shopping is an act of malpractice because it abuses court processes. x x x."

8. ID.; SPECIAL CIVIL ACTIONS; EXPROPRIATION; DOES NOT PRECLUDE THE FILING OF A COMPLAINT FOR REVERSION. — The Republic is not engaging in contradictions when it instituted both expropriation and reversion proceedings for the same parcels of land. The expropriation and reversion proceedings are distinct remedies that are not necessarily exclusionary of each other. The filing of a complaint for reversion does not preclude the institution of an action for expropriation. Even if the land is reverted back to the State, the same may still be subject to expropriation as against the occupants thereof. Also, Rule 67, Section 1 of the Rules of Court allows the filing of a complaint for expropriation even when "the title to any property sought to be condemned appears to be in the Republic of the Philippines, although occupied by private individuals, or if the title is otherwise obscure or doubtful so that the plaintiff cannot with accuracy or certainty specify who are the real owners."

9. ID.; CIVIL PROCEDURE; APPEALS; PETITION FOR REVIEW ON *CERTIORARI* UNDER RULE 45 OF THE RULES OF COURT; SHOULD RAISE ONLY QUESTIONS OF LAW; EXCEPTIONS. — The Court has held in a long line of cases that in a petition for review on *certiorari* under Rule 45 of the Rules of Court, only questions of law may be raised as the

Supreme Court is not a trier of facts. It is settled that as a rule, the findings of fact of the Court of Appeals especially those affirming the trial court are final and conclusive and cannot be reviewed on appeal to the Supreme Court. The exceptions to this rule are: (a) when the conclusion is a finding grounded entirely on speculations, surmises or conjectures; (b) when the inference made is manifestly mistaken, absurd or impossible; (c) when there is grave abuse of discretion; (d) when the judgment is based on a misapprehension of facts; (e) when the findings of fact are conflicting; (f) when the Court of Appeals, in making its findings, went beyond the issues of the case and the same is contrary to the admissions of both appellant and appellee; (g) where the Court of Appeals manifestly overlooked certain relevant facts not disputed by the parties and which, if properly considered, would justify a different conclusion; and (h) where the findings of fact of the Court of Appeals are contrary to those of the trial court, or are mere conclusions without citation of specific evidence, or where the facts set forth by the petitioner are not disputed by the respondent, or where the findings of fact of the Court of Appeals are premised on absence of evidence but are contradicted by the evidence on record.

10. ID.; ID.; JURISDICTION; NOT THE SAME AS THE EXERCISE OF JURISDICTION. — [J]urisdiction is not the same as the exercise of jurisdiction. The Court distinguished between the two, thus: "Jurisdiction is not the same as the exercise of jurisdiction. As distinguished from the exercise of jurisdiction, jurisdiction is the authority to decide a cause, and not the decision rendered therein. **Where there is jurisdiction over the person and the subject matter, the decision on all other questions arising in the case is but an exercise of the jurisdiction.** And the errors which the court may commit in the exercise of jurisdiction are merely errors of judgment which are the proper subject of an appeal.

11. ID.; ID.; ID.; JURISDICTION OVER THE SUBJECT MATTER OR NATURE OF THE ACTION IS CONFERRED ONLY BY THE CONSTITUTION OR BY LAW. — Jurisdiction over the subject matter or nature of the action is conferred only by the Constitution or by law. Once vested by law on a particular court or body, the jurisdiction over the subject matter or nature of the action cannot be dislodged by anybody other than by

the legislature through the enactment of a law. The power to change the jurisdiction of the courts is a matter of legislative enactment, which none but the legislature may do. Congress has the sole power to define, prescribe and apportion the jurisdiction of the courts.

12. ID.; ID.; ID.; JURISDICTION IN CIVIL CASES; THE REGIONAL TRIAL COURT HAS JURISDICTION OVER AN ACTION FOR QUIETING OF TITLE. — The RTC has jurisdiction over an action for quieting of title under the circumstances described in Section 19(2) of Batas Pambansa Blg. 129, as amended: "SEC. 19. *Jurisdiction in civil cases.* – Regional Trial Courts shall exercise exclusive original jurisdiction: x x x (2) In all civil actions which **involve the title to, or possession of, real property, or any interest therein, where the assessed value of the property involved exceeds Twenty thousand pesos (₱20,000.00) x x x ."** Records show that the parcels of land subject of Civil Case No. 4452 have a combined assessed value of **₱35,398,920.00**, undisputedly falling within the jurisdiction of the RTC-Branch 3. The RTC-Branch 3 also acquired jurisdiction over the person of Teofilo when he filed his Answer to the Complaint of Vidal and AZIMUTH; and over the juridical personality of LANDTRADE when the said corporation was allowed to intervene in Civil Case No. 4452. Considering that the RTC-Branch 3 had jurisdiction over the subject matter and parties in Civil Case No. 4452, then it can rule on all issues in the case, including those on Vidal's status, filiation, and heirship, in exercise of its jurisdiction.

13. CIVIL LAW; LAND REGISTRATION ACT (ACT NO. 496); ACTION FOR RECONVEYANCE; NATURE. — The action for reconveyance is based on Section 55 of Act No. 496, otherwise known as the Land Registration Act, as amended, which states "[t]hat in all cases of registration procured by fraud the owner may pursue all his legal and equitable remedies against the parties to such fraud, without prejudice, however, to the rights of any innocent holder for value of a certificate of title." The Court, in *Heirs of Eugenio Lopez, Sr. v. Enriquez*, described an action for reconveyance as follows: "An action for reconveyance is an **action *in personam*** available to a person whose **property has been wrongfully registered under the Torrens system** in another's name. Although the decree is recognized as incontrovertible and no longer open to review,

the registered owner is not necessarily held free from liens. As a remedy, an action for reconveyance is filed as an **ordinary action** in the ordinary courts of justice and not with the land registration court. Reconveyance is always available as long as the property has not passed to an innocent third person for value. x x x"

14. ID.; PROPERTY, OWNERSHIP, AND ITS MODIFICATIONS; OWNERSHIP; QUIETING OF TITLE; ACTION TO QUIET TITLE; NATURE. — Article 476 of the Civil Code lays down the circumstances when a person may institute an action for quieting of title x x x. In *Calacala v. Republic*, the Court elucidated on the nature of an action to quiet title: "Regarding the nature of the action filed before the trial court, quieting of title is a **common law remedy** for the removal of any cloud upon or doubt or uncertainty with respect to title to real property. Originating in equity jurisprudence, its purpose is to secure 'x x x an adjudication that a claim of title to or an interest in property, adverse to that of the complainant, is invalid, so that the complainant and those claiming under him may be forever afterward free from any danger of hostile claim.' In an action for quieting of title, the competent court is tasked to **determine the respective rights of the complainant and other claimants**, 'x x x not only to place things in their proper place, to make the one who has no rights to said immovable respect and not disturb the other, but also for the benefit of both, so that he who has the right would see every cloud of doubt over the property dissipated, and he could afterwards without fear introduce the improvements he may desire, to use, and even to abuse the property as he deems best x x x." The Court expounded further in *Spouses Portic v. Cristobal* that: "Suits to quiet title are characterized as **proceedings *quasi in rem***. Technically, they are neither *in rem* nor *in personam*. In an action *quasi in rem*, an individual is named as defendant. However, unlike suits *in rem*, a *quasi in rem* judgment is conclusive only between the parties. Generally, the **registered owner** of a property is the proper party to bring an action to quiet title. However, it has been held that this remedy may also be availed of by **a person other than the registered owner** because, in the Article reproduced above, "title" does not necessarily refer to the original or transfer certificate of title.

Thus, lack of an actual certificate of title to a property does not necessarily bar an action to quiet title. x x x"

15. REMEDIAL LAW; CIVIL PROCEDURE; ACTIONS FOR DECLARATORY RELIEF AND ORDINARY CIVIL ACTIONS, DISTINGUISHED. — Actions for declaratory relief and other similar remedies are distinguished from ordinary civil actions because: 2. In declaratory relief, the *subject-matter* is a deed, will, contract or other written instrument, statute, executive order or regulation, or ordinance. The *issue* is the validity or construction of these documents. The *relief* sought is the **declaration of the petitioner's rights and duties** thereunder. The concept of a cause of action in ordinary civil actions does not apply to declaratory relief as this special civil action presupposes that there has been no breach or violation of the instruments involved. Consequently, unlike other judgments, the judgment in an action for declaratory relief does not essentially entail any executional process as the only relief to be properly granted therein is a **declaration of the rights and duties of the parties** under the instrument, although some exceptions have been recognized under certain situations.

16. ID.; SPECIAL CIVIL ACTIONS; DECLARATORY RELIEF; NATURE. — [T]he concept of a cause of action in ordinary civil actions does not apply to quieting of title. In declaratory relief, the subject-matter is a deed, will, contract or other written instrument, statute, executive order or regulation, or ordinance. The issue is the validity or construction of these documents. The relief sought is the declaration of the petitioner's rights and duties thereunder. Being in the nature of declaratory relief, this special civil action presupposes that there has yet been no breach or violation of the instruments involved.

17. CIVIL LAW; PROPERTY, OWNERSHIP, AND ITS MODIFICATIONS; OWNERSHIP; QUIETING OF TITLE; THE SUBJECT MATTER IS THE TITLE SOUGHT TO HAVE QUIETED. — In an action for quieting of title, the subject matter is the title sought to have quieted. "Title" is not limited to the certificate of registration under the Torrens System (*i.e.*, OCT or TCT). Pursuant to Article 477 of the Civil Code, the plaintiff must have **legal or equitable title to, or interest** in, the real property subject of the action for quieting of title. The plaintiff need not even be in possession of the property. If

she is indeed Doña Demetria's sole heir, Vidal already has equitable title to or interest in the two parcels of land by right of succession, even though she has not yet secured certificates of title to the said properties in her name.

18. ID.; FAMILY CODE; PATERNITY AND FILIATION; PROOF OF FILIATION; ALTERNATIVE MEANS OF PROVING AN INDIVIDUAL'S FILIATION HAVE BEEN RECOGNIZED BY THE COURT. — Alternative means of proving an individual's filiation have been recognized by this Court in *Heirs of Ignacio Conti v. Court of Appeals.* x x x [T]he Court held that: "Under Art. 172 of the Family Code, the filiation of legitimate children shall be proved by any other means allowed by the Rules of Court and special laws, in the absence of a record of birth or a parent's admission of such legitimate filiation in a public or private document duly signed by the parent. Such other proof of one's filiation may be a baptismal certificate, a judicial admission, a family Bible in which his name has been entered, common reputation respecting his pedigree, admission by silence, the testimonies of witnesses and other kinds of proof admissible under Rule 130 of the Rules of Court." x x x Thus, Vidal's baptismal certificate is not totally bereft of any probative value. It may be appreciated, together with all the other documentary and testimonial evidence submitted on Vidal's filiation x x x.

19. REMEDIAL LAW; APPEALS; FACTUAL FINDINGS OF THE COURT OF APPEALS AND OTHER LOWER COURTS ARE GENERALLY ACCORDED GREAT WEIGHT ON APPEAL. — As a rule, the findings of fact of the trial court when affirmed by the Court of Appeals are final and conclusive, and cannot be reviewed on appeal by this Court as long as they are borne out by the record or are based on substantial evidence. It is not the function of the Court to analyze or weigh all over again the evidence or premises supportive of such factual determination. The Court has consistently held that the findings of the Court of Appeals and other lower courts are, as a rule, accorded great weight, if not binding upon it, save for the most compelling and cogent reasons. There is no justification for the Court to deviate from the factual findings of the RTC-Branch 3 and the Court of Appeals which are clearly supported by the evidence on record.

20. ID.; CIVIL PROCEDURE; APPEALS; THE DEFENSE OF PRESCRIPTION CANNOT BE RAISED FOR THE FIRST TIME ON APPEAL. — In this jurisdiction, the defense of prescription cannot be raised for the first time on appeal. Such defense may be waived, and if it was not raised as a defense in the trial court, it cannot be considered on appeal, the general rule being that the Appellate Court is not authorized to consider and resolve any question not properly raised in the lower court.

21. ID.; ID.; REAL ACTIONS; A REAL ACTION IS AN ACTION AFFECTING TITLE TO OR RECOVERY OF POSSESSION OF REAL PROPERTY. — A real action is one where the plaintiff seeks the recovery of real property or, as indicated in what is now Rule 4, Section 1 of the Rules of Court, a real action is **an action affecting title to** or recovery of possession **of real property**. An action for quieting of title to real property, such as Civil Case No. 4452, is indubitably a real action.

22. CIVIL LAW; DIFFERENT MODES OF ACQUIRING OWNERSHIP; PRESCRIPTION; PRESCRIPTION OF ACTIONS; REAL ACTIONS OVER IMMOVABLES PRESCRIBE AFTER THIRTY YEARS. — Article 1141 of the Civil Code plainly provides that real actions over immovables prescribe **after thirty years**. x x x Nevertheless, the Court notes that Article 1141 of the Civil Code also clearly states that the 30-year prescriptive period for real actions over immovables is **without prejudice** to what is established for the acquisition of ownership and other real rights by prescription. Thus, the Court must also look into the acquisitive prescription periods of ownership and other real rights.

23. ID.; ID.; ID.; PRESCRIPTION OF OWNERSHIP; ORDINARY ACQUISITIVE PRESCRIPTION; REQUIRES POSSESSION OF THINGS IN GOOD FAITH AND WITH JUST TITLE FOR THE TIME FIXED BY LAW. — Ordinary acquisitive prescription requires possession of things in good faith and with just title for the time fixed by law. In the case of ownership and other real rights over immovable property, they are acquired by ordinary prescription through **possession of 10 years**. x x x The good faith of the possessor consists in the reasonable belief that the person from whom he received the thing was the owner thereof, and could transmit his ownership. x x x It is axiomatic

that one who buys from a person who is not a registered owner is not a purchaser in good faith.

24. ID.; ID.; ID.; ID.; ID.; FAILURE OF PROSPECTIVE BUYER TO TAKE PRECAUTIONARY STEPS WOULD MEAN NEGLIGENCE ON HIS PART AND WOULD PRECLUDE HIM FROM INVOKING THE RIGHTS OF A PURCHASER IN GOOD FAITH. — It is, of course, expected from the purchaser of a valued piece of land to inquire first into the status or nature of possession of the occupants, *i.e.*, whether or not the occupants possess the land *en concepto de dueño*, in concept of owner. As is the common practice in the real estate industry, an ocular inspection of the premises involved is a safeguard a cautious and prudent purchaser usually takes. Should he find out that the land he intends to buy is occupied by anybody else other than the seller who, as in this case, is not in actual possession, it would then be incumbent upon the purchaser to verify the extent of the occupant's possessory rights. The failure of a prospective buyer to take such precautionary steps would mean negligence on his part and would thereby preclude him from claiming or invoking the rights of a "purchaser in good faith."

25. ID.; ID.; ID.; ID.; EXTRAORDINARY ACQUISITIVE PRESCRIPTION; PRESCRIPTIVE PERIOD. — Since the ordinary acquisitive prescription period of 10 years does not apply to LANDTRADE, then the Court turns its attention to the **extraordinary acquisitive prescription period** of **30 years** set by Article 1137 of the Civil Code, which reads: ART. 1137. Ownership and other real rights over immovables also prescribe through uninterrupted adverse possession thereof for thirty years, without need of title or of good faith. LANDTRADE adversely possessed the subject properties no earlier than **1996**, when it bought the same from Teofilo, and Civil Case No. 4452 was already instituted **two years** later in **1998**. LANDTRADE cannot tack its adverse possession of the two parcels of land to that of Teofilo considering that there is no proof that the latter, who is already residing in the U.S.A., adversely possessed the properties at all.

26. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; FORCIBLE ENTRY AND UNLAWFUL DETAINER; IMMEDIATE EXECUTION OF JUDGMENT; REQUIREMENT OF POSTING

A SUPERSEDEAS BOND TO STAY EXECUTION; THE NATIONAL POWER CORPORATION IS NO LONGER EXEMPT FROM FILING A SUPERSEDEAS BOND. — The Court had previously recognized the exemption of NAPOCOR from filing a *supersedeas* bond. The Court stated in *Philippine Geothermal, Inc. v. Commissioner of Internal Revenue* that a chronological review of the NAPOCOR Charter will show that it has been the lawmakers' intention that said corporation be completely exempt not only from all forms of taxes, but also from filing fees, appeal bonds, and *supersedeas* bonds in any court or administrative proceedings. x x x Only recently, however, the Court reversed its stance on the exemption of NAPOCOR from filing fees, appeal bonds, and *supersedeas* bonds. Revisiting A.M. No. 05-10-20-SC, the Court issued Resolutions dated October 27, 2009 and March 10, 2010, wherein it denied the request of NAPOCOR for exemption from payment of filing fees and court fees for such request appears to run counter to Article VIII, Section 5(5) of the Constitution, on the rule-making power of the Supreme Court over the rules on pleading, practice and procedure in all courts, which includes the sole power to fix the filing fees of cases in courts. The Court categorically pronounced that NAPOCOR can no longer invoke its amended Charter as basis for exemption from the payment of legal fees.

27. ID.; ID.; ID.; ID.; RULE 70, SECTION 19 APPLIES ONLY TO EJECTMENT CASES PENDING APPEAL WITH THE REGIONAL TRIAL COURT (RTC), AND SECTION 21 TO THOSE ALREADY DECIDED BY THE RTC. — Rule 70, Section 19 of the Rules of Court applies only when the judgment of a Municipal Trial Court (and any same level court such as the MTCC) in an ejectment case is pending appeal before the RTC. When the RTC had already resolved the appeal and its judgment, in turn, is pending appeal before the Court of Appeals, then **Rule 70, Section 21** of the Rules of Court governs. The Court already pointed out in *Northcastle Properties and Estate Corporation v. Paas* that Section 19 applies only to ejectment cases pending appeal with the RTC, and Section 21 to those already decided by the RTC. The Court again held in *Uy v. Santiago* that: **"**[I]t is only execution of the Metropolitan or Municipal Trial Courts' judgment pending appeal with the Regional Trial Court which may be stayed by a compliance with

the requisites provided in ***Rule 70, Section 19 of the 1997 Rules on Civil Procedure***. On the other hand, once the Regional Trial Court has rendered a decision in its appellate jurisdiction, such decision shall, under ***Rule 70, Section 21 of the 1997 Rules on Civil Procedure***, be immediately executory, without prejudice to an appeal, via a Petition for Review, before the Court of Appeals and/or Supreme Court." According to Rule 70, Section 21 of the Rules of Court, "[t]he judgment of the Regional Trial Court against the defendant shall be immediately executory, without prejudice to a further appeal that may be taken therefrom." It no longer provides for the stay of execution at such stage.

28. ID.; PROVISIONAL REMEDIES; PRELIMINARY INJUNCTION; NATURE. — The Court expounded on the nature of a writ of preliminary injunction in *Levi Strauss & Co. v. Clinton Apparelle, Inc.*: "Section 1, Rule 58 of the Rules of Court defines a preliminary injunction as an order granted at any stage of an action prior to the judgment or final order requiring a party or a court, agency or a person to refrain from a particular act or acts. Injunction is accepted as the strong arm of equity or a transcendent remedy to be used cautiously as it affects the respective rights of the parties, and only upon full conviction on the part of the court of its extreme necessity. An extraordinary remedy, injunction is designed to preserve or maintain the *status quo* of things and is generally availed of to prevent actual or threatened acts until the merits of the case can be heard. It may be resorted to only by a litigant for the preservation or protection of his rights or interests and for no other purpose during the pendency of the principal action. It is resorted to only when there is a pressing necessity to avoid injurious consequences, which cannot be remedied under any standard compensation. The resolution of an application for a writ of preliminary injunction rests upon the existence of an emergency or of a special recourse before the main case can be heard in due course of proceedings. Section 3, Rule 58, of the Rules of Court enumerates the grounds for the issuance of a preliminary injunction x x x. Under the cited provision, a clear and positive right especially calling for judicial protection must be shown. Injunction is not a remedy to protect or enforce contingent, abstract, or future rights; it will not issue to protect a right not *in esse* and which may never arise, or to restrain an

act which does not give rise to a cause of action. There must exist an actual right. There must be a patent showing by the complaint that there exists a right to be protected and that the acts against which the writ is to be directed are violative of said right."

29. ID.; ID.; ID.; APPLICABLE TO RULE 70, SECTION 21 OF THE RULES OF COURT; ELUCIDATED. — *Benedicto v. Court of Appeals* sets forth the following elucidation on the applicability of Rule 58 vis-à-vis Rule 70, Section 21 of the Rules of Court: "This section [Rule 70, Section 21] presupposes that the defendant in a forcible entry or unlawful detainer case is unsatisfied with the judgment of the Regional Trial Court and decides to appeal to a superior court. It authorizes the RTC to immediately issue a writ of execution without prejudice to the appeal taking its due course. It is our opinion that on appeal the appellate court may stay the said writ should circumstances so require. In the case of *Amagan v. Marayag*, we reiterated our pronouncement in *Vda. de Legaspi v. Avendaño* that the proceedings in an ejectment case may be suspended in whatever stage it may be found. We further drew a fine line between forcible entry and unlawful detainer, thus: Where the action, therefore, is one of illegal detainer, as distinguished from one of forcible entry, and the right of the plaintiff to recover the premises is seriously placed in issue in a proper judicial proceeding, it is more equitable and just and less productive of confusion and disturbance of physical possession, with all its concomitant inconvenience and expenses. For the Court in which the issue of legal possession, whether involving ownership or not, is brought to restrain, should a petition for preliminary injunction be filed with it, the effects of any order or decision in the unlawful detainer case in order to await the final judgment in the more substantive case involving legal possession or ownership. It is only where there has been forcible entry that as a matter of public policy the right to physical possession should be immediately set at rest in favor of the prior possession regardless of the fact that the other party might ultimately be found to have superior claim to the premises involved thereby to discourage any attempt to recover possession thru force, strategy or stealth and without resorting to the courts. **Patently, even if RTC judgments in unlawful detainer cases are immediately executory, preliminary**

injunction may still be granted. There need only be clear showing that there exists a right to be protected and that the acts against which the writ is to be directed violate said right."

30. ID.; ACTIONS; CAUSE OF ACTION; ELEMENTS. — Rule 2, Section 2 of the Rules of Court defines a cause of action as "the act or omission by which a party violates a right of another." Its essential elements are the following: (1) a right in favor of the plaintiff; (2) an obligation on the part of the named defendant to respect or not to violate such right; and (3) such defendant's act or omission that is violative of the right of the plaintiff or constituting a breach of the obligation of the former to the latter.

31. ID.; ID.; ACTIONS; ACTION FOR REVERSION; NATURE. — *Reversion* is an action where the ultimate relief sought is to revert the land back to the government under the Regalian doctrine. Considering that the land subject of the action originated from a grant by the government, its cancellation is a matter between the grantor and the grantee. In *Estate of the Late Jesus S. Yujuico v. Republic* (*Yujuico case*), reversion was defined as an action which seeks to restore public land fraudulently awarded and disposed of to private individuals or corporations to the mass of public domain. It bears to point out, though, that the Court also allowed the resort by the Government to actions for reversion to cancel titles that were void for reasons other than fraud, *i.e.*, violation by the grantee of a patent of the conditions imposed by law; and lack of jurisdiction of the Director of Lands to grant a patent covering inalienable forest land or portion of a river, even when such grant was made through mere oversight. In *Republic v. Guerrero*, the Court gave a more general statement that the remedy of reversion can be availed of "only in cases of **fraudulent or unlawful inclusion** of the land in patents or certificates of title."

32. POLITICAL LAW; NATIONAL ECONOMY AND PATRIMONY; REGALIAN DOCTRINE; THE BASIS FOR THE RIGHT OF THE REPUBLIC TO INSTITUTE AN ACTION FOR REVERSION. — The right of the Republic to institute an action for reversion is rooted in the Regalian doctrine. Under the **Regalian doctrine**, all lands of the public domain belong to the State, and that the State is the source of any asserted right

to ownership in land and charged with the conservation of such patrimony. This same doctrine also states that all lands not otherwise appearing to be clearly within private ownership are **presumed to belong to the State**. It is incorporated in the 1987 Philippine Constitution under Article XII, Section 2 which declares "[a]ll lands of the public domain, waters, minerals, coal, petroleum, and other mineral oils, all forces of potential energy, fisheries, forests or timber, wildlife, flora and fauna, and other natural resources are owned by the State. x x x" No public land can be acquired by private persons without any grant, express or implied, from the government; it is indispensable that there be a showing of the title from the State.

33. CIVIL LAW; COMMONWEALTH ACT NO. 141 (THE PUBLIC LAND ACT); ACTION FOR REVERSION; ISSUANCE OF A CERTIFICATE OF TITLE IS AN ELEMENT OF THE CAUSE OF ACTION FOR REVERSION. — Just because OCTs were already issued in Doña Demetria's name does not bar the Republic from instituting an action for reversion. Indeed, the Court made it clear in *Francisco v. Rodriguez* that Section 101 of the Public Land Act "may be invoked only when title has already vested in the individual, *e.g.*, when a patent or a certificate of title has already been issued[,]" for the basic premise in an action for reversion is that the certificate of title fraudulently or unlawfully included land of the public domain, hence, calling for the cancellation of said certificate. It is actually the issuance of such a certificate of title which constitutes the third element of a cause of action for reversion.

34. REMEDIAL LAW; CIVIL PROCEDURE; CAUSE OF ACTION; EXISTENCE OF A CAUSE OF ACTION, HOW DETERMINED. — It is a well-settled rule that the existence of a cause of action is determined by the allegations in the complaint. In the resolution of a motion to dismiss based on failure to state a cause of action, only the facts alleged in the complaint must be considered. The test in cases like these is whether a court can render a valid judgment on the complaint based upon the facts alleged and pursuant to the prayer therein. Hence, it has been held that a motion to dismiss generally partakes of the nature of a demurrer which **hypothetically admits** the truth of the factual allegations made in a complaint. The hypothetical admission extends to the relevant and material facts well pleaded in the complaint and inferences fairly deducible therefrom.

Hence, if the allegations in the complaint furnish sufficient basis by which the complaint can be maintained, the same should not be dismissed regardless of the defense that may be assessed by the defendants.

35. CIVIL LAW; COMMONWEALTH ACT NO. 141 (THE PUBLIC LAND ACT); ACTION FOR REVERSION; THE AUTHORITY TO INSTITUTE THE ACTION, ON BEHALF OF THE REPUBLIC, IS PRIMARILY CONFERRED UPON THE OFFICE OF THE SOLICITOR GENERAL. — That the Complaint in Civil Case No. 6686 does not allege that it had been filed by the Office of the Solicitor General (OSG), at the behest of the Director of Lands, does not call for its dismissal on the ground of failure to state a cause of action. Section 101 of Commonwealth Act No. 141, otherwise known as the Public Land Act, as amended, simply requires that: "SEC. 101. All actions for the reversion to the Government of lands of the public domain or improvements thereon shall be instituted by the **Solicitor General or the officer acting in his stead, in the proper courts, in the name of the Republic of the Philippines**." Clear from the aforequoted provision that the authority to institute an action for reversion, on behalf of the Republic, is primarily conferred upon the OSG. While the OSG, for most of the time, will file an action for reversion upon the request or recommendation of the Director of Lands, there is no basis for saying that the former is absolutely bound or dependent on the latter.

36. REMEDIAL LAW; CIVIL PROCEDURE; JUDGMENTS; *RES JUDICATA*; RATIONALE. — Public policy and sound practice enshrine the fundamental principle upon which the doctrine of *res judicata* rests that parties ought not to be permitted to litigate the same issues more than once. It is a general rule common to all civilized system of jurisprudence, that the solemn and deliberate sentence of the law, pronounced by its appointed organs, upon a disputed fact or a state of facts, should be regarded as a final and conclusive determination of the question litigated, and should forever set the controversy at rest. Indeed, it has been well said that this maxim is more than a mere rule of law; more even than an important principle of public policy; and that it is not too much to say that it is a fundamental concept in the organization of every jural system. Public policy and sound practice demand that, at the risk of occasional errors, judgments

of courts should become final at some definite date fixed by law. The very object for which courts were constituted was to put an end to controversies.

37. ID.; ID.; ID.; ID.; CONCEPTS. — The doctrine of *res judicata* comprehends two distinct concepts - (1) bar by former judgment, and (2) conclusiveness of judgment. *For res judicata* to serve as an absolute bar to a subsequent action, the following requisites must concur: (1) the former judgment or order must be final; (2) the judgment or order must be on the merits; (3) it must have been rendered by a court having jurisdiction over the subject matter and parties; and (4) there must be between the first and second actions, identity of parties, of subject matter, and of causes of action. When there is no identity of causes of action, but only an identity of issues, there exists *res judicata* in the concept of conclusiveness of judgment. Although it does not have the same effect as *res judicata* in the form of bar by former judgment which prohibits the prosecution of a second action upon the same claim, demand, or cause of action, the rule on conclusiveness of judgment bars the relitigation of particular facts or issues in another litigation between the same parties on a different claim or cause of action.

38. ID.; ACTIONS; RECONSTITUTION; NATURE. — Reconstitution denotes a restoration of the instrument which is supposed to have been lost or destroyed in its original form or condition. The purpose of the reconstitution of title or any document is to have the same reproduced, after observing the procedure prescribed by law, in the same form they were when the loss or destruction occurred. Reconstitution is another special proceeding where the concept of cause of action in an ordinary civil action finds no application.

39. ID.; ID.; ID.; DOES NOT PASS UPON THE OWNERSHIP OF THE LAND COVERED BY THE LOST OR DESTROYED TITLE. — The following pronouncement of the Court in *Heirs of Susana de Guzman Tuazon v. Court of Appeals* is instructive: "Precisely, in both species of reconstitution under Section 109 of P.D. No. 1529 and R.A. No. 26, the nature of the action denotes a restoration of the instrument which is supposed to have been lost or destroyed in its original form and condition. **The purpose of the action is merely to have the same reproduced, after proper proceedings, in the same form they**

were when the loss or destruction occurred, and does not pass upon the ownership of the land covered by the lost or destroyed title. It bears stressing at this point that ownership should not be confused with a certificate of title. Registering land under the Torrens System does not create or vest title because registration is not a mode of acquiring ownership. A certificate of title is merely an evidence of ownership or title over the particular property described therein. Corollarily, **any question involving the issue of ownership must be threshed out in a separate suit**, which is exactly what the private respondents did when they filed Civil Case No. 95-3577 before Branch 74. The trial court will then conduct a full-blown trial wherein the parties will present their respective evidence on the issue of ownership of the subject properties to enable the court to resolve the said issue. x x x."

40. ID.; ID.; ID.; ID.; FINDINGS OF THE COURT ON THE ISSUE OF OWNERSHIP ARE MERE *OBITER DICTUM*. — Whatever findings the Court made on the issue of ownership in the *1997 Cacho case* are mere *obiter dictum*. As the Court held in *Amoroso v. Alegre, Jr.*: "Petitioner claims in his petition that the 3 October 1957 Decision resolved the issue of ownership of the lots and declared in the body of the decision that he had 'sufficiently proven uncontroverted facts that he had been in possession of the land in question since 1946 x x x [and] has been in possession of the property with sufficient title.' However, **such findings made by the CFI in the said decision are mere obiter, since the ownership of the properties, titles to which were sought to be reconstituted, was never the issue in the reconstitution case. Ownership is not the issue in a petition for reconstitution of title. A reconstitution of title does not pass upon the ownership of the land covered by the lost or destroyed title.** It may perhaps be argued that ownership of the properties was put in issue when petitioner opposed the petition for reconstitution by claiming to be the owner of the properties. However, **any ruling that the trial court may make on the matter is irrelevant considering the court's limited authority in petitions for reconstitution.** In a petition for reconstitution of title, the only relief sought is the issuance of a reconstituted title because the reconstituting officer's power is limited to granting or denying a reconstituted title. As stated earlier, the reconstitution of title does not pass upon the

ownership of the land covered by the lost or destroyed title, and any change in the ownership of the property must be the subject of a separate suit."

41. ID.; CIVIL PROCEDURE; FORUM SHOPPING; DEFINED. — Forum shopping is the filing of multiple suits involving the same parties for the same cause of action, either simultaneously or successively, for the purpose of obtaining a favorable judgment. A party violates the rule against forum shopping if the elements of *litis pendentia* are present; or if a final judgment in one case would amount to *res judicata* in the other.

42. ID.; ID.; ID.; ELEMENTS. — There is forum shopping when the following elements are present: (a) identity of parties, or at least such parties as represent the same interests in both actions; (b) identity of rights asserted and relief prayed for, the relief being founded on the same facts; and (c) the identity of the two preceding particulars, is such that any judgment rendered in the other action will, regardless of which party is successful, amount to *res judicata* in the action under consideration; said requisites are also constitutive of the requisites for *auter action pendant* or *lis pendens*.

43. ID.; ACTIONS; PRESCRIPTION; DOES NOT RUN AGAINST THE STATE AND ITS SUBDIVISIONS. — [E]lementary is the rule that prescription does not run against the State and its subdivisions. When the government is the real party in interest, and it is proceeding mainly to assert its own right to recover its own property, there can as a rule be no defense grounded on laches or prescription. Public land fraudulently included in patents or certificates of title may be recovered or reverted to the State in accordance with Section 101 of the Public Land Act. The right of reversion or reconveyance to the State is not barred by prescription.

44. CIVIL LAW; LAND REGISTRATION; INDEFEASIBILITY OF TITLE; DOES NOT ATTACH TO TITLES SECURED BY FRAUD AND MISREPRESENTATION. — [D]espite the lapse of one year from the entry of a decree of registration/certificate of title, the State, through the Solicitor General, may still institute an action for reversion when said decree/certificate was acquired by fraud or misrepresentation. Indefeasibility of a title does not attach to titles secured by fraud and misrepresentation. Well-settled is the doctrine that the registration of a patent

under the Torrens system does not by itself vest title; it merely confirms the registrant's already existing one. Verily, registration under the Torrens system is not a mode of acquiring ownership.

45. ID.; ID.; ID.; ID.; RIGHT OF THE STATE TO AVAIL ITSELF OF THE REMEDY OF REVERSION WHEN TITLE TO LAND IS VOID FOR REASONS OTHER THAN HAVING BEEN SECURED BY FRAUD OR MISREPRESENTATION, RECOGNIZED IN SOME CASES. — [T]he Court had several times in the past recognized the right of the State to avail itself of the remedy of reversion in other instances when the title to the land is void for reasons other than having been secured by fraud or misrepresentation. One such case is *Spouses Morandarte v. Court of Appeals*, where the Bureau of Lands (BOL), by mistake and oversight, granted a patent to the spouses Morandarte which included a portion of the Miputak River. The Republic instituted an action for reversion 10 years after the issuance of an OCT in the name of the spouses Morandarte. x x x Another example is the case of *Republic of the Phils. v. CFI of Lanao del Norte, Br. IV*, in which the homestead patent issued by the State became null and void because of the grantee's violation of the conditions for the grant. The Court ordered the reversion even though the land subject of the patent was already covered by an OCT and the Republic availed itself of the said remedy more than 11 years after the cause of action accrued x x x.

APPEARANCES OF COUNSEL

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D E C I S I O N

LEONARDO-DE CASTRO, *J.*:

Before the Court are seven consolidated Petitions for Review on *Certiorari* and a Petition for *Certiorari* under Rules 45 and 65 of the Rules of Court, respectively, arising from actions for quieting of title, expropriation, ejectment, and reversion, which all involve the same parcels of land.

In **G.R. No. 170375**, the Republic of the Philippines (Republic), by way of consolidated Petitions for Review on *Certiorari* and for *Certiorari* under Rules 45 and 65 of the Rules of Court, respectively, seeks to set aside the issuances of Judge Mamindiara P. Mangotara (Judge Mangotara) of the Regional Trial Court, Branch 1 (RTC-Branch 1) of Iligan City, Lanao del Norte, in Civil Case No. 106, particularly, the: (1) Resolution[1] dated July 12, 2005 which, in part, dismissed the Complaint for Expropriation of the Republic for the latter's failure to implead indispensable parties and forum shopping; and (2) Resolution[2] dated October 24, 2005, which denied the Partial Motion for Reconsideration of the Republic.

G.R. Nos. 178779 and 178894 are two Petitions for Review on *Certiorari* under Rule 45 of the Rules of Court, where Landtrade Realty Corporation (LANDTRADE), Teofilo Cacho, and/or Atty. Godofredo Cabildo assail the Decision[3] dated January 19, 2007 and Resolution[4] dated July 4, 2007 of the Court of Appeals in CA-G.R. CV No. 00456. The Court of Appeals affirmed the Decision[5] dated July 17, 2004 of the Regional Trial Court, Branch

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[1] *Rollo* (G.R. No. 170375), pp. 71-74.

[2] *Id.* at 75-76.

[3] Penned by Associate Justice Rodrigo F. Lim, Jr. with Associate Justices Teresita Dy Liacco-Flores and Sixto C. Marella, Jr., concurring; *rollo* (G.R. No. 178779), pp. 37-83; *rollo* (G.R. No. 178894), pp. 41-87.

[4] Penned by Associate Justice Rodrigo F. Lim, Jr. with Associate Justices Teresita Dy Liacco-Flores and Jane Aurora C. Lantion, concurring; *rollo* (G.R. No. 178779), pp. 84-85; *rollo* (G.R. No. 178894), pp. 89-90.

[5] Penned by Presiding Judge Albert B. Abragan; *rollo* (G.R. No. 178779), pp. 375-414.

3 (RTC-Branch 3) of Iligan City, Lanao del Norte, in Civil Case No. 4452, granting the Petition for Quieting of Title, Injunction and Damages filed by Demetria Vidal and Azimuth International Development Corporation (AZIMUTH) against Teofilo Cacho and Atty. Godofredo Cabildo.

G.R. No. 170505 is a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court in which LANDTRADE urges the Court to reverse and set aside the Decision[6] dated November 23, 2005 of the Court of Appeals in CA-G.R. SP Nos. 85714 and 85841. The appellate court annulled several issuances of the Regional Trial Court, Branch 5 (RTC-Branch 5) of Iligan City, Lanao del Norte, and its sheriff, in Civil Case No. 6613, specifically, the: (1) Order[7] dated August 9, 2004 granting the Motion for Execution Pending Appeal of LANDTRADE; (2) Writ of Execution[8] dated August 10, 2004; (3) two Notices of Garnishment[9] both dated August 11, 2004, and (4) Notification[10] dated August 11, 2004. These issuances of the RTC-Branch 5 allowed and/or enabled execution pending appeal of the Decision[11] dated February 17, 2004 of the Municipal Trial Court in Cities (MTCC), Branch 2 of Iligan City, Lanao del Norte, favoring LANDTRADE in Civil Case No. 11475-AF, the ejectment case said corporation instituted against the National Power Corporation (NAPOCOR) and the National Transmission Corporation (TRANSCO).

G.R. Nos. 173355-56 and 173563-64 are two Petitions for *Certiorari* and Prohibition under Rule 65 of the Rules of

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[6] Penned by Associate Justice Edgardo A. Camello with Associate Justices Normandie B. Pizzaro and Ricardo S. Rosario, concurring; *rollo* (G.R. No. 170505), pp. 28-54.

[7] Penned by Judge Maximino Magno Libre, *id.* at 485-492.

[8] *Id.* at 493-494.

[9] *Id.* at 495-498.

[10] *Rollo* (G.R. No. 170505), pp. 449-450.

[11] Penned by Judge Marito P. Abragan; *rollo* (G.R. Nos. 173355-56), pp. 93-116 and *rollo* (G.R. Nos. 173563-64), pp. 47-70.

Court with prayer for the immediate issuance of a Temporary Restraining Order (TRO) and/or Writ of Preliminary Injunction filed separately by NAPOCOR and TRANSCO. Both Petitions seek to annul the Resolution[12] dated June 30, 2006 of the Court of Appeals in the consolidated cases of CA-G.R. SP Nos. 00854 and 00889, which (1) granted the Omnibus Motion of LANDTRADE for the issuance of a writ of execution and the designation of a special sheriff for the enforcement of the Decision[13] dated December 12, 2005 of the RTC-Branch 1 in Civil Case No. 6613, and (2) denied the applications of NAPOCOR and TRANSCO for a writ of preliminary injunction to enjoin the execution of the same RTC Decision. The Decision dated December 12, 2005 of RTC-Branch 1 in Civil Case No. 6613 affirmed the Decision dated February 17, 2004 of the MTCC in Civil Case No. 11475-AF, favoring LANDTRADE.

G.R. No. 173401 involves a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court filed by the Republic, which raises pure questions of law and seeks the reversal of the following issuances of the Regional Trial Court, Branch 4 (RTC-Branch 4) of Iligan City, Lanao del Norte, in Civil Case No. 6686, an action for cancellation of titles and reversion: (1) Order[14] dated December 13, 2005 dismissing the Complaint in Civil Case No. 6686; and (2) Order[15] dated May 16, 2006, denying the Motion for Reconsideration of the Republic.

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[12] Penned by Associate Justice Edgardo A. Camello with Associate Justices Ricardo R. Rosario and Sixto C. Marella, Jr., concurring; *rollo* (G.R. Nos. 173355-56), pp. 54-62 and *rollo* (G.R. Nos. 173563-64), pp. 38-46.

[13] Penned by Judge Mamindiara P. Mangotara; *rollo* (G.R. Nos. 173355-56), pp. 176-178 and *rollo* (G.R. Nos. 173563-64), pp. 71-73.

[14] Penned by Presiding Judge Moslemen T. Macarambon*; rollo* (G.R. No. 173401), pp. 57-68.

[15] *Id.* at 69.

I
THE PRECEDING CASES

The consolidated seven cases have for their common genesis the 1914 case of ***Cacho v. Government of the United States***[16] (*1914 Cacho case*).

The *1914 Cacho Case*

Sometime in the early 1900s, the late Doña Demetria Cacho (Doña Demetria) applied for the registration of **two parcels of land**: (1) Lot 1 of Plan II-3732, the smaller parcel with an area of **3,635 square meters or 0.36 hectares** (Lot 1); and (2) Lot 2 of Plan II-3732, the larger parcel with an area of **378,707 square meters or 37.87 hectares** (Lot 2). Both parcels are situated in what was then the Municipality of Iligan, Moro Province, which later became Sitio Nunucan, then Brgy. Suarez, in Iligan City, Lanao del Norte. Doña Demetria's applications for registration were docketed as GLRO Record Nos. 6908 and 6909.

The application in **GLRO Record No. 6908** covered **Lot 1**, the smaller parcel of land. Doña Demetria allegedly acquired Lot 1 by purchase from Gabriel Salzos (Salzos). Salzos, in turn, bought Lot 1 from Datto Darondon and his wife Alanga, evidenced by a deed of sale in favor of Salzos signed solely by Alanga, on behalf of Datto Darondon.

The application in **GLRO Record No. 6909** involved **Lot 2**, the bigger parcel of land. Doña Demetria purportedly purchased Lot 2 from Datto Bunglay. Datto Bunglay claimed to have inherited Lot 2 from his uncle, Datto Anandog, who died without issue.

Only the Government opposed Doña Demetria's applications for registration on the ground that the two parcels of land were the property of the United States and formed part of a military reservation, generally known as Camp Overton.

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[16] 28 Phil. 616 (1914).

On December 10, 1912, the land registration court (LRC) rendered its Decision in GLRO Record Nos. 6908 and 6909.

Based on the evidence, the LRC made the following findings in **GLRO Record No. 6908**:

> 6th. The court is convinced from the proofs that the **small parcel of land** sold by the Moro woman Alanga was the home of herself and her husband, Darondon, and was their conjugal property; and the court so finds.
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> x x x x x x x x x
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> As we have seen, the deed on which applicant's title to the small parcel rests, is executed only by the Moro woman Alanga, wife of Datto Darondon, which is not permitted either by the Moro laws or the Civil Code of the Philippine Islands. It appears that the husband of Alanga, Datto Darondon, is alive yet, and **before admitting this parcel to registration it is ordered that a deed from Datto Darondon, husband of Alanga, be presented, renouncing all his rights in the small parcel of land object of Case No. 6908, in favor of the applicant**.[17] (Emphases supplied.)

In **GLRO Record No. 6909**, the LRC observed and concluded that:

> A tract of land 37 hectares in area, which is the extent of the land under discussion, is larger than is cultivated ordinarily by the Christian Filipinos. In the Zamboanga cadastral case of thousands of parcels now on trial before this court, the average size of the parcels is not above 3 or 4 hectares, and the court doubts very much if a Moro with all his family could cultivate as extensive a parcel of land as the one in question. x x x
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> x x x x x x x x x
>
> The court is also convinced from the proofs that the **small portion in the southern part of the larger parcel**, where, according to the proofs, Datto Anandog had his house and where there still exist some cocos and fruit trees, **was the home of the said Moro Datto Anandog**; and the court so finds. **As to the rest of the large parcel the court does not find the title of Datto Bunglay established**. According to

[17] *Id.* at 627-629.

his own declaration his residence on this land commenced only a few days before the sale. He admitted that the coco trees he is supposed to have planted had not yet begun to bear fruit at the time of the sale, and were very small. Datto Duroc positively denies that Bunglay lived on the land, and it clearly appears that he was not on the land when it was first occupied by the military. Nor does Datto Bunglay claim to have planted the three mango trees by the roadside near point 25 of the plan. The court believes that all the rest of this parcel, not occupied nor cultivated by Datto Anandog, was land claimed by Datto Duroc and also by Datto Anandog and possibly by other dattos as a part of their general jurisdiction, and that it is the class of land that Act No. 718 prohibits the sale of, by the dattos, without the express approval of the Government.

It is also found that Datto Bunglay is the nephew of Dato Anandog, and that the Moro woman Alanga, grantor of the small parcel, is the sister of Datto Anandog, and that he died without issue.

xxx xxx xxx

It appears also that according to the provisions of the Civil Code as also the provisions of the 'Luwaran Code' of the Moros, the Moro woman Alanga has an interest in the portion of land left by her deceased brother, Datto Anandog. By Article LXXXV, Section 3, of the 'Luwaran Code,' it will be seen that the brothers and sisters of a deceased Moro inherit his property to the exclusion of the more distant relatives. Therefore Datto Bunglay had no legal interest whatever in the land to sell to the applicant, Doña Demetria Cacho. But the Moro woman, Alanga, having appeared as a witness for the applicant without having made any claim to the land, the court finds from this fact that she has ratified the sale made by her nephew.

The court therefore finds that the applicant Doña Demetria Cacho is owner of the portion of land occupied and planted by the deceased Datto Anandog in the southern part of the large parcel object of *expediente* No. 6909 only; and her application as to all the rest of the land solicited in said case is denied. And it is ordered that a new survey of the land be made and a corrected plan be presented, excluding all the land not occupied and cultivated by Datto Anandog; that said survey be made and the corrected plan presented on or before the 30th day of March, 1913, with previous notice to the commanding general of the Division of the Philippines.

On the 8th day of December, the court was at Camp Overton and had another ocular inspection of the land for the purpose of fixing the limits of the part cultivated by Datto Anandog, so often mentioned herein, with previous notice to the applicant and her husband and representative, Señor Dionisio Vidal. Having arrived late, Señor Vidal did not assist in the ocular inspection, which was fixed for 3 o'clock, p.m. of the day mentioned. But the court, nevertheless, set stakes marking the N.E., S.E., and S.W. corners of the land found to have been cultivated by the deceased Anandog. The N.E. limit of said land is a brook, and the N.W. corner is the point where the brook intersects the shore line of the sea, the other corners mentioned being marked with pine stakes. **And it is ordered that the new survey be made in accordance with the points mentioned, by tracing four straight lines connecting these four points.** Between the portion cultivated by Datto Anandog and the mouth of the River Agus there is a high steep hill and the court does not believe it possible to cultivate said hill, it being covered with rocks and forest.[18] (Emphases supplied.)

The LRC additionally decreed at the end of its December 10, 1912 Decision:

It is further ordered that one-half of the costs of the new survey be paid by the applicant and the other half by the Government of the United States, and that the applicant present the corresponding deed from Datto Darondon on or before the above-mentioned 30th day of March, 1913. Final decision in these cases is reserved until the presentation of the said deed and the new plan.[19]

Apparently dissatisfied with the foregoing LRC judgment, Doña Demetria appealed to this Court. In its Decision dated December 10, 1914, the Court affirmed *in toto* the LRC Decision of December 10, 1912, well satisfied that the findings of fact of the court below were fully sustained by the evidence adduced during trial.

Eighty-three years later, in 1997, the Court was again called upon to settle a matter concerning the registration of Lots 1

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[18] *Id.* at 624, 627-630.

[19] *Id.* at 630-631.

and 2 in the case of ***Cacho v. Court of Appeals***[20] (*1997 Cacho case*).

The *1997 Cacho Case*

On June 29, 1978, Teofilo Cacho (Teofilo), claiming to be the late Doña Demetria's son and sole heir, filed before the RTC a petition for reconstitution of two original certificates of title (OCTs), docketed under the original GLRO Record Nos. 6908 and 6909.

Teofilo's petition was opposed by the Republic, National Steel Corporation (NSC), and the City of Iligan.

Acting on the motion for judgment on demurrer to evidence filed by the Republic and NSC, the RTC initially dismissed Teofilo's petition for reconstitution of titles because there was inadequate evidence to show the prior existence of the titles sought to be restored. According to the RTC, the proper remedy was a petition for the reconstitution of decrees since "it is undisputed that in Cases No. 6908 and 6909, Decrees No. 10364 and 18969, respectively, were issued." Teofilo sought leave of court for the filing and admission of his amended petition, but the RTC refused. When elevated to this Court in *Cacho v. Mangotara*, docketed as G.R. No. 85495, the Court resolved to remand the case to the RTC, with an order to the said trial court to accept Teofilo's amended petition and to hear it as one for re-issuance of decrees.

In opposing Teofilo's petition, the Republic and NSC argued that the same suffered from jurisdictional infirmities; that Teofilo was not the real party-in-interest; that Teofilo was guilty of laches; that Doña Demetria was not the registered owner of the subject parcels of land; that no decrees were ever issued in Doña Demetria's name; and that the issuance of the decrees was dubious and irregular.

After trial, on June 9, 1993, the RTC rendered its Decision granting Teofilo's petition and ordering the reconstitution and

[20] 336 Phil. 154 (1997).

re-issuance of Decree Nos. 10364 and 18969. The RTC held that the issuance of Decree No. 10364 in GLRO No. 6908 on May 9, 1913 and Decree No. 18969 in GLRO Record No. 6909 on July 8, 1915 was sufficiently established by the certifications and testimonies of concerned officials. The original issuance of these decrees presupposed a prior judgment that had become final.

On appeal, the Court of Appeals reversed the RTC Decision dated June 9, 1993 and dismissed the petition for re-issuance of Decree Nos. 10364 and 18969 because: (1) re-issuance of Decree No. 18969 in GLRO Record No. 6909 could not be made in the absence of the new survey ordered by this Court in the *1914 Cacho case*; (2) the heir of a registered owner may lose his right to recover possession of the property and title thereto by laches; and (3) Teofilo failed to establish his identity and existence and that he was a real party-in-interest.

Teofilo then sought recourse from this Court in the *1997 Cacho case*. The Court reversed the judgment of the Court of Appeals and reinstated the decision of the RTC approving the re-issuance of Decree Nos. 10364 and 18969. The Court found that such decrees had in fact been issued and had attained finality, as certified by the Acting Commissioner, Deputy Clerk of Court III, Geodetic Engineer, and Chief of Registration of the then Land Registration Commission, now National Land Titles and Deeds Registration Administration (NALTDRA). The Court further reasoned that:

> [T]o sustain the Court of Appeals ruling as regards requiring petitioners to fulfill the conditions set forth in *Cacho vs. U.S.* would constitute a derogation of the doctrine of *res judicata*. Significantly, the issuance of the subject decrees presupposes a prior final judgment because the issuance of such decrees is a mere ministerial act on part of the Land Registration Commission (now the NALTDRA), upon presentation of a final judgment. It is also worth noting that the judgment in *Cacho vs. U.S.* could not have acquired finality without the prior fulfillment of the conditions in GLRO Record No. 6908, the presentation of the corresponding deed of sale from Datto Dorondon on or before March 30, 1913 (upon which Decree No. 10364 was issued on May 9, 1913); and in GLRO Record No. 6909, the presentation of

a new survey per decision of Judge Jorge on December 10, 1912 and affirmed by this Court on December 10, 1914 (upon which Decree No. 18969 was issued on July 8, 1915).

Requiring the submission of a new plan as a condition for the re-issuance of the decree would render the finality attained by the *Cacho vs. U.S.* case nugatory, thus, violating the fundamental rule regarding *res judicata*. It must be stressed that the judgment and the resulting decree are *res judicata*, and these are binding upon the whole world, the proceedings being in the nature of proceedings *in rem*. Besides, such a requirement is an impermissible assault upon the integrity and stability of the Torrens System of registration because it also effectively renders the decree inconclusive.[21]

As to the issue of laches, the Court referred to the settled doctrine that laches cannot bar the issuance of a decree. A final decision in land registration cases can neither be rendered inefficacious by the statute of limitations nor by laches.

Anent the issue of the identity and existence of Teofilo and he being a real party-in-interest, the Court found that these were sufficiently established by the records. The Court relied on Teofilo's Affidavit of Adjudication as Doña Demetria's sole heir, which he executed before the Philippine Consulate General in Chicago, United States of America (U.S.A.); as well as the publication in the Times Journal of the fact of adjudication of Doña Demetria's estate. Teofilo also appeared personally before the Vice Consul of the Philippine Consulate General in Chicago to execute a Special Power of Attorney in favor of Atty. Godofredo Cabildo (Atty. Cabildo) who represented him in this case. The Court stressed that the execution of public documents is entitled to the presumption of regularity and proof is required to assail and controvert the same.

In the Resolution dated July 28, 1997,[22] the Court denied the Motions for Reconsideration of the Republic and NSC.

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[21] *Id.* at 166-167.

[22] *Cacho v. Court of Appeals*, 342 Phil. 383 (1997).

As a result of the *1997 Cacho case*, the decrees of registration were re-issued bearing new numbers and OCTs were issued for the two parcels of land in Doña Demetria's name. OCT No. 0-1200 (a.f.) was based on re-issued Decree No. N-219464 in GLRO Record No. 6908, while OCT No. 0-1201 (a.f.) was based on re-issued Decree No. N-219465 in GLRO Record No. 6909.

THE ANTECEDENT FACTS OF THE PETITIONS AT BAR

The dispute over Lots 1 and 2 did not end with the termination of the *1997 Cacho case*. Another four cases involving the same parcels of land were instituted before the trial courts during and after the pendency of the *1997 Cacho case*. These cases are: (1) the Expropriation Case, G.R. No. 170375; (2) the Quieting of Title Case, G.R. Nos. 178779 and 178894; (3) the Ejectment or Unlawful Detainer Case, G.R. No. 170505 (execution pending appeal before the RTC) and G.R. Nos. 173355-56 and 173563-64 (execution pending appeal before the Court of Appeals); and (4) the Cancellation of Titles and Reversion Case, G.R. No. 173401. These cases proceeded independently of each other in the courts *a quo* until they reached this Court via the present Petitions. In the Resolution[23] dated October 3, 2007, the Court consolidated the seven Petitions considering that they either originated from the same case or involved similar issues.

Expropriation Case (G.R. No. 170375)

The Complaint for Expropriation was originally filed on August 15, 1983 by the Iron and Steel Authority (ISA), now the NSC, against Maria Cristina Fertilizer Corporation (MCFC), and the latter's mortgagee, the Philippine National Bank (PNB). The

[23] *Rollo* (G.R. No. 178779), p. 300-A; *rollo* (G.R. No. 178894), p. 92.

Complaint was docketed as Civil Case No. 106 and raffled to RTC-Branch 1, presided over by Judge Mangotara.

ISA was created pursuant to Presidential Decree No. 2729[24] dated August 9, 1973, to strengthen, develop, and promote the iron and steel industry in the Philippines. Its existence was extended until October 10, 1988.

On November 16, 1982, during the existence of ISA, then President Ferdinand E. Marcos issued Presidential Proclamation No. 2239,[25] reserving in favor of ISA a parcel of land in Iligan City, measuring 302,532 square meters or 30.25 hectares, to be devoted to the integrated steel program of the Government. MCFC occupied certain portions of this parcel of land. When negotiations with MCFC failed, ISA was compelled to file a Complaint for Expropriation.

When the statutory existence of ISA expired during the pendency of Civil Case No. 106, MCFC filed a Motion to Dismiss the case alleging the lack of capacity to sue of ISA. The RTC-Branch 1 granted the Motion to Dismiss in an Order dated November 9, 1988. ISA moved for reconsideration or, in the alternative, for the substitution of the Republic as plaintiff in Civil Case No. 106, but the motion was denied by RTC-Branch 1. The dismissal of Civil Case No. 106 was affirmed by the Court of Appeals, thus, ISA appealed to this Court. In *Iron and Steel Authority v. Court of Appeals*[26] *(ISA case)*, the Court remanded the case to RTC-Branch 1, which was ordered to allow the substitution of the Republic for ISA as plaintiff. Entry of Judgment was made in the *ISA case* on August 31, 1998. In an Order[27] dated November 16, 2001, the RTC-

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[24] An Act Creating the Iron and Steel Authority.

[25] Reserving for the Use of the National Steel Corporation Certain Lands of the Public Domain Situated in the City of Iligan, Island of Mindanao and Amending Any and All Previous Presidential Proclamations, Executive Orders and Letters of Instructions Inconsistent or Contrary Hereto.

[26] 319 Phil. 648 (1995).

[27] *Rollo* (G.R. No. 170375), p. 91.

Branch 1 allowed the substitution of the Republic for ISA as plaintiff in Civil Case No. 106.

Alleging that Lots 1 and 2 involved in the *1997 Cacho case* encroached and overlapped the parcel of land subject of Civil Case No. 106, the Republic filed with the RTC-Branch 1 a Motion for Leave to File Supplemental Complaint dated October 7, 2004 and to Admit the Attached Supplemental Complaint dated September 28, 2004[28] seeking to implead in Civil Case No. 106 Teofilo Cacho and Demetria Vidal and their respective successors-in-interest, LANDTRADE and AZIMUTH.

MCFC opposed the Motion for leave to file and to admit the Supplemental Complaint on the ground that the Republic was without legal personality to file the same because ISA was the plaintiff in Civil Case No. 106. MCFC argued that the Republic failed to move for the execution of the decision in the *ISA case* within the prescriptive period of five years, hence, the only remedy left was for the Republic to file an independent action to revive the judgment. MCFC further pointed out that the unreasonable delay of more than six years of the Republic in seeking the substitution and continuation of the action for expropriation effectively barred any further proceedings therein on the ground of estoppel by *laches*.

In its Reply, the Republic referred to the Order dated November 16, 2001 of the RTC-Branch 1 allowing the substitution of the Republic for ISA.

In an Order dated April 4, 2005, the RTC-Branch 1 denied the Motion of the Republic for leave to file and to admit its Supplemental Complaint. The RTC-Branch 1 agreed with MCFC that the Republic did not file any motion for execution of the judgment of this Court in the *ISA case*. Since no such motion for execution had been filed, the RTC-Branch 1 ruled that its Order dated November 16, 2001, which effected the substitution of the Republic for ISA as plaintiff in Civil Case No. 106, was

[28] *Id.* at 132-170.

an honest mistake. The Republic filed a Motion for Reconsideration of the April 4, 2005 Order of the RTC-Branch 1.

MCFC then filed a Motion to Dismiss Civil Case No. 106 for: (1) failure of the Republic to implead indispensable parties because MCFC insisted it was not the owner of the parcels of land sought to be expropriated; and (2) forum shopping considering the institution by the Republic on October 13, 2004 of an action for the reversion of the same parcels subject of the instant case for expropriation.

Judge Mangotara of RTC-Branch 1 issued a Resolution[29] on July 12, 2005, denying for lack of merit the Motion for Reconsideration of the Order dated April 4, 2005 filed by the Republic, and granting the Motion to Dismiss Civil Case No. 106 filed by MCFC. Judge Mangotara justified the dismissal of the Expropriation Case thus:

> What the Republic seeks [herein] is the expropriation of the subject parcels of land. Since the exercise of the power of eminent domain involves the taking of private lands intended for public use upon payment of just compensation to the owner x x x, then a complaint for expropriation must, of necessity, be directed against the owner of the land subject thereof. In the case at bar, the decision of the Supreme Court in *Cacho v. Government of the United States* x x x, decreeing the registration of the subject parcels of land in the name of the late Doña Demetria Cacho has long attained finality and is conclusive as to the question of ownership thereof. Since MCFC, the only defendant left in this case, is not a proper party defendant in this complaint for expropriation, the present case should be dismissed.
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> This Court notes that the Republic [has filed reversion proceedings] dated September 27, 2004, involving the same parcels of land, docketed as Case No. 6686 pending before the Regional Trial Court of Lanao del Norte, Iligan City Branch 4. [The Republic], however, did not state such fact in its "Verification and Certification of Non-Forum Shopping" attached to its Supplemental Complaint dated September 28, 2004. [It is therefore] guilty of forum shopping. Moreover,

[29] *Supra* note 1.

considering that in the Reversion case, [the Republic] asserts ownership over the subject parcels of land, it cannot be allowed to take an inconsistent position in this expropriation case without making a mockery of justice.[30]

The Republic filed a Motion for Reconsideration of the Resolution dated July 12, 2005, insofar as it dismissed Civil Case No. 106, but said Motion was denied by Judge Mangatora in a Resolution[31] dated October 24, 2005.

On January 16, 2006, the Republic filed with this Court the consolidated Petition for Review on *Certiorari* and Petition for *Certiorari* under Rules 45 and 65 of the Rules of Court, respectively, docketed as G.R. No. 170375.

The Quieting of Title Case
(G.R. Nos. 178779 and 178894)

Demetria Vidal (Vidal) and AZIMUTH filed on November 18, 1998, a Petition[32] for Quieting of Title against Teofilo, Atty. Cabildo, and the Register of Deeds of Iligan City, which was docketed as Civil Case No. 4452 and raffled to RTC-Branch 3.

In the Petition, Vidal claimed that she, and not Teofilo, was the late Doña Demetria's sole surviving heir, entitled to the parcels of land covered by OCT Nos. 0-1200 (a.f.) and 0-1201 (a.f.). She averred that she is the daughter of Francisco Cacho Vidal (Francisco) and Fidela Arellano Confesor. Francisco was the only child of Don Dionisio Vidal and Doña Demetria.

AZIMUTH, for its part, filed the Petition as Vidal's successor-in-interest with respect to a 23-hectare portion of the subject parcels of land pursuant to the Memorandum of Agreement dated April 2, 1998 and Deed of Conditional Conveyance dated August 13, 2004, which Vidal executed in favor of AZIMUTH.

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[30] *Id.* at 73-74.

[31] *Supra* note 2.

[32] *Rollo* (G.R. No.178779), pp. 1265-1287.

Teofilo opposed the Petition contending that it stated no cause of action because there was no title being disturbed or in danger of being lost due to the claim of a third party, and Vidal had neither legal nor beneficial ownership of the parcels of land in question; that the matter and issues raised in the Petition had already been tried, heard, and decided by the RTC of Iligan City and affirmed with finality by this Court in the *1997 Cacho case*; and that the Petition was barred by the Statute of Limitations and laches.

LANDTRADE, among other parties, was allowed by the RTC-Branch 3 to intervene in Civil Case No. 4452. LANDTRADE alleged that it is the owner of a portion of the subject parcels of land, measuring 270,255 square meters or about 27.03 hectares, which it purportedly acquired through a Deed of Absolute Sale dated October 1, 1996 from Teofilo, represented by Atty. Cabildo. LANDTRADE essentially argued that Vidal's right as heir should be adjudicated upon in a separate and independent proceeding and not in the instant Quieting of Title Case.

During the pre-trial conference, the parties manifested that there was no possibility of any amicable settlement among them.

Vidal and AZIMUTH submitted testimonial and documentary evidence during the trial before the RTC-Branch 3. Teofilo and Atty. Cabildo failed to present any evidence as they did not appear at all during the trial, while LANDTRADE was declared by the RTC-Branch 3 to have waived its right to present evidence on its defense and counterclaim.

On July 17, 2004, the RTC-Branch 3 rendered its Decision[33] in Civil Case No. 4452 in favor of Vidal and AZIMUTH, the dispositive portion of which reads:

WHEREFORE, judgment is hereby rendered in favor of the petitioners and against the respondents and intervenors:

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[33] *Supra* note 5.

1) DECLARING:

a.) Petitioner Demetria C. Vidal the sole surviving heir of the late Doña Demetria Cacho;

b.) Petitioner Demetria C. Vidal alone has the hereditary right to and interest in the Subject Property;

c.) Petitioner Azimuth International Development Corporation is the successor-in-interest of petitioner Demetria C. Vidal to a portion of the Subject Property to the extent provided in their 2 April 1998 Memorandum of Agreement and 13 August 1998 Deed of Conditional Conveyance;

d.) Respondent Teofilo Cacho is not a son or heir of the late Dona Demetria Cacho; and

e.) Respondent Teofilo Cacho, Godofredo Cabildo and any of their transferees/assignees have no valid right to or interest in the Subject Property.

2) ORDERING:

a.) Respondent Register of Deeds of Iligan City, and any other person acting in his behalf, stop, cease and desist:

i) From accepting or registering any affidavit of self-adjudication or any other document executed by respondents Teofilo Cacho, Godofredo Cabildo and/or any other person which in any way transfers the title to the Subject Property from Dona Demetria Cacho to respondent Teofilo Cacho, Godofredo Cabildo and/or any of their transferees/assignees, including the intervenors.

ii) From cancelling the OCTs or any certificate of title over the Subject Property in the name of Demetria Cacho or any successor certificate of title, and from issuing new certificates of title in the name of respondents Teofilo Cacho, Godofredo Cabildo their transferees/assignees, including the intervenors.

b.) Respondents Teofilo Cacho, Godofredo Cabildo, their transferees/assignees, and any other person acting in their behalf, to stop, cease and desist:

i) From executing, submitting to any Register of Deeds, or registering or causing to be registered therein, any

affidavit of self-adjudication or any other document which in any way transfers title to the Subject Property from Demetria Cacho to respondents Teofilo Cacho, Godofredo Cabildo and/or any of their transferees/assignees, including the intervenors.

ii) From canceling or causing the cancellation of OCTs or any certificate of title over the Subject Property in the name of Demetria Cacho or any successor certificate of title, and from issuing new certificates of title in the name of respondent Teofilo Cacho, Godofredo Cabildo and/or any of their transferees/assignees, including the intervenors.

iii) From claiming or representing in any manner that respondent Teofilo Cacho is the son or heir of Demetria Cacho or has rights to or interest in the Subject Property.

3) ORDERING respondents Teofilo Cacho and Atty. Godofredo Cabildo to pay petitioners, jointly and severally, the following:

a) For temperate damages	-	₱ 80,000.00
b) For nominal damages	-	₱ 60,000.00
c) For moral damages	-	₱500,000.00
d) For exemplary damages	-	₱500,000.00
e) For attorney's fees (ACCRA Law)	-	₱1,000,000.00
f) For Attorney's fees- (Atty. Voltaire Rovira)		₱500,000.00
g) For litigation expenses	-	₱300,000.00

For lack of factual and legal basis, the counterclaim of Teofilo Cacho and Atty. Godofredo Cabildo is hereby dismissed.

Likewise, the counterclaim of intervenor IDD/Investa is dismissed for lack of basis as the petitioners succeeded in proving their cause of action.

On the cross-claim of intervenor IDD/Investa, respondents Teofilo Cacho and Atty. Godofredo Cabildo are ORDERED to pay IDD/Investa, jointly and severally, the principal sum of ₱5,433,036 with 15% interest per annum.

For lack of legal basis, the counterclaim of Intervenor Landtrade Realty Development Corporation is dismissed.

Likewise, Intervenor Manguera's counterclaim is dismissed for lack of legal basis.[34]

The joint appeal filed by LANDTRADE, Teofilo, and Atty. Cabildo with the Court of Appeals was docketed as CA-G.R. CV No. 00456. The Court of Appeals, in its Decision[35] of January 19, 2007, affirmed *in toto* the Decision dated July 17, 2004 of the RTC-Branch 3.

According to the Court of Appeals, the RTC-Branch 3 did not err in resolving the issue on Vidal's status, filiation, and hereditary rights as it is determinative of the issue on ownership of the subject properties. It was indubitable that the RTC-Branch 3 had jurisdiction over the person of Teofilo and juridical personality of LANDTRADE as they both filed their Answers to the Petition for Quieting of Title thereby voluntarily submitting themselves to the jurisdiction of said trial court. Likewise, the Petition for Quieting of Title is in itself within the jurisdiction of the RTC-Branch 3. Hence, where there is jurisdiction over the person and subject matter, the resolution of all other questions arising in the case is but an exercise by the court of its jurisdiction. Moreover, Teofilo and LANDTRADE were guilty of estoppel by laches for failing to assail the jurisdiction of the RTC-Branch 3 at the first opportunity and even actively participating in the trial of the case and seeking affirmative reliefs.

In addition, the Court of Appeals held that the *1997 Cacho case* only determined the validity and efficacy of the Affidavit of Adjudication that Teofilo executed before the Philippine Consulate General in the U.S.A. The decision of this Court in the *1997 Cacho case*, which had become final and executory, did not vest upon Teofilo ownership of the parcels of land as it merely ordered the re-issuance of a lost duplicate certificate of title in its original form and condition.

The Court of Appeals agreed in the finding of the RTC-Branch 3 that the evidence on record preponderantly supports

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[34] *Id.* at 411-414.

[35] *Supra* note 3.

Vidal's claim of being the granddaughter and sole heiress of the late Doña Demetria. The appellate court further adjudged that Vidal did not delay in asserting her rights over the subject parcels of land. The prescriptive period for real actions over immovables is 30 years. Vidal's rights as Doña Demetria's successor-in-interest accrued upon the latter's death in 1974, and only 24 years thereafter, in 1998, Vidal already filed the present Petition for Quieting of Title. Thus, Vidal's cause of action had not yet prescribed. And, where the action was filed within the prescriptive period provided by law, the doctrine of laches was also inapplicable.

LANDTRADE, Teofilo, and Atty. Cabildo filed separate Motions for Reconsideration of the January 19, 2007 Decision of the Court of Appeals, which were denied in the July 4, 2007 Resolution[36] of the same court.

On August 24, 2007, LANDTRADE filed with this Court a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court, which was docketed as G.R. No. 178779. On September 6, 2007, Teofilo and Atty. Cabildo filed their own Petition for Review on *Certiorari* under Rule 45 of the Rules of Court, which was docketed as G.R. No. 178894.

The Ejectment or Unlawful Detainer Case
(G.R. Nos. 170505, 173355-56, and 173563-64)

Three Petitions before this Court are rooted in the Unlawful Detainer Case instituted by LANDTRADE against NAPOCOR and TRANSCO.

On August 9, 1952, NAPOCOR took possession of two parcels of land in Sitio Nunucan, Overton, Fuentes, Iligan City, denominated as Lots 2029 and 2043, consisting of 3,588 square meters (or 0.36 hectares) and 3,177 square meters (or 0.32 hectares), respectively. On Lot 2029, NAPOCOR constructed its power sub-station, known as the Overton Sub-station, while on Lot 2043, it built a warehouse, known as the Agus 7 Warehouse, both for the use of its Agus 7 Hydro-Electric Power Plant. For more than 30 years, NAPOCOR occupied and possessed

[36] *Supra* note 4.

said parcels of land pursuant to its charter, Republic Act No. 6395.[37] With the enactment in 2001 of Republic Act No. 9136, otherwise known as the Electric Power Industry Reform Act (EPIRA), TRANSCO assumed the functions of NAPOCOR with regard to electrical transmissions and took over possession of the Overton Sub-station.

Claiming ownership of the parcels of land where the Overton Sub-station and Agus 7 Warehouse are located, LANDTRADE filed with the MTCC on April 9, 2003 a Complaint for Unlawful Detainer against NAPOCOR and TRANSCO, which was docketed as Civil Case No. 11475-AF.

In its Complaint, LANDTRADE alleged that it acquired from Teofilo, through Atty. Cabildo, two parcels of land at Sitio Nunucan, Overton, Fuentes, Brgy. Maria Cristina, Iligan City, with a combined area of 270,255 square meters or around 27.03 hectares, as evidenced by a Deed of Absolute Sale[38] dated October 1, 1996. Certain portions of said parcels of land were being occupied by the Overton Sub-station and Agus 7 Warehouse of NAPOCOR and TRANSCO, through the tolerance of LANDTRADE. Upon failure of NAPOCOR and TRANSCO to pay rentals or to vacate the subject properties after demands to do so, LANDTRADE filed the present Complaint for Unlawful Detainer, plus damages in the amount of ₱450,000.00 as yearly rental from date of the first extra-judicial demand until NAPOCOR and TRANSCO vacate the subject properties.

In their separate Answers, NAPOCOR and TRANSCO denied the material allegations in the Complaint and countered, by way of special and affirmative defenses, that the Complaint was barred by *res judicata;* that the MTCC has no jurisdiction over the subject matter of the action; and that LANDTRADE lacked the legal capacity to sue.

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[37] An Act Revising the Charter of the National Power Corporation, as amended.

[38] *Rollo* (G.R. No. 170505), pp. 143-144.

On February 17, 2004, the MTCC rendered its Decision[39] in favor of LANDTRADE. The MTCC disposed:

> WHEREFORE, premises considered, judgment is hereby rendered in favor of Plaintiff Land Trade Realty Corporation represented by Atty. Max C. Tabimina and against defendant National Power Corporation represented by its President, Mr. Rogelio M. Murga and co-defendant TRANSCO represented by its President Dr. Allan T. Ortiz and Engr. Lorrymir A. Adaza, Manager, NAPOCOR-Mindanao, Regional Center, Ma. Cristina, Iligan City, ordering:
>
> 1. Defendants National Power Corporation and TRANSCO, their agents or representatives or any person/s acting on its behalf or under its authority to vacate the premises;
>
> 2. Defendants NAPOCOR and TRANSCO to pay Plaintiff jointly and solidarily:
>
> a. Php500,000.00 a month representing fair rental value or compensation since June 29, 1978 until defendant shall have vacated the premises;
> b. Php20,000.00 for and as attorney's fees and
> c. Cost of suit.
>
> Execution shall issue immediately upon motion, unless an appeal has been perfected and the defendant to stay execution files a sufficient supersedeas bond, approved by this Court and executed in favor of the plaintiff, to pay the rents, damages, and costs accruing down to the time of judgment appealed from, and unless, during the pendency of the appeal, defendants deposit with the appellate court the amount of ₱500,000.00 per month, as reasonable value of the use and occupancy of the premises for the preceding month or period on or before the tenth day of each succeeding month or period.[40]

NAPOCOR and TRANSCO seasonably filed a Joint Notice of Appeal. Their appeal, docketed as Civil Case No. 6613, was initially assigned to the RTC-Branch 5, presided over by Judge Maximino Magno Libre (Judge Libre).

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[39] *Supra* note 11.

[40] *Rollo* (G.R. Nos. 173355-56), pp. 115-116 and *rollo* (G.R. Nos. 173563-64), pp. 69-70.

LANDTRADE filed on June 24, 2004 a Motion for Execution, asserting that NAPOCOR and TRANSCO had neither filed a *supersedeas* bond with the MTCC nor periodically deposited with the RTC the monthly rental for the properties in question, so as to stay the immediate execution pending appeal of the MTCC judgment. However, the said Motion failed to comply with the required notice of hearing under Rule 15, Section 5 of the Rules of Court. LANDTRADE then filed a Motion to Withdraw and/or Replace Notice of Hearing.

NAPOCOR and TRANSCO filed on July 13, 2004 a Joint Motion to Suspend Proceedings citing *Amagan v. Marayag*,[41] in which the Court ruled that if circumstances should require, the proceedings in an ejectment case may be suspended in whatever stage it may be found. Since LANDTRADE anchors its right to possession of the subject parcels of land on the Deed of Sale executed in its favor by Teofilo on October 1, 1996, the ejectment case should be held in abeyance pending the resolution of other cases in which title over the same properties are in issue, *i.e.*, (1) Civil Case No. 6600, the action for the annulment of the Deed of Sale dated October 1, 1996 filed by Teofilo against LANDTRADE pending before the RTC-Branch 4; and (2) Civil Case No. 4452, the Quieting of Title Case filed by Vidal and AZIMUTH against Teofilo and Atty. Cabildo pending before the RTC-Branch 3.

LANDTRADE filed on July 19, 2004 another Motion for Execution, which was heard together with the Joint Motion to Suspend Proceedings of NAPOCOR and TRANSCO. After said hearing, the RTC-Branch 5 directed the parties to file their memoranda on the two pending Motions.

LANDTRADE, in its Memorandum, maintained that the pendency of Civil Case No. 4452, the Quieting of Title Case, should not preclude the execution of the MTCC judgment in the Unlawful Detainer Case because the issue involved in the latter was only the material possession or *possession de facto*

[41] 383 Phil. 486 (2000).

of the parcels of land in question. LANDTRADE also reported that Civil Case No. 6600, the action for annulment of the Deed of Sale dated October 1, 1996 instituted by Teofilo, was already dismissed given that the RTC-Branch 4 had approved the Compromise Agreement executed between LANDTRADE and Teofilo.

NAPOCOR and TRANSCO likewise filed their respective Memoranda. Subsequently, NAPOCOR filed a Supplement to its Memorandum to bring to the attention of the RTC-Branch 5 the Decision rendered on July 17, 2004 by the RTC-Branch 3 in Civil Case No. 4452, the Quieting of Title Case, categorically declaring Teofilo, the predecessor-in-interest of LANDTRADE, as having no right at all to the subject parcels of land. Resultantly, the right of LANDTRADE to the two properties, which merely emanated from Teofilo, was effectively declared as non-existent too.

On August 4, 2004, the RTC-Branch 5 issued an Order[42] denying the Joint Motion to Suspend Proceedings of NAPOCOR and TRANSCO. The RTC held that the pendency of other actions involving the same parcels of land could not stay execution pending appeal of the MTCC judgment because NAPOCOR and TRANSCO failed to post the required bond and pay the monthly rentals.

Five days later, on August 9, 2004, the RTC-Branch 5 issued another Order[43] granting the Motion of LANDTRADE for execution of the MTCC judgment pending appeal.

The next day, on August 10, 2004, the Acting Clerk of Court, Atty. Joel M. Macaraya, Jr., issued a Writ of Execution Pending Appeal[44] which directed Sheriff IV Alberto O. Borres (Sheriff Borres) to execute the MTCC Decision dated February 17, 2004.

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[42] Penned by Judge Maximino Magno Libre; *rollo* (G.R. No. 170505), pp. 464-469.

[43] *Supra* note 7.

[44] *Supra* note 8.

A day later, on August 11, 2004, Sheriff Borres issued two Notices of Garnishment[45] addressed to PNB and Land Bank of the Philippines in Iligan City, garnishing all the goods, effects, stocks, interests in stocks and shares, and any other personal properties belonging to NAPOCOR and TRANSCO which were being held by and under the possession and control of said banks. On even date, Sheriff Borres also issued a Notification[46] to NAPOCOR and TRANSCO for them to vacate the subject parcels of land; and to pay LANDTRADE the sums of (a) ₱156,000,000.00, representing the total fair rental value for the said properties, computed at ₱500,000.00 per month, beginning June 29, 1978 until June 29, 2004, or for a period of 26 years, and (b) ₱20,000.00 as attorney's fees.

Thereafter, NAPOCOR and TRANSCO each filed before the Court of Appeals in Cagayan de Oro City a Petition for *Certiorari*, under Rule 65 of the Rules of Court, with prayer for the issuance of a TRO and writ of preliminary injunction. The Petitions, docketed as CA-G.R. SP Nos. 85174 and 85841, were eventually consolidated.

The Court of Appeals issued on August 18, 2004 a TRO[47] enjoining the enforcement and implementation of the Order of Execution and Writ of Execution Pending Appeal of the RTC-Branch 5 and Notices of Garnishment and Notification of Sheriff Borres.

The Court of Appeals, in its Decision[48] dated November 23, 2005, determined that public respondents did commit grave abuse of discretion in allowing and/or effecting the execution of the MTCC judgment pending appeal, since NAPOCOR and TRANSCO were legally excused from complying with the requirements for a stay of execution specified in Rule 70, Section 19 of the Rules of Court, particularly, the posting of a *supersedeas*

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[45] *Supra* note 9.

[46] *Rollo* (G.R. No. 170505), pp. 499-500.

[47] *Id.* at 588-589.

[48] *Supra* note 6.

bond and periodic deposits of rental payments. The decretal portion of said appellate court Decision states:

> ACCORDINGLY, the two petitions at bench are GRANTED; the Order dated 9 August 2004, the Writ of Execution Pending Appeal dated 10 August 2004, the two Notices of Garnishment dated 11 August 2004, and the Notification dated 11 August 2004, are ANNULLED and SET ASIDE.[49]

Displeased, LANDTRADE elevated the case to this Court on January 10, 2006 *via* a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court, which was docketed as G.R. No. 170505.

In the meantime, with the retirement of Judge Libre and the inhibition[50] of Judge Oscar Badelles, the new presiding judge of RTC-Branch 5, Civil Case No. 6613 was re-raffled to the RTC-Branch 1, presided over by Judge Mangotara. The RTC-Branch 1 promulgated on December 12, 2005 a Decision[51] in Civil Case No. 6613 which affirmed *in toto* the February 17, 2004 Decision of the MTCC in Civil Case No. 11475-AF favoring LANDTRADE.

NAPOCOR and TRANSCO filed with the RTC-Branch 1 twin Motions, namely: (1) Motion for Reconsideration of the Decision dated December 12, 2005; and (2) Motion for Inhibition of Judge Mangotara. The RTC-Branch 1 denied both Motions in a Resolution dated January 30, 2006.

NAPOCOR and TRANSCO filed with the Court of Appeals separate Petitions for Review with prayer for TRO and/or a writ of preliminary injunction, which were docketed as CA-G.R. SP Nos. 00854 and 00889, respectively. In a Resolution dated March 24, 2006, the Court of Appeals granted the prayer for TRO of NAPOCOR and TRANSCO.

With the impending lapse of the effectivity of the TRO on May 23, 2006, NAPOCOR filed on May 15, 2006 with the

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[49] *Id.* at 53.

[50] Judge Badelles was a former legal consultant of NAPOCOR.

[51] *Supra* note 13.

Court of Appeals a Manifestation and Motion praying for the resolution of its application for preliminary injunction.

On May 23, 2006, the same day the TRO lapsed, the Court of Appeals granted the motions for extension of time to file a consolidated comment of LANDTRADE. Two days later, LANDTRADE filed an Omnibus Motion seeking the issuance of (1) a writ of execution pending appeal, and (2) the designation of a special sheriff in accordance with Rule 70, Section 21 of the Rules of Court.

In a Resolution[52] dated June 30, 2006, the Court of Appeals granted the Omnibus Motion of LANDTRADE and denied the applications for the issuance of a writ of preliminary injunction of NAPOCOR and TRANSCO. In effect, the appellate court authorized the execution pending appeal of the judgment of the MTCC, affirmed by the RTC-Branch 1, thus:

> IN LIGHT OF THE ABOVE DISQUISITIONS, this Court resolves to grant the [LANDRADE]'s omnibus motion for execution pending appeal of the decision rendered in its favor which is being assailed in these consolidated petitions for review. Accordingly, the [NAPOCOR and TRANSCO's] respective applications for issuance of writ of preliminary injunction are both denied for lack of factual and legal bases. The Municipal Trial Court in Cities, Branch 2, Iligan City, which at present has the custody of the records of the case *a quo*, is hereby ordered to cause the immediate issuance of a writ of execution relative to its decision dated 17 February 2004 in Civil Case No. 11475-AF.[53]

On July 20, 2006, NAPOCOR filed with this Court a Petition for *Certiorari* and Prohibition under Rule 65 of the Rules of Court with an urgent plea for a TRO, docketed as G.R. Nos. 173355-56. On August 2, 2006, TRANSCO filed with this Court its own Petition for *Certiorari*, docketed as G.R. Nos. 173563-64.

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[52] *Supra* note 12.

[53] *Rollo* (G.R. Nos. 173355-56), p. 61 and *rollo* (G.R. Nos. 173563-64), p. 45.

On July 21, 2006, NAPOCOR filed an Urgent Motion for the Issuance of a TRO in G.R. No. 173355-56. In a Resolution[54] dated July 26, 2006, the Court granted the Motion of NAPOCOR and issued a TRO,[55] effective immediately, which enjoined public and private respondents from implementing the Resolution dated June 30, 2006 of the Court of Appeals in CA-G.R. SP Nos. 00854 and 00889 and the Decision dated February 17, 2004 of the MTCC in Civil Case No. 11475-AF.

On July 31, 2006, Vidal and AZIMUTH filed a Motion for Leave to Intervene and to Admit Attached Comment-in-Intervention, contending therein that Vidal was the lawful owner of the parcels of land subject of the Unlawful Detainer Case as confirmed in the Decision dated July 17, 2004 of the RTC-Branch 3 in Civil Case No. 4452. In a Resolution dated September 30, 2006, the Court required the parties to comment on the Motion of Vidal and AZIMUTH, and deferred action on the said Motion pending the submission of such comments.

The Cancellation of Titles and Reversion Case
(G.R. No. 173401)

On October 13, 2004, the Republic filed a Complaint for the Cancellation of OCT Nos. 0-1200 (a.f.) and 0-1201 (a.f.) and Reversion against the late Doña Demetria, represented by her alleged heirs, Vidal and/or Teofilo, together with AZIMUTH and LANDTRADE. The Complaint, docketed as Civil Case No. 6686, was raffled to the RTC-Branch 4.

The Republic sought the cancellation of OCT Nos. 0-1200 (a.f.) and 0-1201 (a.f.) and the reversion of the parcels of land covered thereby to the Government based on the following allegations in its Complaint, under the heading "Cause of Action":

5. On October 15, 1998, Original Certificates of Title (OCTs) Nos. 0-1200 (a.f.) and 0-1201 (a.f.) were issued in the name of "Demetria Cacho, widow, now deceased…" consisting of a total area of Three Hundred Seventy-Eight Thousand Seven Hundred and Seven

[54] *Rollo* (G.R. Nos. 173355-56), pp. 184-185.

[55] *Id.* at 186-187.

(378,707) square meters and Three Thousand Seven Hundred Thirty-Five (3,635) square meters, respectively, situated in Iligan City, x x x

x x x xxx xxx

6. The afore-stated titles were issued in implementation of a decision rendered in LRC (GLRO) Record Nos. 6908 and 6909 dated December 10, 1912, as affirmed by the Honorable Supreme Court in *Cacho v. Government of the United States*, 28 Phil. 616 (December 10, 1914),

7. The decision in LRC (GLRO) Record Nos. 6908 and 6909, upon which the titles were issued, did not grant the entire area applied for therein. x x x

x x x xxx xxx

9. As events turned out, the titles issued in connection with LRC (GLRO) Record Nos. 6908 and 6909 – *i.e.* OCT Nos. 0-1200 (a.f.) and 0-1201 (a.f.) – cover property MUCH LARGER in area than that granted by the land registration court in its corresponding decision, *supra*.

10. While the LRC Decision, as affirmed by the Honorable Supreme Court, granted only the southern part of the 37.87 hectare land subject of **LRC (GLRO) Record Case No. 6909**, the **ENTIRE 37.87** hectares is indicated as the property covered by OCT 0-1200 (a.f.). Worse, OCT No. 0-1200 (a.f.) made reference to **Case No. 6908** as basis thereof, yet, the decision in said case is clear:

(i) The parcel "object of Case No. **6908 is small**" (*Cacho vs. Government of the United States*, 28 Phil. 616, p. 619)

(ii) "The parcel of land claimed by the applicant in Case **No. 6909** is the bigger of two parcels and contains **37.87 hectares**…"

11. More significantly, the technical description in Original Certificate of Title No. 0-1200 (a.f.) specifies the date of survey as "August 31 to September 1, 1910," which is EARLIER than the date the Supreme Court, in *Cacho* supra, resolved LRC (GLRO) Record No. 6909 (involving 37.87 hectares). In resolving the application involving the **37.87 hectares**, the Honorable Supreme Court declared that only the **southern part** of the 37.87 hectare property applied for is granted and that a **new survey** specifying the "southern part" thereof should be submitted. Accordingly, any survey involving the

"granted southern part" should bear a date subsequent to the December 10, 1914 Supreme Court decision. x x x

x x x x x x x x x

12. The Honorable Supreme Court further declared that the Decision in LRC (GLRO) Record No. 6909 was reserved:

> "Final decision in these case is reserved until the presentation of the … new plan." (28 Phil. 616, p. 631; Underscoring supplied)

In other words, as of December 10, 1914, when the Honorable Supreme Court rendered its Decision on appeal in LRC (GLRO) Record No. 6909, "final decision" of the case was still reserved until the presentation of a **new plan**. The metes and bounds of OCT No. 0-1200 (a.f.) could not have been the technical description of the property granted by the court – described as "the southern part of the large parcel object of expediente 6909 only" (**Cacho vs. Government of the United States, 28 Phil. 617, 629**). As earlier stated, the technical description appearing in said title was the result of a survey conducted in **1910** or before the Supreme Court decision was rendered in **1914**.

13. In the same vein, Original Certificate of Title No. 0-1201 (a.f.) specifies LRC (GLRO) Record No. **6909** as the basis thereof (see front page of OCT No. 0-1201 (a.f.)). Yet, the technical description makes, as its reference, Lot 1, Plan II-3732, LR Case No. 047, **LRC (GLRO) Record No. 6908** (see page 2 of said title). A title issued pursuant to a decision may only cover the property subject of the case. A title cannot properly be issued pursuant to a decision in Case 6909, but whose technical description is based on Case 6908.

14. The decision in LRC (GLRO) Record Nos. 6908 and 6909 has become final and executory, and it cannot be modified, much less result in an increased area of the property decreed therein.

x x x x x x x x x

16. In sum, Original Certificates of Title Nos. 0-1200 (a.f.) and 0-1201 (a.f.), as issued, are null and void since the technical descriptions *vis-à-vis* the areas of the parcels of land covered therein went beyond the areas granted by the land registration court in LRC (GLRO) Record Nos. 6908 and 6909.[56]

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[56] *Rollo* (G.R. No. 173401), pp. 74-86.

Vidal and AZIMUTH filed a Motion to Dismiss dated December 23, 2004 on the grounds that (1) the Republic has no cause of action; (2) assuming *arguendo* that the Republic has a cause of action, its Complaint failed to state a cause of action; (3) assuming *arguendo* that the Republic has a cause of action, the same is barred by prior judgment; (4) assuming further that the Republic has a cause of action, the same was extinguished by prescription; and (4) the Republic is guilty of forum shopping.

Upon motion of the Republic, the RTC-Branch 4 issued an Order[57] dated October 4, 2005, declaring LANDTRADE and Teofilo, as represented by Atty. Cabildo, in default since they failed to submit their respective answers to the Complaint despite the proper service of summons upon them.

LANDTRADE subsequently filed its Answer with Compulsory Counterclaim dated September 28, 2005. It also moved for the setting aside and reconsideration of the Order of Default issued against it by the RTC-Branch 4 on October 20, 2005.

On December 13, 2005, the RTC-Branch 4 issued an Order[58] dismissing the Complaint of the Republic in Civil Case No. 6686, completely agreeing with Vidal and AZIMUTH.

The RTC-Branch 4 reasoned that the Republic had no cause of action because there was no showing that the late Doña Demetria committed any wrongful act or omission in violation of any right of the Republic. Doña Demetria had sufficiently proven her ownership over the parcels of land as borne in the ruling of the LRC in GLRO Record Nos. 6908 and 6909. On the other hand, the Republic had no more right to the said parcels of land. The Regalian doctrine does not apply in this case because the titles were already issued to Doña Demetria and segregated from the mass of the public domain.

The RTC-Branch 4 likewise held that the Republic failed to state a cause of action in its Complaint. The arguments of the

[57] Penned by Presiding Judge Moslemen T. Macarambon, *id*. at 351.

[58] *Supra* note 14.

Republic – *i.e.*, the absence of a new survey plan and deed, the titles covered properties with much larger area than that granted by the LRC – had been answered squarely in the *1997 Cacho case*. Also, the Complaint failed to allege that fraud had been committed in having the titles registered and that the Director of Lands requested the reversion of the subject parcels of land.

The RTC-Branch 4 was convinced that the Complaint was barred by *res judicata* because the *1914 Cacho case* already decreed the registration of the parcels of land in the late Doña Demetria's name and the *1997 Cacho case* settled that there was no merit in the argument that the conditions imposed in the first case have not been complied with.

The RTC-Branch 4 was likewise persuaded that the cause of action or remedy of the Republic was lost or extinguished by prescription pursuant to Article 1106 of the Civil Code and Section 32 of Presidential Decree No. 1529, otherwise known as the Land Registration Decree, which prescribes a one-year period within which to file an action for the review of a decree of registration.

Finally, the RTC-Branch 4 found the Republic guilty of forum shopping because there is between this case, on one hand, and the *1914* and *1997 Cacho cases*, on the other, identity of parties, as well as rights asserted and reliefs prayed for, as the contending parties are claiming rights of ownership over the same parcels of land.

The Republic filed a Motion for Reconsideration of the dismissal of its Complaint but the same was denied by the RTC-Branch 4 in its Order[59] dated May 16, 2006.

Assailing the Orders dated December 13, 2005 and May 16, 2006 of the RTC-Branch 4, the Republic filed on August 11, 2006 a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court, which was docketed as G.R. No. 173401.

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[59] *Supra* note 15.

III

ISSUES AND DISCUSSIONS

Expropriation Case (G.R. No. 170375)

The Republic, in its consolidated Petitions challenging the Resolutions dated July 12, 2005 and October 24, 2005 of the RTC-Branch 1 in Civil Case No. 106, made the following assignment of errors:

RESPONDENT JUDGE GRAVELY ERRED IN ORDERING THE DISMISSAL OF THE EXPROPRIATION COMPLAINT IN CIVIL CASE NO. 106 CONSIDERING THAT:

(a) THE NON-JOINDER OF PARTIES IS NOT A GROUND FOR THE DISMISSAL OF AN ACTION PURSUANT TO SECTION 11, RULE 3 OF THE 1997 RULES OF CIVIL PROCEDURE;

(b) AN EXPROPRIATION PROCEEDING IS AN ACTION QUASI IN REM WHEREIN THE FACT THAT THE OWNER OF THE PROPERTY IS MADE A PARTY TO THE ACTION IS NOT ESSENTIALLY INDISPENSABLE;

(c) PETITIONER DID NOT COMMIT ANY FORUM SHOPPING WITH THE FILING OF THE REVERSION COMPLAINT DOCKETED AS CIVIL CASE NO. 6686 WHICH IS PENDING BEFORE BRANCH 4 OF THE REGIONAL TRIAL COURT OF ILIGAN CITY.[60]

Filing of consolidated petitions under both Rules 45 and 65

At the outset, the Court notes that the Republic filed a pleading with the caption *Consolidated Petitions for Review on Certiorari (Under Rule 45) and Certiorari (Under Rule 65) of the Rules of Court.* The Republic explains that it filed the Consolidated Petitions pursuant to *Metropolitan Waterworks and Sewerage System (MWSS) v. Court of Appeals*[61] (*MWSS case*).

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[60] *Rollo* (G.R. No. 170375), p. 41.

[61] 227 Phil. 585 (1986).

The reliance of the Republic on the *MWSS case* to justify its mode of appeal is misplaced, taking the pronouncements of this Court in said case out of context.

The issue in the *MWSS case* was whether a possessor in good faith has the right to remove useful improvements, and not whether consolidated petitions under both Rules 45 and 65 of the Rules of Court can be filed. Therein petitioner MWSS simply filed an appeal by *certiorari* under Rule 45 of the Rules of Court, but named the Court of Appeals as a respondent. The Court clarified that the only parties in an appeal by *certiorari* under Rule 45 of the Rules of Court are the appellant as petitioner and the appellee as respondent. The court which rendered the judgment appealed from is not a party in said appeal. It is in the special civil action of *certiorari* under Rule 65 of the Rules of Court where the court or judge is required to be joined as party defendant or respondent. The Court, however, also acknowledged that there may be an instance when in an appeal by *certiorari* under Rule 45, the petitioner-appellant would also claim that the court that rendered the appealed judgment acted without or in excess of its jurisdiction or with grave abuse of discretion, in which case, such court should be joined as a party-defendant or respondent. While the Court may have stated that in such an instance, "the petition for review on *certiorari* under Rule 45 of the Rules of Court is at the same time a petition for *certiorari* under Rule 65," the Court did not hold that consolidated petitions under both Rules 45 and 65 could or should be filed.

The Court, in more recent cases, had been stricter and clearer on the distinction between these two modes of appeal. In *Nunez v. GSIS Family Bank*,[62] the Court elucidated*:*

> In *Ligon v. Court of Appeals* where the therein petitioner described her petition as "an appeal under Rule 45 and at the same time as a special civil action of *certiorari* under Rule 65 of the Rules of Court," this Court, in frowning over what it described as a "*chimera*," reiterated that the remedies of appeal and *certiorari* are mutually exclusive and not alternative nor successive.

[62] G.R. No. 163988, November 17, 2005, 475 SCRA 305, 316.

To be sure, the distinctions between Rules 45 and 65 are far and wide. However, the most apparent is that errors of jurisdiction are best reviewed in a special civil action for *certiorari* under Rule 65 while errors of judgment can only be corrected by appeal in a petition for review under Rule 45.

But in the same case, the Court also held that:

This Court, x x x, in accordance with the liberal spirit which pervades the Rules of Court and in the interest of justice may treat a petition for *certiorari* as having been filed under Rule 45, more so if the same was filed within the reglementary period for filing a petition for review.[63]

It is apparent in the case at bar that the Republic availed itself of the wrong mode of appeal by filing Consolidated Petitions for Review under Rule 45 and for *Certiorari* under Rule 65, when these are two separate remedies that are mutually exclusive and neither alternative nor successive. Nevertheless, the Court shall treat the Consolidated Petitions as a Petition for Review on *Certiorari* under Rule 45 and the allegations therein as errors of judgment. As the records show, the Petition was filed on time under Rule 45. Before the lapse of the 15-day reglementary period to appeal under Rule 45, the Republic filed with the Court a motion for extension of time to file its petition. The Court, in a Resolution[64] dated January 23, 2006, granted the Republic a 30-day extension, which was to expire on December 29, 2005. The Republic was able to file its Petition on the last day of the extension period.

Hierarchy of courts

The direct filing of the instant Petition with this Court did not violate the doctrine of hierarchy of courts.

According to Rule 41, Section 2(c)[65] of the Rules of Court, a decision or order of the RTC may be appealed to the Supreme

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[63] *Id*.

[64] *Rollo* (G.R. No. 170375), p. 9.

[65] SEC. 2. *Modes of appeal*. –

x x x x x x x x x

Court by petition for review on *certiorari* under Rule 45, provided that such petition raises only questions of law.[66]

A question of law exists when the doubt or controversy concerns the correct application of law or jurisprudence to a certain set of facts; or when the issue does not call for an examination of the probative value of the evidence presented, the truth or falsehood of facts being admitted.[67] A question of fact exists when the doubt or difference arises as to the truth or falsehood of facts or when the query invites calibration of the whole evidence considering mainly the credibility of the witnesses, the existence and relevancy of specific surrounding circumstances, as well as their relation to each other and to the whole, and the probability of the situation.[68]

Here, the Petition of the Republic raises pure questions of law, *i.e.*, whether Civil Case No. 106 should have been dismissed for failure to implead indispensable parties and for forum shopping. Thus, the direct resort by the Republic to this Court is proper.

The Court shall now consider the propriety of the dismissal by the RTC-Branch 1 of the Complaint for Expropriation of the Republic.

The proper parties in the expropriation proceedings

(c) *Appeal by certiorari*. – In all cases where only questions of law are raised or involved, the appeal shall be to the Supreme Court by petition for review on *certiorari* in accordance with Rule 45.

[66] SEC. 1. *Filing of petition with Supreme Court*. – A party desiring to appeal by *certiorari* from a judgment or final order or resolution of the Court of Appeals, the Sandiganbayan, the Regional Trial Court or other courts whenever authorized by law, may file with the Supreme Court a verified petition for review on *certiorari*. The petition shall raise only questions of law which must be distinctly set forth.

[67] *Bukidnon Doctors' Hospital, Inc. v. Metropolitan Bank & Trust Co.*, 501 Phil. 516, 526 (2005).

[68] *Id*.

The right of the Republic to be substituted for ISA as plaintiff in Civil Case No. 106 had long been affirmed by no less than this Court in the *ISA case*. The dispositive portion of the *ISA case* reads:

> WHEREFORE, for all the foregoing, the Decision of the Court of Appeals dated 8 October 1991 to the extent that it affirmed the trial court's order dismissing the expropriation proceedings, is hereby REVERSED and SET ASIDE and the case is REMANDED to the court *a quo* which shall allow the substitution of the Republic of the Philippines for petitioner Iron Steel Authority for further proceedings consistent with this Decision. No pronouncement as to costs.[69]

The *ISA case* had already become final and executory, and entry of judgment was made in said case on August 31, 1998. The RTC-Branch 1, in an Order dated November 16, 2001, effected the substitution of the Republic for ISA.

The failure of the Republic to actually file a motion for execution does not render the substitution void. A writ of execution requires the sheriff or other proper officer to whom it is directed to enforce the terms of the writ.[70] The November 16, 2001 Order of the RTC-Branch 1 should be deemed as voluntary compliance with a final and executory judgment of this Court, already rendering a motion for and issuance of a writ of execution superfluous.

Besides, no substantive right was violated by the voluntary compliance by the RTC-Branch 1 with the directive in the *ISA case* even without a motion for execution having been filed. To the contrary, the RTC-Branch 1 merely enforced the judicially determined right of the Republic to the substitution. While it is desirable that the Rules of Court be faithfully and even meticulously observed, courts should not be so strict about procedural lapses that do not really impair the administration of justice. If the rules are intended to insure the orderly conduct

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[69] *Supra* note 26 at 665.

[70] Rule 39, Section 8 of the Rules of Court.

of litigation it is because of the higher objective they seek which is the protection of the substantive rights of the parties.[71]

The Court also observes that MCFC did not seek any remedy from the Order dated November 16, 2001 of the RTC-Branch 1. Consequently, the said Order already became final, which even the RTC-Branch 1 itself cannot reverse and set aside on the ground of "honest mistake."

The RTC-Branch 1 dismissed the Complaint in Civil Case No. 106 on another ground: that MCFC is not a proper party to the expropriation proceedings, not being the owner of the parcels of land sought to be expropriated. The RTC-Branch 1 ratiocinated that since the exercise of the power of eminent domain involves the taking of private land intended for public use upon payment of just compensation to the owner, then a complaint for expropriation must be directed against the owner of the land sought to be expropriated.

The Republic insists, however, that MCFC is a real party-in-interest, impleaded as a defendant in the Complaint for Expropriation because of its possessory or occupancy rights over the subject parcels of land, and not by reason of its ownership of the said properties. In addition, the Republic maintains that non-joinder of parties is not a ground for the dismissal of an action.

Rule 67, Section 1 of the then Rules of Court[72] described how expropriation proceedings should be instituted:

> Section 1. *The complaint.* – The right of eminent domain shall be exercised by the filing of a complaint which shall state with certainty the right and purpose of condemnation, describe the real or personal property sought to be condemned, **and join as defendants all persons owning or claiming to own, or occupying, any part thereof or interest therein,** showing, so far as practicable, the interest of each defendant

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[71] *Villena v. Rupisan*, G.R. No. 167620, April 3, 2007, 520 SCRA 346, 361.

[72] At the time the Complaint in Civil Case No. 106 was filed, the old Rules of Court was still in effect. Rule 67 of the 1964 Rules of Court was then titled "Eminent Domain."

separately. **If the title to any property sought to be condemned appears to be in the Republic of the Philippines, although occupied by private individuals,** or if the title is otherwise obscure or doubtful so that the plaintiff cannot with accuracy or certainty specify who are the real owners, averment to that effect may be made in the complaint.[73] (Emphases supplied.)

For sure, defendants in an expropriation case are not limited to the owners of the property to be expropriated, and just compensation is not due to the property owner alone. As this Court held in *De Knecht v. Court of Appeals*:[74]

The defendants in an expropriation case are not limited to the owners of the property condemned. They include all other persons owning, occupying or claiming to own the property. When [property] is taken by eminent domain, the owner x x x is not necessarily the only person who is entitled to compensation. In the American jurisdiction, the term 'owner' when employed in statutes relating to eminent domain to designate the persons who are to be made parties to the proceeding, refer, as is the rule in respect of those entitled to compensation, to all those who have lawful interest in the property to be condemned, including a mortgagee, a lessee and a vendee in possession under an executory contract. Every person having an estate or interest at law or in equity in the land taken is entitled to share in the award. If a person claiming an interest in the land sought to be condemned is not made a party, he is given the right to intervene and lay claim to the compensation. (Emphasis supplied.)

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[73] Rule 67 of the present Rules of Court bears the title "Expropriation." Section 1 thereof reads:

> Section 1. *The complaint.* – The right of eminent domain shall be exercised by the filing of a **verified complaint** which shall state with certainty the right and purpose of **expropriation**, describe the real or personal property sought to be **expropriated**, and join as defendants all persons owning or claiming to own, or occupying, any part thereof or interest therein, showing, so far as practicable, the separate interest of each defendant. If the title to any property sought to be **expropriated** appears to be in the Republic of the Philippines, although occupied by private individuals, or if the title is otherwise obscure or doubtful so that the plaintiff cannot with accuracy or certainty specify who are the real owners, averment to that effect shall be made in the complaint. (Changes emphasized.)

[74] 352 Phil. 833, 852 (1998).

At the time of the filing of the Complaint for Expropriation in 1983, possessory/occupancy rights of MCFC over the parcels of land sought to be expropriated were undisputed. In fact, Letter of Instructions No. 1277[75] dated November 16, 1982 expressly recognized that portions of the lands reserved by Presidential Proclamation No. 2239, also dated November 16, 1982, for the use and immediate occupation by the NSC, were then occupied by an idle fertilizer plant/factory and related facilities of MCFC. It was ordered in the same Letter of Instruction that:

(1) NSC shall negotiate with the owners of MCFC, for and on behalf of the Government, for the compensation of MCFC's present **occupancy rights** on the subject lands at an amount of Thirty (₱30.00) Pesos per square meter or equivalent to the assessed value thereof (as determined by the City Assessor of Iligan), whichever is higher. NSC shall give MCFC the option to either remove its aforesaid plant, structures, equipment, machinery and other facilities from the lands or to sell or cede ownership thereof to NSC at a price equivalent to the fair market value thereof as appraised by the Asian Appraisal Inc. as may be mutually agreed upon by NSC and MCFC.

(2) In the event that NSC and MCFC fail to agree on the foregoing within sixty (60) days from the date hereof, the Iron and Steel Authority (ISA) shall exercise its authority under Presidential Decree (PD) No. 272, as amended, to initiate the expropriation of the aforementioned **occupancy rights** of MCFC on the subject lands as well as the plant, structures, equipment, machinery and related facilities, for and on behalf of NSC, and thereafter cede the same to NSC. During the pendency of the expropriation proceedings, NSC shall take possession of the properties, subject to bonding and other requirements of P.D. 1533. (Emphasis supplied.)

Being the occupant of the parcel of land sought to be expropriated, MCFC could very well be named a defendant in Civil Case No. 106. The RTC-Branch 1 evidently erred in dismissing the Complaint for Expropriation against MCFC for not being a proper party.

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[75] Directing the Measures to Facilitate the Implementation of the Integrated Steel Mill Project of National Steel Corporation, One of the Major Industrial Projects of the Government.

Also erroneous was the dismissal by the RTC-Branch 1 of the original Complaint for Expropriation for having been filed only against MCFC, the occupant of the subject land, but not the owner/s of the said property.

Dismissal is not the remedy for misjoinder or non-joinder of parties. According to Rule 3, Section 11 of the Rules of Court:

> SEC. 11. *Misjoinder and non-joinder of parties.* – Neither misjoinder nor non-joinder of parties is ground for dismissal of an action. **Parties may be dropped or added by order of the court** on motion of any party or on its own initiative at any stage of the action and on such terms as are just. Any claim against a misjoined party may be severed and proceeded with separately. (Emphasis supplied.)

MCFC contends that the aforequoted rule does not apply in this case where the party not joined, *i.e.*, the owner of the property to be expropriated, is an indispensable party.

An indispensable party is a party-in-interest without whom no final determination can be had of an action.[76]

Now, is the owner of the property an indispensable party in an action for expropriation? Not necessarily. Going back to Rule 67, Section 1 of the Rules of Court, expropriation proceedings may be instituted even when "title to the property sought to be condemned appears to be in the Republic of the Philippines, although occupied by private individuals." The same rule provides that a complaint for expropriation shall name as defendants "all persons owning or claiming to own, **or occupying**, any part thereof or interest" in the property sought to be condemned. Clearly, when the property already appears to belong to the Republic, there is no sense in the Republic instituting expropriation proceedings against itself. It can still, however, file a complaint for expropriation against the private persons occupying the property. In such an expropriation case, the owner of the property is not an indispensable party.

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[76] Rule 3, Section 7 of the Rules of Court.

To recall, Presidential Proclamation No. 2239 explicitly states that the parcels of land reserved to NSC are part of the public domain, hence, owned by the Republic. Letter of Instructions No. 1277 recognized only the occupancy rights of MCFC and directed NSC to institute expropriation proceedings to determine the just compensation for said occupancy rights. Therefore, the owner of the property is not an indispensable party in the original Complaint for Expropriation in Civil Case No. 106.

Assuming for the sake of argument that the owner of the property is an indispensable party in the expropriation proceedings, the non-joinder of said party would still not warrant immediate dismissal of the complaint for expropriation. In *Vda. De Manguerra v. Risos*,[77] the Court applied Rule 3, Section 11 of the Rules of Court even in case of non-joinder of an indispensable party, *viz*:

> [F]ailure to implead an indispensable party is not a ground for the dismissal of an action. In such a case, the remedy is to implead the non-party claimed to be indispensable. Parties may be added by order of the court, on motion of the party or on its own initiative at any stage of the action and/or such times as are just. **If the petitioner/plaintiff refuses to implead an indispensable party despite the order of the court, the latter may dismiss the complaint/petition** for the petitioner's/plaintiff's failure to comply. (Emphasis supplied.)

In this case, the RTC-Branch 1 did not first require the Republic to implead the alleged owner/s of the parcel of land sought to be expropriated. Despite the absence of any order from the Court, the Republic – upon becoming aware that the parcels of land involved in the *1914 Cacho case* and *1997 Cacho case*, claimed by Teofilo and LANDTRADE, and Vidal and AZIMUTH, encroached into and overlapped with the parcel of land subject of Civil Case No. 106 – sought leave of court to file a Supplemental Complaint to implead these four parties. The RTC-Branch 1 did not take the Supplemental Complaint of the Republic into consideration. Instead, it dismissed outright the original Complaint for Expropriation against MCFC.

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[77] G.R. No. 152643, August 28, 2008, 563 SCRA 499, 504-505.

Forum shopping

The RTC-Branch 1 further erred in finding that the Republic committed forum shopping by (1) simultaneously instituting the actions for expropriation (Civil Case No. 106) and reversion (Civil Case No. 6686) for the same parcels of land; and (2) taking inconsistent positions when it conceded lack of ownership over the parcels of land in the expropriation case but asserted ownership of the same properties in the reversion case.

There is no dispute that the Republic instituted reversion proceedings (Civil Case No. 6686) for the same parcels of land subject of the instant Expropriation Case (Civil Case No. 106). The Complaint for Cancellation of Titles and Reversion[78] dated September 27, 2004 was filed by the Republic with the RTC on October 13, 2004. The records, however, do not show when the Supplemental Complaint for Expropriation[79] dated September 28, 2004 was filed with the RTC. Apparently, the Supplemental Complaint for Expropriation was filed **after** the Complaint for Cancellation of Titles and Reversion since the Republic mentioned in the former the fact of filing of the latter.[80] Even then, the Verification and Certification of Non-Forum Shopping[81] attached to the Supplemental Complaint for Expropriation did not disclose the filing of the Complaint for Cancellation of Titles and Reversion. Notwithstanding such non-disclosure, the Court finds that the Republic did not commit forum shopping for filing both Complaints.

In *NBI-Microsoft Corporation v. Hwang*,[82] the Court laid down the circumstances when forum shopping exists:

> Forum-shopping takes place when a litigant files multiple suits involving the same parties, either simultaneously or successively,

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[78] *Rollo* (G.R. No. 173410), pp. 70-88.

[79] *Rollo* (G.R. No. 170375), pp. 140-170.

[80] *Id.* at 156.

[81] *Id.* at 163.

[82] 499 Phil. 423, 435-436 (2005).

to secure a favorable judgment. Thus**,** it exists where the elements of *litis pendentia* are present, namely: (a) identity of parties, or at least such parties who represent the same interests in both actions; (b) identity of rights asserted and relief prayed for, the relief being founded on the same facts; and (c) the identity with respect to the two preceding particulars in the two cases is such that any judgment that may be rendered in the pending case, regardless of which party is successful**,** would amount to *res judicata* in the other case. Forum-shopping is an act of malpractice because it abuses court processes. x x x.

Here, the elements of *litis pendencia* are wanting. There is no identity of rights asserted and reliefs prayed for in Civil Case No. 106 and Civil Case No. 6686.

Civil Case No. 106 was instituted against MCFC to acquire, for a public purpose, its possessory/occupancy rights over 322,532 square meters or 32.25 hectares of land which, at the time of the filing of the original Complaint in 1983, was not yet covered by any certificate of title. On the other hand, Civil Case No. 6686 sought the cancellation of OCT Nos. 0-1200 (a.f.) and 0-1201 (a.f.), which was entered into registration on December 4, 1998 in Doña Demetria's name, on the argument that the parcels of land covered by said certificates exceeded the areas granted by the LRC to Doña Demetria in GLRO Record Nos. 6908 and 6909, as affirmed by this Court in the *1914 Cacho case*.

Expropriation vis-à-vis reversion

The Republic is not engaging in contradictions when it instituted both expropriation and reversion proceedings for the same parcels of land. The expropriation and reversion proceedings are distinct remedies that are not necessarily exclusionary of each other.

The filing of a complaint for reversion does not preclude the institution of an action for expropriation. Even if the land is reverted back to the State, the same may still be subject to expropriation as against the occupants thereof.

Also, Rule 67, Section 1 of the Rules of Court allows the filing of a complaint for expropriation even when "the title to

any property sought to be condemned appears to be in the Republic of the Philippines, although occupied by private individuals, or if the title is otherwise obscure or doubtful so that the plaintiff cannot with accuracy or certainty specify who are the real owners." Rule 67, Section 9 of the Rules of Court further provides:

> SEC. 9. *Uncertain ownership; conflicting claims.* – **If the ownership of the property taken is uncertain, or there are conflicting claims to any part thereof**, the court may order any sum or sums awarded as compensation for the property to be paid to the court for the benefit of the person adjudged in the same proceeding to be entitled thereto. But the judgment shall require the payment of the sum or sums awarded to either the defendant or the court before the plaintiff can enter upon the property, or retain it for the public use or purpose if entry has already been made. (Emphasis supplied.)

Hence, the filing by the Republic of the Supplemental Complaint for Expropriation impleading Teofilo, Vidal, LANDTRADE, and AZIMUTH, is not necessarily an admission that the parcels of land sought to be expropriated are privately owned. At most, the Republic merely acknowledged in its Supplemental Complaint that there are private persons also claiming ownership of the parcels of land. The Republic can still consistently assert, in both actions for expropriation and reversion, that the subject parcels of land are part of the public domain.

In sum, the RTC-Branch 1 erred in dismissing the original Complaint and disallowing the Supplemental Complaint in Civil Case No. 106. The Court reverses and sets aside the Resolutions dated July 12, 2005 and October 24, 2005 of the RTC-Branch 1 in Civil Case 106, and reinstates the Complaint for Reversion of the Republic.

The Quieting of Title Case
(G.R. Nos. 178779 and 178894)

Essentially, in their Petitions for Review on *Certiorari* under Rule 45 of the Rules of Court, LANDTRADE and Teofilo, and/or Atty. Cabildo are calling upon this Court to determine whether the Court of Appeals, in its Decision dated January

19, 2007 in CA-G.R. CV No. 00456, erred in (1) upholding the jurisdiction of the RTC-Branch 3 to resolve the issues on Vidal's status, filiation, and heirship in Civil Case No. 4452, the action for quieting of title; (2) not holding that Vidal and AZIMUTH have neither cause of action nor legal or equitable title or interest in the parcels of land covered by OCT Nos. 0-1200 (a.f.) and 0-1201 (a.f.); (3) finding the evidence sufficient to establish Vidal's status as Doña Demetria's granddaughter and sole surviving heir; and (4) not holding that Civil Case No. 4452 was already barred by prescription.

In their Comment, Vidal and AZIMUTH insisted on the correctness of the Court of Appeals Decision dated January 19, 2007, and questioned the propriety of the Petition for Review filed by LANDTRADE as it supposedly raised only factual issues.

The Court rules in favor of Vidal and AZIMUTH.

Petitions for review under Rule 45

A scrutiny of the issues raised, not just in the Petition for Review of LANDTRADE, but also those in the Petition for Review of Teofilo and/or Atty. Cabildo, reveals that they are both factual and legal.

The Court has held in a long line of cases that in a petition for review on *certiorari* under Rule 45 of the Rules of Court, only questions of law may be raised as the Supreme Court is not a trier of facts. It is settled that as a rule, the findings of fact of the Court of Appeals especially those affirming the trial court are final and conclusive and cannot be reviewed on appeal to the Supreme Court. The exceptions to this rule are: (a) when the conclusion is a finding grounded entirely on speculations, surmises or conjectures; (b) when the inference made is manifestly mistaken, absurd or impossible; (c) when there is grave abuse of discretion; (d) when the judgment is based on a misapprehension of facts; (e) when the findings of fact are conflicting; (f) when the Court of Appeals, in making its findings, went beyond the issues of the case and the same is contrary to the admissions of both appellant and appellee;

(g) where the Court of Appeals manifestly overlooked certain relevant facts not disputed by the parties and which, if properly considered, would justify a different conclusion; and (h) where the findings of fact of the Court of Appeals are contrary to those of the trial court, or are mere conclusions without citation of specific evidence, or where the facts set forth by the petitioner are not disputed by the respondent, or where the findings of fact of the Court of Appeals are premised on absence of evidence but are contradicted by the evidence on record.[83] None of these exceptions exists in the Petitions at bar.

Be that as it may, the Court shall address in full-length all the issues tendered in the instant Petitions for Review, even when factual, if only to bolster the conclusions reached by the RTC-Branch 3 and the Court of Appeals, with which the Court fully concurs.

Jurisdiction vis-à-vis exercise of jurisdiction

LANDTRADE, Teofilo, and/or Atty. Cabildo argue that the RTC-Branch 3 had no jurisidiction to resolve the issues of status, filiation, and heirship in an action for quieting of title as said issues should be ventilated and adjudicated only in special proceedings under Rule 90, Section 1 of the Rules of Court, pursuant to the ruling of this Court in *Agapay v. Palang*[84] (*Agapay case*) and *Heirs of Guido Yaptinchay and Isabel Yaptinchay v. Del Rosario*[85] (*Yaptinchay case*). Even on the assumption that the RTC-Branch 3 acquired jurisdiction over their persons, LANDTRADE, Teofilo, and/or Atty. Cabildo maintain that the RTC-Branch 3 erred in the exercise of its jurisdiction by adjudicating and passing upon the issues on Vidal's status, filiation, and heirship in the Quieting of Title Case. Moreover, LANDTRADE, Teofilo, and/or Atty. Cabildo aver that the resolution of issues regarding status, filiation, and heirship

[83] *Aclon v. Court of Appeals*, 436 Phil. 219, 230 (2002).

[84] 342 Phil. 302 (1997).

[85] 363 Phil. 393 (1999).

is not merely a matter of procedure, but of jurisdiction which cannot be waived by the parties or by the court.

The aforementioned arguments fail to persuade.

In the first place, jurisdiction is not the same as the exercise of jurisdiction. The Court distinguished between the two, thus:

> Jurisdiction is not the same as the exercise of jurisdiction. As distinguished from the exercise of jurisdiction, jurisdiction is the authority to decide a cause, and not the decision rendered therein. **Where there is jurisdiction over the person and the subject matter, the decision on all other questions arising in the case is but an exercise of the jurisdiction.** And the errors which the court may commit in the exercise of jurisdiction are merely errors of judgment which are the proper subject of an appeal.[86] (Emphasis supplied.)

Here, the RTC-Branch 3 unmistakably had jurisdiction over the subject matter and the parties in Civil Case No. 4452.

Jurisdiction over the subject matter or nature of the action is conferred only by the Constitution or by law. Once vested by law on a particular court or body, the jurisdiction over the subject matter or nature of the action cannot be dislodged by anybody other than by the legislature through the enactment of a law. The power to change the jurisdiction of the courts is a matter of legislative enactment, which none but the legislature may do. Congress has the sole power to define, prescribe and apportion the jurisdiction of the courts.[87]

The RTC has jurisdiction over an action for quieting of title under the circumstances described in Section 19(2) of Batas Pambansa Blg. 129, as amended:

> SEC. 19. *Jurisdiction in civil cases.* – Regional Trial Courts shall exercise exclusive original jurisdiction:
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> xxx xxx xxx

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[86] *Republic v. "G" Holdings, Inc.,* G.R. No. 141241, November 22, 2005, 475 SCRA 608, 619.

[87] *Navales v. Abaya,* 484 Phil. 367, 391 (2004).

(2) In all civil actions which **involve the title to, or possession of, real property, or any interest therein, where the assessed value of the property involved exceeds Twenty thousand pesos (₱20,000.00)** or, for civil actions in Metro Manila, where such value exceeds Fifty thousand pesos (₱50,000.00) except actions for forcible entry into and unlawful detainer of lands or buildings, original jurisdiction over which is conferred upon the Metropolitan Trial Courts, Municipal Trial Courts, and Municipal Circuit Trial Courts.

Records show that the parcels of land subject of Civil Case No. 4452 have a combined assessed value of **₱35,398,920.00**,[88] undisputedly falling within the jurisdiction of the RTC-Branch 3.

The RTC-Branch 3 also acquired jurisdiction over the person of Teofilo when he filed his Answer to the Complaint of Vidal and AZIMUTH; and over the juridical personality of LANDTRADE when the said corporation was allowed to intervene in Civil Case No. 4452.

Considering that the RTC-Branch 3 had jurisdiction over the subject matter and parties in Civil Case No. 4452, then it can rule on all issues in the case, including those on Vidal's status, filiation, and heirship, in exercise of its jurisdiction. Any alleged erroneous finding by the RTC-Branch 3 concerning Vidal's status, filiation, and heirship in Civil Case No. 4452, is merely an error of judgment subject to the affirmation, modification, or reversal by the appellate court when appealed.

The Agapay and Yaptinchay cases

LANDTRADE, Teofilo, and/or Atty. Cabildo cannot rely on the cases of *Agapay* and *Yaptinchay* to support their position that declarations on Vidal's status, filiation, and heirship, should be made in special proceedings and not in Civil Case No. 4452.

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[88] According to Tax Declaration No. 02-029-01514, the parcel of land covered by OCT No. 0-1200 (a.f.) has an assessed value of ₱34,844,670.00 (*rollo* [G.R. No. 178779], pp. 886-867). Per Tax Declaration No. 02-023-00186, the parcel of land covered by OCT No. 0-1201 (a.f.) has an assessed value of ₱554,250.00 (*Id.* at 884-885).

In the ***Agapay case***, the deceased Miguel Agapay (Miguel) contracted two marriages. Miguel married Carlina (sometimes referred to as Cornelia) in 1949, and they had a daughter named Herminia, who was born in 1950. Miguel left for Hawaii a few months after his wedding to Carlina. When Miguel returned to the Philippines in 1972, he did not live with Carlina and Herminia. He married Erlinda in 1973, with whom he had a son named Kristopher, who was born in 1977. Miguel died in 1981. A few months after Miguel's death, Carlina and Herminia filed a complaint for recovery of ownership and possession with damages against Erlinda over a riceland and house and lot in Pangasinan, which were allegedly purchased by Miguel during his cohabitation with Erlinda. The RTC dismissed the complaint, finding little evidence that the properties pertained to the conjugal property of Miguel and Carlina. The RTC went on to provide for the intestate shares of the parties, particularly of Kristopher, Miguel's illegitimate son. On appeal, the Court of Appeals: (1) reversed the RTC judgment; (2) ordered Erlinda to vacate and deliver the properties to Carlina and Herminia; and (3) ordered the Register of Deeds to cancel the Transfer Certificates of Title (TCTs) over the subject property in the name of Erlinda and to issue new ones in the names of Carlina and Herminia. Erlinda filed a Petition for Review with this Court.

In resolving Erlinda's Petition, the Court held in the *Agapay case* that Article 148 of the Family Code applied to Miguel and Erlinda. Article 148 specifically governs the property relations of a man and a woman who are not capacitated to marry each other and live exclusively with each other as husband and wife without the benefit of marriage or under a void marriage. Under said provision, only the properties acquired by both parties through their actual joint contribution of money, property, or industry shall be owned by them in common in proportion to their respective contributions. In this case, the Court found that the money used to buy the subject properties all came from Miguel.

The Court then proceeded to address another issue in the *Agapay case*, more relevant to the one at bar:

The second issue concerning Kristopher Palang's status and claim as an illegitimate son and heir to Miguel's estate is here resolved in favor of respondent court's correct assessment that the trial court erred in making pronouncements regarding Kristopher's heirship and filiation "inasmuch as questions as to who are the heirs of the decedent, proof of filiation of illegitimate children and the determination of the estate of the latter and claims thereto should be ventilated in the proper probate court or in a special proceeding instituted for the purpose and cannot be adjudicated in the instant ordinary civil action which is for recovery of ownership and possession."[89]

The ***Yaptinchay case*** involved two parcels of land in Cavite which were supposedly owned by Guido and Isabel Yaptinchay (spouses Yaptinchay). Upon the death of the spouses Yaptinchay, their heirs (Yaptinchay heirs) executed an Extra-Judicial Settlement of the deceased spouses' estate. However, the Yaptinchay heirs discovered that the properties were already covered by TCTs in the name of Golden Bay Realty Corporation (Golden Bay), prompting the Yaptinchay heirs to file with the RTC a complaint against Golden Bay for the annulment and/or declaration of nullity of TCT Nos. 493363 to 493367 and all their derivatives, or in the alternative, the reconveyance of realty with a prayer for a writ of preliminary injunction and/or restraining order with damages. The Yaptinchay heirs later filed an amended complaint to include additional defendants to whom Golden Bay sold portions of the subject properties. The RTC initially dismissed the amended complaint, but acting on the motion for reconsideration of the Yaptinchay heirs, eventually allowed the same. Golden Bay and its other co-defendants presented a motion to dismiss the amended complaint, which was granted by the RTC. The Yaptinchay heirs came before this Court *via* a Petition for *Certiorari*.

The Court first observed in the *Yaptinchay case* that the Yaptinchay heirs availed themselves of the wrong remedy. An order of dismissal is the proper subject of an appeal, not a petition for *certiorari*. Next, the Court affirmed the dismissal of the amended complaint, thus:

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[89] *Agapay v. Palang*, *supra* note 84 at 313.

Neither did the respondent court commit grave abuse of discretion in issuing the questioned Order dismissing the Second Amended Complaint of petitioners, x x x.

x x x x x x x x x

In *Litam, etc., et al. v. Rivera*, this court opined that the declaration of heirship must be made in an administration proceeding, and not in an independent civil action. This doctrine was reiterated in *Solivio v. Court of Appeals* where the court held:

> "In *Litam, et al. v. Rivera*, 100 Phil. 364, where despite the pendency of the special proceedings for the settlement of the intestate estate of the deceased Rafael Litam, the plaintiffs-appellants filed a civil action in which they claimed that they were the children by a previous marriage of the deceased to a Chinese woman, hence, entitled to inherit his one-half share of the conjugal properties acquired during his marriage to Marcosa Rivera, the trial court in the civil case declared that the plaintiffs-appellants were not children of the deceased, that the properties in question were paraphernal properties of his wife, Marcosa Rivera, and that the latter was his only heir. On appeal to this Court, we ruled that 'such declarations (that Marcosa Rivera was the only heir of the decedent) is improper, in Civil Case No. 2071, it being within the exclusive competence of the court in Special Proceedings No. 1537, in which it is not as yet, in issue, and, will not be, ordinarily, in issue until the presentation of the project of partition.' (p. 378)."

The trial court cannot make a declaration of heirship in the civil action for the reason that such a declaration can only be made in a special proceeding. Under Section 3, Rule 1 of the 1997 Revised Rules of Court, a civil action is defined as "one by which a party sues another for the enforcement or protection of a right, or the prevention or redress of a wrong' while a special proceeding is "a remedy by which a party seeks to establish a status, a right, or a particular fact." It is then decisively clear that the declaration of heirship can be made only in a special proceeding inasmuch as the petitioners here are seeking the establishment of a status or right.[90]

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[90] *Heirs of Guido Yaptinchay and Isabel Yaptinchay v. Del Rosario, supra* note 85 at 398-399.

LANDTRADE, Teofilo, and/or Atty. Cabildo missed one vital factual distinction between the *Agapay and Yaptinchay cases*, on one hand, and the present Petitions, on the other, by reason of which, the Court shall not apply the prior two to the last.

The *Agapay and Yaptinchay cases*, as well as the cases of *Litam v. Rivera*[91] and *Solivio v. Court of Appeals*,[92] cited in the *Yaptinchay case*, all arose from **actions for reconveyance**; while the instant Petitions stemmed from an **action for quieting of title**. The Court may have declared in previous cases that an action for reconveyance is in the nature of an action for quieting of title,[93] but the two are distinct remedies.

Ordinary civil action for reconveyance vis-a-vis special proceeding for quieting of title

The action for reconveyance is based on Section 55 of Act No. 496, otherwise known as the Land Registration Act, as

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[91] 100 Phil. 364 (1956).

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

[93] The Court made such a declaration in relation to determining whether an action for reconveyance had prescribed. For example, in *Vda. de Cabrera v. Court of Appeals* (335 Phil. 19, 32 [1997]), the Court ruled that:

> [A]n action for reconveyance of a parcel of land based on implied or constructive trust prescribes in ten years, the point of reference being the date of registration of the deed or the date of the issuance of the certificate of title over the property, but this rule applies only when the plaintiff or the person enforcing the trust is not in possession of the property, since if a person claiming to be the owner thereof is in actual possession of the property, as the defendants are in the instant case, the right to seek reconveyance, which in effect seeks to quiet title to the property, does not prescribe. The reason for this is that one who is in actual possession of a piece of land claiming to be the owner thereof may wait until his possession is disturbed or his title is attacked before taking steps to vindicate his right, the reason for the rule being, that his undisturbed possession gives him a continuing right to seek the aid of a court of equity to ascertain and determine the nature of the adverse claim of a third party and its effect on his own title, which right can be claimed only by one who is in possession.

amended, which states "[t]hat in all cases of registration procured by fraud the owner may pursue all his legal and equitable remedies against the parties to such fraud, without prejudice, however, to the rights of any innocent holder for value of a certificate of title."

The Court, in *Heirs of Eugenio Lopez, Sr. v. Enriquez*,[94] described an action for reconveyance as follows:

> An action for reconveyance is an **action *in personam*** available to a person whose **property has been wrongfully registered under the Torrens system** in another's name. Although the decree is recognized as incontrovertible and no longer open to review, the registered owner is not necessarily held free from liens. As a remedy, an action for reconveyance is filed as an **ordinary action** in the ordinary courts of justice and not with the land registration court. Reconveyance is always available as long as the property has not passed to an innocent third person for value. x x x (Emphases supplied.)

On the other hand, Article 476 of the Civil Code lays down the circumstances when a person may institute an action for quieting of title:

> ART. 476. Whenever there is a cloud on title to real property or any interest therein, by reason of any instrument, record, claim, encumbrance or proceeding which is apparently valid or effective but is in truth and in fact invalid, ineffective, voidable, or unenforceable, and may be prejudicial to said title, an action may be brought to remove such cloud or to quiet the title.
>
> An action may also be brought to prevent a cloud from being cast upon title to real property or any interest therein.

In *Calacala v. Republic*,[95] the Court elucidated on the nature of an action to quiet title:

> Regarding the nature of the action filed before the trial court, quieting of title is a **common law remedy** for the removal of any cloud

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[94] G.R. No. 146262, January 21, 2005, 449 SCRA 173, 190.

[95] 502 Phil. 681, 688 (2005).

upon or doubt or uncertainty with respect to title to real property. Originating in equity jurisprudence, its purpose is to secure 'x x x an adjudication that a claim of title to or an interest in property, adverse to that of the complainant, is invalid, so that the complainant and those claiming under him may be forever afterward free from any danger of hostile claim.' In an action for quieting of title, the competent court is tasked to **determine the respective rights of the complainant and other claimants**, 'x x x not only to place things in their proper place, to make the one who has no rights to said immovable respect and not disturb the other, but also for the benefit of both, so that he who has the right would see every cloud of doubt over the property dissipated, and he could afterwards without fear introduce the improvements he may desire, to use, and even to abuse the property as he deems best x x x . (Emphases supplied.)

The Court expounded further in *Spouses Portic v. Cristobal*[96] that:

> Suits to quiet title are characterized as **proceedings *quasi in rem***. Technically, they are neither *in rem* nor *in personam*. In an action *quasi in rem*, an individual is named as defendant. However, unlike suits *in rem*, a *quasi in rem* judgment is conclusive only between the parties.
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> Generally, the **registered owner** of a property is the proper party to bring an action to quiet title. However, it has been held that this remedy may also be availed of by **a person other than the registered owner** because, in the Article reproduced above, "title" does not necessarily refer to the original or transfer certificate of title. Thus, lack of an actual certificate of title to a property does not necessarily bar an action to quiet title. x x x (Emphases supplied.)

The Court pronounced in the *Agapay and Yaptinchay cases* that a declaration of heirship cannot be made in an **ordinary civil action** such as an action for reconveyance, but must only be made in a **special proceeding**, for it involves the establishment of a status or right.

The appropriate special proceeding would have been the settlement of the estate of the decedent. Nonetheless, an action

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[96] 496 Phil. 456, 464-465 (2005).

for quieting of title is also a special proceeding, specifically governed by Rule 63 of the Rules of Court on declaratory relief and similar remedies.[97] Actions for declaratory relief and other similar remedies are distinguished from ordinary civil actions because:

> 2. In declaratory relief, the *subject-matter* is a deed, will, contract or other written instrument, statute, executive order or regulation, or ordinance. The *issue* is the validity or construction of these documents. The *relief* sought is the **declaration of the petitioner's rights and duties** thereunder.
>
> The concept of a cause of action in ordinary civil actions does not apply to declaratory relief as this special civil action presupposes that there has been no breach or violation of the instruments involved. Consequently, unlike other judgments, the judgment in an action for declaratory relief does not essentially entail any executional process as the only relief to be properly granted therein is a **declaration of the rights and duties of the parties** under the instrument, although some exceptions have been recognized under certain situations.[98]

Civil Case No. 4452 could not be considered an action for reconveyance as it is not based on the allegation that the two parcels of land, Lots 1 and 2, have been wrongfully registered in another person's name. OCT Nos. 0-1200 (a.f.) and 0-1201

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[97] Rule 63, Section 1 of the Rules of Court provides:

> Section 1. *Who may file petition.* – Any person interested under a deed, will, contract or other written instrument, or whose rights are affected by a statute, executive order or regulation, ordinance, or any other governmental regulation may, before breach or violation thereof, bring an action in the appropriate Regional Trial Court to determine any question of construction or validity arising, and for a declaration of his rights or duties, thereunder.
>
> An action for the reformation of an instrument, **to quiet title to real property or remove clouds therefrom**, or to consolidate ownership under Article 1607 of the Civil Code, may be brought under this Rule. (Emphases supplied.)

[98] Florenz D. Regalado, *REMEDIAL LAW COMPENDIUM*, Vol. 1 (9th revised edition [2005]), pp. 765-766.

(a.f.), covering the subject properties, are still in Doña Demetria's name. Vidal and Teofilo each claims to have inherited the two parcels of land from the late Doña Demetria as said decedent's sole heir, but neither Vidal nor Teofilo has been able to transfer registration of the said properties to her/his name as of yet.

Instead, Civil Case No. 4452 is indisputably an action for quieting of title, a special proceeding wherein the court is precisely tasked to determine the rights of the parties as to a particular parcel of land, so that the complainant and those claiming under him/her may be forever free from any danger of hostile claim. Vidal asserted title to the two parcels of land as Doña Demetria's sole heir. The cloud on Vidal's title, which she sought to have removed, was Teofilo's adverse claim of title to the same properties, also as Doña Demetria's only heir. For it to determine the rights of the parties in Civil Case No. 4452, it was therefore crucial for the RTC-Branch 3 to squarely make a finding as to the status, filiation, and heirship of Vidal in relation to those of Teofilo. A finding that one is Doña Demetria's sole and rightful heir would consequently exclude and extinguish the claim of the other.

Even assuming *arguendo* that the proscription in the *Agapay* and *Yaptinchay cases* against making declarations of heirship in ordinary civil actions also extends to actions for quieting of title, the same is not absolute.

In *Portugal v. Portugal-Beltran*[99] (*Portugal case*), the Court recognized that there are instances when a declaration of heirship need not be made in a separate special proceeding:

> The common doctrine in *Litam, Solivio* and *Guilas* in which the *adverse parties are putative heirs to the estate of a decedent or parties to the special proceedings for its settlement* is that if the special proceedings are pending, or if there are no special proceedings filed but there is, under the circumstances of the case, a need to file one, then the determination of, among other issues, heirship should be raised and settled in said special proceedings. Where special

[99] G.R. No. 155555, August 16, 2005, 467 SCRA 184, 198.

proceedings had been instituted but had been finally closed and terminated, however, or if a putative heir has lost the right to have himself declared in the special proceedings as co-heir and he can no longer ask for its re-opening, then an ordinary civil action can be filed for his declaration as heir in order to bring about the annulment of the partition or distribution or adjudication of a property or properties belonging to the estate of the deceased.[100]

In the *Portugal case* itself, the Court directed the trial court to already determine petitioners' status as heirs of the decedent even in an ordinary civil action, *i.e.*, action for annulment of title, because:

> It appearing x x x that in the present case the only property of the intestate estate of Portugal is the Caloocan parcel of land, to still subject it, under the circumstances of the case, to a special proceeding which could be long, hence, not expeditious, just to establish the status of petitioners as heirs is not only impractical; it is burdensome to the estate with the costs and expenses of an administration proceeding. And it is superfluous in light of the fact that the parties to the civil case—subject of the present case, could and had already in fact presented evidence before the trial court which assumed jurisdiction over the case upon the issues it defined during pre-trial.
>
> In fine, under the circumstances of the present case, there being no compelling reason to still subject Portugal's estate to administration proceedings since a determination of petitioners' status as heirs could be achieved in the civil case filed by petitioners, the trial court should proceed to evaluate the evidence presented by the parties during the trial and render a decision thereon upon the issues it defined during pre-trial, x x x.[101]

Another case, *Heirs of Teofilo Gabatan v. Court of Appeals*[102] (*Gabatan case*), involved an action for recovery of ownership and possession of property with the opposing parties insisting that they are the legal heirs of the deceased. Recalling the *Portugal case*, the Court ruled:

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[100] *Id.* at 198.

[101] *Id.* at 199-200.

[102] G.R. No. 150206, March 13, 2009, 581 SCRA 70, 80-81.

Similarly, in the present case, there appears to be only one parcel of land being claimed by the contending parties as their inheritance from Juan Gabatan. It would be more practical to dispense with a separate special proceeding for the determination of the status of respondent as the sole heir of Juan Gabatan, specially in light of the fact that the parties to Civil Case No. 89-092, had voluntarily submitted the issue to the RTC and already presented their evidence regarding the issue of heirship in these proceeding. Also the RTC assumed jurisdiction over the same and consequently rendered judgment thereon.

In *Fidel v. Court of Appeals*[103] (*Fidel case*), therein respondents, the heirs of the late Vicente Espineli (Vicente) from his first marriage, instituted an action to annul the sale of Vicente's property to therein petitioners, the spouses Fidel. The subject property was sold to petitioners by Vicente's heirs from his second marriage. Even though one's legitimacy can only be questioned in a direct action seasonably filed by the proper party, the Court held that it was necessary to pass upon respondents' relationship to Vicente in the action for annulment of sale so as to determine respondents' legal rights to the subject property. In fact, the issue of whether respondents are Vicente's heirs was squarely raised by petitioners in their Pre-Trial Brief. Hence, petitioners were estopped from assailing the ruling of the trial court on respondents' status.

In Civil Case No. 4452, Teofilo and/or Atty. Cabildo themselves asked the RTC-Branch 3 to resolve the issue of Vidal's legal or beneficial ownership of the two parcels of land.[104] During trial, Vidal already presented before the RTC-Branch 3 evidence to establish her status, filiation, and heirship. There is no showing that Doña Demetria left any other property that would have required special administration proceedings. In the spirit of the *Portugal, Gabatan, and Fidel cases*, the Court deems it more practical and expeditious to settle the

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[103] G.R. No. 168263, July 21, 2008, 559 SCRA 186, 194.

[104] As stated in the RTC Decision dated July 17, 2004; *rollo* (G.R. No. 178779), p. 1296.

issue on Vidal's status, filiation, and heirship in Civil Case No. 4452.

"Title" in quieting of title

LANDTRADE, Teofilo, and/or Atty. Cabildo further contend that Vidal and AZIMUTH have no cause of action for quieting of title since Vidal has no title to the two parcels of land. In comparison, Teofilo's title to the same properties, as Doña Demetria's only heir, was already established and recognized by this Court in the *1997 Cacho case*.

Again, the Court cannot sustain the foregoing contention of LANDTRADE, Teofilo, and/or Atty. Cabildo.

It must be borne in mind that the concept of a cause of action in ordinary civil actions does not apply to quieting of title. In declaratory relief, the subject-matter is a deed, will, contract or other written instrument, statute, executive order or regulation, or ordinance. The issue is the validity or construction of these documents. The relief sought is the declaration of the petitioner's rights and duties thereunder. Being in the nature of declaratory relief, this special civil action presupposes that there has yet been no breach or violation of the instruments involved.[105]

In an action for quieting of title, the subject matter is the title sought to have quieted. "Title" is not limited to the certificate of registration under the Torrens System (*i.e.*, OCT or TCT). Pursuant to Article 477 of the Civil Code, the plaintiff must have **legal or equitable title to, or interest** in, the real property subject of the action for quieting of title. The plaintiff need not even be in possession of the property. If she is indeed Doña Demetria's sole heir, Vidal already has equitable title to or interest in the two parcels of land by right of succession, even though she has not yet secured certificates of title to the said properties in her name.

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[105] *Supra* at note 98.

LANDTRADE, Teofilo, and/or Atty. Cabildo mistakenly believe that the *1997 Cacho case* had conclusively settled Teofilo's identity and existence as Doña Demetria's sole heir. They failed to appreciate that the *1997 Cacho case* involved Teofilo's petition for reconstitution of title, treated as a **petition for the re-issuance of Decree Nos. 10364 and 18969**. The grant by the RTC of Teofilo's petition, affirmed by this Court, only conclusively established the **prior issuance and existence** and the **subsequent loss** of the two decrees, thus, entitling Teofilo to the **re-issuance of the said decrees in their original form and condition**.

As the Court of Appeals pointed out in its assailed Decision dated January 19, 2007, the issue of Teofilo's heirship was not the *lis mota* of the *1997 Cacho case*. It was addressed by the Court in the *1997 Cacho case* for the simple purpose of determining Teofilo's legal interest in filing a petition for the re-issuance of the lost decrees. The Court merely found therein that Teofilo's Affidavit of Adjudication, executed in the U.S.A. before the Philippine Consulate General, enjoyed the presumption of regularity and, thus, sufficiently established Teofilo's legal interest. The *1997 Cacho case*, however, did not conclusively settle that Teofilo is indeed Doña Demetria's only heir and the present owner, by right of succession, of the subject properties.

Factual findings of the RTC-Branch 3 and the Court of Appeals

LANDTRADE, Teofilo, and/or Atty. Cabildo additionally posit that the evidence presented by Vidal and AZIMUTH were insufficient to prove the fact of Vidal's filiation and heirship to Doña Demetria. LANDTRADE, Teofilo, and/or Atty. Cabildo particularly challenged the reliance of the RTC-Branch 3 on Vidal's baptismal certificate, arguing that it has no probative value and is not conclusive proof of filiation.

Alternative means of proving an individual's filiation have been recognized by this Court in *Heirs of Ignacio Conti v. Court of Appeals.*[106] The property in litigation in said case was co-owned

[106] 360 Phil. 536 (1998).

by Lourdes Sampayo (Sampayo) and Ignacio Conti, married to Rosario Cuario (collectively referred to as the spouses Conti). Sampayo died without issue. Therein respondents, claiming to be Sampayo's collateral relatives, filed a petition for partition of the subject property, plus damages. To prove that they were collaterally related to Sampayo through the latter's brothers and sisters, respondents submitted photocopies of the birth certificates, certifications on the non-availability of records of births, and certified true copies of the baptismal certificates of Sampayo's siblings. The spouses Conti questioned the documentary evidence of respondents' filiation on the ground that these were incompetent and inadmissible, but the Court held that:

> Under Art. 172 of the Family Code, the filiation of legitimate children shall be proved by any other means allowed by the Rules of Court and special laws, in the absence of a record of birth or a parent's admission of such legitimate filiation in a public or private document duly signed by the parent. Such other proof of one's filiation may be a baptismal certificate, a judicial admission, a family Bible in which his name has been entered, common reputation respecting his pedigree, admission by silence, the testimonies of witnesses and other kinds of proof admissible under Rule 130 of the Rules of Court. By analogy, this method of proving filiation may also be utilized in the instant case.
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> x x x x x x x x x
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> The admissibility of baptismal certificates offered by Lydia S. Reyes, absent the testimony of the officiating priest or the official recorder, was settled in *People v. Ritte*r, citing *U.S. v. de Vera* (28 Phil. 105 [1914]), thus -
>
> > x x x the entries made in the Registry Book may be considered as entries made in the course of the business under Section 43 of Rule 130, which is an exception to the hearsay rule. The baptisms administered by the church are one of its transactions in the exercise of ecclesiastical duties and recorded in the book of the church during the course of its business.

It may be argued that baptismal certificates are evidence only of the administration of the sacrament, but in this case, there were four (4) baptismal certificates which, when taken together, uniformly show that Lourdes, Josefina, Remedios and Luis had the same set of parents, as indicated therein. Corroborated by the undisputed testimony of Adelaida Sampayo that with the demise of Lourdes and her brothers Manuel, Luis and sister Remedios, the only sibling left was Josefina Sampayo Reyes, such baptismal certificates have acquired evidentiary weight to prove filiation.[107]

Thus, Vidal's baptismal certificate is not totally bereft of any probative value. It may be appreciated, together with all the other documentary and testimonial evidence submitted on Vidal's filiation, to wit:

The first issue proposed by petitioners for resolution is whether or not petitioner Demetria C. Vidal is the sole surviving heir of the late Doña Demetria Cacho. To prove that, indeed, she is the sole surviving heir of the late Doña Demetria Cacho, she testified in open court and identified the following documentary evidence, to wit:

Exhibit "A" – Birth Certificate of Demetria C. Vidal
Exhibit "B" – *Partida de Bautismo* of Demetria C. Vidal
Exhibit "C" – Certificate of Baptism Demetria C. Vidal
Exhibit "D" – Cacho Family Tree
Exhibit "D-1" – Branch of Demetria Cacho
Exhibit "F" – Death Certificate of Demetria Cacho
Exhibit "P" – Driver's license of Demetria C. Vidal
Exhibit "Q" to "Q5" – The book entitled "CACHO", the introductory page on March 1988 when the data were compiled, page 58 on the Vidal branch of the Cacho family, page 62 on Demetria Cacho and her descendants, page 69 on the family member with the then latest birth day 26 March 1988, and page 77 with the picture of Demetria Cacho Vidal, Dionisio Vidal and Francisco Vidal.[108]

In contrast, LANDTRADE, Teofilo, and/or Atty. Cabildo failed to present any evidence at all in support of their claims. According to the RTC-Branch 3:

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[107] *Id.* at 548-550.

[108] *Rollo* (G.R. No. 178779), pp. 1311-1312.

Landtrade was also declared to have waived its right to present evidence on its defense and counterclaim in the above-entitled case in view of its failure to present evidence on their scheduled trial date.

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Since respondents Teofilo Cacho and Atty. Godofredo Cabildo opted not to adduce evidence in this case as they failed to appear during the scheduled trial dates, the court shall decide on the basis of the evidence for the respondents-intervenor and petitioners.[109]

Based on the evidence presented before it, the RTC-Branch 3 made the following factual findings:

From the evidence adduced, both testimonial and documentary, the court is convinced that petitioner Vidal is the granddaughter of Demetria Cacho Vidal, the registered owner of the subject property covered by decree Nos. 10364 & 18969, reissued as Decrees No. 19364 and No. 16869. Such being the case, she is an heir of Demetria Cacho Vidal.

Petitioner Vidal's Certificate of Birth (Exh. "A") shows that she was born on June 3, 1941, with the name Demetria Vidal. [Her] father was Francisco Vidal and her mother was Fidela Confesor, Francisco Vidal is the son of Dionisio Vidal and Demetria Cacho as shown by [his] *Partida de Bautismo* (Baptismal Certificate). Moreover, it was shown in the same document that her godmother was Demetria Cacho. By inference, this Demetria Cacho is actually Demetria Cacho Vidal because she was married to Dionisio Vidal, the father of Francisco Vidal.

Now then, is Demetria Cacho Vidal the same person referred to in *Cacho v. Government of the United States* (28 Phil. 616 [1914])? Page 618, Vol. 28 of the Philippine Reports would indicate that the applicant for registration was Doña Demetria Cacho y Soriano (Exh. "R-1"). The Death Certificate of Demetria Cacho Vidal shows that her mother was Candelaria Soriano (Exh. "F"). Necessarily, they are one and the same person. This is further confirmed by the fact that the husband of Demetria Cacho Vidal, Señor Dionisio Vidal, was quoted in pp. 629-630 of the aforecited decision as the husband of Demetria Cacho (Exh. "R-3").

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[109] *Id.* at 1306 and 1311.

The book "CACHO" (Exhs. "Q" to "Q-5") and the Cacho Family Tree (Exhs. "D" to "D-1") further strengthen the aforecited findings of this Court.

It was established by petitioner Vidal's own testimony that at the time of Doña Demetria Cacho's death, she left no heir other than petitioner Vidal. Her husband, Don Dionisio, died even before the war, while her only child, Francisco Cacho Vidal – xxx Vidal's father – died during the war. Petitioner's only sibling – Francisco Dionisio – died at childbirth.

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The next factual issue proposed by petitioners is whether or not respondent Teofilo Cacho is the son or heir of the late Doña Demetria Cacho. The following facts and circumstances negate the impression that he is the son, as he claims to be, of Doña Demetria Cacho. Thus:

a) Doña Demetria Cacho was married to Don Dionisio Vidal, and thus her full name was Doña Demetria Cacho Vidal. Her only child, expectedly, carried the surname Vidal (Francisco Cacho Vidal). Had Teofilo Cacho actually been a son of Demetria Cacho, he would and should have carried the name "Teofilo Cacho Vidal", but he did not.

b) Teofilo Cacho admits to being married to one Elisa Valderrama in the Special Power of Attorney he issued to Atty. Godofredo [Cabildo] (Exh. "O"). Teofilo Cacho married Elisa Valderrama on 27 May 1953, in the Parish of the Immaculate Conception, Bani, Pangasinan. The Certificate of Marriage shows that Teofilo Cacho is the son of Agustin Cacho and Estefania Cordial, not Demetria Cacho. In his Certificate of Baptism (Exh. "G"), he was born to Agustin Cacho and Estefania Cordial on May 1930 (when Doña Demetria Cacho was already 50 years old).

c) The Cacho Family Tree (Exh. "D") (that is, the Cacho Family to which Doña Demetria Cacho belonged) as well as the book on the Cacho Family (Exh. "Q") are bereft of any mention of Teofilo Cacho or his wife Elisa Valderrama, or even his real father Agustin Cacho, or mother Estefania Cordial. They are not known to be related to the Cacho family of Doña Demetria Cacho.

d) Paragraph 1.11 of the Petition charges respondent Teofilo Cacho of having falsely and fraudulently claiming to be the son and sole heir of the late Doña Demetria Cacho. In his answer to this particular paragraph, he denied the same for lack of knowledge or information to form a belief. He should know whether this allegation is true or not because it concerns him. If true, he should admit and if false, he opted to deny the charges for lack of knowledge or information to form a belief. The Court considers his denial as an admission of the allegation that he is falsely and fraudulently claiming to be the son and sole heir of the late Doña Demetria Cacho.[110]

Considering the aforequoted factual findings, the RTC-Branch 3 arrived at the following legal conclusions, quieting the titles of Vidal and AZIMUTH, *viz*:

The first proposed legal issue to be resolved had been amply discussed under the first factual issue. Certainly, petitioner Vidal has hereditary rights, interest, or title not only to a portion of the Subject Property but to the entire property left by the late Doña Demetria Cacho Vidal, subject, however, to the Deed of Conditional Conveyance executed by petitioner Vidal of a portion of the Subject Property in favor of petitioner Azimuth International Development Corporation (Exh. "J") executed pursuant to their Memorandum of Agreement (Exh. "I"). Consequently, it goes without saying that petitioner Azimuth International Development Corporation has a right, interest in, or title to a portion of the subject property.

As discussed earlier in this decision, Teofilo Cacho, not being the son, as he claims to be, of the late Doña Demetria Cacho Vidal, has no hereditary rights to the Subject Property left by Doña Demetria Cacho Vidal. He failed to show any evidence that he is the son of the late Doña Demetria Cacho Vidal as he and his co respondent, Atty. Godofredo Cabildo, even failed to appear on the scheduled trial date.

It is, therefore, safe to conclude that respondents Teofilo Cacho and/or Atty. Godofredo Cabildo and their transferees/assignees have no right, interest in, or title to the subject property.

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[110] *Id.* at 1312-1314.

Prescinding from the finding of this Court that respondent Teofilo Cacho is not the son of the registered owner of the Subject Property, the late Doña Demetria Cacho Vidal, respondent Cacho committed false pretenses and fraudulent acts in representing himself as son and sole heir of Doña Demetria Cacho (Vidal) in his petition in court, which eventually led to the reconstitution of the titles of Doña Demetria Cacho (Vidal). Certainly, his misrepresentation in the reconstitution case, which apparently is the basis of his claim to the subject property, casts clouds on [respondents'] title to the subject property.

It is only right that petitioner Vidal should seek protection of her ownership from acts tending to cast doubt on her title. Among the legal remedies she could pursue, is this petition for Quieting of Title under Chapter 3, Title I, Book II of the Civil Code, Articles 476 to 481 inclusive. x x x.[111]

The Court of Appeals affirmed *in toto* the judgment of the RTC-Branch 3. The appellate court even soundly trounced Teofilo's attack on the factual findings of the trial court:

[T]he material facts sought to be established by the afore-mentioned documentary evidence corroborated by the testimony of VIDAL, whose testimony or credibility neither Teofilo and LANDTRADE even attempted to impeach, only proves one thing, that she is the granddaughter of DOÑA DEMETRIA and the sole heiress thereof.

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Hence, it is now too late for appellant TEOFILO to assail before Us the facts proven during the trial, which he failed to refute in open court. Verily, TEOFILO's lackadaisical attitude in the conduct of his defense only shows that he has no proof to offer in refutation of the evidence advanced by appellee VIDAL.

Otherwise stated, appellant TEOFILO is an impostor, a pretender and bogus heir of DOÑA DEMETRIA.

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Besides, it is quite unnatural and against human nature for a rightful heir, if TEOFILO is really one, to merely stand still with folded arms, while the accusing finger of VIDAL is right on his very nose. In all

[111] *Id.* at 1314-1315.

likelihood, and with all his might and resources, a rightful heir may even be expected to cross continents and reach distant shores to protect his interest over the subject properties, which in this case is arguably worth more than a King's ransom.

It stands on record that TEOFILO CACHO has all along even prior to executing his Affidavit of Adjudication in 1985 in Chicago, United States of America, and in simultaneously executing a Special Power of Attorney in favor of ATTY. CABILDO, had remained in the United States, and not for a single moment appeared in court except through his agents or representatives. To Our mind, this fact alone adversely affects his pretension in claiming to be an heir of DOÑA DEMETRIA.[112]

As a rule, the findings of fact of the trial court when affirmed by the Court of Appeals are final and conclusive, and cannot be reviewed on appeal by this Court as long as they are borne out by the record or are based on substantial evidence. It is not the function of the Court to analyze or weigh all over again the evidence or premises supportive of such factual determination. The Court has consistently held that the findings of the Court of Appeals and other lower courts are, as a rule, accorded great weight, if not binding upon it, save for the most compelling and cogent reasons.[113] There is no justification for the Court to deviate from the factual findings of the RTC-Branch 3 and the Court of Appeals which are clearly supported by the evidence on record.

Prescription

LANDTRADE finally asserts that the action for quieting of title of Vidal and AZIMUTH already prescribed since LANDTRADE has been in possession of the two parcels of land in question. The prescriptive period for filing said action lapsed in 1995, ten years from the time Teofilo executed his

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[112] *Id.* at 68-70.

[113] *Prudential Bank v. Lim*, G.R. No. 136371, November 11, 2005, 474 SCRA 485, 491.

Affidavit of Adjudication in 1985. Yet, Vidal and AZIMUTH instituted Civil Case No. 4452 only in 1998.

It is too late in the day for LANDTRADE to raise the issue of prescription of Civil Case No. 4452 for the first time before this Court. In this jurisdiction, the defense of prescription cannot be raised for the first time on appeal. Such defense may be waived, and if it was not raised as a defense in the trial court, it cannot be considered on appeal, the general rule being that the Appellate Court is not authorized to consider and resolve any question not properly raised in the lower court.[114]

But even if the Court takes cognizance of the issue of prescription, it will rule against LANDTRADE.

A real action is one where the plaintiff seeks the recovery of real property or, as indicated in what is now Rule 4, Section 1 of the Rules of Court, a real action is **an action affecting title to** or recovery of possession **of real property**.[115] An action for quieting of title to real property, such as Civil Case No. 4452, is indubitably a real action.

Article 1141 of the Civil Code plainly provides that real actions over immovables prescribe **after thirty years**. Doña Demetria died in 1974, transferring by succession, her title to the two parcels of land to her only heir, Vidal. Teofilo, through Atty. Cabildo, filed a petition for reconstitution of the certificates of title covering said properties in **1978**. This is the first palpable display of Teofilo's adverse claim to the same properties, supposedly, also as Doña Demetria's only heir. When Vidal and AZIMUTH instituted Civil Case No. 4452 in **1998**, only **20 years** had passed, and the prescriptive period for filing an action for quieting of title had not yet prescribed.

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[114] *Springsun Management Systems Corporation v. Camerino*, G.R. No. 161029, January 19, 2005, 449 SCRA 65, 86.

[115] *Gochan v. Gochan*, 423 Phil. 491, 502 (2001); *Serrano v. Delica*, G.R. No. 136325, 29 July 2005, 465 SCRA 82, 88.

Nevertheless, the Court notes that Article 1141 of the Civil Code also clearly states that the 30-year prescriptive period for real actions over immovables is **without prejudice** to what is established for the acquisition of ownership and other real rights by prescription. Thus, the Court must also look into the acquisitive prescription periods of ownership and other real rights.

Acquisitive prescription of dominion and real rights may be ordinary or extraordinary. [116]

Ordinary acquisitive prescription requires possession of things in good faith and with just title for the time fixed by law.[117] In the case of ownership and other real rights over immovable property, they are acquired by ordinary prescription through **possession of 10 years**.[118]

LANDTRADE cannot insist on the application of the 10-year ordinary acquisitive prescription period since it cannot be considered a possessor in good faith. The good faith of the possessor consists in the reasonable belief that the person from whom he received the thing was the owner thereof, and could transmit his ownership.[119]

LANDTRADE came to possession of the two parcels of land after purchasing the same from Teofilo. The Court stresses, however, that Teofilo is not the registered owner of the subject properties. The said properties are still registered in Doña Demetria's name under OCT Nos. 0-1200 (a.f.) and 0-1201 (a.f.). The Affidavit of Adjudication, by which Teofilo declared himself to be the sole heir of Doña Demetria's estate, is not even annotated on the OCTs. Worse, LANDTRADE is not dealing directly with Teofilo, but only with the latter's attorney-in-fact, Atty. Cabildo. It is axiomatic that one who buys from

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[116] Civil Code, Article 1117.

[117] *Id*.

[118] *Id.*, Article 1134.

[119] *Id.*, Article 1127.

a person who is not a registered owner is not a purchaser in good faith.[120]

Furthermore, in its Complaint for Unlawful Detainer against NAPOCOR and TRANSCO, which was docketed as Civil Case No. 11475-AF before the MTCC, LANDTRADE itself alleged that when it bought the two parcels of land from Teofilo, portions thereof were already occupied by the Overton Sub-station and Agus 7 Warehouse of NAPOCOR and TRANSCO. This is another circumstance which should have prompted LANDTRADE to investigate or inspect the property being sold to it. It is, of course, expected from the purchaser of a valued piece of land to inquire first into the status or nature of possession of the occupants, *i.e.*, whether or not the occupants possess the land *en concepto de dueño*, in concept of owner. As is the common practice in the real estate industry, an ocular inspection of the premises involved is a safeguard a cautious and prudent purchaser usually takes. Should he find out that the land he intends to buy is occupied by anybody else other than the seller who, as in this case, is not in actual possession, it would then be incumbent upon the purchaser to verify the extent of the occupant's possessory rights. The failure of a prospective buyer to take such precautionary steps would mean negligence on his part and would thereby preclude him from claiming or invoking the rights of a "purchaser in good faith."[121]

Since the ordinary acquisitive prescription period of 10 years does not apply to LANDTRADE, then the Court turns its attention to the **extraordinary acquisitive prescription period** of **30 years** set by Article 1137 of the Civil Code, which reads:

> ART. 1137. Ownership and other real rights over immovables also prescribe through uninterrupted adverse possession thereof for thirty years, without need of title or of good faith.

LANDTRADE adversely possessed the subject properties no earlier than **1996**, when it bought the same from Teofilo, and

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[120] *Samonte v. Court of Appeals*, 413 Phil. 487, 498 (2001).

[121] *Spouses Mathay v. Court of Appeals*, 356 Phil. 870, 891 (1998).

Civil Case No. 4452 was already instituted **two years** later in **1998**. LANDTRADE cannot tack its adverse possession of the two parcels of land to that of Teofilo considering that there is no proof that the latter, who is already residing in the U.S.A., adversely possessed the properties at all.

Thus, the Court of Appeals did not err when it affirmed *in toto* the judgment of the RTC-Branch 3 which declared, among other things, that (a) Vidal is the sole surviving heir of Doña Demetria, who alone has rights to and interest in the subject parcels of land; (b) AZIMUTH is Vidal's successor-in-interest to portions of the said properties in accordance with the 1998 Memorandum of Agreement and 2004 Deed of Conditional Conveyance; (c) Teofilo is not the son or heir of Doña Demetria; and (d) Teofilo, Atty. Cabildo, and their transferees/assignees, including LANDTRADE, have no valid right to or interest in the same properties.

The Ejectment or Unlawful Detainer Case
(G.R. Nos. 170505, 173355-56, and 173563-64)

The Petitions in G.R. Nos. 170505, 173355-56, and 173563-64 all concern the execution pending appeal of the Decision dated February 17, 2004 of the MTCC in Civil Case No. 11475-AF, which ordered NAPOCOR and TRANSCO to vacate the two parcels of land in question, as well as to pay rent for the time they occupied said properties.

LANDTRADE filed its Petition for Review in **G.R. No. 170505** when it failed to have the MTCC Decision dated February 17, 2004 executed while Civil Case No. 6613, the appeal of the same judgment by NAPOCOR and TRANSCO, was still pending before the RTC-Branch 5.

NAPOCOR and TRANSCO sought recourse from this Court through their Petitions for *Certiorari* and Prohibition in **G.R. Nos. 173355-56 and 173563-64** after the RTC-Branch 1 (to which Civil Case No. 6613 was re-raffled) already rendered a Decision dated December 12, 2005 in Civil Case No. 6613, affirming the MTCC Decision dated February 17, 2004.

Expectedly, NAPOCOR and TRANSCO appealed the judgment of the RTC-Branch 1 to the Court of Appeals. The Court of Appeals granted the motion for execution pending appeal of LANDTRADE, and denied the application for preliminary injunction of NAPOCOR and TRANSCO.

The requirements of posting a supersedeas bond and depositing rent to stay execution

The pivotal issue in G.R. No. 170505 is whether LANDTRADE is entitled to the execution of the MTCC Decision dated February 17, 2004 even while said judgment was then pending appeal before the RTC-Branch 5. The RTC-Branch 5 granted the motion for immediate execution pending appeal of LANDTRADE because of the failure of NAPOCOR and TRANSCO to comply with the requirements for staying the execution of the MTCC judgment, as provided in Rule 70, Section 19 of the Rules of Court. The Court of Appeals subsequently found grave abuse of discretion on the part of RTC-Branch 5 in issuing the Order dated August 9, 2004 which granted execution pending appeal and the Writ of Execution Pending Appeal dated August 10, 2004; and on the part of Sheriff Borres, in issuing the Notices of Garnishment and Notification to vacate, all dated August 11, 2004. According to the appellate court, NAPOCOR and TRANSCO are exempt from the requirements of filing a *supersedeas* bond and depositing rent in order to stay the execution of the MTCC judgment.

Rule 70, Section 19 of the Rules of Court lays down the requirements for staying the immediate execution of the MTCC judgment against the defendant in an ejectment suit:

SEC. 19. *Immediate execution of judgment; how to stay same*. – If judgment is rendered against the defendant, execution shall issue immediately upon motion, unless an **appeal has been perfected** and the defendant to stay execution **files a sufficient supersedeas bond**, approved by the Municipal Trial Court and executed in favor of the plaintiff to pay the rents, damages, and costs accruing down to the time of the judgment appealed from, and unless, during the pendency of the appeal, he **deposits with the appellate court the amount of**

rent due from time to time under the contract, if any, as determined by the judgment of the Municipal Trial Court. In the absence of a contract, he shall deposit with the Regional Trial Court the reasonable value of the use and occupation of the premises for the preceding month or period at the rate determined by the judgment of the lower court on or before the tenth day of each succeeding month or period. The supersedeas bond shall be transmitted by the Municipal Trial Court, with the other papers, to the clerk of the Regional Trial Court to which the action is appealed.

All amounts so paid to the appellate court shall be deposited with said court or authorized government depositary bank, and shall be held there until the final disposition of the appeal, unless the court, by agreement of the interested parties, or in the absence of reasonable grounds of opposition to a motion to withdraw, or for justifiable reasons, shall decree otherwise. Should the defendant fail to make the payments above prescribed from time to time during the pendency of the appeal, the appellate court, upon motion of the plaintiff, and upon proof of such failure, shall order the execution of the judgment appealed from with respect to the restoration of possession, but such execution shall not be a bar to the appeal taking its course until the final disposition thereof on the merits.

After the case is decided by the Regional Trial Court, any money paid to the court by the defendant for purposes of the stay of execution shall be disposed of in accordance with the provisions of the judgment of the Regional Trial Court. In any case wherein it appears that the defendant has been deprived of the lawful possession of land or building pending the appeal by virtue of the execution of the judgment of the Municipal Trial Court, damages for such deprivation of possession and restoration of possession may be allowed the defendant in the judgment of the Regional Trial Court disposing of the appeal. (Emphases supplied.)

The Court had previously recognized the exemption of NAPOCOR from filing a *supersedeas* bond. The Court stated in *Philippine Geothermal, Inc. v. Commissioner of Internal Revenue*[122] that a chronological review of the NAPOCOR Charter will show that it has been the lawmakers' intention that said corporation be completely exempt not only from all

[122] G.R. No. 154028, July 29, 2005, 465 SCRA 308, 314-315.

forms of taxes, but also from filing fees, appeal bonds, and *supersedeas* bonds in any court or administrative proceedings. The Court traced the history of the NAPOCOR Charter, thus:

> **Republic Act No. 6395** (10 September 1971) enumerated the details covered by the exemptions by stating under Sec. 13 that "The Corporation shall be non-profit and shall devote all its returns from its capital investment, as well as excess revenues from its operation, for expansion…the Corporation is hereby declared exempt from the payment of all taxes, duties, fees, imposts, charges, costs and service fees in any court or administrative proceedings in which it may be a party, restrictions and duties to the Republic of the Philippines, its provinces, cities, municipalities and other government agencies and instrumentalities . . ." Subsequently, **Presidential Decree No. 380** (22 January 1974), Sec. 10 made even more specific the details of the exemption of NPC to cover, among others, both direct and indirect taxes on all petroleum products used in its operation. **Presidential Decree No. 938** (27 May 1976), Sec. 13 amended the tax exemption by simplifying the same law in general terms. It succinctly exempts service fees, including filing fees, appeal bonds, *supersedeas bonds*, in any court or administrative proceedings. The use of the phrase "all forms" of taxes demonstrate the intention of the law to give NPC all the exemption it has been enjoying before. The rationale for this exemption is that being non-profit, the NPC "shall devote all its return from its capital investment as well as excess revenues from its operation, for expansion.[123] (Emphases supplied.)

As presently worded, Section 13 of Republic Act No. 6395, the NAPOCOR Charter, as amended, reads:

> SEC. 13. *Non-profit Character of the Corporation; Exemption from All Taxes, Duties, Fees, Imposts and Other Charges by the Government and Government Instrumentalities*. – The Corporation shall be non-profit and shall devote all its returns from its capital investment as well as excess revenues from its operation, for expansion. To enable the Corporation to pay its indebtedness and obligations and in furtherance and effective implementation of the policy enunciated in Section One of this Act, the Corporation, including its subsidiaries, is hereby declared exempt from the payment of all forms of taxes, duties, fees, imposts as well as costs and service

[123] *Id.* (footnote 10).

fees **including filing fees, appeal bonds, supersedeas bonds, in any court or administrative proceedings**. (Emphasis supplied.)

In A.M. No. 05-10-20-SC, captioned *In Re: Exemption of the National Power Corporation from Payment of Filing/ Docket Fees*, the Court addressed the query of a Clerk of Court from the RTC of Urdaneta, Pangasinan on whether NAPOCOR is exempt from the payment of filing fees and Sheriff's Trust Fund. In its Resolution dated December 6, 2005, the Court, upon the recommendation of the Court Administrator, declared that NAPOCOR is still exempt from the payment of filing fees, appeal bonds, and *supersedeas* bonds.

Consistent with the foregoing, the Court of Appeals rendered its Decision dated November 23, 2005 in CA-G.R. SP Nos. 85714 and 85841 declaring that NAPOCOR was exempt from filing a *supersedeas* bond to stay the execution of the MTCC judgment while the same was pending appeal before the RTC-Branch 5. The appellate court also held that the exemption of NAPOCOR extended even to the requirement for periodical deposit of rent, ratiocinating that:

> On the whole, the posting of *supersedeas* bond and the making of the periodical deposit are designed primarily to insure that the plaintiff would be paid the back rentals and the compensation for the use and occupation of the premises should the municipal trial court's decision be eventually affirmed on appeal. Elsewise stated, both the posting of the supersedeas bond and the payment of monthly deposit are required to accomplish one and the same purpose, namely, to secure the performance of, or to satisfy the judgment appealed from in case it is affirmed on appeal by the appellate court.
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> xxx xxx xxx
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> Thus viewed, the inescapable conclusion is, and so We hold, that although the term "making of monthly deposit in ejectment cases" is not expressly or specifically mentioned in Section 13 of R.A. 6395, however, inasmuch as it has the same or similar function, purpose, and essence as a supersedeas bond, it should be deemed included in the enumeration laid down under the said provision. This accords well with the principle of *ejusdem generis* which says that where a statute uses a general word followed by an enumeration of specific

words embraced within the general word merely as examples, the enumeration does not restrict the meaning of the general word which should be construed to include others of the same class although not enumerated therein; or where a general word or phrase follows an enumeration of particular and specific words of the same class or where the latter follow the former, the general word or phrase is to be construed to include persons, things or cases akin to, resembling, or of the same kind or class as those specifically mentioned.

In a nutshell, We hold that petitioner NAPOCOR enjoys exemption not only from posting supersedeas bond in courts in appealed ejectment cases, but also from periodically depositing the amount of the monthly rental or the reasonable compensation of the use and occupancy of the property, as determined in the municipal trial court's decision.[124]

The Court of Appeals further adjudged that the exemptions of NAPOCOR similarly applied to TRANSCO since "[i]t is all too obvious that the interests of NAPOCOR and TRANSCO over the premises in litigation are so interwoven and dependent upon each other, such that whatever is adjudged in regard to the former, whether favorable or adverse, would ineluctably and similarly affect the latter[;]" and "[c]onsequently, x x x the stay of the execution of the appealed decision insofar as NAPOCOR is concerned necessarily extends and inures to its co-defendant TRANSCO, not by virtue of the former's statutory exemption privilege from filing supersedeas bond and making periodic deposits, but by the indisputably operative fact that the rights and liabilities *in litis* of BOTH defendants are so intimately interwoven, interdependent, and indivisible."[125]

Only recently, however, the Court reversed its stance on the exemption of NAPOCOR from filing fees, appeal bonds, and *supersedeas* bonds. Revisiting A.M. No. 05-10-20-SC, the Court issued Resolutions dated October 27, 2009 and March 10, 2010, wherein it denied the request of NAPOCOR for exemption from payment of filing fees and court fees for such

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[124] *Supra* note 6 at 43-45.

[125] *Id.* at 47-49.

request appears to run counter to Article VIII, Section 5(5)[126] of the Constitution, on the rule-making power of the Supreme Court over the rules on pleading, practice and procedure in all courts, which includes the sole power to fix the filing fees of cases in courts. The Court categorically pronounced that NAPOCOR can no longer invoke its amended Charter as basis for exemption from the payment of legal fees.

Nevertheless, in this case, the RTC-Branch 1 already promulgated its Decision in Civil Case No. 6613 on December 12, 2005, denying the appeal of NAPOCOR and TRANSCO and affirming the MTCC judgment against said corporations. NAPOCOR and TRANSCO presently have pending appeals of the RTC-Branch 1 judgment before the Court of Appeals.

Rule 70, Section 19 of the Rules of Court applies only when the judgment of a Municipal Trial Court (and any same level court such as the MTCC) in an ejectment case is pending appeal before the RTC. When the RTC had already resolved the appeal and its judgment, in turn, is pending appeal before the Court of Appeals, then **Rule 70, Section 21** of the Rules of Court governs.

The Court already pointed out in *Northcastle Properties and Estate Corporation v. Paas*[127] that Section 19 applies only to ejectment cases pending appeal with the RTC, and Section 21 to those already decided by the RTC. The Court again held in *Uy v. Santiago*[128] that:

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[126] SEC. 5. The Supreme Court shall have the following powers:

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

[127] 375 Phil. 564 (1999).

[128] 391 Phil. 575, 580 (2000).

[I]t is only execution of the Metropolitan or Municipal Trial Courts' judgment pending appeal with the Regional Trial Court which may be stayed by a compliance with the requisites provided in ***Rule 70, Section 19 of the 1997 Rules on Civil Procedure***. On the other hand, once the Regional Trial Court has rendered a decision in its appellate jurisdiction, such decision shall, under ***Rule 70, Section 21 of the 1997 Rules on Civil Procedure***, be immediately executory, without prejudice to an appeal, via a Petition for Review, before the Court of Appeals and/or Supreme Court. (Emphases supplied.)

According to Rule 70, Section 21 of the Rules of Court, "[t]he judgment of the Regional Trial Court against the defendant shall be immediately executory, without prejudice to a further appeal that may be taken therefrom." It no longer provides for the stay of execution at such stage.

Thus, subsequent events have rendered the Petition of LANDTRADE in G.R. No. 170505 moot and academic. It will serve no more purpose for the Court to require NAPOCOR and TRANSCO to still comply with the requirements of filing a *supersedeas* bond and depositing rent to stay execution pending appeal of the MTCC judgment, as required by Rule 70, Section 19 of the Rules of Court, when the appeal had since been resolved by the RTC.

Preliminary injunction to stay execution of RTC judgment against defendant in an ejectment case

The issues raised by NAPOCOR and TRANSCO in their Petitions in G.R. Nos. 173355-56 and 173563-64 boil down to the sole issue of whether the Court of Appeals committed grave abuse of discretion amounting to lack or excess of jurisdiction in refusing to enjoin the execution of the Decision dated December 12, 2005 of the RTC-Branch 1 in Civil Case No. 6613 while the same is pending appeal before the appellate court.

The Court of Appeals granted the issuance of a writ of execution in favor of LANDTRADE and denied the application for writ of preliminary injunction of NAPOCOR and TRANSCO because Rule 70, Section 21 of the Rules of Court explicitly

provides that the RTC judgment in an ejectment case, which is adverse to the defendant and pending appeal before the Court of Appeals, shall be immediately executory and can be enforced despite further appeal. Therefore, the execution of the RTC judgment pending appeal is the ministerial duty of the Court of Appeals, specifically enjoined by law to be done.

NAPOCOR and TRANSCO argue that neither the rules nor jurisprudence explicitly declare that Rule 70, Section 21 of the Rules of Court bars the application of Rule 58 on preliminary injunction. Regardless of the immediately executory character of the RTC judgment in an ejectment case, the Court of Appeals, before which said judgment is appealed, is not deprived of power and jurisdiction to issue a writ of preliminary injunction when circumstances so warrant.

There is merit in the present Petitions of NAPOCOR and TRANSCO.

The Court expounded on the nature of a writ of preliminary injunction in *Levi Strauss & Co. v. Clinton Apparelle, Inc.*:[129]

> Section 1, Rule 58 of the Rules of Court defines a preliminary injunction as an order granted at any stage of an action prior to the judgment or final order requiring a party or a court, agency or a person to refrain from a particular act or acts. Injunction is accepted as the strong arm of equity or a transcendent remedy to be used cautiously as it affects the respective rights of the parties, and only upon full conviction on the part of the court of its extreme necessity. An extraordinary remedy, injunction is designed to preserve or maintain the *status quo* of things and is generally availed of to prevent actual or threatened acts until the merits of the case can be heard. It may be resorted to only by a litigant for the preservation or protection of his rights or interests and for no other purpose during the pendency of the principal action. It is resorted to only when there is a pressing necessity to avoid injurious consequences, which cannot be remedied under any standard compensation. The resolution of an application for a writ of preliminary injunction rests upon the existence of an emergency or of a special recourse before the main case can be heard in due course of proceedings.

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[129] G.R. No. 138900, September 20, 2005, 470 SCRA 236, 251-252.

Section 3, Rule 58, of the Rules of Court enumerates the grounds for the issuance of a preliminary injunction:

> SEC. 3. *Grounds for issuance of preliminary injunction*. – A preliminary injunction may be granted when it is established:
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> (a) That the applicant is entitled to the relief demanded, and the whole or part of such relief consists in restraining the commission or continuance of the act or acts complained of, or in requiring the performance of an act or acts, either for a limited period or perpetually;
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> (b) That the commission, continuance, or non-performance of the act or acts complained of during the litigation would probably work injustice to the applicant; or
>
> (c) That a party, court, agency or a person is doing, threatening, or is attempting to do, or is procuring or suffering to be done, some act or acts probably in violation of the rights of the applicant respecting the subject of the action or proceeding, and tending to render the judgment ineffectual.

Under the cited provision, a clear and positive right especially calling for judicial protection must be shown. Injunction is not a remedy to protect or enforce contingent, abstract, or future rights; it will not issue to protect a right not *in esse* and which may never arise, or to restrain an act which does not give rise to a cause of action. There must exist an actual right. There must be a patent showing by the complaint that there exists a right to be protected and that the acts against which the writ is to be directed are violative of said right.

Benedicto v. Court of Appeals[130] sets forth the following elucidation on the applicability of Rule 58 *vis-à-vis* Rule 70, Section 21 of the Rules of Court:

> This section [Rule 70, Section 21] presupposes that the defendant in a forcible entry or unlawful detainer case is unsatisfied with the judgment of the Regional Trial Court and decides to appeal to a superior court. It authorizes the RTC to immediately issue a writ of execution without prejudice to the appeal taking its due course. It

[130] G.R. No. 157604, October 19, 2005, 473 SCRA 363, 370-371.

is our opinion that on appeal the appellate court may stay the said writ should circumstances so require.

In the case of *Amagan v. Marayag*, we reiterated our pronouncement in *Vda. de Legaspi v. Avendaño* that the proceedings in an ejectment case may be suspended in whatever stage it may be found. We further drew a fine line between forcible entry and unlawful detainer, thus:

> Where the action, therefore, is one of illegal detainer, as distinguished from one of forcible entry, and the right of the plaintiff to recover the premises is seriously placed in issue in a proper judicial proceeding, it is more equitable and just and less productive of confusion and disturbance of physical possession, with all its concomitant inconvenience and expenses. For the Court in which the issue of legal possession, whether involving ownership or not, is brought to restrain, should a petition for preliminary injunction be filed with it, the effects of any order or decision in the unlawful detainer case in order to await the final judgment in the more substantive case involving legal possession or ownership. It is only where there has been forcible entry that as a matter of public policy the right to physical possession should be immediately set at rest in favor of the prior possession regardless of the fact that the other party might ultimately be found to have superior claim to the premises involved thereby to discourage any attempt to recover possession thru force, strategy or stealth and without resorting to the courts.

Patently, even if RTC judgments in unlawful detainer cases are immediately executory, preliminary injunction may still be granted. There need only be clear showing that there exists a right to be protected and that the acts against which the writ is to be directed violate said right. (Emphasis supplied.)

As in *Benedicto*, substantial considerations exist herein that compels the Court to issue a writ of preliminary injunction enjoining the execution of the February 17, 2004 Decision of the MTCC, as affirmed by the December 12, 2005 Decision of the RTC-Branch 1, until the appeal of latter judgment, sought by NAPOCOR and TRANSCO, is finally resolved by the Court of Appeals.

First, the two parcels of land claimed by LANDTRADE are the subject of several other cases. In fact, Vidal and AZIMUTH, who instituted the Quieting of Title Case against Teofilo and LANDTRADE (also presently before the Court in G.R. Nos. 178779 and 178894) have filed a Motion For Leave to Intervene in the instant case, thus, showing that there are other parties who, while strangers to the ejectment case, might be greatly affected by its result and who want to protect their interest in the subject properties. And although cases involving title to real property, *i.e.*, quieting of title, *accion publiciana*, *etc*., are not prejudicial to and do not suspend an ejectment case,[131] the existence of such cases should have already put the Court of Appeals on guard that the title of LANDTRADE to the subject properties – on which it fundamentally based its claim of possessory right – is being fiercely contested.

Second, it is undisputed that TRANSCO and its predecessor, NAPOCOR, have been in possession of the disputed parcels of land for more than 40 years. Upon said properties stand the TRANSCO Overton Sub-station and Agus 7 Warehouse. The Overton Sub-station, in particular, is a crucial facility responsible for providing the power requirements of a large portion of Iligan City, the two Lanao Provinces, and other nearby provinces. Without doubt, having TRANSCO vacate its Overton Sub-station, by prematurely executing the MTCC judgment of February 17, 2004, carries serious and irreversible implications, primordial of which is the widespread disruption of the electrical power supply in the aforementioned areas, contributing further to the electric power crisis already plaguing much of Mindanao.

Lastly, allowing execution pending appeal would result in the payment of an astronomical amount in rentals which, per Sheriff Borres's computation, already amounted to ₱156,000,000.00 by August 11, 2004, when he issued the Notices of Garnishment and Notification against NAPOCOR and

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[131] See *Hilario v. Court of Appeals*, 329 Phil. 202 (1996), citing *Wilmon Auto Supply Corporation v. Court of Appeals*, G.R. No. 97637, April 10, 1992, 208 SCRA 108.

TRANSCO; plus, ₱500,000.0 each month thereafter. Payment of such an amount may seriously put the operation of a public utility in peril, to the detriment of its consumers.

These circumstances altogether present a pressing necessity to avoid injurious consequences, not just to NAPOCOR and TRANSCO, but to a substantial fraction of the consuming public as well, which cannot be remedied under any standard compensation. The issuance by the Court of Appeals of a writ of preliminary injunction is justified by the circumstances.

The Court must emphasize though that in so far as the Ejectment Case is concerned, it has only settled herein issues on the propriety of enjoining the execution of the MTCC Decision dated February 17, 2004 while it was on appeal before the RTC, and subsequently, before the Court of Appeals. The Court of Appeals has yet to render a judgment on the appeal itself. But it may not be amiss for the Court to also point out that in G.R. Nos. 178779 and 178894 (Quieting of Title Case), it has already found that Vidal, not Teofilo, is the late Doña Demetria's sole heir, who alone inherits Doña Demetria's rights to and interests in the disputed parcels of land. This conclusion of the Court in the Quieting of Title Case will inevitably affect the Ejectment Case still pending appeal before the Court of Appeals since LANDTRADE is basing its right to possession in the Ejectment Case on its supposed title to the subject properties, which it derived from Teofilo.

The Cancellation of Titles and Reversion Case (G.R. No. 173401)

The Republic is assailing in its Petition in G.R. No. 173401 the (1) Order dated December 13, 2005 of the RTC-Branch 4 dismissing Civil Case No. 6686, the Complaint for Cancellation of Titles and Reversion filed by the Republic against the deceased Doña Demetria, Vidal and/or Teofilo, and AZIMUTH and/or LANDTRADE; and (2) Order dated May 16, 2006 of the same trial court denying the Motion for Reconsideration of the Republic, averring that:

With due respect, the trial court decided a question of substance contrary to law and jurisprudence in ruling:

(i) THAT PETITIONER HAD NO CAUSE OF ACTION IN INSTITUTING THE SUBJECT COMPLAINT FOR CANCELLATION OF OCT NOS. 0-1200 (A.F.) AND 0-1201 (A.F.), INCLUDING ALL DERIVATIVE TITLES, AND REVERSION.

(ii) THAT PETITIONER'S COMPLAINT FOR CANCELLATION OF OCT NOS. 0-1200 (A.F.) AND 0-1201 (A.F.) INCLUDING ALL DERIVATIVE TITLES, AND REVERSION IS BARRED BY THE DECISIONS IN CACHO VS GOVERNMENT OF THE UNITED STATES (28 PHIL. 616 [1914] AND CACHO VS COURT OF APPEALS (269 SCRA 159 [1997].

(iii) THAT PETITIONER'S CAUSE OF ACTION HAS PRESCRIBED; AND

(iv) THAT PETITIONER IS GUILTY OF FORUM SHOPPING.[132]

The Court finds merit in the present Petition.

Cause of action for reversion

The Complaint in Civil Case No. 6686 seeks the cancellation of OCT Nos. 0-1200 (a.f.) and 0-1201 (a.f.), with all their derivative titles, and reversion. The Complaint was dismissed by the RTC-Branch 4 in its Order dated December 13, 2005, upon Motion of Vidal and AZIMUTH, on the ground that the State does not have a cause of action for reversion. According to the RTC-Branch 4, there was no showing that the late Doña Demetria committed any wrongful act or omission in violation of any right of the Republic. Additionally, the Regalian doctrine does not apply to Civil Case No. 6686 because said doctrine does not extend to lands beyond the public domain. By the own judicial admission of the Republic, the two parcels of land in question are privately owned, even before the same were registered in Doña Demetria's name.

[132] *Rollo* (G.R. No. 173401), p. 34.

The Court disagrees.

Rule 2, Section 2 of the Rules of Court defines a cause of action as "the act or omission by which a party violates a right of another." Its essential elements are the following: (1) a right in favor of the plaintiff; (2) an obligation on the part of the named defendant to respect or not to violate such right; and (3) such defendant's act or omission that is violative of the right of the plaintiff or constituting a breach of the obligation of the former to the latter.[133]

Reversion is an action where the ultimate relief sought is to revert the land back to the government under the Regalian doctrine. Considering that the land subject of the action originated from a grant by the government, its cancellation is a matter between the grantor and the grantee.[134] In *Estate of the Late Jesus S. Yujuico v. Republic*[135] (*Yujuico case*), reversion was defined as an action which seeks to restore public land fraudulently awarded and disposed of to private individuals or corporations to the mass of public domain. It bears to point out, though, that the Court also allowed the resort by the Government to actions for reversion to cancel titles that were void for reasons other than fraud, *i.e.*, violation by the grantee of a patent of the conditions imposed by law;[136] and lack of jurisdiction of the Director of Lands to grant a patent covering inalienable forest land[137] or portion of a river, even when such grant was made through mere oversight.[138] In *Republic v. Guerrero*,[139] the Court gave a more general statement that

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[133] *Velarde v. Social Justice Society*, G.R. No. 159357, April 28, 2004, 428 SCRA 283, 293-294.

[134] *Caro v. Sucaldito*, 497 Phil. 879, 888 (2005).

[135] G.R. No. 168661, October 26, 2007, 537 SCRA 513.

[136] *Republic v. Court of Appeals*, G.R. No. 79582, April 10, 1989, 171 SCRA 721, 734.

[137] *Republic v. De la Cruz*, 160-A Phil. 374, 381-382 (1975).

[138] *Spouses Morandarte v. Court of Appeals*, 479 Phil. 870, 885 (2004).

[139] G.R. No. 133168, March 28, 2006, 485 SCRA 424.

the remedy of reversion can be availed of "only in cases of **fraudulent or unlawful inclusion** of the land in patents or certificates of title."

The right of the Republic to institute an action for reversion is rooted in the Regalian doctrine. Under the **Regalian doctrine**, all lands of the public domain belong to the State, and that the State is the source of any asserted right to ownership in land and charged with the conservation of such patrimony. This same doctrine also states that all lands not otherwise appearing to be clearly within private ownership are **presumed to belong to the State**.[140] It is incorporated in the 1987 Philippine Constitution under Article XII, Section 2 which declares "[a]ll lands of the public domain, waters, minerals, coal, petroleum, and other mineral oils, all forces of potential energy, fisheries, forests or timber, wildlife, flora and fauna, and other natural resources are owned by the State. x x x" No public land can be acquired by private persons without any grant, express or implied, from the government; it is indispensable that there be a showing of the title from the State.[141]

The reversion case of the Republic in Civil Case No. 6686 rests on the main argument that OCT Nos. 0-1200 (a.f.) and 0-1201 (a.f.), issued in Doña Demetria's name, included parcels of lands which were not adjudicated to her by the Court in the *1914 Cacho case*. Contrary to the statement made by the RTC-Branch 4 in its December 13, 2005 Order, the Republic does not make any admission in its Complaint that the two parcels of land registered in Doña Demetria's name were privately owned even prior to their registration. While the Republic does not dispute that that two parcels of land were awarded to Doña Demetria in the *1914 Cacho case*, it alleges that these were not the same as those covered by OCT Nos. 0-1200 (a.f.) and 0-1201 (a.f.) issued in Doña Demetria's name 84 years later. If, indeed, the parcels of land covered by said OCTs were not

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[140] *Spouses Reyes v. Court of Appeals*, 356 Phil. 606, 624 (1998).

[141] *Gordula v. Court of Appeals*, 348 Phil. 670, 685 (1998).

those granted to Doña Demetria in the *1914 Cacho case*, then it can be presumed, under the Regalian doctrine, that said properties still form part of the public domain belonging to the State.

Just because OCTs were already issued in Doña Demetria's name does not bar the Republic from instituting an action for reversion. Indeed, the Court made it clear in *Francisco v. Rodriguez*[142] that Section 101 of the Public Land Act "may be invoked only when title has already vested in the individual, *e.g.*, when a patent or a certificate of title has already been issued[,]" for the basic premise in an action for reversion is that the certificate of title fraudulently or unlawfully included land of the public domain, hence, calling for the cancellation of said certificate. It is actually the issuance of such a certificate of title which constitutes the third element of a cause of action for reversion.

The Court further finds that the Complaint of the Republic in Civil Case No. 6686 sufficiently states a cause of action for reversion, even though it does not allege that fraud was committed in the registration or that the Director of Lands requested the reversion.

It is a well-settled rule that the existence of a cause of action is determined by the allegations in the complaint. In the resolution of a motion to dismiss based on failure to state a cause of action, only the facts alleged in the complaint must be considered. The test in cases like these is whether a court can render a valid judgment on the complaint based upon the facts alleged and pursuant to the prayer therein. Hence, it has been held that a motion to dismiss generally partakes of the nature of a demurrer which **hypothetically admits** the truth of the factual allegations made in a complaint.[143] The hypothetical admission extends to the relevant and material facts well pleaded in the complaint and inferences fairly deducible therefrom. Hence,

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[142] 116 Phil. 765 (1962).

[143] *Peltan Development, Inc. v. Court of Appeals*, 336 Phil. 824, 833-834 (1997).

if the allegations in the complaint furnish sufficient basis by which the complaint can be maintained, the same should not be dismissed regardless of the defense that may be assessed by the defendants.[144]

In *Vergara v. Court of Appeals*,[145] the Court additionally explained that:

> In determining whether allegations of a complaint are sufficient to support a cause of action, it must be borne in mind that the complaint does not have to establish or allege facts proving the existence of a cause of action at the outset; this will have to be done at the trial on the merits of the case. To sustain a motion to dismiss for lack of cause of action, the complaint must show that the claim for relief does not exist, rather than that a claim has been defectively stated, or is ambiguous, indefinite or uncertain.

The Republic meticulously presented in its Complaint the discrepancies between the *1914 Cacho case*, on one hand, which granted Doña Demetria title to two parcels of land; and OCT Nos. 0-1200 (a.f.) and 0-1201 (a.f.), on the other, which were supposedly issued pursuant to the said case. In paragraphs 9 and 16 of its Complaint, the Republic clearly alleged that OCT Nos. 0-1200 (a.f.) and 0-1201 (a.f.) cover properties much larger than or areas beyond those granted by the land registration court in GLRO Record Nos. 6908 and 6909. Thus, the Republic was able to satisfactorily allege the unlawful inclusion, for lack of an explicit grant from the Government, of parcels of public land into Doña Demetria's OCTs, which, if true, will justify the cancellation of said certificates and the return of the properties to the Republic.

That the Complaint in Civil Case No. 6686 does not allege that it had been filed by the Office of the Solicitor General (OSG), at the behest of the Director of Lands, does not call for its dismissal on the ground of failure to state a cause of

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[144] *Ceroferr Realty Corporation v. Court of Appeals*, 426 Phil. 522, 529 (2002).

[145] 377 Phil. 337, 342 (1999).

action. Section 101 of Commonwealth Act No. 141, otherwise known as the Public Land Act, as amended, simply requires that:

> SEC. 101. All actions for the reversion to the Government of lands of the public domain or improvements thereon shall be instituted by the **Solicitor General or the officer acting in his stead, in the proper courts, in the name of the Republic of the Philippines**. (Emphasis supplied.)

Clear from the aforequoted provision that the authority to institute an action for reversion, on behalf of the Republic, is primarily conferred upon the OSG. While the OSG, for most of the time, will file an action for reversion upon the request or recommendation of the Director of Lands, there is no basis for saying that the former is absolutely bound or dependent on the latter.

RTC-Branch 4 cited *Sherwill Development Corporation v. Sitio Niño Residents Association, Inc.*[146] (*Sherwill case*), to support its ruling that it is "absolutely necessary" that an investigation and a determination of fraud should have been made by the Director of Lands prior to the filing of a case for reversion. The *Sherwill case* is not in point and does not constitute a precedent for the case at bar. It does not even involve a reversion case. The main issue therein was whether the trial court properly dismissed the complaint of Sherwill Development Corporation for quieting of title to two parcels of land, considering that a case for the declaration of nullity of its TCTs, instituted by the Sto. Niño Residents Association, Inc., was already pending before the Land Management Bureau (LMB). The Court recognized therein the primary jurisdiction of the LMB over the dispute, and affirmed the dismissal of the quieting of title case on the grounds of *litis pendentia* and forum shopping.

Res judicata

Public policy and sound practice enshrine the fundamental principle upon which the doctrine of *res judicata* rests that

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[146] 500 Phil. 288 (2005).

parties ought not to be permitted to litigate the same issues more than once. It is a general rule common to all civilized system of jurisprudence, that the solemn and deliberate sentence of the law, pronounced by its appointed organs, upon a disputed fact or a state of facts, should be regarded as a final and conclusive determination of the question litigated, and should forever set the controversy at rest. Indeed, it has been well said that this maxim is more than a mere rule of law; more even than an important principle of public policy; and that it is not too much to say that it is a fundamental concept in the organization of every jural system. Public policy and sound practice demand that, at the risk of occasional errors, judgments of courts should become final at some definite date fixed by law. The very object for which courts were constituted was to put an end to controversies.[147]

The doctrine of *res judicata* comprehends two distinct concepts - (1) bar by former judgment, and (2) conclusiveness of judgment. *For res judicata* to serve as an absolute bar to a subsequent action, the following requisites must concur: (1) the former judgment or order must be final; (2) the judgment or order must be on the merits; (3) it must have been rendered by a court having jurisdiction over the subject matter and parties; and (4) there must be between the first and second actions, identity of parties, of subject matter, and of causes of action. When there is no identity of causes of action, but only an identity of issues, there exists *res judicata* in the concept of conclusiveness of judgment. Although it does not have the same effect as *res judicata* in the form of bar by former judgment which prohibits the prosecution of a second action upon the same claim, demand, or cause of action, the rule on conclusiveness of judgment bars the relitigation of particular facts or issues in another litigation between the same parties on a different claim or cause of action.[148]

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[147] *Legarda v. Savellano*, 241 Phil. 988, 993 (1988).

[148] *Sta. Lucia Realty and Development, Inc. v. Cabrigas*, 411 Phil. 369, 386 (2001).

The *1914 Cacho case* does not bar the Complaint for reversion in Civil Case No. 6686 by *res judicata* in either of its two concepts.

There is no bar by prior judgment because the *1914 Cacho case* and Civil Case No. 6686 do not have the same causes of action and, even possibly, they do not involve identical subject matters.

Land registration cases, such as GLRO Record Nos. 6908 and 6909, from which the *1914 Cacho case* arose, are special proceedings where the concept of a cause of action in ordinary civil actions does not apply. In special proceedings, the purpose is to establish a status, condition or fact; in land registration proceedings, the ownership by a person of a parcel of land is sought to be established.[149] Civil Case No. 6686 is an action for reversion where the cause of action is the alleged unlawful inclusion in OCT Nos. 0-1200 (a.f.) and 0-1201 (a.f.) of parcels of public land that were not among those granted to Doña Demetria in the *1914 Cacho case*. Thus, Civil Case No. 6686 even rests on supposition that the parcels of land covered by the certificates of title in Doña Demetria's name, which the Republic is seeking to have cancelled, are different from the parcels of land that were the subject matter of the *1914 Cacho case* and adjudged to Doña Demetria.

Res judicata in the concept of conclusiveness of judgment, likewise, does not apply as between the *1914 Cacho case* and Civil Case No. 6686. A careful study of the Complaint in Civil Case No. 6686 reveals that the Republic does not seek to re-litigate any of the issues resolved in the *1914 Cacho case*. The Republic no longer questions in Civil Case No. 6686 that Doña Demetria was adjudged the owner of two parcels of land in the *1914 Cacho case*. The Republic is only insisting on the strict adherence to the judgment of the Court in the *1914 Cacho case*, particularly: (1) the adjudication of a smaller parcel of land, consisting only of the southern portion of the

[149] *Sta. Ana v. Menla*, 111 Phil. 947, 951 (1961).

37.87-hectare Lot 2 subject of Doña Demetria's application in GLRO Record No. 6909; and (2) the submission of a new technical plan for the adjudicated southern portion of Lot 2 in GLRO Record No. 6909, and the deed executed by Datto Darondon, husband of Alanga, renouncing all his rights to Lot 1, in GLRO Record No. 6908, in Doña Demetria's favor.[150]

Similarly, the *1997 Cacho case* is not an obstacle to the institution by the Republic of Civil Case No. 6686 on the ground of *res judicata*.

Bar by prior judgment does not apply for lack of identity of causes of action between the *1997 Cacho case* and Civil Case No. 6686. The *1997 Cacho case* involves a petition for re-issuance of decrees of registration. In the absence of principles and rules specific for such a petition, the Court refers to those on reconstitution of certificates of title, being almost of the same nature and granting closely similar reliefs.

Reconstitution denotes a restoration of the instrument which is supposed to have been lost or destroyed in its original form or condition. The purpose of the reconstitution of title or any document is to have the same reproduced, after observing the

[150] Incidentally, it is also for the same reason that the Court will not apply its ruling in the *Yujuico case* (*supra* note 141) to the instant Petition. In the former case, the Court ordered the dismissal, for lack of jurisdiction, of the action for reversion filed by the Republic before the RTC. The Court held therein that if the title to land was granted judicially, not administratively, then the proper remedy of the Republic would be to file with the Court of Appeals a petition for annulment of the judgment of the land registration court, in accordance with Rule 47 of the Rules of Court. In the present case, the Republic is not seeking the annulment of the CLR judgment, affirmed in the *1914 Cacho case*, but the cancellation of the OCTs which allegedly included parcels of land beyond those awarded to Doña Demetria. Based on the allegations in the Complaint of the Republic, Civil Case No. 6686 is a "civil action which involve title to, or possession of, real property, or any interest therein, where the assessed value of the property involved exceeds Twenty thousand pesos (₱20,000.00) [,]" properly within the jurisdiction of the RTC [Section 19(2) of Batas Pambansa Blg. 129, otherwise known as The Judiciary Reorganization Act of 1980].

procedure prescribed by law, in the same form they were when the loss or destruction occurred.[151] Reconstitution is another special proceeding where the concept of cause of action in an ordinary civil action finds no application.

The Court, in the *1997 Cacho case*, granted the reconstitution and re-issuance of the decrees of registration considering that the NALTDRA, through then Acting Commissioner Santiago M. Kapunan,[152] its Deputy Clerk of Court III, the Head Geodetic Engineer, and the Chief of Registration, certified that "according to the Record Book of Decrees for Ordinary Land Registration Case, Decree No. 18969 was issued in GLRO Record No. 6909 and Decree No. 10364 was issued in GLRO Record No. 6908[;]"[153] thus, leaving no doubt that said decrees had in fact been issued.

The *1997 Cacho case* only settled the issuance, existence, and subsequent loss of Decree Nos. 10364 and 18969. Consequently, said decrees could be re-issued in their original form or condition. The Court, however, could not have passed upon in the *1997 Cacho case* the issues on whether Doña Demetria truly owned the parcels of land covered by the decrees and whether the decrees and the OCTs subsequently issued pursuant thereto are void for unlawfully including land of the public domain which were not awarded to Doña Demetria.

The following pronouncement of the Court in *Heirs of Susana de Guzman Tuazon v. Court of Appeals*[154] is instructive:

> Precisely, in both species of reconstitution under Section 109 of P.D. No. 1529 and R.A. No. 26, the nature of the action denotes a restoration of the instrument which is supposed to have been lost or destroyed in its original form and condition. **The purpose of the action is merely to have the same reproduced, after proper proceedings, in the same**

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[151] *Republic v. Holazo*, 480 Phil. 828, 838 (2004).

[152] Who subsequently became a Justice of the Supreme Court.

[153] *Cacho v. Government of the United States*, *supra* note 17 at 160.

[154] 465 Phil. 114, 126-127 (2004).

form they were when the loss or destruction occurred, and does not pass upon the ownership of the land covered by the lost or destroyed title. It bears stressing at this point that ownership should not be confused with a certificate of title. Registering land under the Torrens System does not create or vest title because registration is not a mode of acquiring ownership. A certificate of title is merely an evidence of ownership or title over the particular property described therein. Corollarily, **any question involving the issue of ownership must be threshed out in a separate suit**, which is exactly what the private respondents did when they filed Civil Case No. 95-3577 before Branch 74. The trial court will then conduct a full-blown trial wherein the parties will present their respective evidence on the issue of ownership of the subject properties to enable the court to resolve the said issue. x x x. (Emphases supplied.)

Whatever findings the Court made on the issue of ownership in the *1997 Cacho case* are mere *obiter dictum*. As the Court held in *Amoroso v. Alegre, Jr.*:[155]

Petitioner claims in his petition that the 3 October 1957 Decision resolved the issue of ownership of the lots and declared in the body of the decision that he had "sufficiently proven uncontroverted facts that he had been in possession of the land in question since 1946 x x x [and] has been in possession of the property with sufficient title." However, **such findings made by the CFI in the said decision are mere obiter, since the ownership of the properties, titles to which were sought to be reconstituted, was never the issue in the reconstitution case. Ownership is not the issue in a petition for reconstitution of title. A reconstitution of title does not pass upon the ownership of the land covered by the lost or destroyed title.**

It may perhaps be argued that ownership of the properties was put in issue when petitioner opposed the petition for reconstitution by claiming to be the owner of the properties. However, **any ruling that the trial court may make on the matter is irrelevant considering the court's limited authority in petitions for reconstitution.** In a petition for reconstitution of title, the only relief sought is the issuance of a reconstituted title because the reconstituting officer's power is limited to granting or denying a reconstituted title. As stated earlier, the reconstitution of title does not pass upon the ownership of the

[155] G.R. No. 142766, June 15, 2007, 524 SCRA 641, 654-655.

land covered by the lost or destroyed title, and any change in the ownership of the property must be the subject of a separate suit. (Emphases supplied.)

The Court concedes that the *1997 Cacho case*, by reason of conclusiveness of judgment, prevents the Republic from again raising as issues in Civil Case No. 6686 the issuance and existence of Decree Nos. 10364 and 18969, but not the validity of said decrees, as well as the certificates of title issued pursuant thereto.

Forum shopping

Forum shopping is the filing of multiple suits involving the same parties for the same cause of action, either simultaneously or successively, for the purpose of obtaining a favorable judgment. A party violates the rule against forum shopping if the elements of *litis pendentia* are present; or if a final judgment in one case would amount to *res judicata* in the other.[156]

There is forum shopping when the following elements are present: (a) identity of parties, or at least such parties as represent the same interests in both actions; (b) identity of rights asserted and relief prayed for, the relief being founded on the same facts; and (c) the identity of the two preceding particulars, is such that any judgment rendered in the other action will, regardless of which party is successful, amount to *res judicata* in the action under consideration; said requisites are also constitutive of the requisites for *auter action pendant* or *lis pendens*.[157]

Given the preceding disquisition of the Court that the *1914* and *1997 Cacho cases* do not constitute *res judicata* in Civil Case No. 6686, then the Court also cannot sustain the dismissal by the RTC-Branch 4 of the Complaint of the Republic in Civil Case No. 6686 for forum shopping.

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[156] *San Juan v. Arambulo, Sr.*, G.R. No. 143217, December 14, 2005, 477 SCRA 725, 728.

[157] *Id*.

Prescription

According to the RTC-Branch 4, the cause of action for reversion of the Republic was already lost or extinguished by prescription, citing Section 32 of the Property Registration Decree, which provides:

> SEC. 32. *Review of decree of registration; Innocent purchaser for value.* – The decree of registration shall not be reopened or revised by reason of absence, minority, or other disability of any person adversely affected thereby, nor by any proceeding in any court for reversing judgment, subject, however, to the right of any person, including the government and the branches thereof, deprived of land or of any estate or interest therein by such adjudication or confirmation of title obtained by actual fraud, to file in the proper Court of First Instance a petition for reopening and review of the decree of registration not later than one year from and after the date of the entry of such decree of registration, but in no case shall such petition be entertained by the court where an innocent purchaser for value has acquired the land or an interest therein, whose rights may be prejudiced. Whenever the phrase "innocent purchaser of value" or an equivalent phrase occurs in this Decree, it shall be deemed to include an innocent lessee, mortgagee, or other encumbrancer for value.
>
> Upon the expiration of said period of one year, the decree of registration and the certificate of title issued shall become incontrovertible. Any person aggrieved by such decree of registration in any case may pursue his remedy by action for damages against the applicant or any other persons responsible for the fraud.

Decree No. 10364 in GLRO Record No. 6908 was issued on May 9, 1913, while Decree No. 18969 in GLRO Record No. 6909 was issued on July 8, 1915. In the course of eight decades, the decrees were lost and subsequently reconstituted per order of this Court in the *1997 Cacho case*. The reconstituted decrees were issued on October 15, 1998 and transcribed on OCT Nos. 0-1200 (a.f.) and 0-1201 (a.f.). The reconstituted decrees were finally entered into the Registration Book for Iligan City on December 4, 1998 at 10:00 a.m. Almost six years had elapsed from entry of the decrees by the time the Republic filed its Complaint in Civil Case No. 6686 on October 13, 2004.

Nonetheless, elementary is the rule that prescription does not run against the State and its subdivisions. When the government is the real party in interest, and it is proceeding mainly to assert its own right to recover its own property, there can as a rule be no defense grounded on laches or prescription. Public land fraudulently included in patents or certificates of title may be recovered or reverted to the State in accordance with Section 101 of the Public Land Act. The right of reversion or reconveyance to the State is not barred by prescription.[158]

The Court discussed lengthily in *Republic v. Court of Appeals*[159] the indefeasibility of a decree of registration/certificate of title *vis-à-vis* the remedy of reversion available to the State:

> The petitioner invokes *Republic v. Animas*, where this Court declared that a title founded on fraud may be cancelled notwithstanding the lapse of one year from the issuance thereof. Thus:
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> > x x x The misrepresentations of the applicant that he had been occupying and cultivating the land and residing thereon are sufficient grounds to nullify the grant of the patent and title under Section 91 of the Public Land Law which provides as follows:
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> > > "The statements made in the application shall be considered as essential conditions or parts of any concession, title or permit issued on the basis of such application, and any false statement thereon or omission of facts, changing, or modifying the consideration of the facts set forth in such statement, and any subsequent modification, alteration, or change of the material facts set forth in the application shall *ipso facto* produce the cancellation of the concession, title or permit granted. x x x"
> >
> > A certificate of title that is void may be ordered cancelled. A title will be considered void if it is procured through fraud, as when a person applies for registration of the land under his

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[158] *Republic of the Phils. v. Heirs of Angeles*, G.R. No. 141296, October 7, 2002, 439 Phil. 349, 358.

[159] G.R. No. 60169, March 23, 1990, 183 SCRA 620, 626-629.

> name although the property belongs to another. In the case of disposable public lands, *failure on the part of the grantee to comply with the conditions imposed by law* is a ground for holding such title void. The lapse of the one year period within which a decree of title may be reopened for fraud would not prevent the cancellation thereof, for to hold that a title may become indefeasible by registration, even if such title had been secured through fraud or in violation of the law, would be the height of absurdity. Registration should not be a shield of fraud in securing title.

This doctrine was reiterated in *Republic v. Mina*, where Justice Relova declared for the Court:

> A certificate of title that is void may be ordered cancelled. And, a title will be considered void if it is procured through fraud, as when a person applies for registration of the land on the claim that he has been occupying and cultivating it. In the case of disposable public lands, failure on the part of the grantee to comply with the conditions imposed by law is a ground for holding such title void. x x x The lapse of one (1) year period within which a decree of title may be reopened for fraud would not prevent the cancellation thereof for to hold that a title may become indefeasible by registration, even if such title had been secured through fraud or in violation of the law would be the height of absurdity. Registration should not be a shield of fraud in securing title.

Justifying the above-quoted provision, the Court declared in *Piñero, Jr. v. Director of Lands:*

> It is true that under Section 122 of the Land Registration Act, a Torrens title issued on the basis of a free patent or a homestead patent is as indefeasible as one judicially secured. And in repeated previous decisions of this Court that indefeasibility has been emphasized by Our holding that not even the Government can file an action for annulment, but at the same time, it has been made clear that an action for reversion may be instituted by the Solicitor General, in the name of the Republic of the Philippines. It is to the public interest that one who succeeds in fraudulently acquiring title to a public land should not be allowed to benefit therefrom, and the State should, therefore, have an even existing authority, thru its duly authorized officers, to inquire into the circumstances

> surrounding the issuance of any such title, to the end that the Republic, thru the Solicitor General or any other officer who may be authorized by law, may file the corresponding action for the reversion of the land involved to the public domain, subject thereafter to disposal to other qualified persons in accordance with law. In other words, the indefeasibility of a title over land previously public is not a bar to an investigation by the Director of Lands as to how such title has been acquired, if the purpose of such investigation is to determine whether or not fraud had been committed in securing such title in order that the appropriate action for reversion may be filed by the Government.

Private respondent PNB points out that *Animas* involved timberland, which is not alienable or disposable public land, and that in *Piñero* the issue raised was whether the Director of Lands would be enjoined by a writ of prohibition from investigating allegations of fraud that led to the issuance of certain free patents. Nevertheless, we find that the doctrine above quoted is no less controlling even if there be some factual disparities (which are not material here), especially as it has been buttressed by subsequent jurisprudence.

In *Director of Lands v. Jugado,* upon which the appellate court based its ruling, the Court declared meaningfully that:

> There is, however, a section in the Public Land Law (Sec. 101 of Commonwealth Act 141), which affords a remedy whereby lands of the public domain fraudulently awarded may be recovered or reverted back to its original owner, the Government. But the provision requires that all such actions for reversion shall be instituted by the Solicitor General or the officer acting in his stead, in the proper courts, in the name of the Republic of the Philippines (See *Director of Lands v. De Luna, supra*). As the party in interest in this case is the Director of Lands and not the Republic of the Philippines, the action cannot prosper in favor of the appellant.

The reference was to the Public Land Law which authorizes the reversion suit under its Sec. 101, thus:

> Sec. 101. All actions for the reversion to the Government of lands of the public domain or improvements thereon shall be instituted by the Solicitor General or the officer acting in his

stead, in the proper courts, in the name of the Republic of the Philippines.

This remedy was recently affirmed by the Court in *Heirs of Gregorio Tengco v. Heirs of Jose and Victoria Aliwalas*, thus:

> x x x Title to the property having become incontrovertible, such may no longer be collaterally attacked. If indeed there had been any fraud or misrepresentation in obtaining the title, an action for reversion instituted by the Solicitor General would be the proper remedy.

It is evident from the foregoing jurisprudence that despite the lapse of one year from the entry of a decree of registration/certificate of title, the State, through the Solicitor General, may still institute an action for reversion when said decree/certificate was acquired by fraud or misrepresentation. Indefeasibility of a title does not attach to titles secured by fraud and misrepresentation. Well-settled is the doctrine that the registration of a patent under the Torrens system does not by itself vest title; it merely confirms the registrant's already existing one. Verily, registration under the Torrens system is not a mode of acquiring ownership.[160]

But then again, the Court had several times in the past recognized the right of the State to avail itself of the remedy of reversion in other instances when the title to the land is void for reasons other than having been secured by fraud or misrepresentation. One such case is *Spouses Morandarte v. Court of Appeals*,[161] where the Bureau of Lands (BOL), by mistake and oversight, granted a patent to the spouses Morandarte which included a portion of the Miputak River. The Republic instituted an action for reversion 10 years after the issuance of an OCT in the name of the spouses Morandarte. The Court ruled:

Be that as it may, the mistake or error of the officials or agents of the BOL in this regard cannot be invoked against the government

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[160] *Republic v. Heirs of Felipe Alejaga, Sr.*, 441 Phil. 656, 674 (2002).

[161] *Supra* note 138 at 885.

with regard to property of the public domain. It has been said that the State cannot be estopped by the omission, mistake or error of its officials or agents.

It is well-recognized that if a person obtains a title under the Public Land Act which includes, by oversight, lands which cannot be registered under the Torrens system, or when the Director of Lands did not have jurisdiction over the same because it is a public domain, the grantee does not, by virtue of the said certificate of title alone, become the owner of the land or property illegally included. Otherwise stated, property of the public domain is incapable of registration and its inclusion in a title nullifies that title.

Another example is the case of *Republic of the Phils. v. CFI of Lanao del Norte, Br. IV*,[162] in which the homestead patent issued by the State became null and void because of the grantee's violation of the conditions for the grant. The Court ordered the reversion even though the land subject of the patent was already covered by an OCT and the Republic availed itself of the said remedy more than 11 years after the cause of action accrued, because:

There is merit in this appeal considering that the statute of limitation does not lie against the State. Civil Case No. 1382 of the lower court for reversion is a suit brought by the petitioner Republic of the Philippines as a sovereign state and, by the express provision of Section 118 of Commonwealth Act No. 141, any transfer or alienation of a homestead grant within five (5) years from the issuance of the patent is null and void and constitute a cause for reversion of the homestead to the State. In *Republic vs. Ruiz,* 23 SCRA 348, We held that "the Court below committed no error in ordering the reversion to plaintiff of the land grant involved herein, notwithstanding the fact that the original certificate of title based on the patent had been cancelled and another certificate issued in the names of the grantee heirs. Thus, where a grantee is found not entitled to hold and possess in fee simple the land, by reason of his having violated Section 118 of the Public Land Law, the Court may properly order its reconveyance to the grantor, although the property has already been brought under the operation of the Torrens System. *And, this right of the government*

[162] 216 Phil. 385, 388 (1984).

to bring an appropriate action for reconveyance is not barred by the lapse of time: the Statute of Limitations does not run against the State." (Italics supplied). The above ruling was reiterated in *Republic vs. Mina*, 114 SCRA 945.

If the Republic is able to establish after trial and hearing of Civil Case No. 6686 that the decrees and OCTs in Doña Demetria's name are void for some reason, then the trial court can still order the reversion of the parcels of land covered by the same because indefeasibility cannot attach to a void decree or certificate of title. The RTC-Branch 4 jumped the gun when it declared that the cause of action of the Republic for reversion in Civil Case No. 6686 was already lost or extinguished by prescription based on the Complaint alone.

All told, the Court finds that the RTC-Branch 4 committed reversible error in dismissing the Complaint for Cancellation of Titles and Reversion of the Republic in Civil Case No. 6686. Resultantly, the Court orders the reinstatement of said Complaint. Yet, the Court also deems it opportune to recall the following statements in *Saad-Agro Industries, Inc. v. Republic*[163]:

> It has been held that a complaint for reversion involves a serious controversy, involving a question of fraud and misrepresentation committed against the government and it is aimed at the return of the disputed portion of the public domain. It seeks to cancel the original certificate of registration, and nullify the original certificate of title, including the transfer certificate of title of the successors-in-interest because the same were all procured through fraud and misrepresentation. Thus, the State, as the party alleging the fraud and misrepresentation that attended the application of the free patent, bears that burden of proof. Fraud and misrepresentation, as grounds for cancellation of patent and annulment of title, should never be presumed but must be proved by clear and convincing evidence, mere preponderance of evidence not even being adequate. **It is but judicious to require the Government, in an action for reversion, to show the details attending the issuance of title over the alleged inalienable land and explain why such issuance has deprived the State of the claimed property**. (Emphasis supplied.)

[163] G.R. No. 152570, September 27, 2006, 503 SCRA 522, 528-529.

It may do well for the Republic to remember that there is a *prima facie* presumption of regularity in the issuance of Decree Nos. 10364 and 18969, as well as OCT Nos. 0-1200 (a.f.) and 0-1201 (a.f.), in Doña Demetria's name, and the burden of proof falls upon the Republic to establish by clear and convincing evidence that said decrees and certificates of title are null and void.

IV

DISPOSITIVE PART

WHEREFORE, premises considered, the Court renders the following judgment in the Petitions at bar:

1) In *G.R. No. 170375* (Expropriation Case), the Court *GRANTS* the Petition for Review of the Republic of the Philippines. It *REVERSES* and *SETS ASIDE* the Resolutions dated July 12, 2005 and October 24, 2005 of the Regional Trial Court, Branch 1 of Iligan City, Lanao del Norte. It further *ORDERS* the reinstatement of the Complaint in Civil Case No. 106, the admission of the Supplemental Complaint of the Republic, and the return of the original record of the case to the court of origin for further proceedings. No costs.

2) In *G.R. Nos. 178779* and *178894* (Quieting of Title Case), the Court *DENIES* the consolidated Petitions for Review of Landtrade Realty Corporation, Teofilo Cacho, and/or Atty. Godofredo Cabildo for lack of merit. It *AFFIRMS* the Decision dated January 19, 2007 and Resolution dated July 4, 2007 of the Court of Appeals in CA-G.R. CV. No. 00456, affirming *in toto* the Decision dated July 17, 2004 of the Regional Trial Court, Branch 3 of Iligan City, Lanao del Norte, in Civil Case No. 4452. Costs against Landtrade Realty Corporation, Teofilo Cacho, and Atty. Godofredo Cabildo.

3) In *G.R. No. 170505* (The Ejectment or Unlawful Detainer Case – execution pending appeal before the Regional Trial Court), the Court *DENIES* the Petition for Review of Landtrade Realty Corporation for being moot and academic given that the Regional Trial Court, Branch 1 of Iligan City,

Lanao del Norte had already rendered a Decision dated December 12, 2005 in Civil Case No. 6613. No costs.

4) In *G.R. Nos. 173355-56* and *'* (The Ejectment or Unlawful Detainer Case – execution pending appeal before the Court of Appeals), the Court *GRANTS* the consolidated Petitions for *Certiorari* and Prohibition of the National Power Corporation and National Transmission Corporation. It *SETS ASIDE* the Resolution dated June 30, 2006 of the Court of Appeals in CA-G.R. SP Nos. 00854 and 00889 for having been rendered with grave abuse of discretion amounting to lack or excess of jurisdiction. It further *ORDERS* the Court of Appeals to issue a writ of preliminary injunction enjoining the execution of the Decision dated December 12, 2005 of the Regional Trial Court, Branch 1 of Iligan City, Lanao del Norte, in Civil Case No. 6613, while the same is pending appeal before the Court of Appeals in CA-G.R. SP Nos. 00854 and 00889. It finally *DIRECTS* the Court of Appeals to resolve without further delay the pending appeals before it, in CA-G.R. SP Nos. 00854 and 00889, in a manner not inconsistent with this Decision. No costs.

5) In *G.R. No. 173401* (Cancellation of Titles and Reversion Case), the Court *GRANTS* the Petition for Review of the Republic of the Philippines. It *REVERSES* and *SETS ASIDE* the Orders dated December 13, 2005 and May 16, 2006 of the Regional Trial Court, Branch 4 of Iligan City in Civil Case No. 6686. It further *ORDERS* the reinstatement of the Complaint in Civil Case No. 6686 and the return of the original record of the case to the court of origin for further proceedings. No costs.

SO ORDERED.

Corona, C.J. (Chairperson), Velasco, Jr., Del Castillo, and *Perez, JJ.,* concur.

SECOND DIVISION

[G.R. No. 170623. July 7, 2010]

A. Z. ARNAIZ REALTY, INC. represented by CARMEN Z. ARNAIZ, *petitioner, vs.* **OFFICE OF THE PRESIDENT; DEPARTMENT OF AGRARIAN REFORM; REGIONAL DIRECTOR, DAR REGION V, LEGASPI CITY; PROVINCIAL AGRARIAN REFORM OFFICER, DAR PROVINCIAL OFFICE, MASBATE, MASBATE; MUNICIPAL AGRARIAN REFORM OFFICER, DAR MUNICIPAL OFFICE, MASBATE, MASBATE,** *respondents.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; ADMINISTRATIVE PROCEEDINGS; ADMINISTRATIVE DUE PROCESS; OBSERVED WHEN AN ADMINISTRATIVE AGENCY RESOLVES A CASE BASED SOLELY ON POSITION PAPERS, AFFIDAVITS OR DOCUMENTARY EVIDENCE SUBMITTED BY THE PARTIES. — Due process, as a constitutional precept, does not always, and in all situations, require a trial-type proceeding. Litigants may be heard through pleadings, written explanations, position papers, memoranda or oral arguments. The standard of due process that must be met in administrative tribunals allows a certain degree of latitude as long as fairness is not ignored. It is, therefore, not legally objectionable for being violative of due process for an administrative agency to resolve a case based solely on position papers, affidavits or documentary evidence submitted by the parties.

2. ID.; ID.; ID.; ID.; ESSENCE IS AN OPPORTUNITY TO EXPLAIN ONE'S SIDE OR AN OPPORTUNITY TO SEEK FOR A RECONSIDERATION OF THE ACTION OR RULING COMPLAINED OF. — This Court has consistently held that the essence of due process is simply an opportunity to be heard, or, as applied to administrative proceedings, an opportunity to explain one's side or an opportunity to seek for a reconsideration of the action or ruling complained of. And any

seeming defect in its observance is cured by the filing of a motion for reconsideration. Denial of due process cannot be successfully invoked by a party who has had the opportunity to be heard on his motion for reconsideration.

3. LABOR AND SOCIAL LEGISLATION; AGRARIAN LAWS; REPUBLIC ACT NO. 6657 (THE COMPREHENSIVE AGRARIAN REFORM LAW OF 1988); EXCLUSION OF SUBJECT PROPERTIES FROM THE COVERAGE OF THE COMPREHENSIVE AGRARIAN REFORM PROGRAM, NOT ESTABLISHED IN CASE AT BAR. — Anent the findings that the subject properties are not excluded from the coverage of the CARP, this Court agrees with the conclusion of the CA. As aptly found by the CA: x x x "The subject parcels of land are not directly, actually and exclusively used for pasture. Neither was it shown that, indeed, a herd of cattle for raising purposes existed over the subject lands of petitioner nor was the necessary proof of ownership of any cattle over the same land submitted at the time of filing of the petition for exclusion. In fact, it was found by Secretary Garilao that petitioner's cattle were only acquired recently as shown by the Certificate of Ownership of Large Cattle (in the name of petitioner: in 1996, 78 heads-one year old and 50 heads-three years old; and in 1995, 12 heads-one and a half years old), and that some Certificates were even issued to various owners and not to petitioner. As noted by the Office of the President, none of the *recent* documents attached to petitioner's motion for reconsideration would tend to disprove the findings of fact of the DAR Regional Director and the DAR Secretary that *at the time of filing of the petition for exclusion* from CARP coverage, the subject parcels of land were not devoted to livestock purposes. Clearly, the claim of petitioner that they have been engaged in cattle raising since time immemorial is untenable." x x x Also, contrary to petitioner's contention, it was established that the subject lands, specifically Lot 3 of TCT No. T-3543 is predominantly cultivated below 18% slope, the area being planted with corn, coconut, and other crops, with only 44.2470 hectares above 18% slope. x x x As for petitioner's contention that the *Sutton* case is applicable in the instant case, this Court disagrees. Verily, in the *Sutton* case, this Court found Administrative Order No. 9, series of 1993, invalid as it contravenes the Constitution. In *Sutton*, this Court declared

that the deliberations of the 1987 Constitutional Commission show a clear intent to exclude, *inter alia*, all lands exclusively devoted to livestock, swine and poultry-raising. The challenged Order however, sought to regulate livestock farms by including them in the coverage of agrarian reform and prescribing a maximum retention limit for their ownership; as such, it was struck down. However, in the present case, the fact remains that based on the findings of the DAR, the OP, and the CA, the subject properties do not fall within the ambit of the Constitutional exemption as petitioner failed to establish its contention that the subject lands are excluded from the coverage of the CARP.

4. REMEDIAL LAW; APPEALS; FACTUAL FINDINGS OF THE COURT OF APPEALS ARE GENERALLY ACCORDED GREAT RESPECT ON APPEAL. — [F]indings of fact by the Court of Appeals are final and conclusive and cannot be reviewed on appeal to the Supreme Court, more so if the factual findings of the Court of Appeals coincide with those of the DAR, an administrative body with expertise on matters within its specific and specialized jurisdiction. The Courts generally accord great respect, if not finality, to factual findings of administrative agencies, because of their special knowledge and expertise over matters falling under their jurisdiction. The only time this Court will disregard the factual findings of the Court of Appeals, which are ordinarily accorded great respect, is when they are not borne out by the records or are not based on substantial evidence. In the case at bar, no reason exists for us to disregard the findings of fact of the Court of Appeals, the factual findings being borne out by the record and supported by substantial evidence.

APPEARANCES OF COUNSEL

Macababbad Law Office for petitioner.
Rene Sarmiento for Matsuca Farmer's Association.
Delfin B. Samson for DAR.

D E C I S I O N

PERALTA, *J.*:

This is a petition for review on *certiorari* assailing the Decision[1] dated August 11, 2005 of the Court of Appeals (CA) in CA-G.R. SP No. 73687 and the Resolution[2] dated November 24, 2005 denying petitioner's Motion for Reconsideration.

The procedural and factual antecedents are as follows:

Petitioner A. Z. Arnaiz Realty, Inc. filed a Petition for Exclusion from the Comprehensive Agrarian Reform Program (CARP) coverage dated April 25, 1994 before the Regional Director of the Department of Agrarian Reform (DAR), Region V over three (3) parcels of land under Transfer Certificate of Title (TCT) Nos. T-3543, T-6929, and T-3542 having an area of 362.4929 hectares, 109.8385 hectares, and 371.0676, respectively, or an aggregate area of 843.3990 hectares, situated at *Barangay* Asid, Sinalugan, Masbate, Masbate on the basis that (1) the said parcels of land had been devoted to cattle-ranching purposes since time immemorial; (2) said lands are not tenanted; and (3) said lands have more than 18% slopes.

On January 24, 1995, the DAR Regional Director issued an Order[3] denying the petition, to wit:

> In view of the foregoing, the instant petition for Exclusion is denied and it is hereby ordered that the acquisition of the properties under the coverage of CARP be pursued subject to the retention right of the landowner accordant with existing laws, rules, regulations and DAR policies.
>
> SO ORDERED.

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[1] Penned by Associate Justice Celia C. Librea-Leagogo, with Associate Justices Andres B. Reyes, Jr. and Lucas P. Bersamin (now Associate Justice of the Supreme Court), concurring; *rollo*, pp. 147- 174.

[2] *Id.* at 320-321.

[3] *Rollo*, pp. 32-38.

It was established that a portion of the subject landholdings was previously leased by the petitioner to Monterey Farms Corporation for a period of ten years from July 15, 1981 to July 15, 1991. During the subsistence of the lease agreement, petitioner sold its entire herd of cattle to Monterey Farms Corporation for ₱900,000.00. Before the expiration of the lease agreement, the petitioner denied Monterey's request to extend the lease with a ten percent (10%) increase in rentals and informed Monterey to vacate the premises at the expiration of the contract.

The DAR Regional Director also found that the property covered by TCT No. T-3542 was no longer owned by the petitioner, but by Nuestra Señora del Carmen Marble, Inc. and a new TCT (T-6930) was already issued in its name.

In denying the petition, the DAR Regional Director concluded, among other things, that (1) the properties were not directly, actually, and exclusively used for pasture; (2) based on the documents presented, there was no clear and convincing proof that petitioner intended or manifested its intention of maintaining the whole area for cattle ranching; (3) petitioner sold its entire herd of cattle to Monterey Farms Corporation when the latter leased the property from the petitioner; (4) the peace and order situation due to the presence of NPA rebels in Masbate at that time was not the primary reason for the discontinuance of any business activity in the area, considering that it did not prevent Monterey from leasing the property and its subsequent offer to renew the contract of lease after its termination; and (5) the petitioner does not have the authority from the current owner of the property previously covered by TCT-3542 to file the petition in its behalf.

Petitioner filed a Motion for Reconsideration, which was denied in the Order[4] dated December 8, 1995.

Petitioner then appealed the Order to the Secretary of Agrarian Reform. Petitioner also filed two separate motions for ocular

[4] *Id.* at 49-60.

inspections dated April 3, 1996 and August 8, 1996. On October 23, 1996, the Secretary of Agrarian Reform issued an Order[5] dismissing the appeal for lack of merit, the decretal portion of which reads:

WHEREFORE, IN VIEW OF ALL THE ABOVE, the assailed Order of [the] DAR Regional Director, Region V[,] dated December 8, 1995[,] is accordingly, MODIFIED as follows:

1. Dismissing the instant Appeal for lack of merit;

2. Ordering the coverage of all the subject lands under the Comprehensive Agrarian Reform Program. Accordingly, the MARO concerned, with the assistance of the DA representative, should identify the portions and areas which are not suited for agriculture and exclude the same from the coverage of the program;

3. Directing the MARO, through the PARO of Masbate, Masbate, to send Notices of Coverage to AS (sic) Arnaiz Realty, Inc. and the Nuestra Señora del Carmen Marble, Inc.;

4. Ordering the MARO concerned with the assistance of the BARC concerned, to identify the qualified beneficiaries over the subject lands;

5. Directing the DAR Regional Director, Region V, to send a survey team to conduct the necessary survey of the areas of the subject lands which are suited for agriculture and the respective areas which will be allocated to qualified beneficiaries;

6. Ordering the DAR employees and officers to respect the landowner's right to retention, if qualified[,] pursuant to existing agrarian laws and allied issuances; and

7. Denying the Motion for Ocular Inspection dated April 3, 1996 and reiterated on August 8, 1996 for lack of merit.

SO ORDERED.[6]

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[5] *Id.* at 64-69.

[6] *Id.* at 68-69.

Petitioner filed a Motion for Reconsideration, but it was denied in the Order[7] dated February 13, 1998.

Aggrieved, petitioner sought recourse before the Office of the President (OP). On September 19, 2001, the OP rendered a Decision[8] dismissing the appeal, to wit:

> WHEREFORE, premises considered, the instant appeal is hereby **DISMISSED** and the appealed order of then DAR Secretary Ernesto D. Garilao dated February 13, 1998, sustaining his earlier order of October 23, 1996 in its entirety, is hereby **AFFIRMED**.
>
> SO ORDERED.

Petitioner filed a Motion for Reconsideration with Earnest Prayer for Reinvestigation or Ocular Inspection, which was denied in the Resolution[9] dated October 15, 2002.

Undeterred, petitioner appealed the dismissal before the CA arguing that:

I. THE OFFICE OF THE PRESIDENT SERIOUSLY ERRED IN AFFIRMING *IN TOTO* THE DECISION OF THE DEPARTMENT OF AGRARIAN REFORM DENYING HEREIN PETITIONER-APPELLANT'S PETITION FOR EXCLUSION OF HER CATTLE RANCH FROM THE COVERAGE OF THE COMPREHENSIVE AGRARIAN REFORM LAW IN COMPLETE DISREGARD OF THE RULING OF THE SUPREME COURT IN THE CASE OF "*LUZ FARMS VS. HON. DAR SECRETARY*."

II. THE OFFICE OF THE PRESIDENT SERIOUSLY ERRED IN NOT EXCLUDING THE SUBJECT LANDS FROM THE COVERAGE OF THE LAND REFORM PROGRAM, CONSIDERING THAT THEY ARE BESTOWED WITH SLOPES OF 18% OR MORE.[10]

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[7] *Id.* at 78-79.

[8] *Id.* at 81-86.

[9] *Id.* at 90-91.

[10] *Id.* at 118.

On August 11, 2005, the CA rendered a Decision[11] dismissing the petition, the dispositive portion of which reads:

> WHEREFORE, premises considered, the Petition for Review is **DENIED DUE COURSE** and ordered **DISMISSED**. The Decision and Resolution of the Office of the President dated 19 September 2001 and 15 October 2002, respectively, are hereby **AFFIRMED**. Costs against petitioner.
>
> SO ORDERED.

In dismissing the petition, the CA ratiocinated that the findings of fact of the OP, the Secretary of Agrarian Reform, and the DAR Regional Director, Region V were supported by substantial evidence. Petitioner did not establish that the subject parcels of land were directly, actually, and exclusively used for pasture nor did petitioner establish that the subject lands have been devoted for commercial livestock raising. Moreover, it was found that the subject properties were predominantly cultivated below 18% slope, the area being planted with corn, coconut, and other crops, with only 44.2470 hectares above 18% slope and that the property under TCT No. T-3453 is occupied, cultivated, and planted with upland crops since May 1992 by almost 150 farmers.

Petitioner filed a Motion for Reconsideration, which was denied in the Resolution[12] dated November 24, 2005.

Hence, the petition raising the following arguments:

1. PETITIONER WAS NOT ACCORDED THE REQUISITE DUE PROCESS.[13]
2. THE LUZ FARMS RULING, AS WELL AS THE DELIA SUTTON CASE, SHOULD BE APPLIED IN THE INSTANT CASE.[14]
3. THE SUBJECT LANDS ARE NOT SUITABLE FOR AGRICULTURE AND THEY ARE NOT TENANTED ASIDE

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[11] *Id.* at 147-174.

[12] *Id.* at 320-321.

[13] *Id.* at 422.

[14] *Id.* at 427.

FROM THE FACT THAT THEY CONTAIN SLOPES OF MORE THAN 18%.[15]

Petitioner argues that it was not accorded the opportunity to present its case. It insists that it was denied due process when, without any hearing, the DAR Regional Director denied its petition for exclusion. Also, petitioner contends that it should have been allowed to participate in the ocular inspection conducted by the DAR and its request for ocular inspection should have been granted by the former. Being the owner of the subject properties, it knows its topography, boundary, and other characteristics. The presence of its authorized representative is necessary to insure that the DAR conducted the ocular examination on the subject properties or actually conducted an ocular inspection.

Petitioner maintains that the cases of *Luz Farms v. Secretary of the Department of Agrarian reform*[16] and *Department of Agrarian Reform v. Sutton*[17] constitute formidable precedents in the present case. Consequently, petitioner's properties should be excluded from the coverage of the CARP.

Petitioner asserts that the DAR failed to establish that the properties, more particularly the parcel of land covered by TCT No. T-3543, was occupied by almost 150 farmers and that the same was occupied, cultivated, and planted by the latter with upland crops since May 1992. Petitioner claims that if there were indeed farmers occupying the subject properties, they were occupying it not to till the soil, but simply to deprive the petitioner of its properties. Petitioner contends that if there were farmers occupying the subject landholdings, they are armed farmers who are members of the New Peoples Army (NPA). Also, the farmers could just be *kaingeros* or *slash-and-burn* farmers; thus, mere trespassers who have no intention of remaining on the subject properties after exploiting the land.

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[15] *Id.*

[16] G.R. No. 86889, December 4, 1990, 192 SCRA 51.

[17] G.R. No. 162070, October 19, 2005, 473 SCRA 392.

Finally, petitioner posits that Republic Act (R.A.) No. 6657, otherwise known as the *Comprehensive Agrarian Reform Law (CARL) of 1988*, expressly excludes from its coverage lands with 18% slopes or over. Petitioner stresses that the subject properties were bestowed with 18% slopes or higher; thus, the land is not suitable for agriculture and is, therefore, excluded from its coverage.

For its part, respondents maintain that petitioner has been accorded due process when its petition for exclusion was denied, even without any hearing and that the subject landholdings are not exempt from the coverage of the CARP.

The petition is bereft of merit.

Due process, as a constitutional precept, does not always, and in all situations, require a trial-type proceeding. Litigants may be heard through pleadings, written explanations, position papers, memoranda or oral arguments.[18] The standard of due process that must be met in administrative tribunals allows a certain degree of latitude as long as fairness is not ignored. It is, therefore, not legally objectionable for being violative of due process for an administrative agency to resolve a case based solely on position papers, affidavits or documentary evidence submitted by the parties.[19]

Even if no formal hearing took place, it is not sufficient ground for petitioner to claim that due process was not afforded it. In the present case, petitioner was given all the opportunity to prove and establish its claim that the subject properties were excluded from the coverage of the CARP. Petitioner actively participated in the proceedings by submitting various pleadings and documentary evidence. In fact, petitioner filed motions for reconsideration in every unfavorable outcome of its actions in all tiers of the administrative and judicial process - from the

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[18] *Orbase v. Office of the Ombudsman*, G.R. No. 175115, December 23, 2009.

[19] *Marcelo v. Bungubung*, G.R. No. 175201, April 23, 2008, 552 SCRA 589, 603.

Order of the DAR Regional Director up to the Decision of the Court of Appeals.

This Court has consistently held that the essence of due process is simply an opportunity to be heard, or, as applied to administrative proceedings, an opportunity to explain one's side or an opportunity to seek for a reconsideration of the action or ruling complained of.[20] And any seeming defect in its observance is cured by the filing of a motion for reconsideration. Denial of due process cannot be successfully invoked by a party who has had the opportunity to be heard on his motion for reconsideration.[21] Undoubtedly, the requirement of the law was afforded to petitioner.

Anent the findings that the subject properties are not excluded from the coverage of the CARP, this Court agrees with the conclusion of the CA. As aptly found by the CA:

It was also found that petitioner, as lessor, entered into a Contract of Lease dated July 11, 1981 with Monterey Farms Corporation ("Monterey Farms," for brevity), as lessee, over two (2) parcels of land covered by TCT No. 3542 and TCT No. 3543 with an area of seven million three hundred thirty-five thousand six hundred five (7,335,605) square meters for a period of ten (10) years commencing from 15 July 1981. In their Supplemental Agreement of even date executed by the parties, it was stipulated therein that 433 hectares are devoted to marble, gold and other mineral quarry activities of petitioner-lessor, while the coconut and mango trees existing within the leased area shall be maintained and nurtured by the lessee Monterey Farms. During the continuance of the lease agreement with Monterey Farms, petitioner disposed its entire herd (cattle) for Php900,000.00 as admitted in the letter dated 08 May 1990. The subject

[20] *Zacarias v. National Police Commission*, G.R. No. 119847, October 24, 2003, 414 SCRA 387, 393; *Stayfast Philippines Corp. v. National Labor Relations Commission*, G.R. No. 81480, February 9, 1993, 218 SCRA 596; *Villareal v. Court of Appeals*, G.R. No. 97505, March 1, 1993, 219 SCRA 293; *Philippine Phosphate Fertilizer Corp. v. Torres*, G.R. No. 98050, March 17, 1994, 231 SCRA 335.

[21] *Samalio v. Court of Appeals*, G.R. No. 140079, March 31, 2005, 454 SCRA 463, 473.

parcels of land are not directly, actually and exclusively used for pasture. Neither was it shown that, indeed, a herd of cattle for raising purposes existed over the subject lands of petitioner nor was the necessary proof of ownership of any cattle over the same land submitted at the time of filing of the petition for exclusion. In fact, it was found by Secretary Garilao that petitioner's cattle were only acquired recently as shown by the Certificate of Ownership of Large Cattle (in the name of petitioner: in 1996, 78 heads-one year old and 50 heads-three years old; and in 1995, 12 heads-one and a half years old), and that some Certificates were even issued to various owners and not to petitioner.

As noted by the Office of the President, none of the *recent* documents attached to petitioner's motion for reconsideration would tend to disprove the findings of fact of the DAR Regional Director and the DAR Secretary that *at the time of filing of the petition for exclusion* from CARP coverage, the subject parcels of land were not devoted to livestock purposes. Clearly, the claim of petitioner that they have been engaged in cattle raising since time immemorial is untenable. Even the photocopies of the purported Certificates of Ownership of Large Cattle attached to herein Petition as Annexes "O" to "O-77" show that they were all issued to petitioner only in 1998, while the photocopies of the other purported Certificates of Ownership of Large Cattle dated "August 11, **197**" (Annexes "O-78" to "0-89") are in the name of another person, and not the petitioner.

The contention of petitioner that the presence of the NPAs, bad elements, trespassers and squatters further diminished the land area of the subject lands used by petitioner as pasture land is untenable, because as found by the respondents, this situation did not prevent Monterey Farms from vacating or pulling out of the area before the expiration of the lease agreement and even offered to renew the contract and increase the rentals of the areas occupied by 10% of the lease rate, which offer to renew was, however, denied by petitioner's Board of Directors in a letter dated 08 May 1990.

Hence, from the foregoing disquisitions, petitioner's contention that the respondents failed to apply the doctrine laid down in *Luz Farms v. Secretary of the Department of Agrarian Reform* is without merit. In said *Luz Farms* case, it was held that Section 11 of R.A. 6657 which includes "*private agricultural lands devoted to*

commercial livestock, poultry and swine-raising" in the definition of "*commercial farms"* is invalid, to the extent that the aforecited agro-industrial activities are made to be covered by the agrarian reform program of the State. Thus, the High Court declared as null and void, for being unconstitutional, Sections 3(b), 11, 13 and 32 of Republic Act No. 6657 insofar as the inclusion of the raising of livestock, poultry and swine in its coverage, as well as the Implementing Rules and Guidelines promulgated in accordance therewith. As clearly found by the respondents, the petitioner, in the instant case, failed to show that the subject lands have been devoted for commercial livestock-raising. (Emphasis supplied.)[22]

Also, contrary to petitioner's contention, it was established that the subject lands, specifically Lot 3 of TCT No. T-3543 is predominantly cultivated below 18% slope, the area being planted with corn, coconut, and other crops, with only 44.2470 hectares above 18% slope.

Moreover, petitioner cannot argue that the findings of the DAR Regional Director, the DAR Secretary, and the OP were unfounded, baseless, and unjustifiable. A perusal of the Order of the DAR Regional Director denying the petition for exclusion would reveal that it was based on the findings of the Chief of Regional Field Task Force V, the Municipal Agricultural Officer, the representative of the Land Bank of the Philippines, the Provincial Director of the Philippine National Police, and various documents. Surely, these institutions did not whimsically conclude not to exclude the properties of petitioner from the coverage of the CARP. It is noteworthy that as early as in the Order of the DAR Regional Director, the rationale behind the denial of the petition for exclusion was clearly outlined and discussed point by point, to wit:

First. From the foregoing narration of facts, it is established that the properties were not directly, actually, exclusively used for pasture.

Second. *Luz Farms v. Honorable Secretary of Agrarian Reform* meritoriously provides that livestock or poultry-raising is not similar to crop or tree planting. Land is not the primary source in this

[22] *Rollo*, pp. 167-169.

undertaking and represents no more than five percent (5%) of the total investments of commercial livestock and poultry raisers. Lands support the buildings and other amenities attendant to the raising of animals and birds. The use of the land is incidental to, but not the principal factor or consideration in, this industry (*Rollo* p. 11).

The facts, as stated, shows that not all of the portions of the properties leased to Monterey Farms Corp. were devoted to, or actually, directly, exclusively used for, allegedly, as a cattle feed lot/ nor for the raising of livestock. In fact, the landholding covered by TCT-6930 is presently owned by another juridical person, the Nuestra Señora del Carmen Marble, Inc. The Field Investigation Report dated June 3, 1993 by the Municipal Agrarian Reform Officer and [the] Land Bank of the Philippines on Lot 3, TCT T-3543, provides that it is predominantly cultivated, below 18% slope with only 44.2470 hectares above 18% slope. The area is planted to corn, coconut and other crops.

Third. Based on the documents presented, there is no clear and convincing proof that [AZ] Arnaiz Realty intended and manifested its intention of maintaining, utilizing the whole area for cattle ranching, when it established a realty corporation with its primary purpose to acquire by purchase lease, or otherwise, lands and interest in lands and to own, hold improve, develop and manage agricultural land or real estate so acquired for the purpose of mortgaging, leasing and disposing such lands and by transferring the aforementioned parcel of land to another juridical person. In fact, when it leased the property to Monterey Farms Corp. it disposed and/or sold the entire herd (cattle) for ₱900,000.00 as admitted in a letter to Monterey Farms dated May 8, 1992.

Fourth. The Certifications issued by the PNP Provincial Director, dated December 9, 1993, that the Province of Masbate has been under CTs/NPAs expanded area from 1983-1992, may be true. However, this situation did not prevent the Monterey Farms from vacating or pulling out of the area before the expiration of lease agreement. It offered to renew the contract and increase the rentals of the areas occupied by 10% of the present lease rate. This was denied by the Board of Directors in a letter dated May 8, 1990. After the Corporation vacated the leased premises, tillers actually occupied the areas as reported by Carlos Grande, Regional Field Task Force Chief, DAR V. This is a clear indication that the peace and order situation in Masbate was not the primary reason for the discontinuance of any

business activity in the area, nor it can be attributed to force majeure. From 1991 until early part of 1994, no activity insofar as livestock raising have been instituted by the [AZ] Arnaiz Realty Corporation. The alleged resumption of operations of [AZ] Arnaiz Realty in 1994, after the issuance of the Adm. Order No. 9-94 is not substantiated by clear and convincing set of evidence. Proof of ownership of livestock, Certification from the Director, Department of Agriculture, that the livestock project is of greater economic value than the present agricultural use were not submitted before this Office. Its present use by herein petitioner of 109.8385 hectares is, therefore, unauthorized, under Adm. Order No. 9-94, for no Petition for Exclusion was approved by this Office.

Fifth. The Corporation showed no proof that it has legal personality to file the Petition for Exclusion with respect to the landholding covered by TCT 3542, the property being registered in the name of Nuestra Señora del Carmen Marble, Inc. Therefore, the property shall be covered by CARP.[23]

To be sure, findings of fact by the Court of Appeals are final and conclusive and cannot be reviewed on appeal to the Supreme Court, more so if the factual findings of the Court of Appeals coincide with those of the DAR, an administrative body with expertise on matters within its specific and specialized jurisdiction.[24] The Courts generally accord great respect, if not finality, to factual findings of administrative agencies, because of their special knowledge and expertise over matters falling under their jurisdiction.[25] The only time this Court will disregard the factual findings of the Court of Appeals, which are ordinarily accorded great respect, is when they are not borne out by the records or are not based on substantial evidence.[26] In the case

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[23] *Rollo*, pp. 35-37.

[24] *Padunan v. Department of Agrarian Reform Adjudication Board*, G.R. No. 132163, January 28, 2003, 396 SCRA 196, 201.

[25] *Department of Agrarian Reform v. Uy*, G.R. No. 169277, February 9, 2007, 515 SCRA 376, 402.

[26] *Milestone Realty and Co., Inc. v. Court of Appeals*, G.R. No. 135999, April 19, 2002, 381 SCRA 406, 415.

at bar, no reason exists for us to disregard the findings of fact of the Court of Appeals, the factual findings being borne out by the record and supported by substantial evidence.

As for petitioner's contention that the *Sutton* case is applicable in the instant case, this Court disagrees. Verily, in the *Sutton* case, this Court found Administrative Order No. 9, series of 1993, invalid as it contravenes the Constitution. In *Sutton*, this Court declared that the deliberations of the 1987 Constitutional Commission show a clear intent to exclude, *inter alia*, all lands exclusively devoted to livestock, swine and poultry-raising. The challenged Order however, sought to regulate livestock farms by including them in the coverage of agrarian reform and prescribing a maximum retention limit for their ownership; as such, it was struck down. However, in the present case, the fact remains that based on the findings of the DAR, the OP, and the CA, the subject properties do not fall within the ambit of the Constitutional exemption as petitioner failed to establish its contention that the subject lands are excluded from the coverage of the CARP.

WHEREFORE, premises considered, the petition is *DENIED*. The Decision dated August 11, 2005 of the Court of Appeals in CA-G.R. SP No. 73687, and the Resolution dated November 24, 2005, are *AFFIRMED*.

SO ORDERED.

Carpio (Chairperson), Brion,[*] *Abad,* and *Mendoza, JJ.,* concur.

[*] Designated as an additional member in lieu of Associate Justice Antonio Eduardo B. Nachura, per Raffle dated July 1, 2010.

FIRST DIVISION

[G.R. No. 177573. July 7, 2010]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **ROBERTO ASIS and JULIUS PEÑARANDA,** *accused-appellants.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; NOT ADVERSELY AFFECTED BY INCONSISTENCIES IN THE TESTIMONIES OF THE PROSECUTION WITNESSES ON MINOR DETAILS; CASE AT BAR. — The alleged inconsistencies in the testimonies of the prosecution witnesses are not sufficient to adversely affect their credibility. They merely pertain to the position of the victim at the time he was attacked and the participation of the unknown assailants. The materiality of the victim's exact position when he was attacked as well as the participation of the unknown assailants are minor details and of little significance. The more important consideration is that both Ma. Theresa and Clifford categorically and positively identified accused-appellants as the persons who assaulted the victim.

2. ID.; ID.; ID.; TRIAL COURT'S ASSESSMENT THEREON IS ENTITLED TO GREAT WEIGHT ON APPEAL.— It must be emphasized that the RTC gave full faith and credence to the testimonies of the prosecution witnesses. The time-tested doctrine is that a trial court's assessment of the credibility of a witness is entitled to great weight, and is even conclusive and binding on this Court. The reason is obvious. The trial court has the unique opportunity to observe at firsthand the witnesses, particularly their demeanor, conduct and attitude in the course of the trial.

3. ID.; ID.; ID.; POSITIVE AND CATEGORICAL DECLARATIONS OF PROSECUTION WITNESSES DESERVE FULL FAITH AND CREDENCE IN THE ABSENCE OF IMPROPER MOTIVE. — Where there is nothing to indicate that the witnesses for the prosecution were actuated by improper motive, their positive

and categorical declarations on the witness stand under the solemnity of an oath deserve full faith and credence.

4. ID.; ID.; ALIBI; WHEN TO PROSPER AS A DEFENSE. — [F]or the defense of alibi to prosper, the accused must prove not only that he was at some other place at the time of the commission of the crime, but also that it was physically impossible for him to be at the *locus delicti* or within its immediate vicinity.

5. ID.; ID.; ID.; CANNOT PREVAIL OVER THE POSITIVE IDENTIFICATION MADE BY THE PROSECUTION WITNESSES.— Weak as it is, alibi becomes weaker in the face of the positive identification made by the prosecution witnesses as in this case.

6. CRIMINAL LAW; QUALIFYING CIRCUMSTANCES; TREACHERY; CORRECTLY APPRECIATED IN CASE AT BAR. — Treachery was correctly appreciated in the killing of Donald Pais. The victim was caught defenseless when accused-appellant Peñaranda suddenly put his arms on the shoulder of the victim and thereafter, accused-appellant Asis and his group punched and stabbed him several times. The attack was so swift and unexpected, affording the hapless, unarmed and unsuspecting victim no opportunity to resist or defend himself.

7. ID.; MURDER; PENALTY. — Under Article 248 of the Revised Penal Code, the penalty for the crime of Murder is *reclusion perpetua* to death. Accused-appellants were correctly sentenced to suffer *reclusion perpetua*, the lower of the two indivisible penalties, since there was no aggravating circumstance attending the commission of the crime.

8. CIVIL LAW; DAMAGES; CIVIL INDEMNITY; GRANTED TO THE HEIRS OF THE VICTIM WITHOUT NEED OF PROOF OTHER THAN THE COMMISSION OF THE CRIME. — Conformably with existing jurisprudence, the heirs of Donald Pais are entitled to civil indemnity in the amount of ₱75,000.00, which is mandatory and is granted to the heirs of the victim without need of proof other than the commission of the crime.

9. ID.; ID.; MORAL DAMAGES; AWARDED DESPITE THE ABSENCE OF PROOF OF MENTAL AND EMOTIONAL SUFFERING OF THE VICTIM'S HEIRS.— [M]oral damages in the amount of ₱50,000.00 shall be awarded in favor of the

heirs of the victim. Moral damages are awarded despite the absence of proof of mental and emotional suffering of the victim's heirs. As borne out by human nature and experience, a violent death invariably and necessarily brings about emotional pain and anguish on the part of the victim's family.

10. ID.; ID.; EXEMPLARY DAMAGES; AWARDED IN CASE AT BAR IN VIEW OF THE QUALIFYING AGGRAVATING CIRCUMSTANCE OF TREACHERY. — In view of the presence of the qualifying aggravating circumstance of treachery, the award of exemplary damages in the amount of ₱30,000.00, in accordance with Article 2230 of the Civil Code, is in order.

11. ID.; ID.; TEMPERATE DAMAGES; GRANTED WHERE THE AMOUNT OF ACTUAL DAMAGES FOR BURIAL AND FUNERAL EXPENSES CANNOT BE DETERMINED BECAUSE OF THE ABSENCE OF RECEIPTS TO PROVE THEM. — With respect to actual damages, the victim's father, SPO3 Ernesto Pais, testified that the family spent a total of ₱50,000.00 as burial and funeral expenses but he failed to present receipts to substantiate his claim. In *People v. Abrazaldo,* we laid down the doctrine that where the amount of actual damages for funeral expenses cannot be determined because of the absence of receipts to prove them, temperate damages may be awarded in the amount of ₱25,000.00. Thus, in lieu of actual damages, temperate damages in the amount of ₱25,000.00 must be awarded to the heirs of Donald Pais because although the exact amount was not proved with certainty, it was reasonable to expect that they incurred expenses for the coffin and burial of the victim.

12. ID.; ID.; AWARD FOR LOSS OF EARNING CAPACITY; DOCUMENTARY EVIDENCE SHOULD BE PRESENTED TO SUBSTANTIATE A CLAIM; EXCEPTIONS; NOT PRESENT IN CASE AT BAR. — The two courts did not award loss of earnings because the prosecution failed to adduce evidence for the grant of the same. The Court, in the case of *People v. Mallari*, enunciated: "The rule is that documentary evidence should be presented to substantiate a claim for damages for loss of earning capacity. By way of exception, damages therefore may be awarded despite the absence of documentary evidence provided that there is testimony that the victim was either (1) self-employed earning less than the minimum wage under current labor laws, and judicial notice may be taken of the fact that in

the victim's line of work no documentary evidence is available; or (2) employed as a daily-wage worker earning less than the minimum wage under current labor laws." In this case, neither of the two exceptions applied. As testified by his father, Donald was earning ₱700.00 a day as jeepney driver at the time of his death, whereas the daily minimum wage in the National Capital Region at that time was ₱198.00 per Wage Order No. NCR-06 effective February 6, 1998. Therefore, his earnings were above the minimum wage set by the labor laws in his respective workplace at the time of his death. The above-quoted rule thus finds no application to the case at bar.

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.*:

Assailed before this Court is the Decision[1] dated July 31, 2006 of the Court of Appeals in CA-G.R. CR No. 02293, which affirmed the Decision[2] dated July 28, 1999 of the Regional Trial Court (RTC) of Quezon City, Branch 95, in Criminal Case No. Q-98-77356, finding accused-appellants Roberto Asis and Julius Peñaranda guilty beyond reasonable doubt of the crime of Murder and sentencing them to suffer the penalty of *reclusion perpetua*.

In the court of origin, accused-appellants were charged with the crime of Murder in an Information[3] dated June 10, 1998. The crime was alleged to have been committed as follows:

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[1] Penned by Associate Justice Bienvenido L. Reyes with Associate Justices Jose C. Reyes, Jr. and Enrico A. Lanzanas, concurring; *rollo*, pp. 3-13.

[2] CA *rollo*, pp. 28-38.

[3] *Id.* at 5-6.

That on or about the 7th day of June 1998, in Quezon City, Philippines, the above-named accused, conspiring and confederating with other persons whose true identities and other personal circumstances have not as yet been ascertained and mutually helping one another, with intent to kill, qualified with evident premeditation, treachery and abuse of superior strength, did then and there willfully, unlawfully and feloniously attack, assault and employ personal violence upon the person of one DONALD PAIS *y* BALAO, by then and there stabbing him with a bladed weapon hitting him on different parts of his body, thereby inflicting upon said DONALD PAIS *y* BALAO mortal wounds which were the direct and immediate cause of his untimely death, to the damage and prejudice of the heirs of said DONALD PAIS *y* BALAO.

When arraigned on July 6, 1998, both accused-appellants pleaded not guilty to the crime charged.

The prosecution presented eyewitnesses Ma. Theresa Ramos and Clifford Magsanoc (both residents of Payatas, Quezon City), Senior Police Officer (SPO) 1 Joselito Roxas, Dr. Anthony Joselito Llamas (a medico-legal officer of the Philippine National Police [PNP] Crime Laboratory), and SPO3 Ernesto Pais (the victim's father), while the defense presented accused-appellants Roberto Asis and Julius Peñaranda, and also Jenifer Indat and Villamor Casillan (also residents of Payatas) as witnesses.

After trial, a Decision was rendered by the court *a quo* on July 28, 1999, finding accused-appellants guilty beyond reasonable doubt of the crime of Murder. The trial court thus decreed:

WHEREFORE, judgment is hereby rendered finding the two accused, Roberto Asis *y* Bautista and Julius Peñaranda *y* Jacaba, GUILTY beyond reasonable doubt of the crime of murder defined in and penalized by Article 248 of the Revised Penal Code, as amended, and, there being no mitigating or aggravating circumstance, are hereby sentenced to suffer the penalty of r*eclusion perpetua.* They are further ordered to indemnify the heirs of the victim the amounts of ₱50,000.00 as death indemnity, and ₱50,000.00 as actual or compensatory damages. The Court cannot award loss of earnings as the prosecution failed to adduce evidence for the grant of the same.[4]

[4] *Id.* at 38.

The record of this case was originally transmitted before this Court in view of the notices of appeal of accused-appellants. In our Resolutions[5] both dated July 3, 2000, we accepted the appeal and directed the Chief of the Judicial Records Office to send notices to the parties to file their respective briefs.

Accused-appellants, through the Public Attorney's Office of the Department of Justice, filed their Brief for the Accused-Appellants[6] on May 31, 2005, while the People, through the Office of the Solicitor General, filed its Appellee's Brief[7] on October 4, 2005.

Pursuant to *People v. Mateo*,[8] the record was remanded to the Court of Appeals for appropriate action and disposition where it was docketed as CA-G.R. CR No. 02293.

The evidence for the prosecution and for the defense were summarized by the Court of Appeals as follows:

> On June 7, 1998[,] at about 6:30 in the evening, prosecution witness Ma. Theresa Ramos was inside her store when she saw Donald Pais, the victim, standing from a distance of five meters. She also saw Alex Costuna, accused-appellant Julius Peñaranda and another person in front of her store. Suddenly, a commotion broke out and stones were being thrown by different persons. Accused-appellant Julius Peñaranda placed his arms around Donald's shoulders, after which, Alex Costuna punched Donald who initially fought back but was eventually outnumbered. Donald was hit in the head. He ran away limping because he was stoned in the legs. However, Alex Costuna, accused-appellant Roberto Asis and several other persons caught up with Donald and ganged up on him. Thereupon, Alex Costuna took out a knife and repeatedly stabbed Donald. Accused-appellant Roberto Asis also did the same thing. The victim sat on the ground with hands crossed, covering his head to ward off his attackers. According to witness Theresa Ramos, she saw around nine to ten persons ganging up on the victim, but she could not tell who among

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[5] *Id.* at 41 and 42.

[6] *Id.* at 119-136.

[7] *Id.* at 158-175.

[8] G.R. Nos. 147678-87, July 4, 2004, 433 SCRA 640.

them initiated the attack. However, she saw that aside from accused-appellant Roberto Asis and Alex Costuna, other men also hit and boxed Donald Pais. She shouted for help but nobody came. The victim was bloodied and holding his stomach. After accused-appellants' group left, Theresa and her husband boarded the victim on a tricycle and took him to Fairview General Hospital in Quezon City where he died shortly after.

According to another witness by the name of Clifford Magsanoc, at around seven in the evening of June 7, 1998, he was standing in front of a store while chatting with a friend. There was then an on-going commotion perpetrated by Alex Costuna, Romy Manzanilla and accused-appellants Julius Peñaranda and Roberto Asis. Their target was Donald Pais who was hit on different parts of his body. The victim attempted to flee but his assailants caught up with him and stabbed him repeatedly. The witness saw the victim bloodied and lying on his back. When the accused-appellants' group left, the witness helped in boarding the victim on a tricycle.

Dr. Anthony Joselito Llamas, a medico-legal officer of the PNP Crime Laboratory autopsied the victim's body, and his findings are reduced in a medico-legal report, and quoted in *pari materia* as follows:

POST MORTEM FINDINGS:

Fairly developed, fairly nourished male cadaver in rigor mortis, with postmortem lividity at the dependent portions of the body. Conjunctiva are pale. Lips and nail beds are cyanotic.

HEAD, TRUNK AND EXTREMITIES:

1. Abrasion, frontal region, measuring 2 x 0.4 cm., 1.2 cm. Right of the anterior midline.

2. Abrasion, right maxillary region, measuring 0.8 x 0.6 cm., 8 cm. From the anterior midline.

3. Abrasion, frontal region, measuring 3.5 cm. x 2 cm., 7 cm. Left of the anterior midline with superimposed lacerated wound, measuring 2.2 x 0.6 cm.

4. Lacerated wound, occipital region, measuring 3 x 0.3 cm., 4 cm. right of the posterior midline.

5. Area of multiple contusions, right axillary region, measuring 8 x 5 cm., 17.5 cm. from the anterior midline.

6. Abrasion, right supermammary region, measuring 1.3 x 0.5 cm., 5.5 cm. from the anterior midline.

7. Stab wound, right mammary region, measuring 2.2 x 0.5 cm., 3.5 cm. from the anterior midline, 11 cm. deep, directed posteriorwards, slightly medialwards, and to the left, fracturing the right 5th rib, piercing the right hemidiaphragm, and the left lobe of the liver.

8. Stab wound, right inframmamary region, measuring 3 x 0.6 cm., 11.5 cm. from the anterior midline, 9 cm. deep, directed posteriorwards, medialwards, and slightly upwards, passing the 6th intercostals space, fracturing the 6th right rib and piercing the right and left lobes of the liver.

9. Stab wound, right hypochondriac region, measuring 3.8 x 1 cm., 14.5 cm. from the anterior midline 8.5 cm. deep, directed posteriorwards, medialwards and slightly upwards, fracturing the 7th thoracic rib and perforating the stomach.

10. Abrasion, left supermammary region, measuring 6.5 x 0.3 cm., 15.5 cm. from the anterior midline.

11. Area of multiple contusions, left axillary region, measuring 6 x 3 cm., 16 cm. from the anterior midline.

12. Stab wound, left lateral abdominal region, measuring 1.8 x 0.5 cm., 13.5 cm. from the anterior midline.

13. Stab wound, thru and thru, distal 3rd of the right arm, measuring 2.8 x 0.5 cm., 5.5. cm. medial to its anterior midline piercing the underlying soft tissues making a point of exit at the proximal 3rd of the right forearm, measuring 2.5 x 0.5 cm., 3.5 cm. lateral to its posterior midline.

14. Contusion, distal 3rd of the right forearm, measuring 4 x 4 cm., 2 cm. lateral to its posterior midline.

15. Abrasion, middle 3rd of the left arm, measuring 3.5 x 1 cm. lateral to its anterior midline.

16. Lacerated wound, left elbow, measuring 2 x 0.5 cm., along its posterior midline.

17. Stab wound, left elbow, measuring 2 x 0.5 cm., 5 cm. lateral to its posterior midline.

x x x x x x x x x

CONCLUSION:

Cause of death is multiple stab wounds of the trunk.

In sum, Dr. Llamas concluded that Donald Pais sustained abrasions, lacerated wounds, contusions and stab wounds in various parts of his body, some of which fatally hit his vital organs and caused his death.

Evidence for the defense shows as follows:

On January 7, 1998[,] at around five in the afternoon, defense witness Jennifer Indat was tending her store. At about quarter past six in the evening, she was preparing to close her store when she saw two Ilongos conversing beside her store. She heard the Ilongo named Roy saying he could not sleep if he could not make revenge and kill somebody. Thereafter, a young girl passed by. The two Ilongos whistled at the young girl. The latter uttered "Kuya Donald, its already night time and you go home." The two Ilongos suddenly stood up, got stones and threw the same at Donald. The latter went home. Meanwhile, somebody pacified the two Ilongos and one of them was dragged home. Jennifer Indat testified that she closed her store at around quarter to seven in the evening. She then proceeded to the house of Julius Peñaranda to pay the latter money that her husband owed the former. On her way to Julius's house, she met the victim who was holding a bladed weapon. She hurriedly went to the house of Julius. Before she entered the latter's house, she heard Donald shouting "*Putangina niyo lumabas kayo diyan sino ang matapang sa inyo*." Julius was already sleeping so she just

gave the money to his mother. She went home at around seven forty in the evening.

According to another defense witness by the name of Villamor Casillan, he arrived home at around seven in the evening on June 7, 1998. He changed his clothes and went out to watch a basketball game in front of his house. At seven twenty in the evening, he heard Donald Pais shouting the name of Alex Costuna saying "*Putangina mo Alex.*" He did not mind what he heard but when Donald successively shouted "*Putangina mo Alex, putangina mo Alex, Kuya Jerry.*" he immediately left what he was watching, approached Donald, and helped the latter to stand up. Donald was very weak because he had stab wounds. He shouted for help at the house of Camilo Tabago. He got a tricycle and brought Donald to the hospital where Donald died. He waited for the arrival of Donald's father Sgt. Pais.

Accused-appellant Julius Peñaranda denied before the court his alleged participation in the killing of Donald Pais. According to him at the time of the incident, he was in their house sleeping because he was a little drunk so he slept early. He attended the birthday celebration of his brother-in-law Roberto Asis. They had a drinking spree at the back of their house together with Alex Costuna and a certain Bong.

Julius insisted that he only learned about the death of Donald Pais from his mother the following day. He asked who killed Donald but [his] mother did not know. He woke up at four in the morning of June 8, 1998, had breakfast and then went straight to work. He arrived home at seven in the evening. While having dinner, somebody knocked at their door. When he opened the door, he saw four policemen who invited him to the police precinct to answer some questions.

Accused-appellant Julius Peñaranda likewise denied the claim of prosecution witness Theresa Ramos that he was one of those who attacked and stabbed Donald Pais. According to him, Ramos only testified against him because she was afraid that he would testify concerning the killing of Sonny Atienza inside her house. Before Sonny died, he revealed to him that he had a relationship with Ramos. The suspect in the killing of Sonny were Donald Pais and Ruel Ubillo. Allegedly, warrants of arrest had been issued against Donald and Ruel.

As for accused-appellant Roberto Asis, he had no preparation for his birthday on June 7, 1998. A certain Bogart arrived in their

house and greeted him happy birthday at twelve noon. Then, Bogart asked permission to leave, but promised to be back. When Bogart returned, he was carrying a bottle of Tanduay. Because it was his birthday, Bogart told him that they would drink. They had a drinking spree with Alex Costuna and the Ilongos up to around quarter to five in the afternoon. He then told them that they had to stop drinking because he would be going to work the following morning. At five thirty in the afternoon, he went home and lay down. Between eleven to twelve in the evening, policemen woke him up and invited him to ask questions regarding the killing of Donald Pais. They asked him to accompany them to where the Ilongos and Alex Costuna were. On their way to the residence of the Ilongos, he recognized Sgt. Pais with the group of policemen. He put his arms around the shoulder of Sgt. Pais and told him he really pity him because of the death of Donald. After pointing to the policemen the residence of the Ilongos and Alex Costuna, they told him to go home. On his way home, Sgt. Pais asked him to help and cooperate with them regarding the arrest of the Ilongos and Alex Costuna. He told them that he would do his best to help them. Then, the policemen invited him to go with them to the police station in order to shed light on the incident. He first went home to ask permission from his wife. At the police station, the policemen told him that somebody was pointing to him as one of the perpetrators of the murder.[9]

On July 31, 2006, the Court of Appeals promulgated the herein challenged decision affirming *in toto* the decision of the RTC. We quote the pertinent portions of the Court of Appeals decision, thus:

Apparently, the defense attempts to discredit the testimonies of the prosecution witnesses by harping on the seeming inconsistencies in their statements: (a) as regards the position of the victim at the time he was attacked. While prosecution witness Theresa Ramos said that the victim was sitting on the ground while he was being attacked, the other prosecution witness Clifford Magsanoc testified that when he saw the victim, the latter was lying prost[r]ate on his back; (b) as regards the participation of the other unknown assailants. While Theresa Ramos testified that the other assailants punched and boxed the victim, Clifford Magsanoc insisted that he also saw the other assailants stab the victim.

[9] *Rollo*, pp. 3-6.

The foregoing inconsistencies in the witnesses' declarations, however, do not necessarily impair their credibility. Well settled is the rule that inconsistencies and discrepancies as to minor matters irrelevant to the elements of the crime cannot be considered as grounds for acquittal. x x x.

x x x x x x x x x

Indeed, the accused-appellants' alibi and denial cannot prevail over the positive identification by the prosecution witnesses as the perpetrators of the crime x x x. Again, for alibi to qualify as a valid defense, it must first be shown that it was physically impossible for the accused to have been present in the crime scene at the supposed time of its commission. x x x.

In this case, the place where the murder was committed was also within the same vicinity as the accused-appellants' houses where the two allege to have been in deep slumber while the killing was being committed. The accused-appellants, therefore, were not so geographically removed from the *locus criminis* as to conclusively rule out the possibility that they were responsible for the felony.

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WHEREFORE, in the light of the foregoing premises, the instant appeal is hereby DENIED. Accordingly, the court *a quo*'s decision dated 28 July 1999 is perforce affirmed *in toto*.[10]

From the Court of Appeals, the case was again elevated to this Court upon the filing of accused-appellants' notice of appeal on August 7, 2006. In our Resolution[11] dated June 27, 2007, we required both parties to submit their respective supplemental briefs, if they so desire. The parties, however, opted not to file supplemental briefs and manifested that they were merely adopting their briefs filed before the Court of Appeals.[12]

In their Brief, accused-appellants raised the following assignment of errors:

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[10] *Id.* at 10-13.

[11] *Id.* at 12.

[12] *Id.* at 15-17 and 23-25.

I

THE TRIAL COURT GRAVELY ERRED IN GIVING FULL WEIGHT AND CREDENCE TO THE CONFLICTING AND CONTRADICTORY TESTIMONIES OF PROSECUTION WITNESSES MA. THERESA RAMOS AND CLIFFORD MAGSANOC.

II

THE TRIAL COURT GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANTS OF THE CRIME CHARGED DESPITE FAILURE OF PROSECUTION TO PROVE THEIR GUILT BEYOND REASONABLE DOUBT.[13]

Accused-appellants insist that the prosecution failed to prove their guilt beyond reasonable doubt. They assail the credibility of prosecution witnesses Ma. Theresa Ramos and Clifford Magsanoc, whose testimonies, accused-appellants contend, are conflicting and inconsistent. They particularly point out that while Ma. Theresa testified that the victim was sitting on the ground while he was being attacked, Clifford testified that the victim was lying prostrate on his back. Likewise, Ma. Theresa testified that the other assailants punched the victim while Clifford declared that he saw the other assailants stab the victim. Accused-appellants also argue that the testimonies of these witnesses did not jibe with the medico-legal findings which cast doubt as to the veracity of the said testimonies and their culpability for the crime charged.

After a careful consideration of the evidence of this case, we find no reason to reverse the decision of the RTC in Criminal Case No. Q-98-77356 as affirmed by the Court of Appeals.

The alleged inconsistencies in the testimonies of the prosecution witnesses are not sufficient to adversely affect their credibility. They merely pertain to the position of the victim at the time he was attacked and the participation of the unknown assailants. The materiality of the victim's exact position when he was attacked as well as the participation of the unknown assailants are minor details and of little significance. The more important

[13] CA *rollo*, p. 121.

consideration is that both Ma. Theresa and Clifford categorically and positively identified accused-appellants as the persons who assaulted the victim. As the Court declared in *People v. Lacbayan*:[14]

> It is perfectly natural for different witnesses testifying on the occurrence of a crime to give varying details as there may be some details which one witness may notice while the other may not observe or remember. In fact, jurisprudence even warns against a perfect dovetailing of narration by different witnesses as it could mean that their testimonies were pre-fabricated and rehearsed. x x x.

We agree with the view of the Solicitor General that such seeming inconsistencies refer to trivial matters and can easily be reconciled, thus:

> In support of their appeal, appellants contend that their guilt was not proved beyond reasonable doubt allegedly because of the inconsistent testimonies of prosecution witnesses Ma. Theresa Ramos and Clifford Magsanoc specifically on the exact position of Donald Pais after he was ganged up by appellants' group. Appellants point out that while Ma. Theresa Ramos testified that Donald Pais sat on the ground and crossed his arms over his head, Clifford Magsanoc, however, stated that Donald Pais was lying on his back with arms crossed over his head.
>
> There is no contradiction. True, when Ma. Theresa Ramos saw Donald Pais, he was still sitting on the ground while she was shouting for help. Thus, when Donald Pais lost his strength because of his wounds, he fell on the ground, and it was at this point that Clifford Magsanoc saw him.[15]

While prosecution witnesses Ma. Theresa and Clifford differ in their narration of minor details, they unequivocally identified the accused-appellants as the perpetrators of the crime. Ma. Theresa declared on the witness stand:

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[14] 393 Phil. 800, 807 (2000).

[15] Appellee's Brief, CA *rollo*, pp. 168-169.

ATTY. MALLARES:

Q. Mrs. Witness, if you can recall, where were you on June 7, 1998 at about 6:30 in the evening?

A. I was inside my store.

Q. Where is your store located?

A. Just in front of my house.

Q. Where is the exact address, if you still remember?

A. 29 San Juan Evangelista, Payatas, Quezon City.

Q. What were you doing at that time inside the store?

A. Nothing sir, I was just sitting inside and looking outside.

Q. And while so doing looking outside your store, was there any unusual incident that occurred within the immediate vicinity of the place on such date and place where you were?

A. There was.

Q. What was the unusual incident if you can still recall?

A. I saw Donald in front of the store but far from me. I also saw Alex and Julius with another one. Suddenly, Julius put his arms on the shoulder of Donald with his right hand. (Witness demonstrating as if she is wrapping his right arm on somebody).

Q. How far is that distance where you were at the time you saw them, this Julius putting his hand over the shoulder of Donald?

A. From this place where I am seated right now to the stand fan.

ATTY. MALLARES:

May I know if the good counsel will stipulate the distance of more or less five meters.

ATTY. PEREZ:

Seven meters.

COURT:

As stipulated by the parties, more or less seven meters.

Q. And what happened next after this Julius Peñaranda placed his arm over the shoulder of Donald?

A. I saw Alex suddenly punched Donald.

Q. What happened to Donald when he was punched by Alex?

A. He was hit but he hit back.

Q. And so what happened next after they exchanged blows, between Donald and Alex?

A. I went out of the store and looked thru the gate. I saw my son and I called my son and told him to come here. Because at the time there were already stone throwing. In fact stones were thrown as if they were flying.

Q. After the stone throwing what happened next?

A. There was commotion and I saw this Donald running away but he was hit in the head. I saw him bloodied in the head. He was not able to run away.

Q. That particular circumstance Donald had been hit by the stone and cannot run anymore, what happened next?

A. He cannot run because he is limping. He was hit by the stone and at that time they already ganged up on him.

Q. Whom do you recognize who ganged up on him?

A. Alex Costuna. I also saw Robert Asis and other persons whom I can recognize if I see them again.

Q. You mentioned Roberto Asis who is one of the accused in this case. If you see his face again, can you recognize him?

A. Yes, sir.

Q. Will you please point to him if he is inside the courtroom?

A. (witness pointing to a male person wearing yellow shirt who when asked his name answered as Roberto Asis).

Q. You mentioned about a certain Julius Peñaranda also if you see him or if he is inside the courtroom, can you point to him?

A. The one beside Roberto Asis (witness pointing to a male person wearing yellow shirt with marking and who when asked his name answered as Julius Peñaranda).[16]

Clifford's testimony corroborated that of Ma. Theresa, to wit:

ATTY. MALLARES: (to the witness)

Q. After he felt dizzy, what happened to him?

A. He was bloodied, sir.

Q. After he was bloodied what happened to him?

A. He was "*inabutan napo siya*," sir.

Q. Who was that person whom you are referring to as those who "*inabutan*" that Donald Pais?

A. Julius Peñaranda, Alex Costuna and Romy Manzanilla, sir.

Q. Who else?

A. Ober Asis, sir.

Q. And who else other than them?

A. Their companions, sir.

Q. By the way, you know these persons Robert Asis and this Julius Peñaranda?

A. Yes, sir.

Q. If they are inside the courtroom will you please point to them?

A. The one with the top hair, sir. (witness pointed to a male person wearing yellow shirt with black pants when asked of his name, he stated his name as Roberto Asis).

Q. How about this Julius Peñaranda?

A. (witness pointed to a male person wearing yellow shirt with Giordano Blues marking in front portion when asked of his name he stated his name as Julius Peñaranda).

xxx xxx xxx

[16] TSN, August 3, 1998, pp. 2-4.

Q. At the time this Alex Costuna delivered his stabbing thrust on the person of Donald Pais, what was the position of Donald Pais in relation to the thrust made by Alex Costuna?

A. (Witness demonstrating by crossing both of his hands). Like this, sir.

Q. Was he still standing or sitting?

ATTY. PEREZ: (to the court)

Leading, Your Honor.

COURT:

Anyway you already asked him what happened next why not ask the same question, rather than to lead the witness.

ATTY. MALLARES: (to the witness)

Q. After Donald Pais was stabbed twice by this Alex Costuna, what happened next?

A. Obet followed him, sir.

Q. What did Obet Asis do if any?

A. Obet him with the stones, sir.

Q. What else did Obet do if any?

A. He also stabbed Donald Pais, sir.

Q. And how about this Julius Peñaranda, what did he do if any?

A. He also stabbed Donald Pais, sir.

Q. How about this Romy Manzanilla?

A. He also stabbed, sir.

Q. How about their companions whom you did not know by their names?

A. They also stabbed him, sir.

Q. What happened to this Donald Pais after he was stabbed by the group of Obet Asis?

A. *Napatihaya na po at duguan*, sir. (lying face up and bloody).

Q. Why what was the position of this Donald Pais before he was "*napatihaya*"?

A. He was standing, sir.

Q. And what did the group of Obet Asis do after he was bloodied and already "*nakatihaya*"?

A. They ran away, sir.[17]

Undeniably, the testimonies of these two witnesses on material details are coherent, categorical and consistent with each other. Ma. Theresa saw accused-appellant Peñaranda put his arms around the victim, after which, a certain Alex Costuna punched the victim who initially retaliated but eventually ran away because he was outnumbered. However, accused-appellants and their group caught up with the victim, ganged up on him and thereafter stabbed him. Both witnesses personally saw accused-appellants at the scene of the crime at the time it was committed. Contrary to accused-appellants' assertions, the declarations of these two witnesses established beyond reasonable doubt their identity as the perpetrators of the crime.

It must be emphasized that the RTC gave full faith and credence to the testimonies of the prosecution witnesses. The time-tested doctrine is that a trial court's assessment of the credibility of a witness is entitled to great weight, and is even conclusive and binding on this Court. The reason is obvious. The trial court has the unique opportunity to observe at firsthand the witnesses, particularly their demeanor, conduct and attitude in the course of the trial.[18]

Accused-appellants also claim that the testimonies of Ma. Theresa and Clifford did not coincide with the findings of the medico-legal officer. Ma. Theresa testified that the victim was stabbed thrice, while Clifford declared that the victim was stabbed twice by Costuna and once each by Asis, Peñaranda, and a

[17] TSN, August 24, 1998, pp. 7-11.

[18] *People v. Dimaano*, G.R. No. 168168, September 14, 2005, 469 SCRA 647, 658.

certain Romy Manzanilla. In addition, accused-appellants' unknown companions, numbering around five to six persons, also stabbed the victim. On the other hand, the medico-legal report indicated that the victim sustained just six stab wounds.

Again, this seeming inconsistency does not detract from the certitude of Ma. Theresa's and Clifford's testimonies that they saw accused-appellants stab the victim. True, they may have been mistaken with respect to the exact number of wounds inflicted on the victim by the accused-appellants and their group, but their account of the events remains credible. The essential thing is that the medico-legal findings which concluded that the victim's cause of death was multiple stab wounds confirmed the interlocking testimonies of prosecution witnesses that the victim was stabbed by several men including accused-appellants. Indeed, this Court declared in *People v. Bihison*:[19]

> Eyewitnesses to a horrifying event cannot be expected, nor be faulted if they are unable, to be completely accurate in picturing to the court all that has transpired and every detail of what they have seen or heard. Various reasons, mostly explainable, can account for this realty; the Court has long acknowledged the verity that different human minds react distinctly and diversely when confronted with a sudden and shocking event, and that a witness may sometimes ignore certain details which at the time might have appeared to him to be insignificant but which to another person under the same circumstances, would seem noteworthy.

Moreover, accused-appellants have not shown any evidence of improper motive on the part of Ma. Theresa and Clifford that would have impelled them to falsely testify against them. Where there is nothing to indicate that the witnesses for the prosecution were actuated by improper motive, their positive and categorical declarations on the witness stand under the solemnity of an oath deserve full faith and credence.[20]

Accused-appellants' defense of denial was properly rejected by both the Court of Appeals and the RTC. We quote with

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[19] 367 Phil. 778, 786 (1999).

[20] *People v. Benito*, 363 Phil. 90, 98 (1999).

approval the trial court's ratiocination, *viz*:

> The Court is not convinced of the defense of the accused that they did not participate in the commission of the crime and were neither at the place of the incident because they were positively identified by prosecution witnesses. "Defenses of denial and alibi are inherently weak and have always been viewed with disfavor by the courts due to the facility with which they can be concocted." (*People vs. Danao*, 253 SCRA 146). The alibi of the accused deserves scant consideration in the absence of evidence that it was physically impossible for the two accused to be at the scene of the crime at the time it was committed. In fact, evidence shows that both accused never left the area at all before, during or after the incident and their sole defense was that they were sleeping at their respective houses at the time the crime was committed. There is therefore no physical impossibility for them to be at the scene of the crime taking into account the distance between the place of the incident and the place where they were allegedly situated.[21]

As consistently enunciated by this Court, the established doctrine is that, for the defense of alibi to prosper, the accused must prove not only that he was at some other place at the time of the commission of the crime, but also that it was physically impossible for him to be at the *locus delicti* or within its immediate vicinity.[22] From the aforequoted findings of the trial court, accused-appellants failed to demonstrate satisfactorily that it was physically impossible for them to be at the scene of the crime at the time it was committed. The crime of murder happened in San Juan Evangelista St., Payatas, Quezon City or exactly the same area where accused-appellants' houses were located and claimed to be sleeping when the crime occurred. Weak as it is, alibi becomes weaker in the face of the positive identification made by the prosecution witnesses as in this case.[23]

Treachery was correctly appreciated in the killing of Donald Pais. The victim was caught defenseless when accused-appellant

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[21] CA *rollo*, pp. 36-37.

[22] *People v. Ballesteros*, 349 Phil. 366, 375 (1998).

[23] *People v. Bonifacio*, 426 Phil. 511, 520-521 (2002).

Peñaranda suddenly put his arms on the shoulder of the victim and thereafter, accused-appellant Asis and his group punched and stabbed him several times. The attack was so swift and unexpected, affording the hapless, unarmed and unsuspecting victim no opportunity to resist or defend himself. As the RTC reasoned:

> The act of accused Julius Peñaranda in putting his arms on the shoulder of the victim, Donald Pais, after which said accused, alongside with accused Roberto Asis and other men, suddenly boxed, stabbed and hit him on different parts of his body constitute treachery as the attack was sudden and rapid and did not afford the victim any chance at all to put up any defense. Regardless of whether the attack was frontal or at the back considering that there were several wounds both at the front and back of the victim's body, "an unexpected and sudden attack under circumstances which render the victim unable and unprepared to defend himself by reason of the suddenness and severity of the attack constitutes *alevosia*, and the fact that the attack was frontal does not preclude the presence of treachery." (*People vs. Dinglasan*, 267 SCRA 26). The number and location of the wounds inflicted on the victim is a strong indication that the accused made sure of the success of their effort to kill the victim without risk to themselves.[24]

We, thus, sustain the conviction of accused-appellants for the crime of Murder as well as the penalty imposed upon them. Under Article 248 of the Revised Penal Code, the penalty for the crime of Murder is *reclusion perpetua* to death. Accused-appellants were correctly sentenced to suffer *reclusion perpetua*, the lower of the two indivisible penalties, since there was no aggravating circumstance attending the commission of the crime.[25]

We now come to the award of damages. When death occurs due to a crime, the following may be awarded: (1) civil indemnity *ex delicto* for the death of the victim; (2) actual or compensatory

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[24] CA *rollo*, p. 37.

[25] Article 61, Revised Penal Code.

damages; (3) moral damages; (4) exemplary damages; and (5) temperate damages.[26]

Conformably with existing jurisprudence, the heirs of Donald Pais are entitled to civil indemnity in the amount of ₱75,000.00, which is mandatory and is granted to the heirs of the victim without need of proof other than the commission of the crime.[27] Likewise, moral damages in the amount of ₱50,000.00 shall be awarded in favor of the heirs of the victim. Moral damages are awarded despite the absence of proof of mental and emotional suffering of the victim's heirs. As borne out by human nature and experience, a violent death invariably and necessarily brings about emotional pain and anguish on the part of the victim's family.[28]

Both the RTC and the Court of Appeals failed to award exemplary damages to the heirs of the victim. In view of the presence of the qualifying aggravating circumstance of treachery, the award of exemplary damages in the amount of ₱30,000.00,[29] in accordance with Article 2230 of the Civil Code,[30] is in order.

With respect to actual damages, the victim's father, SPO3 Ernesto Pais, testified that the family spent a total of ₱50,000.00 as burial and funeral expenses but he failed to present receipts to substantiate his claim. In *People v. Abrazaldo,*[31] we laid down

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[26] *People v. Anod*, G.R. No. 186420, August 25, 2009, 597 SCRA 205, 212.

[27] *People v. Ocampo*, G.R. No. 177753, September 25, 2009, 601 SCRA 58, 73.

[28] *Id.* at 64, 73.

[29] *People v. Gido*, G.R. No. 185162, April 24, 2009, 586 SCRA 825, 837.

[30] 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.

[31] 445 Phil. 109, 126 (2003).

the doctrine that where the amount of actual damages for funeral expenses cannot be determined because of the absence of receipts to prove them, temperate damages may be awarded in the amount of ₱25,000.00. Thus, in lieu of actual damages, temperate damages in the amount of ₱25,000.00 must be awarded to the heirs of Donald Pais because although the exact amount was not proved with certainty, it was reasonable to expect that they incurred expenses for the coffin and burial of the victim.

The two courts did not award loss of earnings because the prosecution failed to adduce evidence for the grant of the same. The Court, in the case of *People v. Mallari*,[32] enunciated:

> The rule is that documentary evidence should be presented to substantiate a claim for damages for loss of earning capacity. By way of exception, damages therefore may be awarded despite the absence of documentary evidence provided that there is testimony that the victim was either (1) self-employed earning less than the minimum wage under current labor laws, and judicial notice may be taken of the fact that in the victim's line of work no documentary evidence is available; or (2) employed as a daily-wage worker earning less than the minimum wage under current labor laws.

In this case, neither of the two exceptions applied. As testified by his father, Donald was earning ₱700.00 a day as jeepney driver at the time of his death, whereas the daily minimum wage in the National Capital Region at that time was ₱198.00 per Wage Order No. NCR-06 effective February 6, 1998. Therefore, his earnings were above the minimum wage set by the labor laws in his respective workplace at the time of his death. The above-quoted rule thus finds no application to the case at bar.

In addition to the damages awarded, we also impose on all the amounts of damages an interest at the legal rate of 6% from this date until fully paid.[33]

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[32] 452 Phil. 210, 225 (2003).

[33] *People v. Honor*, G.R. No. 175945, April 7, 2009, 584 SCRA 546, 561.

WHEREFORE, the decision dated July 31, 2006 of the Court of Appeals in CA-G.R. CR No. 02293 is hereby *AFFIRMED*. Accused-appellants Roberto Asis and Julius Peñaranda are found *GUILTY* beyond reasonable doubt of the crime of Murder and sentenced to suffer the penalty of *reclusion perpetua*. They are hereby ordered to indemnify the heirs of Donald Pais the following: (a) ₱75,000.00 as civil indemnity; (b) ₱50,000.00 as moral damages; (c) ₱30,000.00 as exemplary damages; (d) ₱25,000.00 as temperate damages; and (e) interest on all damages awarded at the legal rate of 6% from this date until fully paid.

SO ORDERED.

Corona C.J. (Chairperson), Velasco, Jr., Del Castillo, and *Perez, JJ.,* concur.

SECOND DIVISION

[G.R. No. 188704. July 7, 2010]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **PEDRO ORTIZ, JR. *y* LOPES,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; AGGRAVATING CIRCUMSTANCES; TREACHERY; WHEN PRESENT. — Article 14, paragraph 16 of the Revised Penal Code provides that "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 essence of treachery is the sudden and unexpected attack by the aggressors on unsuspecting victims,

depriving the latter of any real chance to defend themselves, thereby ensuring its commission without risk to the aggressors, and without the slightest provocation on the part of the victims.

2. ID.; MURDER; QUALIFYING CIRCUMSTANCES; TREACHERY; PRESENT ALTHOUGH THE VICTIM KNEW THE THREAT IN HIS LIFE. — The accused argues that there could not have been any treachery because the victim knew the threat to his life. The Court has consistently held that treachery can still be appreciated even though the victim was forewarned of the danger because what is decisive is that the attack was executed in a manner that the victim was rendered defenseless and unable to retaliate. In this case, although it is true that the victim knew that the accused had a grudge against him, he never had any inkling that he would actually be attacked that night. x x x [A]s treachery attended the killing of Loreto Cruz, such circumstance qualified the killing as murder, punishable under *paragraph 1 of Article 248 of the Revised Penal Code*.

3. ID.; ID.; CIVIL PENALTIES; EXEMPLARY DAMAGES ALSO AWARDED FOR THE AGGRAVATING CIRCUMSTANCE OF TREACHERY. — When death results due to a crime, recovery of these awards are allowed: (1) civil indemnity *ex delicto* for the death of the victim; (2) actual or compensatory damages; (3) moral damages; (4) exemplary damages; (5) attorney's fees and expenses of litigation; and (6) interest, in proper cases. The RTC only awarded ₱50,000.00 as civil indemnity and another ₱50,000.00 as moral damages. The Court deems it proper to award exemplary damages in the amount of ₱30,000.00 following precedents. "Under Article 2230 of the Civil Code, exemplary damages may be awarded in criminal cases when the crime was committed with one or more aggravating circumstances, in this case, treachery. This is intended to serve as deterrent to serious wrongdoings and as vindication of undue sufferings and wanton invasion of the rights of an injured, or as a punishment for those guilty of outrageous conduct. The imposition of exemplary damages is also justified under Article 2229 of the Civil Code in order to set an example for the public good." The Court likewise grants ₱25,000.00 as temperate damages in keeping with current jurisprudence allowing it where the funeral and burial expenses spent for the victim cannot be fully substantiated or there is no proof of actual damages.

APPEARANCES OF COUNSEL

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

D E C I S I O N

MENDOZA, *J.*:

This is an appeal[1] from the April 29, 2009 Decision of the Court of Appeals (CA),[2] in CA-G.R. CR No. 31164, affirming the June 7, 2007 Decision of the Regional Trial Court, Branch 18, Manila *(RTC)* which found accused Pedro Ortiz, Jr., guilty beyond reasonable doubt of the crime of Murder for the killing of one Loreto Cruz.

Accused Pedro Ortiz, Jr., along with his nephew, Jojo Ortiz, was charged with murder for the killing of Loreto Cruz in two (2) consolidated cases before the Regional Trial Court, Manila, Branch 18. The accusatory portions of the two (2) Informations read:

Criminal Case No. 03-215663
(*People v. Jojo Ortiz y Quitada*)

"That on or about June 22, 2003, in the City of Manila, Philippines, the said accused, conspiring and confederating with one another whose true name, identity and present whereabouts are still unknown and mutually helping each other, did then and there willfully, unlawfully and feloniously, with intent to kill, qualified by treachery and evident premeditation, attack, assault and use personal violence upon the person of one LORETO CRUZ *Y* CRUZ, by then and there suddenly shooting the latter with a .38 revolver bearing Serial No. 47970 with trademarks Armscor on the right cheek, thereby inflicting upon said LORETO CRUZ *Y* Cruz mortal gunshot wound which was the direct and immediate cause of his death thereafter.

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[1] *Rollo*, pp. 23-25.

[2] *Id.* at 2-22, Penned by Associate Justice Remedios Salazar-Fernando with Associate Justices Magdangal De Leon and Ramon Garcia concurring.

Contrary to law."

Criminal Case No. 03-219216
(*People v. Pedro Ortiz*)

"That on or about June 22, 2003, in the City of Manila, Philippines the said accused conspiring and confederating with one JOJO ORTIZ *Y* GUTABA, who was already charged with the same offense before the Regional Trial Court of Manila docketed as Criminal Case No. 03-215663, and mutually helping each other, did then and there willfully, unlawfully and feloniously, with intent to kill, qualified by treachery and evident premeditation, attack, assault and use personal violence upon the person of one LORETO CRUZ *Y* CRUZ, by then and there suddenly shooting the latter with a .38 caliber revolver bearing Serial No. 47970 with trademarks Armscor on the right cheek, thereby inflicting upon said LORETO CRUZ *Y* CRUZ, a mortal gunshot wound which was the direct and immediate cause of his death thereafter.

Contrary to law."[3]

As culled from the evidentiary records, it appears that on June 22, 2003, between 9:00 and 10:00 o'clock in the evening, Loreto Cruz, an Executive Officer of Barangay 597, Zone 59, Guadalcanal St., Sta. Mesa, Manila, together with Barangay Tanod Angelito de Guzman and Kagawad Gil Bactol, was watching television inside the *barangay* hall. Without anyone noticing him, accused Pedro Ortiz, Jr. entered the hall and called out, "Ex-O!" When Loreto Cruz turned, the accused shot him with a .38 caliber revolver. The bullet hit the left side of his face. Upon realizing what happened, Tanod de Guzman tried to wrest the gun from the accused. In their struggle, another shot was fired hitting a table nearby. Kagawad Villena then grabbed the accused who called out for his nephew, Jojo Ortiz. Responding to his call, Jojo, with a samurai, uttered, *"Bitiwan mo yan, para wala tayong problema."* Kagawad Villena let go of the accused. Wasting no time, the accused and his nephew fled from the scene. Thereafter, Loreto Cruz was rushed to Our Lady of Lourdes Hospital where he expired. The accused and his nephew, Jojo, were later apprehended and criminally charged with murder.

[3] CA *rollo*, pp. 34-35.

Although the accused pleaded not guilty during the arraignment, he admitted killing Loreto Cruz in the course of the trial because he was not satisfied with the way the victim dealt with his sons' case. According to the accused, his sons were merely playing "*kara y kruz*" but were detained for illegal drug use. As the Executive Officer, the victim promised that his sons would be released from detention after three to four months. Five months passed and his sons remained in jail. On his part, Jojo Ortiz denied any participation in the commission of the crime and only admitted the fact that he helped his uncle when he saw him being grabbed by the *barangay* officials.

On June 7, 2007, the RTC found the accused guilty of the crime charged but acquitted co-accused Jojo Ortiz.[4] The RTC did not consider evident premeditation but appreciated treachery as a qualifying circumstance because of the manner by which the killing was executed. It wrote: "the victim was killed frontally and in a sudden and unexpected manner. Although, accused Pedro Ortiz narrated that he shot the victim after the latter sneered at him, the nature and location of the wound and the manner of the shooting deprived the victim opportunity to put up a defense."[5]

In acquitting Jojo Ortiz, the RTC ruled that "Pedro Ortiz shot the victim alone. The killing was carried out without the participation of Jojo Ortiz who did not personally hit or harm the victim. Nothing in the testimonies conveyed a coordinated action, concerted purpose or community of design to commit the criminal act."[6] Thus, the decretal portion of the RTC Decision reads:

"WHEREFORE, the court finds accused Pedro Ortiz guilty beyond reasonable doubt of murder. He is sentenced to suffer the penalty of *reclusion perpetua* and to pay the heirs of Loreto Cruz the amounts of ₱50,000.00 as civil indemnity and ₱50,000.00 as moral damages. Accused Jojo Ortiz is acquitted of the crime charged.

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[4] *Id.* at 34-64.

[5] *Id.* at 62.

[6] *Id.* at 63.

SO ORDERED."[7]

The accused appealed to the Court of Appeals and assigned the following errors:

"I

THE TRIAL COURT GRAVELY ERRED IN APPRECIATING THE QUALIFYING CIRCUMSTANCE OF TREACHERY

II

THE TRIAL COURT GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT OF MURDER."[8]

The accused argued that the RTC erred in appreciating the element of treachery as an aggravating circumstance. He insisted that the victim knew all along that there was a threat to his life but chose to ignore it.[9] He likewise stressed that the presence of three *Barangay* tanods outside the *barangay* hall did not render Loreto Cruz totally defenseless from any possible attack against his life.[10]

In its Brief,[11] the Office of the Solicitor General (OSG) countered that there was treachery because of the suddenness of the attack while the victim was watching television. It wrote: "Even if Cruz was aware of the accused's threat against him, the suddenness of the attack deprived him of any real chance to defend himself or to retaliate. The weapon used and the nature of the injury inflicted, which pertained to the lone gunshot fatally wounding the victim, clearly shows that accused deliberately and consciously adopted the particular mode of attack to ensure the commission of the offense with impunity."[12]

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[7] *Id.* at 64.

[8] *Id.* at 81.

[9] *Id.* at 88.

[10] *Id.* at 89.

[11] *Id.* at 123-139.

[12] *Id.* at 133.

The OSG likewise prayed that exemplary and temperate damages be added to the award of damages.[13]

On April 29, 2009, the Court of Appeals agreed that there was treachery and affirmed the ruling. It pointed out that the accused, with a firearm in hand, barged into the *Barangay* hall, called out "Ex-O," and suddenly shot the victim at close range, evident of his intent to ensure the success of his attack with no risk to himself. The CA also added that while it is true that the accused called Loreto Cruz "Ex-O" as he shot the latter, "he did so only to make sure that the person he would shoot was his intended target and not to afford his victim a chance to defend himself."[14]

Hence, this appeal.

The only issue before this Court is whether or not the accused employed treachery or *alevosia* so as to qualify the killing of one Loreto Cruz to murder.

The Court rules in the affirmative.

Article 14, paragraph 16 of the Revised Penal Code provides that "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 essence of treachery is the sudden and unexpected attack by the aggressors on unsuspecting victims, depriving the latter of any real chance to defend themselves, thereby ensuring its commission without risk to the aggressors, and without the slightest provocation on the part of the victims.[15]

In this case, the accused purposely sought the unsuspecting victim with intent to inflict a mortal wound on him. He shouted

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[13] *Id.* at 135-136.

[14] *Rollo*, p. 19.

[15] *People v. De Guzman*, G.R. No. 169082, August 17, 2007, 530 SCRA 631, 638.

"Ex-O" just in time for the victim to turn towards his line of fire. When the victim faced him, the accused instantly pulled the trigger hitting him on the left side of his face. The way it was executed made it impossible for the victim to respond or defend himself. He just had no opportunity to repel the sudden attack, rendering him completely helpless.

The accused argues that there could not have been any treachery because the victim knew the threat to his life. The Court has consistently held that treachery can still be appreciated even though the victim was forewarned of the danger[16] because what is decisive is that the attack was executed in a manner that the victim was rendered defenseless and unable to retaliate.[17] In this case, although it is true that the victim knew that the accused had a grudge against him, he never had any inkling that he would actually be attacked that night. In fact, records reveal that the victim was preoccupied with watching television with his back turned against the accused when the latter suddenly barged into the *barangay* hall. Accused, moreover, used a firearm to easily neutralize the victim, which was undeniably a swift and effective way to achieve his purpose. Lastly, but significantly, the accused aimed for the face of the victim ensuring that the bullet would penetrate it and damage his brain.

It is likewise true that the victim was with two other *barangay* officials at the time of the shooting. It should be emphasized though that these two *barangay* officials were also watching television and were also caught by surprise. The accused had already shot the victim before they could even react.

These acts are distinctly indicative of the treacherous means employed by the accused to guarantee the consummation of his criminal plan. Thus, as treachery attended the killing of Loreto Cruz, such circumstance qualified the killing as murder,

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[16] *People v. Rodas*, G.R. No. 175881, August 28, 2007, 531 SCRA 554, 567.

[17] *People v. Mara*, G.R. No. 184050, May 8, 2009, 587 SCRA 839.

punishable under *paragraph 1 of Article 248 of the Revised Penal Code*.[18]

When death results due to a crime, recovery of these awards are allowed: (1) civil indemnity *ex delicto* for the death of the victim; (2) actual or compensatory damages; (3) moral damages; (4) exemplary damages; (5) attorney's fees and expenses of litigation; and (6) interest, in proper cases.[19]

The RTC only awarded ₱50,000.00 as civil indemnity and another ₱50,000.00 as moral damages. The Court deems it proper to award exemplary damages in the amount of ₱30,000.00 following precedents.[20] "Under Article 2230 of the Civil Code, exemplary damages may be awarded in criminal cases when the crime was committed with one or more aggravating circumstances, in this case, treachery. This is intended to serve as deterrent to serious wrongdoings and as vindication of undue sufferings and wanton invasion of the rights of an injured, or as a punishment for those guilty of outrageous conduct. The imposition of exemplary damages is also justified under Article 2229 of the Civil Code in order to set an example for the public good."[21]

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[18] Art. 248. Murder.- Any person who not falling within the provisions of Article 246, shall kill another, shall be guilty of murder and shall be punished by *reclusion perpetua* to death if committed with any of the following attendant circumstances:

1. *With treachery*, taking advantage of superior strength, with the aid of armed men, or employing means to weaken the defense, or of means or persons to insure or afford impunity; x x x

[19] *People v. Gutierrez*, G.R. No. 188602, February 04, 2010 citing *People v. Tolentino*, G.R. No. 176385, February 26, 2008, 546 SCRA 671, 699.

[20] *People v. Mortera*, G.R. 188104, April 23, 2010 citing *People v. Antonio Dalisay y Destresa*, G.R. No. 188106, November 25, 2009, 605 SCRA 807; and *People v. Elmer Peralta y Hidalgo*, G.R. No. 187531, October 16, 2009, 604 SCRA 285.

[21] *People v. Angeles*, G.R. No. 177134, August 14, 2009, 596 SCRA 304, 313.

The Court likewise grants ₱25,000.00 as temperate damages in keeping with current jurisprudence allowing it where the funeral and burial expenses spent for the victim cannot be fully substantiated or there is no proof of actual damages.[22]

WHEREFORE, the April 29, 2009 Decision of the Court of Appeals in CA-G.R. CR No. 31164 is hereby *AFFIRMED* with *MODIFICATION* in that the accused is further ordered to pay ₱30,000.00 as exemplary damages and ₱25,000.00 as temperate damages.

SO ORDERED.

Carpio (Chairperson), Nachura, Peralta, and *Abad, JJ.,* concur.

FIRST DIVISION

[G.R. No. 172962. July 8, 2010]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **ROMEO REPUBLO**, *accused-appellant.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; ALIBI; PROPRIETY THEREOF. — In order that the defense of alibi may prosper, the appellant must prove both the presence of the appellant in another place at the time of the commission of the offense and the physical impossibility of him being at the scene of the crime.

2. ID.; ID.; ID.; ID.; IMPOSSIBILITY FOR ACCUSED TO BE AT THE SCENE AT THE TIME OF CRIME; NOT APPRECIATED IN CASE AT BAR. — In *Marco v. Court of Appeals*, the Court did not find the distance of twelve (12) kilometers far enough as to make it physically impossible for the appellant therein to be at the scene of the crime. In *People v. Bation*, we ruled that there was no physical impossibility for the appellant to be at the scene of the

[22] *People v. Se*, G.R. No. 152966, March 17, 2004, 425 SCRA 725.

crime, citing that the appellant claims to be merely twenty-six (26) kilometers away from said scene. In *People v. Ignas*, the distance was even much farther. x x x We, therefore, find it difficult to uphold accused-appellant's defense of alibi in the case at bar, when he is merely claiming to be living in the adjacent house to that of AAA.

APPEARANCES OF COUNSEL

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

D E C I S I O N

LEONARDO-DE CASTRO, *J.*:

This is an appeal from the Decision[1] dated January 31, 2006 of the Court of Appeals in CA-G.R. CR.-H.C. No. 00348, which affirmed *in toto* the Decision[2] dated April 15, 2002 of the Caloocan City Regional Trial Court (RTC), Branch 128 in Criminal Cases No. C-54755 to 54757 convicting accused-appellant Romeo Republo of two counts of rape and one count of attempted rape.

Three Informations were filed against the accused-appellant:

Criminal Case No. C-54755

That sometime in the morning of September 1997 in Caloocan City, Metro Manila and within the jurisdiction of this Honorable Court, the above-named accused with lewd design and by means of force and intimidation did then and there willfully, unlawfully and feloniously lie and have sexual intercourse with one AAA, a minor of 12 years old, against the latter's will and without her consent.[3]

Criminal Case No. C-54756

That sometime in the afternoon of September 1997 in Caloocan City, Metro Manila and within the jurisdiction of this Honorable

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[1] Penned by Associate Justice Andres B. Reyes with Associate Justices Rosmari D. Carandang and Monina Arevalo-Zenarosa, concurring; *rollo*, pp. 3-14.

[2] CA *rollo*, pp. 15-20.

[3] *Id.* at 6.

Court, the above-named accused, with lewd design and by means of threats and intimidation, did then and there willfully, unlawfully and feloniously attempt to have sexual intercourse with one AAA, a minor of 12 years old, thus commencing directly by overt act, the commission of the crime of "RAPE" as a consequence, but the herein accused was not able to perform all the acts of execution which should constitute the said felony, by reason or causes other than his own spontaneous desistance, that is, the victim was able to [run] outside the room.[4]

Criminal Case No. C-54757

That sometime in the evening of September 1997 in Caloocan City, Metro Manila and within the jurisdiction of this Honorable Court, the above-named accused, with lewd design and by means of force and intimidation, did then and there willfully, unlawfully and feloniously lie and have sexual intercourse with one AAA, a minor of 12 years old, against the latter's will and without her consent.[5]

On December 7, 1998, accused-appellant pleaded NOT GUILTY to the three criminal informations, which were tried jointly.[6]

The prosecution's version of the facts, culled from the testimonies of witnesses AAA, her mother BBB, Police Officer (PO) 3 Constantino Guerrero, and Dr. Tomas Suguitan, is as follows:

In 1997, BBB went to New Guinea Republic, West Africa, to work, leaving her daughter, AAA, with the family of her older sister, RRR, in a house they were renting in Bagong Silang, Caloocan City. The accused-appellant is RRR's husband.

All three incidents happened sometime in September 1997, on three different dates. The first incident occurred at around 9:00 a.m. on a Saturday, when then 11-year old AAA was awakened from her sleep by accused-appellant. Only AAA

[4] *Id.* at 7.

[5] *Id.* at 8.

[6] Records, p. 19.

and accused-appellant were in the house at that time. Accused-appellant, who was wearing only his shorts, pulled her blanket, forced her to lie down and undressed her. Upon removing her shorts, accused-appellant inserted his penis inside her vagina. He then left.[7]

The second incident happened at around 3:00 p.m., two days later. While AAA was doing her schoolwork inside her room, accused-appellant entered the room and immediately went on top of her. However, as the daughter of accused-appellant was inside the house, AAA was able to run outside. AAA went to her aunt LLL's house.[8] Aunt LLL is the wife of BBB's brother. The latter was not in his and LLL's house at the time AAA went there.

Around two days later, AAA was preparing to sleep with accused-appellant's children at around 10:00 p.m. AAA laid down beside the three children. When the accused-appellant's three children were already sleeping, accused-appellant laid down beside AAA, and threatened her not to tell anybody about what was happening, or else he would kill her family. AAA was afraid and believed that accused-appellant would execute his threat as she knows that "he is a bad man." Accused-appellant then removed her shorts and inserted his private part into hers.[9]

BBB learned of these incidents on July 24, 1998, when she had already returned to the Philippines. On that night, AAA asked her what "rape" was. As AAA was still so young, BBB was reluctant to tell her what was meant by the word rape. AAA, however, insisted and, when BBB finally told her, BBB inquired why she was asking about the same. AAA told her that it already happened to her when accused-appellant went on top of her ("*pinatungan*"). BBB immediately went to the house of accused-appellant, but he was out on a drinking spree. She confronted her sister, RRR, who claimed that she did not know anything of the matter.[10]

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[7] TSN, August 5, 1999, pp. 2-4, 12-13.

[8] *Id.* at 5, 14-15.

[9] *Id.* at 5-6.

[10] *Id.* at 19-22.

BBB then had AAA medically examined.[11] The third prosecution witness, Dr. Tomas D. Suguitan, whose competence and expertise had been admitted by the defense, observed that AAA had two healed shallow lacerations at 2 o'clock and 6 o'clock positions of her hymen. Dr. Suguitan concluded that AAA was in a non-virgin state when she was medically examined. AAA told Dr. Suguitan that she was sexually abused by accused-appellant.[12]

On August 10, 1988, BBB and AAA went to the police station to give their statement. Fourth prosecution witness PO2 Guerrero took the statements of AAA and BBB regarding the incidents.[13]

The defense presented accused-appellant Republo as its lone witness. Republo denied having raped AAA. Instead, he believed that the rape charges were filed against him in order to teach him a lesson, as there were several incidents that allegedly infuriated BBB, to wit:

On November 15, 1997, accused-appellant purportedly caught AAA sitting on the lap of her boyfriend, and they were embracing each other. The following morning, he talked to AAA and told her that she was too young to be in a romantic relationship. Resenting this advice, AAA replied to him in a disrespectful manner. Accused-appellant got so annoyed with AAA that he kicked her twice at her thighs. AAA ran to her aunt LLL's house and told her about the incident. LLL confronted accused-appellant. Accused-appellant told LLL that he caught AAA with her boyfriend the previous night. There was also another time when accused-appellant was drunk that he quarreled with BBB. During this quarrel, accused-appellant destroyed some of BBB's furniture and appliances. He uttered the following words against BBB and AAA: "*YUNG ANAK MO, GUSTONG MAG-ARAL SA IYO, MAKATI KA, MAY ASAWA KANG TUNAY, NAGLALANDI KA LANG, IKAW, MAKATI KA,*

[11] *Id.* at 22.

[12] TSN, August 11, 1999, pp. 2-6.

[13] TSN, August 12, 1999, pp. 3-5.

NAGMANA KA SA INA MO." BBB later on told accused-appellant that the rape cases were filed in order to teach him a lesson.[14]

Accused-appellant claims that AAA began living with them only in November 1997. AAA's grandfather had just died at that time, and the parents of AAA asked accused-appellant and RRR to take care of AAA and her sister, MMM.

On April 15, 2002, the RTC of Caloocan City rendered its Decision convicting accused-appellant, the dispositive portion of which read:

> WHEREFORE, finding the accused Romeo Republo guilty beyond reasonable doubt for two (2) counts of Rape [in] Criminal Cases Nos. CO 54755 [and] 54757, he is hereby sentenced to suffer imprisonment of *reclusion perpetua* in each cases and indeterminate penalty of six (6) years and one day maximum of *prision correccional* as minimum to eight (8) years minimum of *prision mayor* as maximum under Criminal Case No. C-54756. Accused is likewise ordered to indemnify the private complainant the amount of ₱50,000.00 as moral damages and ₱50,000.00 for civil damages for each count of consummated rape. The accused is entitled to the benefits of his preventive imprisonment.
>
> The City Warden of Caloocan City is hereby ordered to commit the person of the accused to the National Bilibid Prison, Muntinlupa City, to serve his sentence.[15]

The RTC held that the straightforward testimony of AAA and the impartial findings of the medico-legal officer led it to believe that accused-appellant committed the crimes charged. The RTC likewise found the credibility of accused-appellant doubtful, finding it unbelievable his claim that AAA filed complaints for two counts of rape and one count of attempted rape merely because accused-appellant maltreated her when she rudely answered him after he warned her to be careful about her relationship with her alleged boyfriend.

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[14] TSN, July 10, 2001, pp. 3-12; TSN, July 23, 2001, pp. 2-9.

[15] CA *rollo*, p. 20.

Accused-appellant appealed the three convictions to this Court, where the cases were originally docketed as G.R. No. 154292-94. However, pursuant to the Decision of this Court in *People v. Mateo*,[16] which modified the provisions of the Revised Rules on Criminal Procedure insofar as they provide for direct appeals to this Court in cases where the penalty imposed is death, *reclusion perpetua* or life imprisonment, the cases were transferred to the Court of Appeals for appropriate action and disposition.[17] Upon transfer, the cases were docketed as a single case as CA-G.R. CR.-H.C. No. 00348. On January 31, 2006, the Court of Appeals affirmed the RTC Decision *in toto*.[18]

Accused-appellant appealed to this Court anew,[19] with both parties manifesting that they will no longer file supplemental briefs, as the issues had already been thoroughly discussed in the Appellee's and Accused-Appellant's Briefs filed in the original appeal that was transferred to the Court of Appeals.[20]

In said Accused-Appellant's Brief, Republo specified the following assignment of errors:

I

THE TRIAL COURT ERRED IN GIVING CREDENCE TO THE PROSECUTION'S WITNESSES['] INCREDIBLE TESTIMONIES.

II

THE TRIAL COURT ERRED IN CONVICTING THE ACCUSED-APPELLANT OF TWO (2) COUNTS OF RAPE AND ONE (1) COUNT OF ATTEMPTED RAPE WHEN HIS GUILT WAS NOT PROVEN BEYOND REASONABLE DOUBT.[21]

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[16] G.R. Nos. 147678-87, July 7, 2004, 433 SCRA 640.

[17] CA *rollo*, p. 61.

[18] *Id.* at 104-115.

[19] *Id.* at 116.

[20] *Rollo*, pp. 16-17; 23-24.

[21] CA *rollo*, p. 39.

In insisting that AAA's testimony was incredible, the accused-appellant, in his brief, focuses on two arguments:

1. Accused-appellant points out that BBB entrusted the custody of AAA to BBB's mother and niece. This allegedly being the case, accused-appellant contends that it is highly inconceivable for AAA's grandmother to let the children of BBB stay in accused-appellant's house considering that BBB specially provided for an apartment for her mother and her children. There was therefore no need for AAA to live with the accused-appellant considering that she had a place of her own.[22]

2. Accused-appellant points out that AAA had testified that she informed her aunt, LLL, about the rape incidents, but the latter did not do anything about said information. Accused-appellant added that "[i]t would be reasonable to presume that [LLL] did not find any reason to believe the allegations of [AAA] against the accused-appellant. Otherwise, [LLL] would have relayed the matter to [AAA]'s grandmother."[23]

Accused-appellant's first argument is apparently meant to support his alibi, that he and AAA supposedly lived in the same house only in November 1997 upon the request of AAA's parents after AAA's grandfather died. Citing the following portion of BBB's cross-examination, accused-appellant contends that it is highly inconceivable for AAA's grandmother, who was entrusted with the custody of AAA, to let the children of BBB stay in accused-appellant's house considering that BBB specially provided an apartment for her children:

Q Now, you mentioned of a house adjacent to the house of your sister, what is that house adjacent to the house of your sister?
A It is a house made of light materials, sir.

Q That is not the house of your sister [RRR]?
A They were just renting that, sir.

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[22] *Rollo*, p. 48.

[23] *Id*.

Q How about the adjoining house?
A That is the same, sir, they were just renting it.

Q Who [was] renting it?
A I was the one renting because I was the one sending the money, sir.

Q To whom?
A To my mother, sir.

Q So you were the one leasing this house in Bagong Silang?
A Yes, sir.

Q Which is a two adjacent structure?
A Yes, sir.

Q The one structure occupied by your sister [RRR] and her family and the adjacent structure was occupied by your mother and children?
A Yes, sir.

Q And you know that your mother, your children, were staying in Bagong Silang while you were abroad?
A Yes, sir, I know that.

Atty. Ibanes to Witness –

Q Because you were the one sending the money to your mother in Bagong Silang for the payment of the rentals of this adjoining structure occupied by your children and your mother?
A Yes, sir.

Q Aside from your mother, who were residing in that structure adjacent to the house of the Republos?
A My mother, my children and one of my niece [NNN] and her husband, sir.

Q How many children of yours are residing there?
A Three (3) children, sir.

xxx xxx xxx

Q And this [HHH], [NNN] and your mother were the persons to whom you entrusted your children while you were staying abroad?
A Yes, sir.[24]

Accused-appellant concludes that it was physically impossible for him to have raped AAA in September 1997 considering that he and AAA lived in the same house only in November 1997.[25]

In order that the defense of alibi may prosper, the appellant must prove both the presence of the appellant in another place at the time of the commission of the offense and the physical impossibility of him being at the scene of the crime.[26]

In *Marco v. Court of Appeals,* [27] the Court did not find the distance of twelve (12) kilometers far enough as to make it physically impossible for the appellant therein to be at the scene of the crime. In *People v. Bation*,[28] we ruled that there was no physical impossibility for the appellant to be at the scene of the crime, citing that the appellant claims to be merely twenty-six (26) kilometers away from said scene. In *People v. Ignas*,[29] the distance was even much farther:

Basic is the rule that for alibi to prosper, the accused must prove that he was somewhere else when the crime was committed and that it was physically impossible for him to have been at the scene of the crime. Physical impossibility refers to the distance between the place where the appellant was when the crime transpired and the place where it was committed, as well as the facility of access between the two places. In these cases, the defense admitted that the distance between La Trinidad, Benguet and Kayapa, Nueva Vizcaya is 79

[24] TSN, August 5, 1999, pp. 24-25.

[25] CA *rollo*, p. 49.

[26] *Marco v. Court of Appeals*, 339 Phil. 467, 474 (1997).

[27] *Id.* at 475.

[28] 419 Phil. 494, 516 (2001).

[29] 458 Phil. 965, 993 (2003).

kilometers, which can be negotiated in 4 or 5 hours. Clearly, it was not physically impossible for appellant to be at the *locus criminis* at the time of the killing. Hence, the defense of alibi must fail.

We, therefore, find it difficult to uphold accused-appellant's defense of alibi in the case at bar, when he is merely claiming to be living in the adjacent house to that of AAA.

In so far as the above testimony of BBB on cross-examination was being offered as proof that the testimony of AAA was incredible, we fail to find any irreconcilable inconsistency in AAA and BBB's statements so as to conclude that AAA had been lying about living in accused-appellant's house, much less that she had been lying about the rape incidents.

In said cross-examination, counsel for accused-appellant was able to elicit from BBB an admission that she had entrusted AAA to her mother, her niece, NNN, and the latter's husband, HHH. However, for accused-appellant to subtly conclude on this premise that AAA's aunt, accused-appellant's wife, RRR, was not entrusted just the same with the care of AAA, is a *non sequitur*. Contrary to accused-appellant's contention, it is not at all inconceivable for AAA's grandmother to let the children of BBB stay in RRR and accused-appellant's house, as the same is very close, adjacent in fact, to the house where she (AAA's grandmother) is staying.

As regards the testimony of AAA that she informed her aunt, LLL, about the rape incidents, but the latter did not do anything about said information, we likewise do not subscribe to accused-appellant's hasty conclusion that LLL did not do anything because she did not believe AAA was telling the truth. While we can think of many possible explanations why LLL would choose not to get involved in such a potentially messy situation, it is best not to indulge in the defense's speculations on the same, especially since LLL was not even presented as a witness. The trial court, which was able to observe the demeanor of AAA and accused-appellant, concluded that it was AAA who was truthful in her testimony on the harrowing events of September 1997. It is the bounden duty of the trial court to

determine the credibility of witnesses for both sides and to weigh the probative value of their testimonies, just as it is the trial court's duty not to rely on, or consider as evidence, the purported opinion of a person who was never even presented as a witness in the case.

We furthermore agree with the finding of the trial court that it is unbelievable that AAA would file complaints for two counts of rape and one count of attempted rape just to exact revenge for the time accused-appellant allegedly kicked her. We are convinced even less that BBB would persuade her daughter to lie about such rape incidents because of her quarrel with accused-appellant. Thus, we have repeatedly held that:

> Not a few accused in rape cases have attributed the charges brought against them to family feuds, resentment, or revenge. But such alleged motives have never swayed the Court from lending full credence to the testimony of a complainant who remained steadfast throughout her direct and cross-examinations, especially a minor as in this case. Further, we simply cannot believe that a lass of tender age would concoct a tale of defloration, allow the examination of her private parts, and undergo the expense, trouble, inconvenience, not to mention the trauma, of a public trial, unless she was in fact raped. No young and decent Filipina would publicly admit that she was ravished and her honor tainted unless such was true, for it would be instinctive for her to protect her honor.[30]

On the civil aspect of the case at bar, the trial court correctly found accused-appellant civilly liable in the amount of ₱50,000.00 as moral damages and ₱50,000.00 as civil indemnity for each of the counts of consummated rape. These amounts are consistent with prevailing jurisprudence.[31] The trial court, however, omitted the civil liabilities of accused-appellant for the attempted rape. Prevailing jurisprudence sets the amount of the civil indemnity in attempted rape at ₱30,000.00 and moral

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[30] *People v. Gagto*, 323 Phil. 539, 555-556 (1996).

[31] *People v. Biong*, 450 Phil. 433, 449 (2003); *People v. Pagsanjan*, 442 Phil. 667, 687 (2002).

damages at ₱25,000.00.[32] We hereby modify the disposition in the lower courts to include such amounts.

WHEREFORE, the Court of Appeals' Decision dated January 31, 2006 in CA-G.R. CR.-H.C. No. 00348, which affirmed *in toto* the Caloocan City Regional Trial Court's Decision dated April 15, 2002 in Criminal Cases No. C-54755 to 54757, is hereby *AFFIRMED*, with the *MODIFICATION* that accused-appellant Romeo Republo is further *ORDERED* to indemnify private complainant in the amount of ₱30,000.00 as civil indemnity and ₱25,000.00 as moral damages in Criminal Case No. C-54756 for attempted rape.

SO ORDERED.

Corona, C.J. (Chairperson), Velasco, Jr., Del Castillo, and *Perez, JJ.,* concur.

EN BANC

[G.R. No. 174697. July 8, 2010]

CHAMBER OF REAL ESTATE AND BUILDERS' ASSOCIATIONS, INC. (CREBA), *petitioner, vs.* **ENERGY REGULATORY COMMISSION (ERC) and MANILA ELECTRIC COMPANY (MERALCO),** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; PARTIES; LEGAL STANDING, ELUCIDATED. — Legal standing or *locus standi* refers to a party's personal and substantial interest in a case, arising from the direct injury it has sustained or will sustain as a result of the challenged governmental action. Legal standing

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[32] *People v. Miranda*, G.R. No. 169078, March 10, 2006, 484 SCRA 555, 569-570.

calls for more than just a generalized grievance. The term "interest" means a material interest, an interest in issue affected by the governmental action, as distinguished from mere interest in the question involved, or a mere incidental interest. Unless a person's constitutional rights are adversely affected by a statute or governmental action, he has no legal standing to challenge the statute or governmental action.

2. POLITICAL LAW; ADMINISTRATIVE LAW; SUBDIVISION AND CONDOMINIUM BUYER'S PROTECTIVE DECREE (PD 957); IMPLEMENTING RULES; MINIMUM DESIGN STANDARDS FOR SUBDIVISIONS; ELECTRICAL POWER SUPPLY SYSTEM. — Section 1, Rule I of the Revised Rules and Regulations Implementing the Subdivision and Condominium Buyer's Protective Decree (PD 957) and Other Related Laws provides the minimum design standards for subdivisions. These minimum standards include an electrical power supply, described under subsection C(7) thus: 7. Electrical Power Supply System. Mandatory individual household connection to primary and/ or alternate sources of power. x x x x Provision of street lighting per pole is mandatory at 50-meter distance and every other pole if distance is less than 50 meters. Thus, subdivision developers are obligated under these rules to include in their design an electrical power supply system that would link individual households within their subdivision to primary and/ or alternate sources of power. This requirement is intended to protect the rights of prospective subdivision homeowners, and exists regardless of the validity of Section 2.6 of the DSOAR.

3. REMEDIAL LAW; CIVIL PROCEDURE; PARTIES; LEGAL STANDING; ON TRANSCENDENTAL ISSUE INVOLVED; DETERMINING GUIDES THEREOF. — The Court, through Associate Justice Florentino P. Feliciano (now retired), provided the following instructive guides as determinants in determining whether a matter is of transcendental importance: (1) the character of the funds or other assets involved in the case; (2) the presence of a clear case of disregard of a constitutional or statutory prohibition by the public respondent agency or instrumentality of the government; and (3) the lack of any other party with a more direct and specific interest in the questions being raised.

4. ID.; SPECIAL CIVIL ACTIONS; *CERTIORARI*; APPLICATION TO TRIBUNAL ONLY ON THE EXERCISE OF JUDICIAL OR QUASI-JUDICIAL FUNCTIONS. — Rule 65, Section 1 of the Rules of Court mandates that the remedy of *certiorari* is directed against a tribunal, board, or officer exercising judicial or quasi-judicial functions: Section 1. *Petition for certiorari*.—When any tribunal, board or officer exercising **judicial or quasi-judicial functions** has acted without or in excess of its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, and there is no appeal, nor any plain, speedy, and adequate remedy in the ordinary course of law, a person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered annulling or modifying the proceedings of such tribunal, board or officer, and granting such incidental reliefs as law and justice may require. Judicial functions are exercised by a body or officer clothed with authority to determine what the law is and what the legal rights of the parties are with respect to the matter in controversy. Quasi-judicial function is a term that applies to the action or discretion of public administrative officers or bodies given the authority to investigate facts or ascertain the existence of facts, hold hearings, and draw conclusions from them as a basis for their official action using discretion of a judicial nature. Thus, in *Philnabank Employees Association v. Estanislao*, we did not grant a petition for *certiorari* against the Department Secretary who did not act in any judicial or quasi-judicial capacity but merely promulgated the questioned implementing rules under the mandate of Republic Act No. 6971, the applicable law in this cited case. x x x Rule 65 requires, for a petition for *certiorari* to be an appropriate remedy, that there be no appeal or plain, speedy, and adequate remedy in the ordinary course of law.

5. ID.; ID.; DECLARATORY RELIEF; PROPER REMEDY TO ASSAIL THE VALIDITY OF AN ADMINISTRATIVE RULE. — [T]he petitioner assails the validity of a rule or statute and seeks our declaration that the rule is unconstitutional, a petition for declaratory relief under Section 1, Rule 63 of the Rules of Court provides a remedy more appropriate than *certiorari*.

6. ID.; ID.; *CERTIORARI*; RULE ON HIERARCHY OF COURTS MUST BE EXERCISED; WHEN THE SUPREME COURT WILL ENTERTAIN THE PETITION. — [T]he Court of Appeals and

the Supreme Court have original concurrent jurisdiction over petitions for *certiorari*; the rule on hierarchy of courts determines the venue of recourses to these courts. In original petitions for *certiorari*, the Supreme Court will not directly entertain this special civil action – as in the present case – **unless** the redress desired cannot be obtained elsewhere based on exceptional and compelling circumstances justifying immediate resort to this Court.

7. ID.; ID.; ID.; NOT PROPER IF THE SAME IS THE WRONG REMEDY. — In the present case, the petitioner cannot come before this Court using an incorrect remedy and claim that it was oppressed, or that its rights to due process and equal protection have been violated by an administrative issuance that does not even affect its rights and obligations. The writ of *certiorari* is an extraordinary remedy that the Court issues only under closely defined grounds and procedures that litigants and their lawyers must scrupulously observe. They cannot seek refuge under the umbrella of this remedy on the basis of an undemonstrated claim that they raise issues of transcendental importance, while at the same time flouting the basic ground rules for the remedy's grant.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner
Public Attorney's Office for respondents.

D E C I S I O N

BRION, *J.*:

This is a Petition for *Certiorari* with Prayer for the Issuance of a Temporary Restraining Order and/or Writ of Preliminary Injunction[1] to nullify Section 2.6 of the Distribution Services and Open Access Rules (DSOAR), promulgated by respondent Energy Regulatory Commission (ERC) on January 18, 2006. Petitioner Chamber of Real Estate and Builders' Associations,

[1] *Rollo,* pp. 3-22.

Inc. asserts that Section 2.6 of the DSOAR, which obligates certain customers to advance the amount needed to cover the expenses of extending lines and installing additional facilities, is unconstitutional and contrary to Republic Act No. 9136, otherwise known as "The Electric Power Industry Reform Act of 2001 (EPIRA)."

THE BACKGROUND FACTS

The petitioner is a non-stock, non-profit corporation, organized under the laws of the Republic of the Philippines, with principal office at 3/F CREBA Center, Don Alejandro Roces Avenue cor. South "A" Street, Quezon City. It has almost 4,500 members, comprising of developers, brokers, appraisers, contractors, manufacturers, suppliers, engineers, architects, and other persons or entities engaged in the housing and real estate business.[2]

The ERC is a quasi-judicial and quasi-legislative regulatory body created under Section 38 of the EPIRA, with office address at the Pacific Center Building, San Miguel Avenue, Ortigas Center, Pasig City. It is an administrative agency vested with broad regulatory and monitoring functions over the Philippine electric industry to ensure its successful restructuring and modernization, while, at the same time, promoting consumer interest.[3]

Respondent Manila Electric Company (MERALCO) is a corporation organized under the laws of the Republic of the Philippines, with principal office at Lopez Building, Ortigas Avenue, Pasig City. It is engaged primarily in the business of power production, transmission, and distribution. It is the largest distributor of electricity in the Philippines.[4]

Pursuant to its rule-making powers under the EPIRA, the ERC promulgated the Magna Carta for Residential Electricity Consumers (*Magna Carta*), which establishes residential

[2] *Id.* at 4.

[3] *Id.* at 153.

[4] *Id.* at 5.

consumers' rights to have access to electricity and electric service, subject to the requirements set by local government units and distribution utilities (*DUs*).[5] **Article 14** of the Magna Carta pertains to the rights of consumers to avail of extension lines or additional facilities. It also *distinguishes between consumers located within 30 meters from existing lines and those who are located beyond 30 meters; the latter have the obligation to advance the costs of the requested lines and facilities*, to wit:

> Article 14. Right to Extension of Lines and Facilities.—A consumer located within thirty (30) meters from the distribution utilities' existing secondary low voltage lines, has the right to an extension of lines or installation of additional facilities, other than a service drop, at the expense of the utility inasmuch as said assets will eventually form part of the rate base of the private distribution utilities, or will be sourced from the reinvestment funds of the electric cooperatives. However, if a prospective customer is beyond the said distance, or his demand load requires that the utility extend lines and facilities, the customer may initially fund the necessary expenditures.

Article 14 of the Magna Carta continues with a provision on how the costs advanced by the residential end-user can be recovered:

> To recover his aforementioned expenditures, the customer may either demand the issuance of a notes payable from the distribution utility or refund at the rate of twenty-five (25) percent of the gross distribution revenue derived for the calendar year, or, if available, the purchase of preferred shares.
>
> Revenue derived from additional customers tapped directly to the poles and facilities so extended shall be considered in determining the revenues derived from the extension of facilities.

The same article specifies that if a developer initially pays the cost of the extension lines but passes it to the registered customer, the customer would still be entitled to recover the cost in the manner provided under this article:

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[5] Under Section 4(q) of the EPIRA, a distribution utility refers to any electric cooperative, private corporation, government-owned utility, or existing local government unit which has an exclusive franchise to operate a distribution system in accordance with this Act.

When a developer initially paid the cost of the extension of lines to provide electric service to a specific property and incorporated these expenses in the cost thereof, and that property was purchased and transferred in the name of the registered customer, the latter shall be entitled to the refund of the cost of the extension of lines, and exercise the options for refund provided in this article.

On January 18, 2006, the ERC modified this provision when it issued the DSOAR. Section 2.6.1 reiterates the old rule requiring consumers located beyond 30 meters from existing lines to advance the costs of the requested lines and facilities. Section 2.6.2 likewise provides that the costs advanced by consumers may be refunded at the rate of 25% of the annual gross distribution revenue derived from all customers connected to the line extension. However, Section 2.6.2 amends Article 14 of the Magna Carta by limiting the period for the refund to five years, whether or not the amount advanced by the consumer is fully paid. Section 2.6 of the DSOAR decrees that:

2.6. MODIFICATIONS AND NEW PHYSICAL CONNECTIONS: RESIDENTIAL

2.6.1 RIGHT TO EXTENSION OF LINES AND FACILITIES – In accordance with the Magna Carta, a residential End-user located within thirty (30) meters from the distribution utilities' existing secondary low voltage lines has the right to an extension of lines or installation of additional facilities, other than a service drop, at the expense of the utility. However, if a prospective customer is beyond the said distance, the customer shall advance the amounts necessary to cover the expenditures on the facilities beyond thirty (30) meters.

2.6.2 REFUND—To recover the aforementioned advanced payment, the customer may either demand the issuance of a notes payable from the distribution utility or a refund at the rate of twenty-five (25) percent of the gross distribution revenue derived from all customers connected to the line extension for the calendar year until such amounts are fully refunded or for five (5) years whichever period is shorter, or, if available, the purchase of preferred shares. Revenue derived from additional customers tapped directly to the poles and facilities so extended shall be considered in determining the revenues derived from the extension of facilities.

Distribution Connection Assets paid for through advances from residential End-users shall be deemed plant in service in the accounts of the DU. Unpaid advances shall be a reduction to plant in service. If replacement becomes necessary at any time for any Distribution Connection Assets paid for by residential End-users, the DU shall be solely responsible for the cost of such replacement which shall become plant in service in the accounts of the DU, and shall not require another advanced payment from the connected residential End-users unless the replacement is due to End-user fault.

The petitioner alleged that the entities it represented applied for electrical power service, and MERALCO required them to sign *pro forma* contracts that (1) obligated them to advance the cost of the construction of new lines and other facilities and (2) allowed annual refunds at 25% of the gross distribution revenue derived from the customer's electric service, until the amount advanced is fully paid, pursuant to Section 2.6 of the DSOAR.[6]

The petitioner seeks to nullify Section 2.6 of the DSOAR, on the following grounds: (1) it is unconstitutional since it is oppressive and it violates the due process and equal protection clauses; (2) it contravenes the provisions of the EPIRA; and (3) it violates the principle of unjust enrichment.[7]

Petitioner claims that Section 2.6 of the DSOAR is unconstitutional as it is oppressive to the affected end-users who must advance the amount for the installation of additional facilities. Burdening residential end-users with the installation costs of additional facilities defeats the objective of the law – the electrification of residential areas – and contradicts the provisions of the legislative franchise, requiring DUs to be financially capable of providing the distribution service. Moreover, the questioned provision violates the equal protection clause since the difference in treatment between end-users

[6] *Rollo*, pp. 7-9.

[7] *Id.* at 7.

residing within 30 meters of the existing lines and those beyond 30 meters does not rest on substantial distinctions.[8]

In addition, the petitioner alleges that the assailed provision contravenes Sections 2, 23, 41 and 43 of the EPIRA[9] which are geared towards ensuring the affordability of electric power and the protection of consumers.[10] Lastly, requiring consumers to provide the huge capital for the installation of the facilities, which will be owned by distribution utilities such as MERALCO, results in unjust enrichment.[11]

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[8] *Id.* at 11-15.

[9] Section 2. Declaration of Policy. - It is hereby declared the policy of the State:

x x x x x x x x x

b) To ensure the quality, reliability, security and affordability of the supply of electric power;

c) To ensure transparent and reasonable prices of electricity in a regime of free and fair competition and full public accountability to achieve greater operational and economic efficiency and enhance the competitiveness of Philippine products in the global market;

x x x x x x x x x

f) To protect the public interest as it is affected by the rates and services of electric utilities and other providers of electric power[.]

Section 23. *Functions of Distribution Utilities*. - A distribution utility shall have the obligation to provide distribution services and connections to its system for any end-user within its franchise area consistent with the distribution code. Any entity engaged therein shall provide open and non-discriminatory access to its distribution system to all users.

x x x x x x x x x

Section 41. x x x The ERC shall handle consumer complaints and ensure the adequate promotion of consumer interests.

x x x x x x x x x

Section 43. *Functions of the ERC.* The ERC shall promote competition, encourage market development, ensure customer choice and penalize abuse of market power in the restructured electricity industry.

[10] *Rollo*, pp. 15-17.

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

THE RESPONDENTS' CASE

a. The ERC Position

Contradicting the petitioner's arguments, the ERC avers that it issued Section 2.6 of the DSOAR as an exercise of police power directed at promoting the general welfare. The rule seeks to address the inequitable situation where the cost of an extension facility benefiting one or a few consumers is equally shared by them.[12]

The ERC likewise asserts that the equal protection clause is observed since the distinction between end-users residing within 30 meters of the existing lines and those beyond 30 meters is based on real and substantial differences, namely: (1) proximity of end-user service drop to the main distribution lines; (2) manner of checking status service; (3) system loss risk; (4) cost in installing the facilities; and (5) additional risk posed by the possibility of the customer defaulting in his electric service with the DU.[13]

The ERC also maintains that Section 2 of the DSOAR is consistent with Sections 2, 23, 41 and 43 of the EPIRA. By not subjecting most consumers to the payment of installation costs benefitting customers located beyond a reasonably-set boundary, the provision in question gives effect to the EPIRA policy to ensure that the prices of electricity remain affordable, transparent, and reasonable to the majority. The policy of accelerating the total electrification of the country is also served when the residents of far-flung areas are given the option to apply for extension lines. This option is subject only to the condition that the cost of the extension of existing lines is advanced by the end-user, who will eventually be reimbursed; without such condition, businesses will be reluctant to provide service connection in remote areas.[14]

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[12] *Id.* at 288-289.

[13] *Id.* at 294.

[14] *Id.* at 297.

Additionally, the ERC points out that the DSOAR provisions do not result in unjust enrichment since the DUs do not stand to be materially benefited by the customers' advances. The DUs have the obligation to reimburse the customers the advances within five years, and whatever advances are unpaid during the five-year period are recorded as reductions in "plant in service."[15]

Finally, it argues that petitioner lacks the standing to file the present suit since the petitioner is not an end-user who will sustain a direct injury as a result of the issuance and implementation of the DSOAR. The ERC likewise maintains the petition for *certiorari* must fail since petitioner fails to impute grave abuse of discretion to the ERC.[16]

b. The MERALCO Position

MERALCO reiterates the defenses raised by the ERC. It also contends that the present petition does not involve the ERC's judicial and quasi-judicial functions so that a petition for *certiorari* is an improper remedy. MERALCO likewise argues that the petition for *certiorari*, assuming it to be a correct remedy, should be dismissed since the petitioner failed to observe the doctrine of hierarchy of courts by filing an original petition with this Court.

On the merits, MERALCO points out that even if Section 2.6 of the DSOAR is struck down, the provision in the Magna Carta, on the same point, would nevertheless require end-users located beyond 30 meters from existing lines to advance the cost. The petitioner's members are not also end-users, but subdivision developers, brokers, and various entities who are not affected by the questioned provision; if a developer would apply for electric service, the terms and conditions of the service will not be governed by Section 2.6 of the DSOAR.[17]

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[15] *Id.* at 298-300.

[16] *Id.* at 300-304.

[17] *Id.* at 315, 318.

MERALCO also elaborates on why the provision does not result in unjust enrichment and justifies the distinction between end-users within the 30-meter limit and those located outside of this limit. The DSOAR provides that the unpaid amounts that the end-users advanced for the electrical facilities are not included in "plant in service." The total "plant in service" is the basis in fixing the rates collected by the DU from all its customers. By having the end-users, located 30 meters away from existing lines, advance the amount, this amount is no longer included in the rates passed on to regular consumers. The DSOAR further limits the subsidies by regular consumers, by limiting the amount to be recovered to 25% and to five years. Thus, if the costs of the lines are too great and the revenues are too small, it is the end-user who would bear the cost and not the regular customers.[18]

THE ISSUES

The petitioner summarizes the issues as follows:

Procedural Issues:

A. Whether petitioner can challenge the constitutionality of a quasi-legislative act (*i.e.*, the Rules) in a petition for *certiorari* under Rule 65 of the Rules of Court.

B. Whether the Honorable Supreme [Court] has original jurisdiction over this case.

C. Whether petitioner has legal standing to sue.

D. Whether petitioner is authorized to file this suit.

Substantive issues:

A. Whether Section 2.6 of the Rules violates the due process and equal protection clause of the Constitution.

B. Whether Section 2.6 of the Rules violates R.A. No. 9136.

C. Whether Section 2.6 of the Rules violates the rule against unjust enrichment.

[18] *Id.* at 323-324.

D. Whether Section 2.6 of the Rules is a valid exercise of police power.[19]

THE COURT'S RULING

We resolve to dismiss the petition for its serious procedural and technical defects.

a. The Petitioner Has No Legal Standing

We do not see the petitioner as an entity with the required standing to assail the validity of Section 2.6 of the DSOAR.

Legal standing or *locus standi* refers to a party's personal and substantial interest in a case, arising from the direct injury it has sustained or will sustain as a result of the challenged governmental action. Legal standing calls for more than just a generalized grievance. The term "interest" means a material interest, an interest in issue affected by the governmental action, as distinguished from mere interest in the question involved, or a mere incidental interest. Unless a person's constitutional rights are adversely affected by a statute or governmental action, he has no legal standing to challenge the statute or governmental action.[20]

The petitioner expressly enumerates its members to be the following: developers, brokers, appraisers, contractors, manufacturers, suppliers, engineers, architects, and other persons or entities engaged in the housing and real estate business.[21] It does not question the challenged DSOAR provision as a residential end-user and it cannot because the challenged provision only refers to the rights and obligations of DUs and residential end-users; neither the petitioner nor its members are residential

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[19] *Id.* at 236.

[20] *Abaya v. Ebdane*, G.R. No. 167919, February 14, 2007, 515 SCRA 720, 756-757; *Olama v. Philippine National Bank*, G.R. No. 169213, June 22, 2006, 492 SCRA 343, 353; and *Jumamil v. Café*, G.R. No. 144570, September 21, 2005, 470 SCRA 475, 487.

[21] *Rollo*, p. 4.

end-users. In fact, the DSOAR has separate provisions for the extension of lines or installation of additional facilities for non-residential end-users, under its Section 2.7 entitled "Modifications and New Connections: Non-Residential." Thus, neither the petitioner nor its members can claim any injury, as residential end-users, arising from the challenged Section 2.6 of the DSOAR, nor cite any benefit accruing to them as residential end-users that would result from the invalidation of the assailed provision.

The petitioner meets the objection to its capacity to bring suit through the claim that subdivision developers are directly affected by the assailed provision because MERALCO has asked them to advance the cost of installing additional lines and facilities, in accordance with Section 2.6 of the DSOAR.[22] This claim is specious.

Section 1, Rule I of the Revised Rules and Regulations Implementing the Subdivision and Condominium Buyer's Protective Decree (PD 957) and Other Related Laws provides the minimum design standards for subdivisions. These minimum standards include an electrical power supply, described under subsection C(7) thus:

7. Electrical Power Supply System

Mandatory individual household connection to primary and/or alternate sources of power.

xxx xxx xxx

Provision of street lighting per pole is mandatory at 50-meter distance and every other pole if distance is less than 50 meters.

Thus, subdivision developers are obligated under these rules to include in their design an electrical power supply system that would link individual households within their subdivision to primary and/or alternate sources of power. This requirement is intended

[22] *Id.* at 249.

to protect the rights of prospective subdivision homeowners,[23] and exists regardless of the validity of Section 2.6 of the DSOAR.

In other words, the invalidation of Section 2.6 of the DSOAR would not permit subdivision developers to renege from their duty to ensure power supply and to pass the costs of installing a proper electrical power supply system to MERALCO. In this light, it is immaterial that MERALCO did require certain developers to sign the Agreement for Extension of Lines And/Or Additional Facilities[24] as this was required under the provisions of the Magna Carta, not under the assailed DSOAR provision that, in the first place, does not govern the relationship of subdivision developers (who are not residential end-users) and MERALCO.

a. 1. No Transcendental Issue Involved

The petitioner cites instances when the Court, in the exercise of its discretion, waived the procedural rule on standing in cases that raised issues of transcendental importance. We do not, however, view the present case as one involving a matter of transcendental importance so that a waiver of the *locus standi* rule should be recognized.

The Court, through Associate Justice Florentino P. Feliciano (now retired), provided the following instructive guides as determinants in determining whether a matter is of transcendental importance: (1) the character of the funds or other assets involved

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[23] The "WHEREAS" clauses of Presidential Decree No. 957 state that:

WHEREAS, it is the policy of the State to afford its inhabitants the requirements of decent human settlement and to provide them with ample opportunities for improving their quality of life;

WHEREAS, numerous reports reveal that many real estate subdivision owners, developers, operators, and/or sellers have reneged on their representations and obligations to provide and maintain properly subdivision roads drainage, sewerage, water systems, lighting systems, and other similar basic requirements, thus endangering the health and safety of home and lot buyers[.]

[24] *Rollo*, pp. 208-222; Annexes "A" to "E" of the Reply to Respondents' Comments.

in the case; (2) the presence of a clear case of disregard of a constitutional or statutory prohibition by the public respondent agency or instrumentality of the government; and (3) the lack of any other party with a more direct and specific interest in the questions being raised.[25]

In this case, the three determinants are glaringly absent. Public funds are not involved. The allegations of constitutional and statutory violations of the public respondent agency are unsubstantiated by facts and are mere challenges on the wisdom of the rules, a matter that will be further discussed in this Decision. In addition, parties with a more direct and specific interest in the questions being raised – the residential end-users – undoubtedly exist and are not included as parties to the petition. As the Court did in *Anak Mindanao Party-List Group v. Executive Secretary*,[26] we cannot waive the rule on standing where the three determinants were not established.

b. Rule 65 is both a Wrong and Misapplied Remedy

The petitioner's choice of remedy – a petition for *certiorari* under Rule 65 of the Rules of Court – is an incorrect remedy.

Rule 65, Section 1 of the Rules of Court mandates that the remedy of *certiorari* is directed against a tribunal, board, or officer exercising judicial or quasi-judicial functions:

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

[25] *Senate of the Philippines v. Ermita*, G.R. No. 169777, April 20, 2006, 488 SCRA 1, 39-40; and *Francisco v. Nagmamalasakit na mga Manggagawang Pilipino, Inc.*, G.R. No. 160261, November 10, 2003, 415 SCRA 44, 139, citing *Kilosbayan v. Guingona*, G.R. No. 113375, May 5, 1994, 232 SCRA 110, 155-157.

[26] G.R. No. 166052, August 29, 2007, 531 SCRA 583, 592.

judgment be rendered annulling or modifying the proceedings of such tribunal, board or officer, and granting such incidental reliefs as law and justice may require.

Judicial functions are exercised by a body or officer clothed with authority to determine what the law is and what the legal rights of the parties are with respect to the matter in controversy.[27] Quasi-judicial function is a term that applies to the action or discretion of public administrative officers or bodies given the authority to investigate facts or ascertain the existence of facts, hold hearings, and draw conclusions from them as a basis for their official action using discretion of a judicial nature.[28] Thus, in *Philnabank Employees Association v. Estanislao*, we did not grant a petition for *certiorari* against the Department Secretary who did not act in any judicial or quasi-judicial capacity but merely promulgated the questioned implementing rules under the mandate of Republic Act No. 6971, the applicable law in this cited case.[29]

Contrary to Section 2, Rule III of the Rules of Court, the petitioner and its members are not even parties who are aggrieved by the assailed DSOAR provision, as already discussed above. Even if they had been properly aggrieved parties, the petition must still be dismissed for violation of yet another basic principle applicable to Rule 65. This rule requires, for a petition for *certiorari* to be an appropriate remedy, that there be no appeal or plain, speedy, and adequate remedy in the ordinary course of law.[30] Since the petitioner

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[27] *Angara v. Fedman Development Corporation*, G.R. No. 156822, October 18, 2004, 440 SCRA 467, 477; and *Toyota Motors Philippines Corporation Workers' Association v. Court of Appeals*, 458 Phil. 661, 681 (2003).

[28] *Metropolitan Bank and Trust Company, Inc. v. National Wages and Productivity Commission*, G.R. No. 144322, February 6, 2007, 514 SCRA 346, 357; and *Villarosa v. Commission on Elections*, 377 Phil. 497, 506 (1999).

[29] G.R. No. 104209, November 16, 1993, 227 SCRA 804, 810-811.

[30] *Esguera v. Gonzales-Asdala*, G.R. No. 168906, December 4, 2008, 573 SCRA 50, 64-65; *Franco-Cruz v. Court of Appeals*, G.R. No. 172238, September 17, 2008, 565 SCRA 531, 538; and *Mallari v. Banco Filipino Savings and Mortgage Bank*, G.R. No. 157660, August 29, 2008, 563 SCRA 664, 668.

assails the validity of a rule or statute and seeks our declaration that the rule is unconstitutional, a petition for declaratory relief under Section 1, Rule 63 of the Rules of Court[31] provides a remedy more appropriate than *certiorari*.

Furthermore, the Court of Appeals and the Supreme Court have original concurrent jurisdiction over petitions for *certiorari*; the rule on hierarchy of courts determines the venue of recourses to these courts. In original petitions for *certiorari*, the Supreme Court will not directly entertain this special civil action – as in the present case – **unless** the redress desired cannot be obtained elsewhere based on exceptional and compelling circumstances justifying immediate resort to this Court.[32]

In the present case, the petitioner alleges that the constitutionality and legality of the assailed provision are of "immense importance to the public"[33] and are a "recipe for financial ruin of the affected parties."[34] Moreover, it maintains that its petition raises transcendental and weighty issues that would merit the Honorable Court's exercise of original jurisdiction.[35] To support its position, it cites the cases of the *Senate of the Philippines v. Ermita*[36] and *Ople v. Torres*.[37]

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[31] Section 1. Who may file petition.—Any person interested under a deed, will, contract or other written instrument, whose rights are affected by a statute, executive order or regulation, ordinance, or any other governmental regulation may, before breach or violation thereof, bring an action in the appropriate Regional Trial Court to determine any question of construction or validity arising, and for a declaration of his rights or duties, thereunder.

[32] *Audi AG v. Mejia*, G.R. No. 167533, July 27, 2007, 528 SCRA 378, 384-385; *De los Reyes v. People*, G.R. No. 138297, January 27, 2006, 480 SCRA 294, 297; and *Santos v. Cruz*, G.R. Nos. 170096 and 170097, March 3, 2006, 484 SCRA 66, 75.

[33] *Rollo*, p. 238.

[34] *Id.* at 239.

[35] *Ibid*.

[36] G.R. No. 169777, April 20, 2006, 488 SCRA 1.

[37] 354 Phil. 948 (1998).

Senate of the Philippines v. Ermita[38] was a case for *certiorari* and prohibition, while our Decision in *Ople v. Torres*[39] did not clearly state whether the case was filed as a petition for *certiorari*. But granting that both cases were filed as petitions for *certiorari*, they prompted the Court to suspend its rules of procedure as they involved clear violations of the Constitution which urgently needed to be addressed. Moreover, they were unquestionably filed by the proper parties.

The petitioners in the *Ermita* case included the Philippine Senate, which assailed Executive Order No. 464 for infringing on their prerogatives as legislators, to conduct inquiries in aid of legislation.[40] We had to immediately resolve this case since the implementation of the challenged order had already resulted in the absence of officials invited to Senate hearings.

In the *Ople* case, Senator Blas F. Ople sought to invalidate Administrative Order No. 308, which "establishes a system of identification that is all-encompassing in its scope, [and that] affects the life and liberty of every Filipino citizen and foreign resident."[41] The petition was based on two important constitutional grounds: (1) usurpation of the power of Congress to legislate and (2) impermissible intrusion into the citizenry's protected zone of privacy.

In the present case, the petitioner cannot come before this Court using an incorrect remedy and claim that it was oppressed, or that its rights to due process and equal protection have been

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[38] *Supra* note 36.

[39] *Supra* note 37.

[40] *Supra* note 36. The challenged order, Executive Order No. 464, required all heads of departments of the Executive Branch of the government to secure the consent of the President prior to appearing before either House of Congress. In its petition, the Senate considered this as a flagrant violation of their prerogatives under Article VI, Section 21 of the Constitution, among other provisions.

[41] *Supra* note 37, at 966.

violated by an administrative issuance that does not even affect its rights and obligations. The writ of *certiorari* is an extraordinary remedy that the Court issues only under closely defined grounds and procedures that litigants and their lawyers must scrupulously observe. They cannot seek refuge under the umbrella of this remedy on the basis of an undemonstrated claim that they raise issues of transcendental importance, while at the same time flouting the basic ground rules for the remedy's grant.[42]

These conclusions render any further discussion of the improperly raised substantive issues unnecessary.

WHEREFORE, premises considered, we hereby *DISMISS* the petition for its serious procedural and technical defects. Costs against the petitioner.

SO ORDERED.

Corona, C.J., Carpio, Del Castillo, Abad, Villarama, Jr., Perez, and *Mendoza, JJ.,* concur.

Carpio Morales and *Nachura, JJ.,* on leave.

Velasco, Jr., Leonardo-de Castro, Peralta, and *Bersamin, JJ.,* on official travel.

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[42] *Athena Computers, Inc. v. Reyes,* G.R. No. 156905, September 5, 2007, 532 SCRA 343, 348.

FIRST DIVISION

[G.R. No. 165168. July 9, 2010]

SPS. NONILON (MANOY) and IRENE MONTECALVO, *petitioners, vs.* **HEIRS (Substitutes) OF EUGENIA T. PRIMERO, represented by their Attorney-in-Fact, ALFREDO T. PRIMERO, JR.,** *respondents.*

SYLLABUS

1. CIVIL LAW; SPECIAL CONTRACTS; CONTRACT OF SALE DISTINGUISHED FROM CONTRACT TO SELL. — In *Salazar v. Court of Appeals,* we distinguished a contract of sale from a contract to sell in that in a contract of sale the title to the property passes to the buyer upon the delivery of the thing sold; in a *contract to sell,* ownership is, by agreement, reserved in the seller and is not to pass to the buyer until full payment of the purchase price. Otherwise stated, in a contract of sale, the seller loses ownership over the property and cannot recover it until and unless the contract is resolved or rescinded; whereas, in a contract to sell, title is retained by the seller until full payment of the price. In the latter contract, payment of the price is a positive suspensive condition, failure of which is not a breach but an event that prevents the obligation of the vendor to convey title from becoming effective.

2. ID.; ID.; CONTRACT TO SELL; PRESUMED ABSENT TRANSFER OF TITLE. — In the Agreement, Eugenia, as owner, did not convey her title to the disputed property to Irene since the Agreement was made for the purpose of negotiating the sale of the 860-square meter property. On this basis, we are more inclined to characterize the agreement as a contract to sell rather than a contract of sale. Although not by itself controlling, the absence of a provision in the Agreement transferring title from the owner to the buyer is taken as a strong indication that the Agreement is a contract to sell. In a contract to sell, the prospective seller explicitly reserves the transfer of title to the prospective buyer, meaning, the prospective seller does not as yet agree or consent to transfer ownership of the property subject of the contract to sell until the happening of an event, which for present purposes we shall take as the full

payment of the purchase price. What the seller agrees or obliges himself to do is to fulfill his promise to sell the subject property when the entire amount of the purchase price is delivered to him. In other words, the full payment of the purchase price partakes of a *suspensive* condition, the non-fulfillment of which prevents the obligation to sell from arising and thus, ownership is retained by the prospective seller without further remedies by the prospective buyer. A contract to sell is commonly entered into in order to protect the seller against a buyer who intends to buy the property in installment by withholding ownership over the property until the buyer effects full payment therefor.

3. ID.; OBLIGATIONS AND CONTRACTS; CONDITIONAL OBLIGATIONS; POSITIVE SUSPENSIVE CONDITION; IN THE PAYMENT OF PURCHASE PRICE IN INSTALLMENTS WITHIN THE STIPULATED PERIOD, FAILURE THEREOF PREVENTS OBLIGATION TO CONVEY TITLE; CASE AT BAR. — [I]n the Agreement, the payment of the purchase price, in installments within the period stipulated, constituted a *positive suspensive condition,* the failure of which is not really a breach but an event that prevents the obligation of the seller to convey title in accordance with Article 1184 of the Civil Code. Hence, for petitioners' failure to comply with the terms and conditions laid down in the Agreement, the obligation of the predecessor-in-interest of the respondents to deliver and execute the corresponding deed of sale never arose. The fact that the predecessor-in-interest of the respondents failed to return the P40,000.00 deposit subsequent to the expiration of the period of negotiation did not prevent the respondents from repudiating the Agreement. The obligation of the respondent to convey the property never came to pass as the petitioners did not comply with the positive suspensive condition of full payment of the purchase price within the period as stipulated.

4. ID.; SPECIAL CONTRACTS; CONTRACT OF SALE; ELEMENTS. — It is a fundamental principle that for a contract of sale to be valid, the following elements must be present: (a) consent or meeting of the minds; (b) determinate subject matter; and (3) price certain in money or its equivalent. Until the contract of sale is perfected, it cannot, as an independent source of obligation, serve as a binding juridical relation between the parties.

5. REMEDIAL LAW; EVIDENCE; BURDEN OF PROOF; PREPONDERANCE OF EVIDENCE REQUIRED IN CIVIL CASES. — Jurisprudence is replete with rulings that in civil cases, the party who alleges a fact has the burden of proving it. Burden of proof is the duty of a party to present evidence on the facts in issue necessary to prove the truth of his claim or defense by the amount of evidence required by law. x x x Section 1 of Rule 133 of the Rules of Court provides that in civil cases, the party having the burden of proof must establish his case by a preponderance of evidence.

APPEARANCES OF COUNSEL

Dulcesimo P. Tampus for petitioners.
Alfredo T. Primero, Jr. for respondents.

D E C I S I O N

DEL CASTILLO, *J.*:

Jurisprudence is replete with rulings that in civil cases, the party who alleges a fact has the burden of proving it. Burden of proof is the duty of a party to present evidence on the facts in issue necessary to prove the truth of his claim or defense by the amount of evidence required by law.[1] In this case, the petitioners awfully failed to discharge their burden to prove by preponderance of evidence that the Agreement they entered into with respondents' predecessor-in-interest is a contract of sale and not a mere contract to sell, or that said Agreement was novated after the latter subsequently entered into an oral contract of sale with them over a determinate portion of the subject property more than a decade ago.

Petitioners filed this appeal from the Decision of the Court of Appeals (CA) affirming the Regional Trial Court's (RTC's) dismissal of their action for specific performance where they sought to compel the respondents to convey the property subject of their purported oral contract of sale.

[1] RULES OF COURT, Rule 131, Section 1.

Factual Antecedents

The property involved in this case is a portion of a parcel of land known as Lot No. 263 located at Sabayle Street, Iligan City. Lot No. 263 has an area of 860 square meters covered by Original Certificate of Title (OCT) No. 0-271[2] registered in the name of Eugenia Primero (Eugenia), married to Alfredo Primero, Sr. (Alfredo).

In the early 1980s, Eugenia leased the lot to petitioner Irene Montecalvo (Irene) for a monthly rental of ₱500.00. On January 13, 1985, Eugenia entered into an un-notarized Agreement[3] with Irene, where the former offered to sell the property to the latter for ₱1,000.00 per square meter. They agreed that Irene would deposit the amount of ₱40,000.00 which shall form part of the down payment equivalent to 50% of the purchase price. They also stipulated that during the term of negotiation of 30 to 45 days from receipt of said deposit, Irene would pay the balance of ₱410,000.00 on the down payment. In case Irene defaulted in the payment of the down payment, the deposit would be returned within 10 days from the lapse of said negotiation period and the Agreement deemed terminated. However, if the negotiations pushed through, the balance of the full value of ₱860,000.00 or the net amount of ₱410,000.00 would be paid in 10 equal monthly installments from receipt of the down payment, with interest at the prevailing rate.

Irene failed to pay the full down payment within the stipulated 30-45-day negotiation period. Nonetheless, she continued to stay on the disputed property, and still made several payments with an aggregate amount of ₱293,000.00. On the other hand, Eugenia did not return the ₱40,000.00 deposit to Irene, and refused to accept further payments only in 1992.

Thereafter, Irene caused a survey of Lot No. 263 and the segregation of a portion equivalent to 293 square meters in her favor. However, Eugenia opposed her claim and asked her to

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[2] Folder of Exhibits, p. 88.

[3] *Id.* at 1.

vacate the property. Then on May 13, 1996, Eugenia and the heirs of her deceased husband Alfredo filed a complaint for unlawful detainer against Irene and her husband, herein petitioner Nonilon Montecalvo (Nonilon) before the Municipal Trial Court (MTC) of Iligan City. During the preliminary conference, the parties stipulated that the issue to be resolved was whether their Agreement had been rescinded and novated. Hence, the MTC dismissed the case for lack of jurisdiction since the issue is not susceptible of pecuniary estimation. The MTC's Decision dismissing the ejectment case became final as Eugenia and her children did not appeal therefrom.[4]

On June 18, 1996, Irene and Nonilon retaliated by instituting Civil Case No. II-3588 with the RTC of Lanao del Norte for specific performance, to compel Eugenia to convey the 293-square meter portion of Lot No. 263.[5]

Proceedings before the Regional Trial Court

Trial on the merits ensued and the contending parties adduced their respective testimonial and documentary evidence before the trial court.

Irene testified that after their Agreement for the purpose of negotiating the sale of Lot No. 263 failed to materialize, she and Eugenia entered into an oral contract of sale and agreed that the amount of ₱40,000.00 she earlier paid shall be considered as down payment. Irene claimed that she made several payments amounting to ₱293,000.00 which prompted Eugenia's daughters Corazon Calacat (Corazon) and Sylvia Primero (Sylvia) to ask Engr. Antonio Ravacio (Engr. Ravacio) to conduct a segregation survey on the subject property. Thereafter, Irene requested Eugenia to execute the deed of sale, but the latter refused to do so because her son, Atty. Alfredo Primero, Jr. (Atty. Primero), would not agree.

On March 22, 1999, herein respondents filed with the court *a quo* a "Notice of Death of the Defendant"[6] manifesting that

[4] CA *rollo*, pp. 55-56.
[5] Records, pp. 1-5.
[6] *Id.* at 208.

Eugenia passed away on February 28, 1999 and that the decedent's surviving legal heirs agreed to appoint their co-heir Atty. Primero, to act as their representative in said case. In an Order[7] dated April 8, 1999, the trial court substituted the deceased defendant with Atty. Primero.

Respondents, on the other hand, presented the testimony of Atty. Primero to establish that Eugenia could not have sold the disputed portion of Lot No. 263 to the petitioners. According to Atty. Primero, at the time of the signing of the Agreement on January 13, 1985, Eugenia's husband, Alfredo, was already dead. Eugenia merely managed or administered the subject property and had no authority to dispose of the same since it was a conjugal property. In addition, respondents asserted that the deposit of ₱40,000.00 was retained as rental for the subject property.

Respondents likewise presented Sylvia, who testified that the receipts issued to petitioners were for the lot rentals.[8] Another sister of Atty. Primero, Corazon, testified that petitioners were their tenants in subject land, which she co-owns with her mother Eugenia.[9] She denied having sold the purported 293-square meter portion of Lot No. 263 to the petitioners.[10]

As rebuttal witness, petitioners presented Engr. Ravacio, a surveyor who undertook the segregation of the 293-square meter portion out of the subject property.[11]

On October 22, 2001, the RTC rendered a Decision:[12] (1) dismissing the complaint and the counterclaim for lack of legal and factual bases; (2) ordering petitioners to pay respondents

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[7] *Id.* at 219; penned by Presiding Judge Maximo B. Ratunil.

[8] TSN, August 16, 2000, pp. 9-10.

[9] TSN, October 11, 2000, pp. 5-12.

[10] *Id*.

[11] TSN, January 30, 2001, pp. 19-21.

[12] Records, pp. 360-379; penned by Presiding Judge Maximo B. Ratunil.

₱2,500.00 representing rentals due, applying therefrom the amount deposited and paid; and (3) ordering petitioner to pay 12% legal interest from finality of decision until full payment of the amount due.[13]

Aggrieved, petitioners appealed the Decision of the trial court to the CA.

Proceedings before the Court of Appeals

Both parties filed their respective briefs before the appellate court.[14] Thereafter, on November 28, 2003, the CA rendered a Decision[15] affirming the RTC Decision.[16]

Petitioners timely filed a Motion for Reconsideration.[17] However, in a Resolution[18] dated June 27, 2004, the CA resolved to deny the same for lack of merit.[19]

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[13] *Rollo,* p. 96.

[14] CA *rollo,* pp. 46-170.

[15] *Id.* at 203-210; penned by Associate Justice Elvi John S. Asuncion and concurred in by Associate Justices Renato C. Dacudao and Lucas P. Bersamin (now a Member of this Court).

[16] *Id.* at 209. The dispositive portion of the said Decision reads:

WHEREFORE, the foregoing considered, the October 22, 2001 Decision of the Regional Trial Court of Lanao del Norte, Iligan City, Branch 02 is AFFIRMED.

[17] *Id.* at 211-224.

[18] *Id.* at 242.

[19] *Id.* The July 27, 2004 Resolution of the Court of Appeals reads:

Acting on the plaintiffs-appellants' "Motion for Reconsideration of our November 28, 2003 Decision, the Court finds no new matters which were not taken into consideration in arriving at the said decision and/or which would warrant a reversal or modification thereof.

Since there exists no plausible, factual or legal basis to grant the reconsideration sought, the above motion is hereby DENIED for lack of merit.

SO ORDERED.

Issues

Petitioners thus filed this Petition for Review on *Certiorari* anchored on the following grounds.

1. WHETHER AN ORAL CONTRACT OF SALE OF A PORTION OF [A] LOT IS BINDING [UPON] THE SELLER.
2. WHETHER A SELLER IN AN ORAL CONTRACT OF SALE OF A PORTION OF [A] LOT CAN BE COMPELLED TO EXECUTE THE REQUIRED DEED OF SALE AFTER THE AGREED CONSIDERATION WAS PAID AND POSSESSION THEREOF DELIVERED TO AND ENJOYED BY THE BUYER.
3. WHETHER THE BUYER HAS A RIGHT TO ENFORCE AN ORAL CONTRACT OF SALE AFTER THE PORTION SOLD IS SEGREGATED BY AGREEMENT OF THE PARTIES.
4. WHETHER THE SELLER IS BOUND BY THE HANDWRITTEN RECEIPTS PREPARED AND SIGNED BY HER EXPRESSLY INDICATING PAYMENTS OF LOTS.
5. WHETHER THE TRIAL COURT COULD RENDER A JUDGMENT ON ISSUES NOT DEFINED IN THE PRE-TRIAL ORDER.

Our Ruling

The petition lacks merit.

The Agreement dated January 13, 1985 is a contract to sell. Hence, with petitioners' non-compliance with its terms and conditions, the obligation of the respondents to deliver and execute the corresponding deed of sale never arose.

The CA found that the Agreement dated January 13, 1985 is not a contract of sale but a mere contract to sell, the efficacy of which is dependent upon the *resolutory* condition that Irene pay at least 50% of the purchase price as down payment within 30-45 days from the day Eugenia received the ₱40,000.00

deposit.[20] Said court further found that such condition was admittedly not met.[21]

Petitioners admit that the Agreement dated January 13, 1985 is at most, "a preliminary agreement for an eventual contract."[22] However, they argue that contrary to the findings of the appellate court, it was not only the buyer, Irene, who failed to meet the condition of paying the balance of the 50% down payment.[23] They assert that the Agreement explicitly required Eugenia to return the deposit of ₱40,000.00 within 10 days, in case Irene failed to pay the balance of the 50% down payment within the stipulated period.[24] Thus, petitioners posit that for the cancellation clause to operate, two conditions must concur, namely, (1) buyer fails to pay the balance of the 50% down payment within the agreed period and (2) seller should return the deposit of ₱40,000.00 within 10 days if the first condition was not complied with. Petitioners conclude that since both seller and buyer failed to discharge their reciprocal obligations, being in *pari delictu*, the seller could not repudiate their agreement to sell.

The petitioners' contention is without merit.

There is no dispute as to the due execution and existence of the Agreement. The issue thus presented is whether the said Agreement is a contract of sale or a contract to sell. For a better understanding and resolution of the issue at hand, it is *apropos* to reproduce herein the Agreement in *haec verba*:

A G R E E M E N T

This Agreement, made and executed by and between:

EUGENIA T. PRIMERO, a Filipino of legal age and residing in Camague, Iligan City (hereinafter called the OWNER)

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[20] *Rollo*, p. 44.

[21] *Id*.

[22] *Id.* at 203.

[23] *Id.* at 20.

[24] *Id*.

- and -

IRENE P. MONTECALVO, Filipino of legal age and presently residing at Sabayle St., Iligan City (hereinafter [called] the INTERESTED PARTY);

WITNESSETH:

1. That the OWNER is the true and absolute owner of a parcel of land located at Sabayle St. immediately fronting the St. Peter's College which is presently leased to the INTERESTED PARTY;

2. That the property referred to contains an area of EIGHT HUNDRED SIXTY SQUARE METERS at the value of One Thousand Pesos (₱1,000.00) per square meters;

3. That this agreement is entered into for the purpose of negotiating the sale of the above referred property between the same parties herein under the following terms and conditions, to wit:

   a) That the term of this negotiation is for a period of Thirty to Forty Five (30-45) days from receipt of a deposit;

   b) That Forty Thousand Pesos (₱40,000.00) shall be deposited to demonstrate the interest of the Interested Party to acquire the property referred to above, which deposit shall not earn any interest;

   c) That should the contract or agreement push through the deposit shall form part of the down payment of Fifty percent (50%) of the total or full value. Otherwise the deposit shall be returned within TEN (10) days from the lapse of the period of negotiation;

4. That should this push through, the balance of Four Hundred Ten Thousand on the down payment shall be made upon execution of the Agreement to Sell and the balance of the full value of Eight Hundred Sixty Thousand or Four Hundred Ten Thousand Pesos shall be paid in equal monthly

installment within Ten (10) months from receipt of the down payment with [sic] according to prevailing interest.

IN WITNESS WHEREOF, the parties have signed these presents in the City of Iligan this 13th day of January 1985.

(Signed) (Signed)

IRENE PEPITO MONTECALVO EUGENIA TORRES PRIMERO

SIGNED IN THE PRESENCE OF:

_____(Signed)_____ _____(Signed)_____

In *Salazar v. Court of Appeals*,[25] we distinguished a contract of sale from a contract to sell in that in a contract of sale the title to the property passes to the buyer upon the delivery of the thing sold; in a *contract to sell*, ownership is, by agreement, reserved in the seller and is not to pass to the buyer until full payment of the purchase price. Otherwise stated, in a contract of sale, the seller loses ownership over the property and cannot recover it until and unless the contract is resolved or rescinded; whereas, in a contract to sell, title is retained by the seller until full payment of the price.[26] In the latter contract, payment of the price is a positive suspensive condition, failure of which is not a breach but an event that prevents the obligation of the vendor to convey title from becoming effective.[27]

In the Agreement, Eugenia, as owner, did not convey her title to the disputed property to Irene since the Agreement was made for the purpose of negotiating the sale of the 860-square meter property.[28]

On this basis, we are more inclined to characterize the agreement as a contract to sell rather than a contract of sale.

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[25] 327 Phil. 944, 955 (1996).

[26] *Id*.

[27] *Id*.

[28] Exhibit "A", Formal Offer of Evidence for the plaintiff, herein petitioners, p. 1.

Although not by itself controlling, the absence of a provision in the Agreement transferring title from the owner to the buyer is taken as a strong indication that the Agreement is a contract to sell.[29]

In a contract to sell, the prospective seller explicitly reserves the transfer of title to the prospective buyer, meaning, the prospective seller does not as yet agree or consent to transfer ownership of the property subject of the contract to sell until the happening of an event, which for present purposes we shall take as the full payment of the purchase price.[30] What the seller agrees or obliges himself to do is to fulfill his promise to sell the subject property when the entire amount of the purchase price is delivered to him.[31] In other words, the full payment of the purchase price partakes of a *suspensive* condition, the non-fulfillment of which prevents the obligation to sell from arising and thus, ownership is retained by the prospective seller without further remedies by the prospective buyer.[32] A contract to sell is commonly entered into in order to protect the seller against a buyer who intends to buy the property in installment by withholding ownership over the property until the buyer effects full payment therefor.[33]

In this case, the Agreement expressly provided that it was "entered into for the purpose of negotiating the sale of the above referred property between the same parties herein x x x." The term of the negotiation shall be for a period of 30-45 days from receipt of the ₱40,000.00 deposit and the buyer has to pay the balance of the 50% down payment amounting to ₱410,000.00 within the said period of negotiation. Thereafter, an Agreement to Sell shall be executed by the parties and the remainder of the purchase price amounting to another ₱410,000.00 shall be paid in 10 equal monthly installments from receipt of

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[29] *Lacanilao v. Court of Appeals*, 330 Phil. 1074, 1080 (1996).

[30] *Coronel v. Court of Appeals*, 331 Phil. 294, 309 (1996).

[31] *Id*.

[32] *Id*.

[33] *The City of Cebu v. Heirs of Rubi*, 366 Phil. 70, 80 (1999).

the down payment. The assumption of both parties that the purpose of the Agreement was for negotiating the sale of Lot No. 263, in its entirety, for a definite price, with a specific period for payment of a specified down payment, and the execution of a subsequent contract for the sale of the same on installment payments leads to no other conclusion than that the predecessor-in-interest of the herein respondents and the herein petitioner Irene entered into a contract to sell.

As stated in the Agreement, the payment of the purchase price, in installments within the period stipulated, constituted a *positive suspensive condition,* the failure of which is not really a breach but an event that prevents the obligation of the seller to convey title in accordance with Article 1184 of the Civil Code.[34] Hence, for petitioners' failure to comply with the terms and conditions laid down in the Agreement, the obligation of the predecessor-in-interest of the respondents to deliver and execute the corresponding deed of sale never arose.

The fact that the predecessor-in-interest of the respondents failed to return the ₱40,000.00 deposit subsequent to the expiration of the period of negotiation did not prevent the respondents from repudiating the Agreement. The obligation of the respondent to convey the property never came to pass as the petitioners did not comply with the positive suspensive condition of full payment of the purchase price within the period as stipulated.

The alleged oral contract of sale for the 293-square meter portion of the property was not proved by preponderant evidence. Hence, petitioners cannot compel the successors-in-interest of the deceased Eugenia to execute a deed of absolute sale in their favor.

Petitioners alleged in their Complaint that in 1992, Eugenia refused to accept further payments and suggested that she

[34] Art. 1184. The condition that some event happen at a determinate time shall extinguish the obligation as soon as the time expires or if it has become indubitable that the event will not take place.

will convey to petitioners 293 square meters of her 860-square meter property, in proportion to payments already made. Thus, Eugenia caused the segregation of the area where the petitioners' building now stands, consisting of 293 square meters.

In support of their contention, petitioners presented the testimony of Irene, who testified that Eugenia segregated for them an area of 293 square meters for the agreed price of ₱1,000.00 per square meter.[35] The total purchase price allegedly agreed upon by the parties, amounting to ₱293,000.00, corresponded to the amount of payments already made by Irene.[36] They likewise presented (1) 82 receipts covering the period October 13, 1986 to July 10, 1994;[37] (2) the testimony of the surveyor, Engr. Ravacio, to show that the segregation survey of the 293-square meter portion of the property was made with the knowledge and consent of Eugenia; and (3) the resulting subdivision plan.

On the other hand, respondents counter that the alleged contract of sale is contradicted by petitioners' own evidence.

We cannot sustain the contention of the petitioners. The primal issue to be resolved is whether the parties subsequently entered into a contract of sale over the segregated 293-square meter portion of Lot No. 263. It is a fundamental principle that for a contract of sale to be valid, the following elements must be present: (a) consent or meeting of the minds; (b) determinate subject matter; and (3) price certain in money or its equivalent.[38] Until the contract of sale is perfected, it cannot, as an independent source of obligation, serve as a binding juridical relation between the parties.[39]

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[35] TSN, April 3, 1997, p. 57.

[36] *Id*.

[37] Formal Offer of Evidence for the plaintiffs, herein petitioners, pp. 2-83.

[38] *Del Prado v. Spouses Caballero*, G.R. No. 148225, March 3, 2010.

[39] *Abalos v. Dr. Macatangay, Jr.*, 482 Phil. 877, 885 (2004).

Contrary to petitioners' allegations that the 82 receipts indicated that they were issued "for payment of lot (at Sabayle)",[40] a cursory examination thereof shows that the receipts from 1986 to 1992 do not consistently indicate "Sabayle Lot" or "Sabayle Lot Deposit". More than half of the receipts presented merely indicated receipt of differing sums of money from the petitioners. In addition, the receipts for the years 1993 to 1994 do not establish installment payments for the purchase of the disputed portion of Lot No. 263. Rather, the receipts indicate that the same were issued as proof of "cash advance",[41] "cash for groceries, electric bill, water bill, telephone/long distance",[42] "cash",[43] "cash for mktg"[44] and "x x x cash to be paid a month after".[45] These are not consistent with the allegation of the petitioners that they have paid the full amount of the purchase price for the 293-square meter portion of the lot by 1992.

Moreover, the testimony of petitioners' witness, surveyor Engr. Ravacio, shows that Eugenia was neither around when the survey was conducted nor gave her express consent to the conduct of the same.[46] On the other hand, respondents' witness,

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[40] *Rollo*, p. 25.

[41] Exhibit "B-73", Formal Offer of Evidence by the plaintiffs, herein petitioners, p. 75.

[42] Exhibit "B-74", *id.* at 76.

[43] Exhibit "B-75", *id.* at 77.

[44] Exhibit "B-76", *id.* at 78.

[45] Exhibit "B-77", *id.* at 79.

[46] TSN, January 30, 2001, pp. 19-21 reads:

x x x x x x x x x

Q: You never attempted to inform Mrs. Eugenia Primero with respect to the survey?

A: No, Your Honor.

Q: So, you mean to say that there was no knowledge that said Eugenia Primero was not around during the second survey?

A: Yes, Your Honor.

Sylvia, testified that the receipts issued to the petitioners were for the lot rentals.[47] In addition, respondents' third witness,

Court:

Proceed.

Atty. Tampus:

Why was Atty. Primero present during the first schedule of your segregation?

A: I think, that he was there to witness this segregation survey but as I have said the segregation was aborted because there was no agreement about the area and the portions to be segregated.

Atty. Tampus:

Okay. Now who was represented by Atty. Primero?

A: His Mother.

x x x x x x x x x

Court:

Now do you know Eugenia Primero?

A: Yes, Your Honor.

Q: Personally you know her, Eugenia Primero?

A: Yes, Your Honor.

x x x x x x x x x

[47] TSN, August 16, 2000, pp. 9-10 reads:

x x x x x x x x x

Atty. Marohombsar:

Q: Will you go over these receipts again and tell the Honorable Court how did you come to prepare these receipts or why did you prepare these receipts?

A: Oftentimes, my mother is not around so I am the one issuing the receipts.

Q: And why did you issue these receipts?

A: So that they can have the duplicate of the payments which we received.

Q: Payment for what?

A: For the lot rentals.

Q: When you issued these receipts, [was] Mrs. Montecalvo present?

A: Yes, sir.

Q: And these receipts were issued in relation to the lot which was rented by your mother to them and which was located in Sabayle?

Corazon, testified that petitioners were their tenants in subject land, which she co-owns with her mother Eugenia, and disclaimed any sale of any portion of their lot to the petitioners.[48]

A: Yes Sir.

x x x x x x x x x

Q: In what capacity [do] the Montecalvos [occupy or possess]?

A: They are just renting.

x x x x x x x x x

[48] TSN, October 11, 2000, pp. 5-12 reads:

x x x x x x x x x

Q: In other words, the properties are owned by all of you in common?

A: Yes, sir.

x x x x x x x x x

Q: What is this lot in Sabayle, who owns this lot in Sabayle?

A: My parents and the children.

Q: And were the Montecalvos able to rent this lot?

A: Yes, sir.

Q: When, if you know, more or less?

A: If I can recall, it was [sometime] in 1979 or 1980. I cannot recall anymore it was between them.

x x x x x x x x x

Q: Who was, if you know, collecting this monthly rental?

A: My sister, Sylvia.

x x x x x x x x x

Q: You said that plaintiffs are no longer paying rentals. Do you remember when they ceased to pay rentals?

A: I think when they filed the case.

Q: You are referring to this instant case?

A: Yes.

Q: When?

A: 1994.

x x x x x x x x x

Q: Do you know on your personal knowledge why they are no longer paying rentals?

A: They considered themselves as the owner because the lot was sold to them.

Thirdly, since the surveyor himself, Engr. Ravacio, admitted that Eugenia did not give her express consent to the conduct of the segregation plan, the resulting subdivision plan, submitted by the petitioners to the trial court to prove that Eugenia caused the segregation of the 293-square meter area, cannot be appreciated.

Section 1 of Rule 133 of the Rules of Court provides that in civil cases, the party having the burden of proof must establish his case by a preponderance of evidence. However, the evidence presented by the petitioners, as considered above, fails to convince this Court that Eugenia gave her consent to the purported oral deed of sale for the 293-square meter portion of her property. We are hence in agreement with the finding of the CA that there was no contract of sale between the parties. As a consequence, petitioners cannot rightfully compel the successors-in-interest of Eugenia to execute a deed of absolute sale in their favor.

Q: Who sold the lot to them, if you know?

A: Nobody. That was according to them that they already bought it.

Q: Who sold it?

A: According to them it was my mother.

Q: In fact, the lot was sold to them by your mother?

A: No.

Q: Mrs. Montecalvo testified here that you and Sylvia engaged the services of Engineer Ravacio to undertake the survey of the Sabayle lot for the purpose of segregating a portion thereof in favor of Mrs. Montecalvo. Did you engage the services of Engineer Ravacio to undertake the survey?

A: No, sir.

Q: Did you know Engineer Ravacio?

A: No.

x x x x x x x x x

Q: By the way, Madam Witness, did you agree for the sale of the lot to the Montecalvos?

A: No, sir.

The courts below correctly modified the rental award to ₱2,500.00 per month.

Lastly, petitioners argue that the courts below erred in imposing a ₱2,500.00 monthly rental from 1985 onwards, since said amount is far greater than the last agreed monthly rental (December 1984) of ₱500.00.

In its Decision, the CA affirmed the ruling of the RTC "that the trial court had authority to fix a reasonable value for the continued use and occupancy of the leased premises after the termination of the lease contract, and that it was not bound by the stipulated rental in the contract of lease since it is equally settled that upon termination or expiration of the contract of lease, the rental stipulated therein may no longer be the reasonable value for the use and occupation of the premises as a result of the change or rise in values. Moreover, the trial court can take judicial notice of the general increase in rentals of real estate especially of business establishments".[49] The appellate court likewise held that the petitioners failed to discharge their burden to show that the said price was exorbitant or unconscionable.[50] Hence, the CA found no reason to disturb the trial court's decision ordering the petitioners to pay ₱2,500.00 as monthly rentals.[51] The appellate court further held that "to deprive Eugenia of the rentals due her as the owner-lessor of the subject property would result to unjust enrichment on the part of Irene."[52]

The courts below correctly took judicial notice of the nature of the leased property subject of the case at bench based on its location and commercial viability. As described in the Agreement, the property is immediately in front of St. Peter's

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[49] *Rollo*, p. 47 citing *Spouses Catungal v. Hao*, 407 Phil. 309, 322-323 (2001).

[50] *Id*.

[51] *Id*.

[52] *Id*.

College.[53] More significantly, it is stated in the Declaration of Real Property submitted by the petitioners as evidence in the trial court, that the property is used predominantly for commercial purposes.[54] The assessment by the trial court of the area where the property is located is therefore fairly grounded.

Furthermore, the trial court also had factual basis in arriving at the said conclusion, the same being based on the un-rebutted testimony of a witness who is a real estate broker. With respect to the prevailing valuation of the property in litigation, witness Atty. Primero, a licensed real estate broker testified that:

> x x x There is no fixed pricing for each year because it always depends on the environment so that if the price in 1986, as you were referring to 1986, it would have risen or increased from ₱1,000.00, then it would increase to ₱3,000.00, then it would increase to ₱7,000.00 and again increase to ₱15,000.00 and right now the current price of property in that area is ₱25,000.00 per square meter.[55]

The RTC rightly modified the rental award to ₱2,500.00 per month, considering that it is settled jurisprudence that courts may take judicial notice of the general increase in rentals, particularly in business establishments.

WHEREFORE, the petition is *DENIED*. The November 28, 2003 Decision of the Court of Appeals affirming the October 22, 2001 Decision of the Regional Trial Court of Lanao del Norte, Branch 2, is hereby *AFFIRMED*.

SO ORDERED.

Corona, C.J. (Chairperson), Brion,[*] *Abad ,*[**] and *Perez, JJ.,* concur.

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[53] Exhibit "A", Formal Offer of Evidence for the plaintiffs, herein petitioners, p. 1.

[54] Exhibit "C", *id*. at 84.

[55] TSN, March 13, 2000, p. 95.

[*] Per Special Order No. 856 dated July 1, 2010

[**] Per Special Order No. 869 dated July 5, 2010.

SECOND DIVISION

[G.R. No. 165582. July 9, 2010]

LUIS CHITO BUENSOCESO LOZANO, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. CRIMINAL LAW; THEFT, DEFINED; WHEN QUALIFIED. — As defined, theft is committed by any person who, with intent to gain, but without violence against, or intimidation of persons or force upon things, shall take the personal property of another without the latter's consent. If committed with grave abuse of confidence, the crime of theft becomes qualified.

2. REMEDIAL LAW; EVIDENCE; CIRCUMSTANTIAL EVIDENCE; SUFFICIENCY THEREOF. — Circumstantial evidence is that evidence which proves a fact or series of facts from which the facts in issue may be established by inference. In order that conviction be had, the following elements must concur: 1. There is more than one circumstance; 2. The facts from which the inferences are derived are proven; 3. The combination of the circumstances is such as to produce a conviction beyond reasonable doubt. To sustain a conviction based on circumstantial evidence, it is essential that the circumstantial evidence presented must constitute an unbroken chain which leads one to a **fair and reasonable conclusion pointing to the accused, to the exclusion of the others, as the guilty person. The circumstantial evidence must exclude the possibility that some other person has committed the crime.**

3. POLITICAL LAW; CONSTITUTIONAL LAW; BILL OF RIGHTS; PRESUMPTION OF INNOCENCE; UPHELD IN THE ABSENCE OF PROOF BEYOND REASONABLE DOUBT. — Theft is clearly established in this case and the prosecution has adequately identified accused Lozano and his co-accused as the perpetrators thereof, but, to Our mind, **with respect to the two (2) tires only**. It may be that the car of private complainant had been forcibly opened and robbed. The car stereo was said to be missing. Other items x x x were also allegedly nowhere to be found. The prosecution, however, failed to prove that accused

Lozano and his companions were also the ones responsible for their loss. x x x There was no direct evidence pointing to accused Lozano and his co-accused in stealing the missing items, not even for the actual taking of the two tires. All that was established was that they were in possession of the two (2) tires. x x x The fact that the accused were in possession of the stolen tires belonging to private respondent does not necessarily bring us to the conclusion that the accused are also the ones responsible for the loss of the other items. Absent proof of the stolen property, as in the case at bench, no presumption of guilt can arise. Instead, the constitutional presumption of innocence should prevail in favor of the accused.

4. CRIMINAL LAW; THEFT; ACTUAL DAMAGES, MUST BE DULY PROVED. —The basis of the penalty imposed, therefore, should have been the value of the magwheels only. Records bear out that only the two (2) magwheels (R14 Goodyear tires) were found in the possession of the accused, with their value pegged at ₱17,000.00. In arriving at this amount, the trial court and the Court of Appeals merely relied on the testimony of private respondent who did not even claim that they were brand new. At the risk of being repetitious, no other evidence was presented to support the testimony of private complainant. It is an ancient principle that actual damages must be duly proved. In this aspect, the prosecution failed.

5. ID.; ID.; PROPER PENALTY AND APPLYING THE INDETERMINATE SENTENCE LAW IN CASE AT BAR.— [P]etitioner and his co-accused are found guilty beyond reasonable doubt of the crime of theft. Applying Article 309 (2) of the Revised Penal Code and the Indeterminate Sentence Law, petitioner and his co-accused, should suffer the indeterminate penalty ranging from six (6) months and one (1) day of *prision correccional*, as minimum, to four (4) years and two (2) months and one (1) day also of *prision correccional*, as maximum.

APPEARANCES OF COUNSEL

E.G. Ferry Law Offices for petitioner.
The Solicitor General for respondent.

D E C I S I O N

MENDOZA, *J.*:

This is a petition for review on *certiorari* under Rule 45 of the Rules of Court seeking a reversal of the October 8, 2004 Decision of the Court of Appeals,[1] in CA-G.R. CR No. 27684, entitled *People v. Luis Chito Buensoceso Lozano, Lorenzo Remeses Tubis, Willie Reyes Callanga, and Meliton Arambulo Balderas*. The CA decision affirmed with modification the May 23, 2002 Decision[2] of the Regional Trial Court, Branch 257, Parañaque City, in Criminal Case No. 97-555, which convicted accused Lozano, Tubis and Callanga for the crime of theft. In the same decision, accused Meliton Balderas was acquitted. Pertinent portions of the subject CA decision, including the dispositive portion, read:

> Accordingly, the accused-appellant is sentenced to a prison term ranging from five (5) years, four (4) months and twenty (20) days of *prision correccional* in its maximum period, as minimum, to eight (8) years, eight (8) months and one (1) day of *prision mayor* in its medium period, as maximum. The accused-appellant should also be ordered to pay Paz Gonzales the amount of ₱10,000.00 corresponding to the value of the still unrecovered items (the car stereo and speakers, Ray Ban, police sunglasses and calculator). It is to be noted that the two tires worth ₱17,000.00 were already recovered by the complaining witnesses.
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> WHEREFORE, modified as thus indicated, the judgment appealed from must be, as it hereby is **AFFIRMED** in all other respects, with the costs of this instance to be assessed against the accused-appellant.
>
> SO ORDERED.

It appears from the records that accused Luis Lozano and his co-accused Lorenzo Remeses Tubis, Willie Reyes Callanga, and Melito Arambulo Balderas, were indicted for theft by the Office

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[1] Penned by Associate Justice Renato C. Dacudao, with Associate Justice Lucas P. Bersamin (now a member of this Court) and Associate Justice Celia C. Librea-Leagogo, concurring.

[2] Records, pp. 261-265.

of the Provincial Prosecutor of Rizal. The Information[3] charging them with the said crime reads:

> That on or about the 24th day of July 1997 in the Municipality of Parañaque, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the abovenamed accused, conspiring and confederating with '@Larry' and '@Marlon,' whose true names and present whereabouts are still unknown, and all of them mutually helping one another, with intent to gain and without knowledge and consent of the owner Paz Gonzales, did then and there willfully, unlawfully and feloniously take, steal, and carry away two (2) magwheels (R14 goodyear tires), valued at ₱17,000.00, car stereo and 2 speakers, Ray Ban valued at ₱500.00, police sunglass valued at ₱5,000.00, calculator valued at ₱200.00, all in the total amount of ₱27,700.00, belonging to said complainant, to the damage and prejudice of the owner thereof, in the aforesaid amount of ₱27,700.00.
>
> CONTRARY TO LAW."

During the trial, the prosecution presented, as its witnesses, the private complainant Paz Gonzales and Brgy. Tanod Jose Lazaro, Jr.

Paz Gonzales testified that at around 8:00 o'clock in the morning of July 25, 1997, when she was about to board her car (a 1996 Nissan Sentra with Plate No. UGJ 952), she discovered that it had been forcibly opened while it was parked along Cuenco Street, Airport View, Parañaque City. She found out that her tires, car stereo, speakers, sunglasses, tapes, and calculator were stolen, all amounting to more or less ₱27,000.00. She immediately reported the incident to the authorities in Barangay Moonwalk, Parañaque City.[4]

The *barangay tanod*, Jose Lazaro, Jr., testified that on July 26, 1997, he received information that two male persons on board a Toyota Cressida would be getting two stolen tires from the house of Willie Callanga on the same day. He immediately positioned himself on the second floor of the house overlooking

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[3] *Id.* at 1.

[4] *Id.* at 262, TSN, January 27, 1998, pp. 7-11, 13.

the house of Callanga. From there, he saw Lozano and Lorenzo Tubis enter the said house. After a few minutes, he saw Lozano and Tubis come out of the house carrying two tires which they placed inside the baggage compartment of the Toyota Cressida. He called his fellow tanods and they intercepted the Cressida. The two tires were recovered and Lozano and Callanga were arrested. Tubis was able to escape. Thereafter, Paz Gonzales was summoned to the *Barangay* Office where she identified the two tires as the same tires which were stolen from her.[5]

Accused Lozano took the witness stand for his defense. His testimony was, however, stricken off the record for his repeated failure to appear in court for the continuation of his direct examination.[6]

After the case was submitted for decision, the trial court convicted all the accused except Meliton Balderas of the crime of theft. Thus:

"WHEREFORE, finding accused Luis Chito Buensoceso Lozano, Lorenzo Rameses Tubis and Willie Reyes Callanga guilty beyond reasonable doubt for the theft, applying the Indeterminate Sentence Law (Act. No. 4103, as amended), they are hereby sentenced to suffer 2 years, 4 months and 1 day of *prision correccional* as minimum to 6 years and 1 day *prision mayor* as maximum. For lack of evidence accused Meliton Balderas is acquitted.

SO ORDERED."[7]

The trial court explained its decision in this wise:

"It is duly established by evidence that the car of Paz Gonzales was forced open by thieves and two (2) of its tires, among others, were stolen. The stolen tires were recovered in the possession of accused Luis Chito Lozano, Willie Callanga and Lorenzo Tubis. There can be no other conclusion that they are the thieves. Besides, they

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[5] *Id.* at 262-263, TSN, March 17, 1998, pp. 4-9.

[6] *Id.* at 256, 264.

[7] *Id.* at 265.

are seen by Brgy. Tanod Lazaro, Jr. taking the tires from the house of Callanga and putting them inside their vehicle. The vivid details surrounding the discovery of the caper convinces the Court without any doubt of the commission of the crime by the three (3) malefactors.

There is, however, no evidence against Meliton Balderas. His name was not mentioned by Brgy. Tanod Lazaro, Jr. except on just one point – that Balderas was allegedly implicated by co-accused Willie Callanga. But Callanga, who did not show up in Court, did not testify against Balderas, not even for his own defense.

The tires allegedly valued at ₱17,000.00 were recovered. The other items and their value were not duly proven."[8]

Accused Lozano filed a Motion for Reconsideration and/or Modification of the Judgment[9] but the same was denied by the trial court.[10]

Petitioner elevated his conviction to the Court of Appeals presenting the following assignments of error:

"First Assignment of Error

THE TRIAL COURT SERIOUSLY ERRED IN FINDING THAT THE TWO MAGWHEELS TIRES WERE FOUND AND RECOVERED IN THE POSSESSION OF ACCUSED-APPELLANT.

Second Assignment of Error

THE TRIAL COURT ERRED IN CONCLUDING THAT THE ACCUSED-APPELLANT, WILLIE CALLANGA AND LORENZO TUBIS WERE THE PERPETRATORS OF THE CRIME.

Third Assignment of Error

THE TRIAL COURT SERIOUSLY ERRED IN FINDING ACCUSED-APPELLANT AND HIS CO-ACCUSED, LORENZO TUBIS AND WILLIE CALLANGA GUILTY OF THE CRIME CHARGED.

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[8] *Id.* at 264-265.

[9] *Id.* at 274-277.

[10] *Id.* at 291.

Fourth Assignment of Error

THE TRIAL COURT ERRED IN IMPOSING THE PENALTY OF 2 YEARS, 4 MONTHS AND 1 DAY OF *PRISION CORRECCIONAL* AS MINIMUM TO 6 YEARS AND 1 DAY OF *PRISION MAYOR* AS MAXIMUM."[11]

Accused Lozano posits the view that "(s)ince both witnesses had no personal knowledge that the said tires were recovered in the possession of the accused, their testimonies are purely hearsay, hence without any probative value."[12] Petitioner added that "the testimonies of the prosecution witnesses on this matter, which are both hearsay, are even conflicting. While Paz Gonzales claims that the tires were recovered by the *barangay tanod* from the house of the accused Willie 'Bong' Callanga, Jose Lazaro, Jr., however, declared that they were recovered from the baggage compartment of the Cressida car."[13]

Accused Lozano further averred that "since the penalty in the crime of theft is based on the value of the thing stolen, it is incumbent upon the prosecution to adduce proof of its value. In the case at bar, no proof was adduced as to the value of the alleged lost properties, save for the bare testimony of Paz Gonzales that it was more or less ₱27,000.00."[14]

In its Decision dated October 8, 2004,[15] the Court of Appeals AFFIRMED with MODIFICATION the RTC Decision, pertinent portions of which read:

The record showed that *barangay tanod* Jose Lazaro, Jr. personally saw appellant and his co-accused Lorenzo Remeses Tubis load the tires onto their vehicle. Few moments after his witness called his fellow *barangay tanods* to intercept the vehicle, he was informed

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[11] CA *rollo*, p. 30.

[12] *Id.* at 31.

[13] *Id.* at 32.

[14] *Id.* at 33.

[15] *Id.* at 73-84.

that the appellant and his criminal associates had been arrested and the tires were recovered from their possession. Immediately thereafter, the recovered tires were confirmed by Ms. Gonzales herself as the very tires stolen from her car. In the words of Lazaro, Jr.'s *Sinumpaang Salaysay*:

> *"Na ilang sandali ay may tumawag sa akin na nakuha na ang naturang sasakyan at naroon nga ang dalawang gulong at ipinatawag ang complainant na si Paz Gonzales at Novo Gabriel (na biktima ng naturang kaso) at pagdating ay nakita ang kotse at ng ipakita ang gulong ay positibong nakilala ni Novo Gabriel at pinatibay ni Paz Gonzales na iyon ay nakakabit sa Nissan Sentra UGJ 952 nila."*

The connection among these details is too close and too obvious: the stolen tires were found in the possession of appellant and his co-accused.

Moreover, the information conveyed to Lazaro, Jr. by one of his fellow *tanods* regarding the arrest of appellant and his cohorts and the recovery of the tires is admissible to prove that the stolen tires were actually found in the possession of appellant and his partners. While said information may have consisted of out-of-court statements by an out-of-court declarant (Lazaro, Jr.), this person could have testified thereon (as he in fact did), as a 'present sense impression.'

A statement describing or explaining an event or condition made while the declarant was perceiving the event or condition, or immediately thereafter, is not barred by the rule against hearsay. The rationale for the 'present sense impression' exception is that (1) There is no substantial danger that defects in the declarant's memory will affect the value of the statement; (2) the declarant would not have had much time to fabricate before making the statement; and (3) in many cases, the person to whom the statement was addressed would have been in a position to check its accuracy; hence, the declarant could speak with care.

In the present case, there is no doubt that the *barangay tanod* who reported the arrest and recovery to Lazaro, Jr. did not have the opportunity to fabricate his statement as he instantly transmitted the information to Lazaro, Jr. who verified the correctness and truthfulness of such account.

As correctly held by the trial court, since the stolen tires were found in the possession of appellant and his partners, the inescapable conclusion is that they were the perpetrators of the crime. A person found in possession of a stolen thing is presumed to be the taker

thereof, and the author of the theft. This presumption was not overturned by appellant.

Now, the elements of the crime of theft are these: (1) personal property of another person must be taken without the latter's consent; (2) the act of taking the personal property of another must be done without the use of violence against or intimidation of persons nor force upon things; and (3) there must be an intention to gain (or *animus lucrandi*) in the taking of another person's property.

In this case, we hold that the testimonies of the complaining witness Ms. Paz Gonzales and barangay tanod Jose Lazaro, Jr. are sufficiently conclusive enough to convict appellant and his co-accused beyond a reasonable doubt for the felony charged. Based on the accounts of the prosecution witnesses, all the elements of the offense and the identity of the perpetrators were duly established.

But appellant insists that the trial court erred in believing the bare and self-serving testimony of the complaining witness in regard to the value of the allegedly stolen items. According to him, save for Ms. Gonzales's bare and self-serving testimony that the value of the stolen items was 'more or less ₱27,000.00,' the prosecution failed to establish the value of the stolen items upon which the imposable penalty for the crime of theft would be based.

We do not agree. Paz Gonzales's testimony in open court that the value of the stolen items was 'more or less ₱27,000.00' is admissible and sufficient to establish the value of the stolen properties. As held by the Supreme Court in *People v. Martinez*, 274 SCRA 259 (1997) "

> "Again, even under the rule on opinions of ordinary witnesses, the value of the stolen items was established. It is a standing doctrine that the opinion of a witness is admissible in evidence on ordinary matters known to all men of common perception, such as the value of ordinary household articles.
>
> "Also not to be overlooked is the fact that the trial court has the power to take judicial notice, in this case of the **value** of the stolen goods, because there are matters of public knowledge or are capable of unquestionable demonstration. The lower court may, as it obviously did, take such judicial notice *motu proprio*. Judicial cognizance, which is based on considerations of expediency and convenience, displaces evidence since, being equivalent to proof, it fulfills the object which the evidence is intended to achieve. Surely, matters like

> the **value** of the appliances, canned goods and perfume x x x are ordinarily within public knowledge and easily capable of unquestionable demonstration.' (Emphasis supplied)

It bears stressing that the testimony of Ms. Gonzales on the value of the stolen properties is not self-serving. Self-serving statements are those made by a party out of court advocating his own interest; they do not include a party's testimony as a witness in court. Self-serving statements are inadmissible xxx. This cannot be said of a party's testimony in court made under oath, with full opportunity for cross-examination on the part of the opposing party. Here, Gonzales was subjected to a grueling cross-examination on her assertions in open court, including her testimony on the value of the stolen properties.

Nonetheless, the penalty imposed by the trial court can stand modification, having in view Art. 309 (1) of the Revised Penal Code which provides:

> "Penalties – Any person guilty of theft shall be punished by:
>
> '(1) The penalty of *prision mayor* in its minimum medium periods, if the value of the thing stolen is more than 12,000 pesos but does not exceed 22,000.00 pesos, but if the value of the thing stolen exceeds the latter amount, the penalty shall be the maximum period of the one prescribed in this paragraph, and one year for each additional ten thousand pesos, but the total of the penalty which may be imposed shall not exceed twenty years."

Since the value of the items taken from the complaining witness, Ms. Paz Gonzales, amounted to 'more or less ₱27,000.00,' the proper penalty to be meted out against the petitioner should be *prision mayor* in its minimum and medium period, to be imposed in its maximum period, conformably to said Art. 309 (1) of the Revised Penal Code, as amended. Applying the Indeterminate Sentence Law, there being no mitigating or aggravating circumstance in this case, the penalty that must thus be imposed upon the appellant must be anywhere between two (2) years, four (4) months and one (1) day of *prision correccional* minimum period, to six (6) years of *prision correccional* maximum period, as minimum, and eight (8) years, eight (8) months and one (1) day to ten years of *prision mayor* in its medium period as maximum.

Accordingly, the accused-appellant is sentenced to a prison term ranging from five (5) years, four (4) months and twenty (20) days of *prision correccional* in its maximum period, as minimum, to eight years, eight (8) months and one (1) day of *prision mayor* in its medium period, as maximum. The accused-appellant should also be ordered to pay Paz Gonzales the amount of ₱10,000.00, corresponding to the value of the still unrecovered items (the car stereo and speakers, Ray Ban police sunglasses, and calculator). It is to be noted that the two tires worth ₱17,000.00 were already recovered by the complaining witness.

WHEREFORE, modified as thus indicated, the judgment appealed from must be, as it hereby is, **AFFIRMED** in all other respects, with the costs of this instance to be assessed against the accused-appellant.

SO ORDERED.[16]

Aggrieved, accused Lozano sought relief from this Court *via* this petition alleging that the Court of Appeals has seriously erred:

"A

IN NOT HOLDING THAT THE TESTIMONIES OF THE TWO PROSECUTION WITNESSES, (JOSE LAZARO, JR. AND PAZ GONZALES) REGARDING THE ALLEGED RECOVERY OF THE MAGWHEELS TIRES FROM THE POSSESSION OF PETITIONER ARE NOT HEARSAY.

B

IN FINDING THAT THE PETITIONER, WILLIE CALLANGA AND LORENZO TUBIS WERE THE PERPETRATORS OF THE CRIME.

C

IN FINDING PETITIONER AND HIS CO-ACCUSED, LORENZO TUBIS AND WILLIE CALLANGA GUILTY OF THE CRIME CHARGED.

D

IN IMPOSING THE PENALTY RANGING FROM FIVE (5) YEARS, FOUR (4) MONTHS AND TWENTY (20) DAYS OF *PRISION CORRECCIONAL* IN ITS MAXIMUM PERIOD, AS MINIMUM, TO EIGHT (8) YEARS, EIGHT (8) MONTHS AND ONE (1) DAY OF

[16] *Id.* at 78-84.

PRISION MAYOR IN ITS MEDIUM PERIOD, AS MAXIMUM, AND IN ORDERING PETITIONER TO PAY PAZ GONZALES THE AMOUNT OF ₱10,000.00 CORRESPONDING TO THE VALUE OF THE STILL UNRECOVERED ITEMS."[17]

We resolve.

The Court of Appeals did not err in convicting accused Lozano and his co-accused. They are guilty beyond reasonable doubt of the crime of theft.

As defined, theft is committed by any person who, with intent to gain, but without violence against, or intimidation of persons or force upon things, shall take the personal property of another without the latter's consent. If committed with grave abuse of confidence, the crime of theft becomes qualified.[18]

Theft is clearly established in this case and the prosecution has adequately identified accused Lozano and his co-accused as the perpetrators thereof, but, to Our mind, **with respect to the two (2) tires only**.

It may be that the car of private complainant had been forcibly opened and robbed.[19] The car stereo was said to be missing. Other items — speakers, Ray Ban, police sunglasses and calculator were also allegedly nowhere to be found. The prosecution, however, failed to prove that accused Lozano and his companions were also the ones responsible for their loss. The Court is inclined to give accused Lozano and his co-accused the benefit of the doubt insofar as these other items are concerned.

There was no direct evidence pointing to accused Lozano and his co-accused in stealing the missing items, not even for the actual taking of the two tires. All that was established was that they were in possession of the two (2) tires. It appears,

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[17] *Rollo*, p. 11.

[18] *Matrido v. People*, G.R. No. 179061, July 13, 2009, 592 SCRA 534.

[19] Records, p. 151.

therefore, that the trial court and the Court of Appeals relied on circumstantial evidence with respect to the other items.

Circumstantial evidence is that evidence which proves a fact or series of facts from which the facts in issue may be established by inference. In order that conviction be had, the following elements must concur:

1. There is more than one circumstance;
2. The facts from which the inferences are derived are proven;
3. The combination of the circumstances is such as to produce a conviction beyond reasonable doubt.

To sustain a conviction based on circumstantial evidence, it is essential that the circumstantial evidence presented must constitute an unbroken chain which leads one to **a fair and reasonable conclusion pointing to the accused, to the exclusion of the others, as the guilty person. The circumstantial evidence must exclude the possibility that some other person has committed the crime.**[20]

The following comprise the chain of circumstantial evidence against the accused with respect to the other missing items: *First*, Paz Gonzales discovered around 8:00 o'clock in the morning of July 25, 1997 that her car was forcibly opened with the two (2) tires missing. *Second*, she reported the incident to the authorities in Barangay Moonwalk, Parañaque City. *Third*, on the following day, the *barangay tanod*, Jose Lazaro, received an information that two male persons on board a Toyota Cressida would be getting two (2) stolen tires from the house of Willie Callanga on the same day. *Fourth*, Lazaro immediately positioned himself on the second floor of the house overlooking the house of Callanga, from where he saw accused Lozano and Lorenzo Tubis go inside the house of Callanga, and come out carrying two (2) tires which they placed inside the baggage compartment of the Toyota Cressida. *Fifth*, he called his fellow *tanods* and they intercepted the Cressida. The two tires were

[20] *Aoas v. People*, G.R. No. 155339, March 3, 2008, 547 SCRA 311.

recovered. Accused Lozano and Callanga were arrested. Tubis was able to escape. Thereafter, Paz Gonzales identified the recovered tires as the same tires stolen from her.

There was no trace or even mention of the other missing items. The fact that the accused were in possession of the stolen tires belonging to private respondent does not necessarily bring us to the conclusion that the accused are also the ones responsible for the loss of the other items. Absent proof of the stolen property, as in the case at bench, no presumption of guilt can arise. Instead, the constitutional presumption of innocence should prevail in favor of the accused.[21]

With respect to the two (2) tires, accused Lozano has consistently maintained that the evidence of the prosecution regarding the discovery of the two (2) tires in their possession is purely hearsay. He says so because the information regarding the alleged discovery of the said tires in their possession was only conveyed to witness Jose Lazaro, Jr. by one of his fellow *barangay tanods*.[22]

The Court finds said argument untenable. Although it may be true that Jose Lazaro, Jr. initially received information from another *barangay tanod* regarding the subject stolen tires, it bears stressing that he himself confirmed the report. Pertinent portions of his testimony are hereby quoted:

"Q: Could you tell us if up to present you are a member of the *Barangay Tanod*?
A: Yes, sir.

Q: On July 26, 1997 at about 7:20 in the morning, could you still remember where were you?
A: I was in my house, sir.

Q: When you are in your house, could you still remember what happened?
A: Somebody called me, a male person called me, sir.

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[21] *Id*.

[22] *Rollo,* p. 12.

Q: Could you tell us the reason why he called you?
A: He gave me the information, sir.

Q: Could you tell us the information that he gave to you?
A: With regards to the white Toyota Cressida, sir.

Q: After receiving that information, what did you do?
A: According to the person they entered the house of Willie 'Bong' Callanga, sir.

Q: What did you do?
A: He told me that I might need some informations with regards to the two (2) tires which were stolen because the two (2) persons were acting suspectedly, sir.

COURT:

Who was that person given that information?
A: Your Honor, I would not tell it to the Court anymore, because he does not want to be involved in this case.

COURT:

Proceed.

Q: Did you give the information as requested?
A: Because the place where the car was nearby my place.

COURT:

What did you do after you got the information given to you and you saw the white car?
A: **Your Honor, I went up to the second floor of my house, and in that place I was able to see the yard of Willie 'Bong' Callanga, Your Honor.**

COURT:

What did you see after you went up?

A: **I saw three (3) male persons talking, Your Honor.**

COURT:

Who were these three (3) male persons?

A: **Willie 'Bong' Callanga, Lorenzo Tubis, and Chito Lozano**, Your Honor.

COURT:

What did you find after you saw them.

A: **After their conversation, Your Honor, the three (3) of them went inside the house, and after that went out the house, and two (2) of them were carrying the tires each.**

COURT:

Who was carrying the tires?

A: Luis 'Chito' Lozano and Lorenzo Tubis, Your Honor.

COURT:

What kind of tires?

A: Tires of the car, Your Honor.

COURT:

What did they do with the two (2) tires of the car? What happened at the Barangay Hall?

A: **We arrived there at the same time with the Toyota Cressida together with the two (2) persons who were arrested and it was then Pas Gonzales identified the two (2) tires, Your Honor, as she was the owner of the two (2) tires.**

COURT:

Who were on boarded at Toyota Cressida?

A: It was only Luis 'Chito' Lozano who was boarded the car, Your Honor.

COURT:

Do you know what happened to Lorenzo Tubis and Willie 'Bong' Callanga?

A: According to my fellow *barangay tanod*, Lorenzo Tubis was able to escape, Your Honor.

COURT:

How about Willie 'Bong' Callanga?

A: After we conducted the investigation on Chito Lozano the Police officer arrested Willie 'Bong' Callanga, Your Honor.

COURT:

Where was this house of Willie 'Bong' Callanga located when you saw him at his yard together with Lozenzo (sic) Tubis and Chito Lozano conversing?

A: My neighbor, Your Honor.

COURT:

What place?

A: Airport View Subdivision, Barangay Moonwalk, Parañaque, your Honor."[23]

Clearly, the testimony of Jose Lazaro, Jr. was not merely hearsay. He personally witnessed the incident as reported by his fellow *tanod*. Immediately thereafter, Paz Gonzales confirmed that the tires recovered from accused Lozano and his co-accused were the same tires stolen from her car.[24]

In view of the foregoing, the penalty imposed on accused Lozano and his co-accused should be modified.

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[23] TSN, March 17, 1998, pp. 4-9 (emphases supplied).

[24] TSN, January 27, 1998, p. 10.

The penalty for theft is graduated according to the value of the thing/s stolen.

"Art. 309. *Penalties.* - Any person guilty of theft shall be punished by:

xxx xxx xxx

(2) The penalty of *prision correccional* in its medium and maximum periods, if the value of the thing stolen is more than 6,000 pesos but does not exceed 12,000 pesos."

Per testimony of the private complainant, the value of the items stolen was more or less ₱27,000.00. This was the finding of the trial court and the Court of Appeals. The amount, which includes not only the alleged value of the two (2) tires but also of the other items, became the basis of the penalty imposed on the accused. The Court cannot, however, sustain it.

The amount of "more or less ₱27,000.00" was a sweeping assessment *uncorroborated* by any other evidence. The Court cannot arbitrarily hold that the loss sustained indeed amounted to ₱27,000.00. As earlier resolved, the guilt of the accused was not proven insofar as the other items were concerned. There is simply no solid evidence from which an adverse inference can be made. Thus, the trial court wrote that the "other items and their value were not duly proven."[25] Accordingly, the Court agrees with the trial court that the supposed amount corresponding to these items, which is ₱10,000.00, should be excluded.

The basis of the penalty imposed, therefore, should have been the value of the magwheels only. Records bear out that only the two (2) magwheels (R14 Goodyear tires) were found in the possession of the accused, with their value pegged at ₱17,000.00. In arriving at this amount, the trial court and the Court of Appeals merely relied on the testimony of private respondent[26] who did not even claim that they were brand new. At the risk of being repetitious, no other evidence was presented to support the testimony of private complainant. It is an ancient principle that

[25] CA *rollo,* p. 18.

[26] *Rollo,* p. 32.

actual damages must be duly proved.[27] In this aspect, the prosecution failed.

Was the amount of ₱17,000.00 an accurate or at least a realistic estimate of the value of these items? The Court does not believe so. Since there was no conclusive or definite proof relative to the value of these magwheels other than the testimony of private complainant, the Court fixes the value of the magwheels at ₱12,000.00. This is the reasonable allowable limit under the circumstances, following the guidelines in *Francisco v. People*.[28] To the Court's view, the amount is a more realistic estimate of their value. Thus, the **basis of the penalty** that should be imposed on petitioner and his co-accused should only be **₱12,000.00**.

All told, petitioner and his co-accused are found guilty beyond reasonable doubt of the crime of theft. Applying Article 309 (2) of the Revised Penal Code and the Indeterminate Sentence Law, petitioner and his co-accused, should suffer the indeterminate penalty ranging from six (6) months and one (1) day of *prision correccional*, as minimum, to four (4) years and two (2) months and one (1) day also of *prision correccional*, as maximum.[29]

WHEREFORE, the petition is *PARTLY GRANTED*. The Decision of the Court of Appeals, in CA-G.R. CR No. 27684, is *AFFIRMED with MODIFICATION*. Accused Luis Chito Buensoceso Lozano, Lorenzo Rameses Tubis and Willie Reyes Callanga are guilty beyond reasonable doubt of the crime of Theft under Article 309 (2) of the Revised Penal Code. They are hereby sentenced to suffer the indeterminate penalty of imprisonment ranging from Six (6) Months and One (1) day of *Prision Correccional*, as minimum, to Four (4) Years and Two (2) Months and One (1) Day also of *Prision Correccional*, as maximum.

SO ORDERED.

Carpio (Chairperson), Nachura, Peralta, and *Abad, JJ.*, concur.

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[27] *Dueñas v. Africa*, G.R. No. 165679, October 5, 2009, 603 SCRA 11.

[28] *Francisco v. People*, 478 Phil. 167 (2004).

[29] *People v. Salazar*, 342 Phil. 745 (1997).

SECOND DIVISION

[G.R. No. 170645. July 9, 2010]

NIEVES ESTARES BALDOS, substituted by FRANCISCO BALDOS and MARTIN BALDOS, *petitioners, vs.* **COURT OF APPEALS and REYNALDO PILLAZAR *a.k.a.* REYNALDO ESTARES BALDOS,** *respondents.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; P.D. NO. 651 ON REQUIRING REGISTRATION OF BIRTHS IN THE PHILIPPINES WHICH OCCURRED FROM JANDUARY 1, 1974 AND THEREAFTER; PERIOD OF REGISTRATION EXTENDED UNDER P.D. NO. 766. — Presidential Decree No. 651, otherwise known as An Act Requiring the Registration of Births and Deaths in the Philippines which Occurred from 1 January 1974 and Thereafter, provides: *Sec. 1. Registration of births*. **All babies born** in hospitals, maternity clinics, private homes, or elsewhere **within the period starting from January 1, 1974 up to the date when this decree becomes effective**, irrespective of the nationality, race, culture, religion or belief of their parents, whether the mother is a permanent resident or transient in the Philippines, and whose births have not yet been registered **must be reported for registration** in the office of the local civil registrar of the place of birth by the physician, nurse, midwife, *hilot*, or hospital or clinic administrator who attended the birth or in default thereof, by either parent or a responsible member of the family or a relative, or any person who has knowledge of the birth of the individual child. The report referred to above shall be accompanied with an affidavit describing the circumstances surrounding the delayed registration. Sec. 2. *Period of registration of births*. **The registration of the birth of babies referred to in the preceding section must be done within sixty (60) days from the date of effectivity of this decree without fine or fee of any kind**. Babies born after the effectivity of this decree must be registered in the office of the local civil registrar of the place of birth within thirty (30) days after birth, by the attending physician, nurse, midwife, *hilot* or hospitals or clinic administrator or, in default

of the same, by either parent or a responsible member of the family or any person who has knowledge of the birth. The parents or the responsible member of the family and the attendant at birth or the hospital or clinic administrator referred to above shall be jointly liable in case they fail to register the new born child. If there was no attendant at birth, or if the child was not born in a hospital or maternity clinic, then the parents or the responsible member of the family alone shall be primarily liable in case of failure to register the new born child. Presidential Decree No. 766 amended P.D. No. 651 by extending the period of registration up to 31 December 1975. P.D. No. 651, as amended, provided for special registration within a specified period to address the problem of under-registration of births as well as deaths. It allowed, without fine or fee of any kind, the late registration of births and deaths occurring within the period starting from 1 January 1974 up to the date when the decree became effective.

2. ID.; ID.; CIVIL REGISTRY LAW (ACT NO. 3753); APPLIES TO REGISTRATION OF ALL BIRTHS NOT COVERED BY P.D. NO. 651 AS AMENDED, OCCURRING FROM FEBRUARY 27, 1931; NCSO AO NO. 1-83 ON LATE REGISTRATION APPLIES TO 1948 BIRTH REGISTERED IN 1985; REGISTRATION THEREIN PRESUMED VALID. — Since Reynaldo was born on 30 October 1948, the late registration of his birth x x x falls under Act No. 3753, otherwise known as the Civil Registry Law, which took effect on 27 February 1931. As a general law, Act No. 3753 applies to the registration of all births, not otherwise covered by P.D. No. 651, as amended, occurring from 27 February 1931 onwards. Considering that the late registration of Reynaldo's birth took place in 1985, National Census Statistics Office (NCSO) Administrative Order No. 1, Series of 1983 governs the implementation of Act No. 3753 in this case. Under NCSO A.O. No. 1-83, the birth of a child shall be registered in the office of the local civil registrar within 30 days from the time of birth. Any report of birth made beyond the reglementary period is considered delayed. The local civil registrar, upon receiving an application for delayed registration of birth, is required to publicly post for at least ten days a notice of the pending application for delayed registration. If after ten days no one opposes the registration and the local civil registrar is convinced beyond doubt that the birth should be registered, he should register the

same. x x x Applications for delayed registration of birth go through a rigorous process. The books making up the civil register are considered public documents and are *prima facie* evidence of the truth of the facts stated there. As a public document, a registered certificate of live birth enjoys the presumption of validity. It is not for Reynaldo to prove the facts stated in his certificate of live birth, but for petitioners who are assailing the certificate to prove its alleged falsity.

APPEARANCES OF COUNSEL

Luperto F. Villanueva for petitioners.
Manuel R. Rosapapan for respondent.

R E S O L U T I O N

CARPIO, *J.*:

The Case

This is a petition for review[1] of the 8 August 2005 Decision[2] and the 22 November 2005 Resolution[3] of the Court of Appeals in CA G.R. CV No. 65693. The 8 August 2005 Decision affirmed the 16 August 1999 Order[4] of the Regional Trial Court (Branch 74) of Olongapo City in Civil Case No. 79-0-95. The 22 November 2005 Resolution denied petitioners' motion for reconsideration.

The Antecedent Facts

Reynaldo Pillazar, *alias* Reynaldo Baldos, was born on 30 October 1948. However, his birth was not registered in the

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

[2] *Rollo*, pp. 28-38. Penned by Associate Justice Jose Catral Mendoza, with Presiding Justice Romeo A. Brawner and Associate Justice Edgardo P. Cruz, concurring.

[3] *Id.* at 39-40. Penned by Associate Justice Jose Catral Mendoza, with Associate Justices Conrado M. Vasquez, Jr. and Edgardo P. Cruz, concurring.

[4] Records, pp. 106-109.

office of the local civil registrar until roughly 36 years later or on 11 February 1985. His certificate of live birth[5] indicated Nieves Baldos as his mother and Bartolome Baldos as his father. Nieves Baldos also appeared as the informant on the certificate of live birth.

On 8 March 1995, Nieves Baldos filed in the Regional Trial Court of Olongapo City a complaint,[6] docketed as Civil Case No. 79-0-95, for cancellation of the late registration of Reynaldo's birth. She claimed that Reynaldo was not really her son.

The Trial Court's Ruling

The trial court treated the complaint as a petition. In its 16 August 1999 Order,[7] the trial court dismissed the petition for lack of merit. The trial court reasoned as follows:

> A thorough examination of the evidence adduced by the plaintiff *vis-a-vis* the evidence of the defendant shows that apart from the scornful denial of plaintiff that defendant is her son, all documentary evidence available points to the contrary. The declaration of two disinterested persons, who were neighbors of the petitioner and his deceased husband, has never been refuted.
>
> No one was presented by plaintiff to corroborate her stand.
>
> In the realm of the evidence on record, there is no doubt that the oppositor is petitioner's son. Petitioner's reason for disowning the oppositor is obvious; he did not live up to her expectation; his wife is ungrateful to everything she did for her and the oppositor. Bad blood runs in the veins of the parties. But while oppositor may have done an act that caused plaintiff to rue she gave him life, such acts however, are not justifications of what she prays from this Court.
>
> An ungrateful act is not a ground to cancel a validly executed document, nor a reason to strip a person of one's filiation. It may be a ground for disinheritance though. The documents adduced on record are the best evidence of the parties' relationship.[8]

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[5] *Id.* at 4.

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

[7] *Id.* at 106-109.

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

Undeterred, Nieves appealed to the Court of Appeals. She insisted that the late registration of Reynaldo's birth was contrary to Presidential Decree No. 651 (P.D. No. 651).

The Ruling of the Court of Appeals

In its 8 August 2005 Decision,[9] the Court of Appeals affirmed the trial court's Order. The appellate court held that P.D. No. 651 did not proscribe the late registration of births of persons born before 1 January 1974. The Court of Appeals explained that the purpose of the decree was to encourage registration of births as well as deaths.

Nieves Baldos died on 17 May 1999. Her lawyer filed a motion for substitution[10] six years later or on 20 October 2005. In its 22 November 2005 Resolution,[11] the Court of Appeals granted the motion for substitution. From then on, Bartolome's brothers, Francisco Baldos and Martin Baldos, substituted for Nieves Baldos.

The Issue

The sole issue is whether the late registration of Reynaldo's birth is valid.

The Court's Ruling

The petition lacks merit.

Petitioners insist that the late registration of Reynaldo's birth is not authorized by P.D. No. 651. They claim that P.D. No. 651 applies only to births within the period from 1 January 1974 up to the date when the decree became effective. They point out that Reynaldo was born on 30 October 1948, outside of the period covered by the decree. Thus, petitioners submit the Court of Appeals violated basic rules of statutory construction when it interpreted P.D. No. 651 to include births before 1 January 1974. Petitioners contend the late registration of Reynaldo's birth amounts to simulation of birth.

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[9] *Rollo*, pp. 28-38.

[10] CA *rollo*, p. 61.

[11] *Id.* at 71-72.

Respondent Reynaldo counters that P.D. No. 651 does not proscribe the late registration of births of persons born before 1 January 1974. He maintains that he has sufficiently proven, by clear and convincing evidence, the fact that he is the son of Nieves and Bartolome Baldos. He asserts that a certificate of live birth is a public document covered by the presumption of regularity in the performance of official functions.

Presidential Decree No. 651, otherwise known as An Act Requiring the Registration of Births and Deaths in the Philippines which Occurred from 1 January 1974 and Thereafter, provides:

Sec. 1. Registration of births. **All babies born** in hospitals, maternity clinics, private homes, or elsewhere **within the period starting from January 1, 1974 up to the date when this decree becomes effective**, irrespective of the nationality, race, culture, religion or belief of their parents, whether the mother is a permanent resident or transient in the Philippines, and whose births have not yet been registered **must be reported for registration** in the office of the local civil registrar of the place of birth by the physician, nurse, midwife, *hilot*, or hospital or clinic administrator who attended the birth or in default thereof, by either parent or a responsible member of the family or a relative, or any person who has knowledge of the birth of the individual child.

The report referred to above shall be accompanied with an affidavit describing the circumstances surrounding the delayed registration. (Emphasis supplied)

Sec. 2. *Period of registration of births.* **The registration of the birth of babies referred to in the preceding section must be done within sixty (60) days from the date of effectivity of this decree without fine or fee of any kind**. Babies born after the effectivity of this decree must be registered in the office of the local civil registrar of the place of birth within thirty (30) days after birth, by the attending physician, nurse, midwife, *hilot* or hospitals or clinic administrator or, in default of the same, by either parent or a responsible member of the family or any person who has knowledge of the birth.

The parents or the responsible member of the family and the attendant at birth or the hospital or clinic administrator referred to above shall be jointly liable in case they fail to register the new born child. If there was no attendant at birth, or if the child was not born in a hospital or maternity clinic, then the parents or the responsible member of the family

alone shall be primarily liable in case of failure to register the new born child. (Emphasis supplied)

Presidential Decree No. 766[12] amended P.D. No. 651 by extending the period of registration up to 31 December 1975. P.D. No. 651, as amended, provided for special registration within a specified period to address the problem of under-registration of births as well as deaths. It allowed, without fine or fee of any kind, the late registration of births and deaths occurring within the period starting from 1 January 1974 up to the date when the decree became effective.

Since Reynaldo was born on 30 October 1948, the late registration of his birth is outside of the coverage of P.D. No. 651, as amended. The late registration of Reynaldo's birth falls under Act No. 3753, otherwise known as the Civil Registry Law, which took effect on 27 February 1931. As a general law, Act No. 3753 applies to the registration of all births, not otherwise covered by P.D. No. 651, as amended, occurring from 27 February 1931 onwards. Considering that the late registration of Reynaldo's birth took place in 1985, National Census Statistics Office (NCSO) Administrative Order No. 1, Series of 1983[13] governs the implementation of Act No. 3753 in this case.

Under NCSO A.O. No. 1-83, the birth of a child shall be registered in the office of the local civil registrar within 30 days from the time of birth.[14] Any report of birth made beyond the reglementary period is considered delayed.[15] The local civil registrar, upon receiving an application for delayed registration of birth, is required to publicly post for at least ten days a notice of the pending application for delayed registration.[16] If after ten days no one opposes the registration and the local civil registrar is convinced beyond doubt that the birth should be registered, he should register the same.[17]

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[12] Effective 8 August 1975.

[13] Amended by NCSO Administrative Order No. 1, Series of 1993.

[14] Rule 8 of NCSO Administrative Order No. 1, Series of 1983.

[15] Rule 46 of NCSO Administrative Order No.1, Series of 1983.

[16] Rule 47 of NCSO Administrative Order No.1, Series of 1983.

[17] Rule 48 of NCSO Administrative Order No.1, Series of 1983.

Reynaldo's certificate of live birth, as a duly registered public document, is presumed to have gone through the process prescribed by law for late registration of birth. It was only on 8 March 1995, after the lapse of ten long years from the approval on 11 February 1985 of the application for delayed registration of Reynaldo's birth, that Nieves registered her opposition. She should have done so within the ten-day period prescribed by law. Records[18] show that no less than Nieves herself informed the local civil registrar of the birth of Reynaldo. At the time of her application for delayed registration of birth, Nieves claimed that Reynaldo was her son. Between the facts stated in a duly registered public document and the flip-flopping statements of Nieves, we are more inclined to stand by the former.

Applications for delayed registration of birth go through a rigorous process. The books making up the civil register are considered public documents and are *prima facie* evidence of the truth of the facts stated there.[19] As a public document, a registered certificate of live birth enjoys the presumption of validity.[20] It is not for Reynaldo to prove the facts stated in his certificate of live birth, but for petitioners who are assailing the certificate to prove its alleged falsity. Petitioners miserably failed to do so. Thus, the trial court and the Court of Appeals correctly denied for lack of merit the petition to cancel the late registration of Reynaldo's birth.

WHEREFORE, we DENY the petition. We *AFFIRM* the 8 August 2005 Decision and the 22 November 2005 Resolution of the Court of Appeals in CA G.R. No. 65693 affirming the 16 August 1999 Order of the Regional Rial Court (Branch 74) of Olongapo City in Civil Case No. 79-0-95.

Cost against petitioner.

SO ORDERED.

Brion, Abad, Villarama, Jr., Perez, JJ., concur.

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[18] Records, p. 4.

[19] Sec. 13, Act No. 3753, otherwise known as the Civil Registry Law.

[20] *Yturralde v. Vagilidad,* 138 Phil. 416 (1969).

FIRST DIVISION

[G.R. No. 171873. July 9, 2010]

MUNICIPALITY OF TIWI, represented by Hon. Mayor JAIME C. VILLANUEVA and the SANGGUNIANG BAYAN of TIWI, *petitioners, vs.* **ANTONIO B. BETITO,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; JUDGMENT ON THE PLEADINGS. — A motion for judgment on the pleadings admits the truth of all the material and relevant allegations of the opposing party and the judgment must rest on those allegations taken together with such other allegations as are admitted in the pleadings. It is proper when an answer fails to tender an issue, or otherwise admits the material allegations of the adverse party's pleading. However, when it appears that not all the material allegations of the complaint were admitted in the answer for some of them were either denied or disputed, and the defendant has set up certain special defenses which, if proven, would have the effect of nullifying plaintiff's main cause of action, judgment on the pleadings cannot be rendered.

2. ID.; ID.; ALLEGATIONS IN PLEADINGS; HOW TO CONTEST GENUINENESS OF SUCH DOCUMENTS; RULE NOT APPLICABLE WHEN THE ADVERSE PARTY DOES NOT APPEAR TO BE A PARTY TO THE INSTRUMENT. — It was erroneous for the trial court to rule that the genuineness and due execution of the Contract of Legal Services was impliedly admitted by petitioners for failure to make a sworn specific denial thereof as required by Section 8, Rule 8 of the Rules of Court. This rule is not applicable when the adverse party does not appear to be a party to the instrument.

3. POLITICAL LAW; ADMINISTRATIVE LAW; LOCAL GOVERNMENT CODE; MUNICIPAL MAYOR; PRIOR AUTHORIZATION FROM THE SANGGUNIANG BAYAN REQUIRED FOR CONTRACT ON BEHALF OF THE MUNICIPALITY; PRESENT IN RESOLUTION NO. 15-92 AUTHORIZING MAYOR TO HIRE LAWYER TO REPRESENT

TIWI IN THE EXECUTION OF COURT'S DECISION IN *NPC V. PROV. OF ALBAY*; RELATIVE POWERS THEREIN. — Section 444(b)(1)(vi) of the LGC provides: SECTION 444. *The Chief Executive: Powers, Duties, Functions and Compensation.* — x x x (b) For efficient, effective and economical governance the purpose of which is the general welfare of the municipality and its inhabitants pursuant to Section 16 of this Code, the municipal mayor shall: x x x (1) Exercise general supervision and control over all programs, projects, services, and activities of the municipal government, and in this connection, shall: x x x (vi) Upon authorization by the *sangguniang bayan*, represent the municipality in all its business transactions and sign on its behalf all bonds, contracts, and obligations, and such other documents made pursuant to law or ordinance; x x x Pursuant to this provision, the municipal mayor is required to secure the prior authorization of the *Sangguniang Bayan* before entering into a contract on behalf of the municipality. In the instant case, the *Sangguniang Bayan* of Tiwi unanimously passed Resolution No. 15-92 authorizing Mayor Corral to hire a lawyer of her choice to represent the interest of Tiwi in the execution of this Court's decision in *National Power Corporation v. Province of Albay*. x x x The authority necessarily carried with it the power to negotiate, execute and sign on behalf of Tiwi the Contract of Legal Services. That the authorization did not set the terms and conditions of the compensation signifies that the council empowered Mayor Corral to reach a mutually agreeable arrangement with the lawyer of her choice subject, of course, to the general limitation that the contract's stipulations should not be contrary to law, morals, good customs, public order or public policy, and, considering that this is a contract of legal services, to the added restriction that the agreed attorney's fees must not be unreasonable and unconscionable.

4. ID.; ID.; ID.; ID.; ID.; ID.; AUTHORIZATION, NOT RATIFICATION, IS REQUIRED. — [P]etitioners' contention that the subject contract should first be ratified in order to become enforceable as against Tiwi must necessarily fail. As correctly held by the CA, the law speaks of prior authorization and not ratification with respect to the power of the local chief executive to enter into a contract on behalf of the local government unit.

5. ID.; ID.; ID.; ID.; ID.; ID.; SERVICES OF HIRED LAWYER DOES NOT INCLUDE GENERAL LEGAL SERVICES. — We cannot accept lawyer-respondent's strained reading of Resolution No. 15-92 in that the phrase "to represent the interest of the Municipality of Tiwi and its *Barangays*" is taken to mean such other matters not related to the execution of the decision in *National Power Corporation v. Province of Albay*. It could not have been the intention of the *Sangguniang Bayan* of Tiwi to authorize the hiring of a lawyer to perform general legal services because this duty devolves upon the municipal legal officer. The council sought the services of a lawyer because the dispute was between the municipality (Tiwi) and province (Albay) so much so that it fell under the exception provided in Section 481(b)(3)(i) of the LGC which permits a local government unit to employ the services of a special legal officer. Thus, the provisions of paragraph 4 of the Contract of Legal Services to the contrary notwithstanding, the basis of respondent's compensation should be limited to the services he rendered which reasonably contributed to the recovery of Tiwi's share in the subject realty taxes.

6. ID.; ID.; ID.; ID.; ID.; ID.; AGREED ATTORNEY'S FEES REQUIRES FULL BLOWN TRIAL. — The subject contract stipulated that respondent's 10% fee shall be based on "whatever amount or payment collected from the National Power Corporation (NPC) **as a result of the legal service rendered by [respondent]**." [However,] the extent and significance of respondent's legal services that reasonably contributed to the recovery of Tiwi's share as well as the amount of realty taxes recovered by Tiwi arising from these alleged services requires a full-blown trial. x x x [T]he issue of the reasonable legal fees due to respondent still needs to be resolved in a trial on the merits with the following integral sub-issues: (1) the reasonableness of the 10% contingent fee given that the recovery of Tiwi's share was not solely attributable to the legal services rendered by respondent, (2) the nature, extent of legal work, and significance of the cases allegedly handled by respondent which reasonably contributed, directly or indirectly, to the recovery of Tiwi's share, and (3) the relative benefit derived by Tiwi from the services rendered by respondent. In addition, we should note here that the amount of reasonable attorney's fees finally determined by the trial court should be without legal interest in line with well-

> settled jurisprudence. x x x To end, justice and fairness require that the issue of the reasonable attorney's fees due to respondent be ventilated in a trial on the merits amidst the contentious assertions by both parties because in the end, neither party must be allowed to unjustly enrich himself at the expense of the other. More so here because contracts for attorney's services stand upon an entirely different footing from contracts for the payment of compensation for any other services. Verily, a lawyer's compensation for professional services rendered are subject to the supervision of the court, not just to guarantee that the fees he charges and receives remain reasonable and commensurate with the services rendered, but also to maintain the dignity and integrity of the legal profession to which he belongs.

APPEARANCES OF COUNSEL

Maria Teresa Arao-Mahiwo for petitioners.
Betito Peña & Associates for respondent.

D E C I S I O N

DEL CASTILLO, *J.*:

A judgment on the pleadings is proper when the answer admits all the material averments of the complaint. But where several issues are properly tendered by the answer, a trial on the merits must be resorted to in order to afford each party his day in court.

This Petition for Review on *Certiorari* seeks to reverse and set aside the Court of Appeal's (CA) October 19, 2005 Decision[1] in CA G.R. CV No. 79057, which affirmed the March 3, 2001 Partial Decision[2] of the Regional Trial Court (RTC) of Quezon City, Branch 96 in Civil Case No. Q-99-39370, and

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[1] *Rollo*, pp. 44-52; penned by Associate Justice Rosmari D. Carandang and concurred in by Associate Justices Andres B. Reyes, Jr. and Monina Arevalo-Zenarosa.

[2] *Id.* at 152-160; penned by then Judge Lucas P. Bersamin, now a member of this Court.

the March 10, 2006 Resolution[3] denying petitioner's motion for reconsideration.

Factual Antecedents

The instant case is an offshoot of *National Power Corporation v. Province of Albay*[4] and *Salalima v. Guingona, Jr.*[5] It is, thus, necessary to revisit some pertinent facts from these cases in order to provide an adequate backdrop for the present controversy.

On June 4, 1990, this Court issued a Decision in the case of *National Power Corporation v. Province of Albay* finding, among others, the National Power Corporation (NPC) liable for unpaid real estate taxes from June 11, 1984 to March 10, 1987 on its properties located in the Province of Albay (Albay). These properties consisted of geothermal plants in the Municipality of Tiwi (Tiwi) and substations in the Municipality of Daraga. Previously, the said properties were sold at an auction sale conducted by Albay to satisfy NPC's tax liabilities. As the sole bidder at the auction, Albay acquired ownership over said properties.

On July 29, 1992, the NPC, through its then President Pablo Malixi (President Malixi), and Albay, represented by then Governor Romeo R. Salalima (Governor Salalima), entered into a Memorandum of Agreement (MOA) where the former agreed to settle its tax liabilities estimated at ₱214,845,104.76. The MOA provided, among others, that: (1) the actual amount collectible from NPC will have to be recomputed/revalidated; (2) NPC shall make an initial payment of ₱17,763,000.00 upon signing of the agreement; (3) the balance of the recomputed/ revalidated amount (less the aforesaid initial payment), shall be paid in 24 equal monthly installments to commence in September

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[3] *Id.* at 53; penned by Associate Justice Rosmari D. Carandang and concurred in by Associate Justices Andres B. Reyes, Jr. and Monia Arevalo-Zanarosa.

[4] G.R. No. 87479, June 4, 1990, 186 SCRA 198.

[5] 326 Phil. 847 (1996).

1992; and (4) ownership over the auctioned properties shall revert to NPC upon satisfaction of the tax liabilities.

On August 3, 1992, then Mayor Naomi C. Corral (Mayor Corral) of Tiwi formally requested Governor Salalima to remit the rightful tax shares of Tiwi and its *barangays* where the NPC's properties were located relative to the payments already made by NPC to Albay. On even date, the *Sangguniang Bayan* of Tiwi passed Resolution No. 12-92 requesting the *Sangguniang Panlalawigan* of Albay to hold a joint session for the purpose of discussing the distribution of the NPC payments.

On August 10, 1992, Governor Salalima replied that the request cannot be granted as the initial payment amounting to ₱17,763,000.00 was only an "earnest money" and that the total amount to be collected from the NPC was still being validated.

Due to the brewing misunderstanding between Tiwi and the concerned *barangays* on the one hand, and Albay on the other, and so as not to be caught in the middle of the controversy, NPC requested a clarification from the Office of the President as to the scope and extent of the shares of the local government units in the real estate tax collections.

On August 30, 1992, the *Sangguniang Bayan* of Tiwi passed Resolution No. 15-92 authorizing Mayor Corral to hire a lawyer to represent Tiwi and its *barangays* in the recovery of their rightful share in the aforesaid realty taxes. Thereafter, Mayor Corral sought the services of respondent Atty. Antonio B. Betito (respondent) and Atty. Alberto Lawenko (Atty. Lawenko). As a result, on January 25, 1993, Mayor Corral, representing Tiwi, and respondent and Atty. Lawenko entered into a Contract of Legal Services (subject contract). The subject contract provided, among others, that respondent and Atty. Lawenko would receive a 10% contingent fee on whatever amount of realty taxes that would be recovered by Tiwi through their efforts.

On December 3, 1992, the Office of the President, through then Chief Presidential Legal Counsel Antonio T. Carpio,[6] opined

[6] Now Senior Associate Justice of this Court.

that the MOA entered into by NPC and Albay merely recognized and established NPC's realty taxes. He further clarified that the sharing scheme and those entitled to the payments to be made by NPC under the MOA should be that provided under the law, and since Tiwi is entitled to share in said realty taxes, NPC may remit such share directly to Tiwi, *viz*:

xxx xxx xxx

The Memorandum of Agreement entered into by the Province of Albay and NPC merely enunciates the tax liability of NPC. The Memorandum of Agreement does not provide for the manner of payment of NPC's liability. Thus, the manner of payment as provided for by law shall govern. In any event, the Memorandum of Agreement cannot amend the law allowing the payment of said taxes to the Municipality of Tiwi.

The decision in the case of *NPC v. Province of Albay* (186 SCRA 198), likewise, only established the liability of NPC for real property taxes but does not specifically provide that said back taxes be paid exclusively to Albay province.

Therefore, it is our opinion that the NPC may pay directly to the municipality of Tiwi the real property taxes accruing to the same.

Please be guided accordingly.

Very truly yours,
(Sgd.)
ANTONIO T. CARPIO
Chief Presidential Legal Counsel[7]

Because of this opinion, NPC President Malixi, through a letter dated December 9, 1992, informed Mayor Corral and Governor Salalima that starting with the January 1993 installment, NPC will directly pay Tiwi its share in the payments under the MOA. As of December 9, 1992, payments made by NPC to Albay reached ₱40,724,471.74.

[7] Records, p. 26.

On December 19, 1992, in an apparent reaction to NPC's Decision to directly remit to Tiwi its share in the payments made and still to be made pursuant to the MOA, the *Sangguniang Panlalawigan* of Albay passed Ordinance No. 09-92, which, among others: (1) authorized the Provincial Treasurer upon the direction of the Provincial Governor to sell the real properties (acquired by Albay at the auction sale) at a public auction, and to cause the immediate transfer thereof to the winning bidder; and (2) declared as forfeited in favor of Albay, all the payments already made by NPC under the MOA.

From Albay's refusal to remit Tiwi's share in the aforementioned ₱40,724,471.74 stemmed several administrative complaints and court cases that respondent allegedly handled on behalf of Tiwi to recover the latter's rightful share in the unpaid realty taxes, including the case of *Salalima v. Guingona, Jr.* In this case, the Court held, among others, that the elective officials of Albay are administratively liable for abuse of authority due to their unjustified refusal to remit the rightful share of Tiwi in the subject realty taxes.

The present controversy arose when respondent sought to enforce the Contract of Legal Services after rendering the aforementioned legal services which allegedly benefited Tiwi. In his Complaint[8] for sum of money against Tiwi, represented by then Mayor Patricia Gutierrez, Vice Mayor Vicente Tomas Vera III, *Sangguniang Bayan* Members Rosana Parcia, Nerissa Cotara, Raul Corral, Orlando Lew Velasco, Liberato Ulysses Pacis, Lorenzo Carlet, Bernardo Costo, Jaime Villanueva, Benneth Templado and Municipal Treasurer Emma Cordovales (collectively petitioners), respondent claims that he handled numerous cases which resulted to the recovery of Tiwi's share in the realty taxes. As a result of these efforts, Tiwi was able to collect the amount of ₱110,985,181.83 and another ₱35,594,480.00 from the NPC as well as other amounts which will be proven during the trial. Under the Contract of Legal Services, respondent is entitled to 10% of whatever amount

[8] *Id.* at 1-10.

that would be collected from the NPC. However, despite repeated demands for the *Sangguniang Bayan* of Tiwi to pass an appropriate ordinance for the payment of his attorney's fees, the former refused to pass the ordinance and to pay what is justly owed him. Respondent prayed that Tiwi be ordered to pay ₱11,000,000.00 in attorney's fees and 10% of the other amounts to be determined during trial plus interest and damages; that the *Sangguniang Bayan* be ordered to pass the necessary appropriation ordinance; that the municipal treasurer surrender all the receipts of payments made by the NPC to Tiwi from January 1993 to December 1996 for the examination of the court; and that Tiwi pay ₱500,000.00 as attorney's fees.

In their Answer,[9] petitioners admitted that the *Sangguniang Bayan* of Tiwi passed Resolution No. 15-92 but denied that said resolution authorized then Mayor Corral to enter into the subject contract. In particular, Mayor Corral exceeded her authority when she bound Tiwi to a gargantuan amount equivalent to 10% of the amount of realty taxes recovered from NPC. Further, the legal services under the subject contract should have been limited to the execution of the decision in *National Power Corporation v. Province of Albay* as per Resolution No. 15-92. For these reasons, the subject contract is void, unenforceable, unconscionable and unreasonable. Petitioners further claim that they are not aware of the cases which respondent allegedly handled on behalf of Tiwi since these cases involved officials of the previous administration; that some of these cases were actually handled by the Office of the Solicitor General; and that these were personal cases of said officials. In addition, the Contract of Legal Services was not ratified by the *Sangguniang Bayan* of Tiwi in order to become effective. Petitioners also raise the defense that the realty taxes were recovered by virtue of the opinion rendered by then Chief Presidential Legal Counsel Antonio T. Carpio and not through the efforts of respondent.

As to the amount of ₱110,985,181.83 in realty taxes, the same was received by Albay and not Tiwi while the amount of ₱35,594,480.00 is part of the share of Tiwi in the utilization of

[9] *Id.* at 57-62.

the national wealth. Furthermore, in a Commission on Audit (COA) Memorandum dated January 15, 1996, the COA ruled that the authority to pass upon the reasonableness of the attorney's fees claimed by respondent lies with the *Sangguniang Bayan* of Tiwi. Pursuant to this memorandum, the *Sangguniang Bayan* of Tiwi passed Resolution No. 27-98 which declared the subject contract invalid. Petitioners also allege that the contract is grossly disadvantageous to Tiwi and that respondent is guilty of laches because he lodged the present complaint long after the death of Mayor Corral; and that the amount collected from NPC has already been spent by Tiwi.

On November 7, 2000, respondent filed a motion[10] for partial judgment on the pleadings and/or partial summary judgment.

Regional Trial Court's Ruling

On March 3, 2001, the trial court rendered a partial judgment on the pleadings in favor of respondent:

> WHEREFORE, partial judgment on the pleadings is rendered ordering the defendant Municipality of Tiwi, Albay to pay the plaintiff the sum of ₱14,657,966.18 plus interest at the legal rate from the filing of the complaint until payment is fully delivered to the plaintiff; and, for this purpose, the defendant *Sangguniang Bayan* of Tiwi, represented by the co-defendants officials, shall adopt and approve the necessary appropriation ordinance.
>
> Trial to receive evidence on the remaining amounts due and payable to the plaintiff pursuant to the contract of legal services shall hereafter continue, with notice to all the parties.
>
> SO ORDERED.[11]

The trial court held that petitioners' answer to the complaint failed to tender an issue, thus, partial judgment on the pleadings is proper. It noted that petitioners did not specifically deny under oath the actionable documents in this case, particularly, the Contract of Legal Services and Resolution No. 15-92.

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[10] *Id.* at 168-172.

[11] *Id.* at 190.

Consequently, the genuineness and due execution of these documents are deemed admitted pursuant to Section 8, Rule 8 of the Rules of Court. Thus, the authority of Mayor Corral to enter into the subject contract was deemed established.

It added that the authority given to Mayor Corral to hire a lawyer was not only for the purpose of executing the decision in *National Power Corporation v. Province of Albay* but extended to representing the interest of Tiwi in other cases as well. Further, the said resolution did not impose as a condition precedent the ratification of the subject contract by the *Sangguniang Bayan* in order to render it effective. Lastly, the trial court ruled that the answer admitted, through a negative pregnant, that Tiwi was paid the amounts of ₱110,985,181.83 and ₱35,594,480.00, hence, respondent is entitled to 10% thereof as attorney's fees under the terms of the subject contract.

Court of Appeal's Ruling

In its assailed October 19, 2005 Decision, the CA affirmed the Decision of the trial court:

> WHEREFORE, premises considered, the Partial Decision of the Regional Trial Court of Quezon City, Branch 96, dated March 3, 2001, is **AFFIRMED**.
>
> SO ORDERED.[12]

The appellate court agreed with the trial court that the genuineness and due execution of the Contract of Legal Services and Resolution No. 15-92 was impliedly admitted by petitioners because of their failure to make a verified specific denial thereof. Further, the answer filed by the petitioners admitted the material averments of the complaint concerning Tiwi's liability under the subject contract and its receipt from the NPC of a total of ₱146,579,661.84 as realty taxes. Petitioners cannot claim that the subject contract required ratification because this is not a requisite for the enforceability of a contract against a local government unit under the express terms of the contract and

[12] *Rollo*, p. 52.

the provisions of the Local Government Code (LGC). Also, petitioners are estopped from questioning the enforceability of the contract after having collected and enjoyed the benefits derived therefrom.

The appellate court found nothing objectionable in the stipulated contingent fee of 10% as this was voluntarily agreed upon by the parties and allowed under existing jurisprudence. The fee was justified given the numerous administrative and court cases successfully prosecuted and defended by the respondent in the face of the provincial government's stubborn refusal to release Tiwi's share in the realty taxes paid by NPC. The stipulated fee is not illegal, unreasonable or unconscionable. It is enforceable as the law between the parties.

Issues

Petitioners raise the following issues for our resolution:

1. The amount of award of attorney's fees to respondent is unreasonable, unconscionable and without any proof of the extent, nature and "result of his legal service" as required by the purported "contract of legal services" and pursuant to Section 24, Rule 138 of the Rules of Court.
2. The application of the rule of judgment on the pleadings and/or summary judgment is baseless, improper and unwarranted in the case at bar.
3. The purported "contract of legal services" exceeded the authority of the late Mayor Corral and should have been ratified by the *Sangguniang Bayan* of Tiwi in order to be enforceable.[13]

Petitioners' Arguments

Petitioners claim that their answer raised factual issues and defenses which merited a full-blown trial. In their answer, they asserted that the 10% contingent fee is unreasonable,

[13] *Id.* at 18-19.

unconscionable and unfounded considering that respondent did not render any legal service which accrued to the benefit of Tiwi. The Contract of Legal Services specifically provided that for the attorney's fees to accrue, respondent's legal services should result to the recovery of Tiwi's claims against Albay and NPC. It is, thus, incumbent upon respondent to prove in a trial on the merits that his legal efforts resulted to the collection of the realty taxes in favor of Tiwi. Petitioners belittle as mere messengerial service the legal services rendered by respondent on the ground that what remained to be done was the execution of the judgment of this Court in *National Power Corporation v. Province of Albay* and the opinion of then Chief Presidential Legal Counsel Antonio T. Carpio.

In their answer, petitioners also questioned the authority of Mayor Corral to enter into the subject contract providing for a 10% contingent fee because the provisions of Resolution No. 15-92 do not grant her such power. In addition, under the said contract, Tiwi was made liable for legal services outside of those related to the satisfaction of the judgment in *National Power Corporation v. Province of Albay*. These stipulations are void and unenforceable. Hence, any claim of respondent must be based on *quantum meruit* which should be threshed out during a full-blown trial.

Finally, petitioners argue that respondent cannot capitalize on the admission of the genuineness and due execution of the subject contract because this merely means that the signature of the party is authentic and the execution of the contract complied with the formal solemnities. This does not extend to the document's substantive validity and efficacy.

Respondent's Arguments

Respondent counters that the Contract of Legal Services was not limited to the NPC case but to other services done pursuant to said contract. Thus, the attorney's fees should cover these services as well. He also stresses that despite this Court's ruling in *National Power Corporation v. Province of Albay* and the opinion of then Chief Presidential Legal Counsel Antonio

T. Carpio, Governor Salalima and the *Sangguniang Panlalawigan* of Albay stubbornly resisted and disobeyed the same. Consequently, respondent prosecuted and defended on behalf of Tiwi several administrative and court cases involving the elective officials of Albay to compel the latter to comply with the aforesaid issuances. He also filed a civil case to prevent the NPC from remitting Tiwi's share in the realty taxes directly to Albay.

Respondent adds that he also acted as counsel for Mayor Corral after Governor Salalima and his allies sought to remove Mayor Corral in retaliation to the administrative cases that she (Mayor Corral) previously filed against Governor Salalima for the latter's failure to remit Tiwi's share in the realty taxes. These administrative cases reached this Court in *Salalima v. Guingona, Jr.* where respondent appears as the counsel of record of Mayor Corral and the other local officials of Tiwi. The filing and handling of these cases belies petitioners' claim that what respondent did for Tiwi was a mere messengerial service.

Respondent also argues that the Contract of Legal Services is valid and enforceable due to petitioners' failure to specifically deny the same under oath in their Answer. Moreover, the law does not require that the subject contract be ratified by the *Sangguniang Bayan* in order to become enforceable. Instead, the law merely requires that the *Sangguniang Bayan* authorize the mayor to enter into contracts as was done here through Resolution No. 15-92.

Last, the 10% attorney's fees in the subject contract is reasonable, more so because the fee is contingent in nature. In a long line of cases, it has been ruled that a 10% attorney's fees of the amount recoverable is reasonable.

Our Ruling

The petition is meritorious.

Judgment on the pleadings is improper when the answer to the complaint tenders several issues.

A motion for judgment on the pleadings admits the truth of all the material and relevant allegations of the opposing party and the judgment must rest on those allegations taken together with such other allegations as are admitted in the pleadings.[14] It is proper when an answer fails to tender an issue, or otherwise admits the material allegations of the adverse party's pleading.[15] However, when it appears that not all the material allegations of the complaint were admitted in the answer for some of them were either denied or disputed, and the defendant has set up certain special defenses which, if proven, would have the effect of nullifying plaintiff's main cause of action, judgment on the pleadings cannot be rendered.[16]

In the instant case, a review of the records reveal that respondent (as plaintiff) and petitioners (as defendants) set-up multiple levels of claims and defenses, respectively, with some failing to tender an issue while others requiring the presentation of evidence for resolution. The generalized conclusion of both the trial and appellate courts that petitioners' answer admits all the material averments of the complaint is, thus, without basis. For this reason, a remand of this case is unavoidable. However, in the interest of justice and in order to expedite the disposition of this case which was filed with the trial court way back in 1999, we shall settle the issues that can be resolved based on the pleadings and remand only those issues that require a trial on merits as hereunder discussed.

Preliminarily, it was erroneous for the trial court to rule that the genuineness and due execution of the Contract of Legal Services was impliedly admitted by petitioners for failure to make a sworn specific denial thereof as required by Section 8,[17] Rule 8 of the Rules of Court. This rule is not applicable

[14] *Rodriguez v. Llorente*, 49 Phil. 823, 824 (1926).

[15] Rules of Court, Rule 34, Section 1.

[16] *Benavides v. Alabastro*, 120 Phil. 1349, 1351-1352 (1964).

[17] SECTION 8. *How to contest such documents*. — When an action or defense is founded upon a written instrument, copied in or attached to the

when the adverse party does not appear to be a party to the instrument.[18] In the instant case, the subject contract was executed between respondent and Atty. Lawenko, on the one hand, and Tiwi, represented by Mayor Corral, on the other. None of the petitioners, who are the incumbent elective and appointive officials of Tiwi as of the filing of the Complaint, were parties to said contract. Nonetheless, in their subsequent pleadings,[19] petitioners admitted the genuineness and due execution of the subject contract. We shall, thus, proceed from the premise that the genuineness and due execution of the Contract of Legal Services has already been established. Furthermore, both parties concede the contents and efficacy of Resolution 15-92. As a result of these admissions, the issue, at least as to the coverage of the subject contract, may be resolved based on the pleadings as it merely requires the interpretation and application of the provisions of Resolution 15-92 *vis-à-vis* the stipulations in the subject contract.

Mayor Corral was authorized to enter into the Contract of Legal Services

Petitioners argue that Resolution No. 15-92 did not authorize Mayor Corral to enter into the subject contract, hence, the contract must first be ratified to become binding on Tiwi.

The argument is unpersuasive. Section 444(b)(1)(vi) of the LGC provides:

SECTION 444. *The Chief Executive: Powers, Duties, Functions and Compensation*. — x x x

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corresponding pleading as provided in the preceding section, the genuineness and due execution of the instrument shall be deemed admitted unless the adverse party, under oath, specifically denies them, and sets forth what he claims to be the facts; but the requirement of an oath does not apply when the adverse party does not appear to be a party to the instrument or when compliance with an order for an inspection of the original instrument is refused.

[18] *Id.*; *Gaw v. Court of Appeals*, G.R. No. 60783, October 31, 1990, 191 SCRA 77, 85.

[19] *Rollo*, pp. 30-32.

(b) For efficient, effective and economical governance the purpose of which is the general welfare of the municipality and its inhabitants pursuant to Section 16 of this Code, the municipal mayor shall: x x x

(1) Exercise general supervision and control over all programs, projects, services, and activities of the municipal government, and in this connection, shall: x x x

(vi) Upon authorization by the *sangguniang bayan*, represent the municipality in all its business transactions and sign on its behalf all bonds, contracts, and obligations, and such other documents made pursuant to law or ordinance; x x x

Pursuant to this provision, the municipal mayor is required to secure the prior authorization of the *Sangguniang Bayan* before entering into a contract on behalf of the municipality. In the instant case, the *Sangguniang Bayan* of Tiwi unanimously passed Resolution No. 15-92 authorizing Mayor Corral to hire a lawyer of her choice to represent the interest of Tiwi in the execution of this Court's Decision in *National Power Corporation v. Province of Albay* –

RESOLUTION AUTHORIZING THE MUNICIPAL MAYOR OF TIWI TO HIRE THE SERVICES OF A LAWYER TO REPRESENT THE MUNICIPALITY OF TIWI AND THE SIX GEOTHERMAL *BARANGAYS* IN THE EXECUTION OF G.R. NO. 87479 AND DIVESTING THE LAWYER HIRED BY THE PROVINCIAL GOVERNOR AND THE PROVINCE OF ALBAY OF ITS AUTHORITY TO REPRESENT THE MUNICIPALITY OF TIWI AND THE SIX *BARANGAYS*

WHEREAS, In an *en banc* decision G.R. No. 87479, the Supreme Court sustained the posture of the Province of Albay and legally declared that the NAPOCOR is under obligation to pay the Province of Albay, the Municipality of Tiwi and Daraga the amount of ₱ 214 Million representing Realty Taxes covering the period from the year 1984 to 1987 which decision had already been final and executory per entry of judgment dated June 4, 1990;

WHEREAS, NAPOCOR finally paid the Province of Albay the amount of ₱ 17.7 Million as initial payment [d]ated July 29, 1992 that

amount will inevitably increase the financial resources of the Local Government Units concerned;

WHEREAS, the Province of Albay headed by Governor Salalima and his men are still reconciling the ₱ 214 Million with NAPOCOR which contravene the final decision of the Supreme Court and considered the ₱ 17.7 Million as an Earnest money to the damage and prejudice of the Municipality of Tiwi and the Six *Barangays*, since that amount should be pro-rated accordingly as mandated by Law after deducting the legitimate expenses and attorneys fees;

WHEREAS, not (*sic*) of [the] ₱ 17.7 Million already paid by NAPOCOR as per decision of the court nothing has yet been given by Governor Salalima to the Municipality of Tiwi as its share cost (*sic*) to be 45% of said amount nor the affected *barangays* of Tiwi has ever been given each corresponding shares despite representation made by the Municipal Mayor Naomi Corral, the Governor is hesitant and showing signs that the share of the Municipality will never be given;

WHEREAS, on motion of Kagawad Bennett Templado duly seconded by Joselito Cantes and Kagawad Francisco Alarte, be it

RESOLVED, as it is hereby resolved, To authorize the Mayor to hire the Services of a lawyer to represent the interest of the Municipality of Tiwi and its *Barangays* and for this purpose and authorization be given to the Municipal Mayor to hire a lawyer of her choice; Further divesting the lawyer hired by Governor Salalima and on (*sic*) the Province of Albay of its authority to represent the Municipality of Tiwi and the six Geothermal Barangays;

FINALLY RESOLVED, that copy of this resolution be furnished [the] Office of the Provincial Governor, Vice Governor, Office of the Sangguniang Panlalawigan, President Malixi of NAPOCOR for [their] information and guidance.

Approved unanimously.[20]

The above-quoted authority necessarily carried with it the power to negotiate, execute and sign on behalf of Tiwi the Contract of Legal Services. That the authorization did not set the terms and conditions of the compensation signifies that the council empowered Mayor Corral to reach a mutually agreeable

[20] Records, pp. 15-16.

arrangement with the lawyer of her choice subject, of course, to the general limitation that the contract's stipulations should not be contrary to law, morals, good customs, public order or public policy,[21] and, considering that this is a contract of legal services, to the added restriction that the agreed attorney's fees must not be unreasonable and unconscionable.[22] On its face, and there is no allegation to the contrary, this prior authorization appears to have been given by the council in good faith to the end of expeditiously safeguarding the rights of Tiwi. Under the particular circumstances of this case, there is, thus, nothing objectionable to this manner of prior authorization. In *Constantino v. Hon. Ombudsman Desierto*,[23] we reached a similar conclusion:

> More persuasive is the Mayor's second contention that no liability, whether criminal or administrative, may be imputed to him since he merely complied with the mandate of Resolution No. 21, series of 1996 and Resolution No. 38, series of 1996, of the Municipal Council; and that the charges leveled against him are politically motivated. A thorough examination of the records convinces this Court that the evidence against him is inadequate to warrant his dismissal from the service on the specified grounds of grave misconduct, conduct prejudicial to the best interest of the service and gross neglect of duty.
>
> The explicit terms of Resolution No. 21, Series of 1996 clearly authorized Mayor Constantino to "*lease/purchase* one (1) fleet of heavy equipment" composed of seven (7) generally described units, through a "*negotiated contract*." That resolution, as observed at the outset, contained *no parameters as to rate of rental, period of lease, purchase price*. Pursuant thereto, Mayor Constantino, representing the Municipality of Malungon, and Norberto Lindong, representing the Norlovanian Corporation, executed two written instruments on the same date and occasion, *viz.*:
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> *One* — an agreement (on a standard printed form) dated February 28, 1996 for the *lease* by the corporation to the municipality of heavy

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[21] CIVIL CODE, Article 1306.

[22] RULES OF COURT, Rule 138, Section 24.

[23] 351 Phil. 896 (1998).

equipment of the number and description required by Resolution No. 21, and

Two — an undertaking for the *subsequent conveyance and transfer of ownership* of the equipment to the municipality at the end of the term of the lease.

xxx xxx xxx

In light of the foregoing facts, which appear to the Court to be quite apparent on the record, it is difficult to perceive how the Office of the Ombudsman could have arrived at a conclusion of any wrongdoing by the Mayor in relation to the transaction in question. It is difficult to see how the transaction between the Mayor and Norlovanian Corporation — entered into pursuant to Resolution No. 21 — and tacitly accepted and approved by the town Council through its Resolution No. 38 — could be deemed an infringement of the same Resolution No. 21. In truth, an examination of the pertinent writings (the resolutions, the two (2) instruments constituting the negotiated contract, and the certificate of delivery) unavoidably confirms their integrity and congruity. It is, in fine, difficult to see how those pertinent written instruments," could establish a *prima facie* case to warrant the preventive suspension of Mayor Constantino. A person with the most elementary grasp of the English language would, from merely scanning those material documents, at once realize that the Mayor had done nothing but carry out the expressed wishes of the Sangguniang Bayan.

xxx xxx xxx

[T]he Court is thus satisfied that it was in fact the Council's intention, which it expressed in clear language, to confer on the Mayor ample discretion to execute a "negotiated contract" with any interested party, without regard to any official acts of the Council prior to Resolution No. 21.[24]

Prescinding therefrom, petitioners' next contention that the subject contract should first be ratified in order to become enforceable as against Tiwi must necessarily fail. As correctly held by the CA, the law speaks of prior authorization and not ratification with respect to the power of the local chief executive to enter into a contract on behalf of the local government unit.[25] This authority, as

[24] *Id.* at 909-913.

[25] *Vergara v. Ombudsman*, G.R. No. 174567, March 12, 2009, 580 SCRA 693, 714.

discussed above, was granted by the *Sangguniang Bayan* to Mayor Corral as per Resolution No. 15-92.

The scope of the legal services contemplated in Resolution No. 15-92 was limited to the execution of the decision in National Power Corporation v. Province of Albay.

For his part, respondent claims that the Contract of Legal Services should be construed to include such services even outside the scope of the execution of the ruling in *National Power Corporation v. Province of Albay*. Respondent relies on the broad wording of paragraph 4 of the subject contract to support this contention, *viz*:

> 4. That the legal services which the Party of the FIRST PART is obliged to render to the Party of the SECOND PART under this AGREEMENT consists of the following:
>
> a) To prepare and file cases in courts, Office of the President, Ombudsman, Sandiganbayan, Department of Interior and Local Government and Department of Finance or to represent the Party of the SECOND PART in cases before said bodies;
> b) To coordinate or assist the Commission on Audit, The National Bureau of Investigation or the Fiscals Office in the prosecution of cases for the Party of the SECOND PART;
> c) To follow-up all fees, taxes, penalties and other receivables from National Power Corporation (NPC) and Philippine Geothermal Inc. due to the Municipality of Tiwi;
> d) To provide/give legal advice to the Party of the SECOND PART in her administration of the Municipal Government of Tiwi where such advice is necessary or proper; and
> e) To provide other forms of legal assistance that may be necessary in the premises.[26]

The contention is erroneous. The wording of Resolution No. 15-92 is clear. Its title and whereas clauses, previously quoted above, indicate that the hiring of a lawyer was for the sole

[26] Records, pp. 17-18.

purpose of executing the judgment in *National Power Corporation v. Province of Albay*, that is, to allow Tiwi to recover its rightful share in the unpaid realty taxes of NPC. In his Complaint, respondent admits that he was furnished and read a copy of the said resolution before he entered into the subject contract. He cannot now feign ignorance of the limitations of the authority of Mayor Corral to enter into the subject contract and the purpose for which his services were employed.

We cannot accept respondent's strained reading of Resolution No. 15-92 in that the phrase "to represent the interest of the Municipality of Tiwi and its *Barangays*" is taken to mean such other matters not related to the execution of the decision in *National Power Corporation v. Province of Albay*. It could not have been the intention of the *Sangguniang Bayan* of Tiwi to authorize the hiring of a lawyer to perform general legal services because this duty devolves upon the municipal legal officer. The council sought the services of a lawyer because the dispute was between the municipality (Tiwi) and province (Albay) so much so that it f ell under the exception provided in Section 481(b)(3)(i)[27] of the LGC which permits a local government unit to employ the services of a special legal officer. Thus, the provisions of paragraph 4 of the Contract of Legal Services to the contrary notwithstanding, the basis of respondent's compensation should be limited to the services he rendered which reasonably contributed to the recovery of Tiwi's share in the subject realty taxes.

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[27] SECTION 481. *Qualifications, Terms, Powers and Duties*. — x x x

(b) The legal officer, the chief legal counsel of the local government unit, shall take charge of the office of legal services and shall: x x x

(3) x x x x x x x x x

(i) Represent the local government unit in all civil actions and special proceedings wherein the local government unit or any official thereof, in his official capacity, is a party: Provided, That, in actions or proceedings where a component city or municipality is a party adverse to the provincial government or to another component city or municipality, **a special legal officer may be employed to represent the adverse party**; (Emphasis supplied)

In sum, the allegations and admissions in the pleadings are sufficient to rule that Mayor Corral was duly authorized to enter into the Contract of Legal Services. However, the legal services contemplated therein, which are properly compensable, are limited to such services which reasonably contributed to the recovery of Tiwi's rightful share in the unpaid realty taxes of NPC. Paragraph 4 of the Contract of Legal Services, insofar as it covers legal services outside of this purpose, is therefore unenforceable.

While the foregoing issues may be settled through the admissions in the pleadings, the actual attorney's fees due to respondent cannot still be determined.

The issue of the reasonable legal fees due to respondent still needs to be resolved in a trial on the merits.

The subject contract stipulated that respondent's 10% fee shall be based on "whatever amount or payment collected from the National Power Corporation (NPC) **as a result of the legal service rendered by [respondent]**."[28] As will be discussed hereunder, the extent and significance of respondent's legal services that reasonably contributed to the recovery of Tiwi's share as well as the amount of realty taxes recovered by Tiwi arising from these alleged services requires a full-blown trial.

The main source of respondent's claim for attorney's fees lies with respect to several administrative and court cases that he allegedly prosecuted and defended on behalf of Tiwi against the elective officials of Albay in order to compel the latter to remit the rightful share of Tiwi in the unpaid realty taxes. In their Answer, petitioners denied knowledge of these cases on the pretext that they were filed during the prior term of Mayor Corral. However, we can take judicial notice of *Salalima v. Guingona, Jr.* where respondent appears as the counsel of record. In *Salalima v. Guingona, Jr.*, the Court found, among

[28] Emphasis supplied.

others, that the elective officials of Albay are administratively liable for (1) their unjustified refusal to release the share of Tiwi in the subject realty taxes, and (2) initiating unfounded and harassment disciplinary actions against Mayor Corral as a retaliatory tactic. This case, at the minimum, is evidence of the efforts of respondent in recovering Tiwi's share. Nevertheless, the other cases allegedly handled by respondent cannot be deemed admitted for purposes of fixing respondent's compensation because petitioners controverted the same on several grounds, to wit: (1) these cases where not handled by respondent, (2) the OSG was the lead counsel in these cases, and (3) these cases were the personal cases of Mayor Corral and other officials of Tiwi which had no bearing in the eventual recovery of Tiwi's share in the subject realty taxes. With our previous finding that the subject contract only covers legal services which reasonably contributed to the recovery of Tiwi's share, these defenses properly tender issues which should be determined in a trial on the merits.

More important, in their Answer, petitioners raise the main defense that the subject realty taxes were recovered by virtue of the opinion rendered by then Chief Presidential Legal Counsel Antonio T. Carpio and not through the efforts of respondent. As narrated earlier, the said opinion was issued after then NPC President Malixi asked clarification from the Office of the President regarding the distribution of the unpaid realty taxes to Albay and its municipalities and *barangays*, including Tiwi. Significantly, respondent himself stated in his Complaint that "pursuant to the advice of Sec. Carpio, NPC started to remit their shares directly to Tiwi and its *barangays* in January 1993."[29] Our pronouncements in *Salalima v. Guingona, Jr.*, which respondent himself relies on in his pleadings, tell the same story, *viz*:

> Fortunately, the Municipalities of Tiwi and Daraga and the National Government eventually received their respective shares, which were paid directly to them by the NPC **pursuant to the directive of the Office of the President issued after the NPC requested clarification**

[29] Records, p. 5.

regarding the right of the municipalities concerned to share in the realty tax delinquencies. But this fact does not detract from the administrative liability of the petitioners. Notably, when the NPC advised the Province of Albay on 9 December 1992 that starting with the January 1993 installment it would pay directly to the Municipality of Tiwi by applying the sharing scheme provided by law, the petitioners passed on 19 December 1992 an ordinance declaring as forfeited in favor of the Province all the payments made by the NPC under the MOA and authorizing the sale of the NPC properties at public auction. This actuation of the petitioners reveals all the more their intention to deprive the municipalities concerned of their shares in the NPC payments. (Emphasis supplied)[30]

What appears then from the pleadings is that respondent, by his own admission, concedes the immense importance of the aforesaid opinion to the eventual recovery of the unpaid realty taxes. However, respondent never asserted the degree of his participation in the crafting or issuance of this opinion. It is evident, therefore, that the recovery of the realty taxes is not solely attributable to the efforts of respondent. This aspect of the case is decisive because it goes into the central issue of whether the 10% contingent fee is unreasonable and unconscionable. Consequently, it becomes necessary to weigh, based on the evidence that will be adduced during trial, the relative importance of the aforesaid opinion *vis-à-vis* the cases allegedly handled by respondent on behalf of Tiwi insofar as they aided in the eventual recovery of the unpaid realty taxes. And from here, the trial court may reasonably determine what weight or value to assign the legal services which were rendered by respondent.

Apart from this, there is another vital issue tendered by the pleadings regarding the extent of the benefits which Tiwi allegedly derived from the legal services rendered by respondent. In partially ruling that these amounts should be ₱110,985,181.83 and ₱35,594,480.00, respectively, the trial court explained in this wise:

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[30] *Supra* note 5 at 917.

The complaint alleged as to this:

"18. Based on the available records obtained by the plaintiff from the NPC, the Municipality of Tiwi received One Hundred Ten Million Nine Hundred Eighty Five Thousand One Hundred Eighty One & 83/100 (₱110,985.83) [sic] plus Thirty Five Million Five Hundred Ninety Four Thousand Four Hundred Eighty (₱35,594,480.00) Pesos remittances from the said agency. The total receipts of taxes by Tiwi remitted by the NPC could be higher and this will be proven during the trial when all the records of remittances of taxes of the NPC-SLRC in Biñan, Laguna are subpoenaed, marked as ANNEXES-P; Q and R;"

In relation thereto, the answer stated:

"14. With respect to the allegation in paragraph 18 of the complaint answering defendant admits that the amount of ₱110,985.83 [*sic*] was remitted to Albay province so far as the annex is concerned but the same is immaterial, useless as there was no allegation that this was recovered/received by Tiwi. With respect to the amount of ₱35,594,480.00, the said amount was received as a matter of the clear provision of the law, specifically Sections 286-293 of the present Local Government Code and not through the effort of the plaintiff. Annex "R" is hearsay and self-serving."

While the plaintiff directly averred that "the Municipality of Tiwi received One Hundred Ten Million Nine Hundred Eighty Five Thousand One Hundred Eighty One & 83/100 (₱110,985.83) [sic] plus Thirty Five Million Five Hundred Ninety Four Thousand Four Hundred Eighty (₱35,594,480.00) Pesos remittances from the said agency," the defendant evasively stated that "the amount of ₱110,985.83 [sic] was **remitted to Albay province**" and that "the same is immaterial, useless as there was no allegation that this was recovered/received by Tiwi." Thereby, the answer was a negative pregnant because its denial was not specific. Hence, the defendants have admitted that Tiwi was paid the stated amounts.

The defendants further stated that Tiwi received the amount of ₱35,594,480.00 "as a matter of the clear provision of the law, [sic] and not through the effort of the plaintiff." However, considering that the legal services of the plaintiff were rendered under a written contract, the qualification as to the ₱35,594,480.00 was meaningless.

The pleadings render it indubitable, therefore, that the total amount of ₱146,579,661.84, which was received by Tiwi from NPC, is subject to the 10% attorney's fees under the plaintiff's contract of legal services.[31]

We disagree. Although concededly petitioners' counter-allegations in their Answer were not well-phrased, the overall tenor thereof plainly evinces the defense that the amount of ₱110,985,181.83 was received by Albay and not by Tiwi.[32] Consequently, the said amount cannot be deemed admitted for the purpose of fixing respondent's compensation. There is no occasion to apply the rule on negative pregnant because the denial of the receipt of the said amount by Tiwi is fairly evident. The dictates of simple justice and fairness precludes us from unduly prejudicing the rights of petitioners by the poor phraseology of their counsel. Verily, the Rules of Court were designed to ascertain the truth and not to deprive a party of his legitimate defenses. In fine, we cannot discern based merely on the pleadings that this line of defense employed by petitioners is patently sham especially since the documentary evidence showing the alleged schedule of payments made by NPC to Albay and its municipalities and *barangays*, including Tiwi, was not even authenticated by NPC.

We also disagree with the trial court's above-quoted finding that the qualification as to the amount of ₱35,594,480.00 which was received "as a matter of the clear provision of the law, [sic] and not through the effort of the plaintiff" is meaningless. The error appears to have been occasioned by the failure to quote the exact allegation in petitioners' Answer which reads "the said amount [₱35,594,480.00] was received as a matter of the clear

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[31] Records, pp. 188-189.

[32] This is fairly deducible from paragraph 14 of petitioners' Answer (*records, p.* 59) to the Complaint, *viz*:

14. With respect to the allegation in paragraph 18 of the complaint answering defendant admits that the amount of ₱110,985.83 [sic] **was remitted to Albay Province** so far as the annex is concerned but the same is immaterial, useless as **there was no allegation that this was recovered/ received by Tiwi**. x x x **Annex "R" is hearsay and self-serving**. (Emphasis supplied)

provision of the law, **specifically Sections 286-293 of the present Local Government Code** and not through the effort of the plaintiff."[33] The omitted portion is significant because Sections 286-293 of the LGC refer to the share of the local government unit in the utilization of the national wealth. Petitioners are, in effect, claiming that the ₱35,594,480.00 was received by Tiwi as its share in the utilization and development of the national wealth within its area and not as its share in the unpaid realty taxes of NPC subject of *National Power Corporation v. Province of Albay*. What's more, respondent's own documentary evidence, appended to his Complaint, confirms this posture because said document indicates that the ₱35,594,480.00 was derived from the "Computation of the Share of Local Government from Proceeds Derived in the Utilization of National Wealth SOUTHERN LUZON For CY 1992 and First Quarter 1993."[34] It may be added that the unpaid realty taxes of NPC subject of *National Power Corporation v. Province of Albay* covered the period from June 11, 1984 to March 10, 1987 and not from 1992 to 1993. There is, thus, nothing from the above which would categorically establish that the amount of ₱35,594,480.00 was part of the realty taxes that NPC paid to Tiwi or that said amount was recovered from the legal services rendered by respondent on behalf of Tiwi.

Based on the preceding discussion, it was, thus, erroneous for the trial and appellate courts to peg the amount of realty taxes recovered for the benefit of Tiwi at ₱110,985,181.83 and ₱35,594,480.00 considering that petitioners have alleged defenses in their Answer and, more importantly, considering that said amounts have not been sufficiently established as reasonably flowing from the legal services rendered by respondent.

Conclusion

The foregoing considerations cannot be brushed aside for it would be iniquitous for Tiwi to compensate respondent for legal

[33] Records, p. 59

[34] *Id.* at 34.

services which he did not render; or which has no reasonable connection to the recovery of Tiwi's share in the subject realty taxes; or whose weight or value has not been properly appraised in view of respondent's admission in his Complaint that the opinion issued by then Chief Presidential Legal Counsel Antonio T. Carpio (in which respondent had no clear participation) was instrumental to the recovery of the subject realty taxes. Hence, the necessity of a remand of this case to determine these issues of substance.

To recap, the following are deemed resolved based on the allegations and admissions in the pleadings: (1) then Mayor Corral was authorized to enter into the Contract of Legal Services, (2) the legal services contemplated in Resolution No. 15-92 was limited to such services which reasonably contributed to the recovery of Tiwi's rightful share in the unpaid realty taxes of NPC, and (3) paragraph 4 of the Contract of Legal Services, insofar as it covers services outside of this purpose, is unenforceable. Upon the other hand, the issue of the reasonable legal fees due to respondent still needs to be resolved in a trial on the merits with the following integral sub-issues: (1) the reasonableness of the 10% contingent fee given that the recovery of Tiwi's share was not solely attributable to the legal services rendered by respondent, (2) the nature, extent of legal work, and significance of the cases allegedly handled by respondent which reasonably contributed, directly or indirectly, to the recovery of Tiwi's share, and (3) the relative benefit derived by Tiwi from the services rendered by respondent. In addition, we should note here that the amount of reasonable attorney's fees finally determined by the trial court should be without legal interest in line with well-settled jurisprudence.[35]

As earlier noted, this case was filed with the trial court in 1999, however, we are constrained to remand this case for further proceedings because the subject partial judgment on the pleadings was clearly not proper under the premises. At any rate, we have narrowed down the triable issue to the

[35] *Cortes v. Court of Appeals,* 443 Phil. 42, 54 (2003).

determination of the exact extent of the reasonable attorney's fees due to respondent. The trial court is, thus, enjoined to resolve this case with deliberate dispatch in line with the parameters set in this Decision.

To end, justice and fairness require that the issue of the reasonable attorney's fees due to respondent be ventilated in a trial on the merits amidst the contentious assertions by both parties because in the end, neither party must be allowed to unjustly enrich himself at the expense of the other. More so here because contracts for attorney's services stand upon an entirely different footing from contracts for the payment of compensation for any other services. Verily, a lawyer's compensation for professional services rendered are subject to the supervision of the court, not just to guarantee that the fees he charges and receives remain reasonable and commensurate with the services rendered, but also to maintain the dignity and integrity of the legal profession to which he belongs.[36]

WHEREFORE, the petition is *GRANTED*. The October 19, 2005 Decision and March 10, 2006 Resolution of the Court of Appeals in CA G.R. CV No. 79057 are *REVERSED* and *SET ASIDE*. This case is *REMANDED* to the trial court for further proceedings to determine the reasonable amount of attorney's fees which respondent is entitled to in accordance with the guidelines set in this Decision.

SO ORDERED.

Corona, C.J. (Chairperson), Brion,[*] *Abad,*[**] and *Perez, JJ.,* concur.

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[36] *Id.* at 54-55.

[*] Per Special Order No. 856 dated July 1, 2010.

[**] Per Special Order No. 869 dated July 5, 2010.

SECOND DIVISION

[G.R. No. 172023. July 9, 2010]

HEIRS OF SANTIAGO C. DIVINAGRACIA, *petitioners, vs.* **HONORABLE J. CEDRICK O. RUIZ, Presiding Judge, Branch 39, Regional Trial Court, Iloilo City; GERRY D. SUMACULUB, as Clerk of Court of the Regional Trial Court; CBS DEVELOPMENT CORPORATION, INC. (CBSDC) represented by its President and Chief Executive Officer, ROGELIO M. FLORETE, SR., and DIAMEL, INC., represented by ROGELIO M. FLORETE, SR.,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; INTERIM RULES OF PROCEDURE GOVERNING INTRA-CORPORATE CONTROVERSIES; THAT DECISIONS COVERED THEREBY ARE IMMEDIATELY EXECUTORY EXCEPT AWARDS FOR MORAL DAMAGES, EXEMPLARY DAMAGES AND ATTORNEY'S FEES; RETROACTIVE APPLICATION THEREOF. — On 19 September 2006, while the present [intra-corporate] case remained pending before this Court, the Court *en banc* issued a Resolution in A.M. No. 01-2-04-SC titled "R**e:** Amendment of Section 4, Rule 1 of the Interim Rules of Procedure Governing Intra-Corporate Controversies by Clarifying that Decisions Issued Pursuant to Said Rule are Immediately Executory Except the Awards for Moral Damages, Exemplary Damages and Attorney's Fees, if any." x x x The amended provision expressly exempts awards for moral damages, exemplary damages, and attorney's fees from the rule that decisions and orders in cases covered by the Interim Rules are immediately executory. As can be gleaned from the title of A.M. No. 01-2-04-SC, the amendment of Section 4, Rule 1 of the Interim Rules was crafted precisely to clarify the previous rule that decisions on intra-corporate disputes are immediately executory, by specifically providing for an exception. Thus, the prevailing rule now categorically provides that awards for moral damages, exemplary damages, and attorney's fees in intra-

corporate controversies are ***not*** immediately executory. Indisputably, the amendment of Section 4, Rule 1 of the Interim Rules is procedural in character. Well-settled is the rule that procedural laws are construed to be applicable to actions pending and undetermined at the time of their passage, and are deemed retroactive in that sense and to that extent. Procedural laws do not fall under the general rule against retroactive operation of statutes. Further, the retroactive application of procedural laws does not violate any personal rights because no vested right has yet attached or arisen from them. Clearly, the amended Section 4, Rule 1 of the Interim Rules must be applied retroactively to the present case.

2. ID.; ID.; ID.; ID.; THAT EVEN THEN, AWARDS FOR MORAL AND EXEMPLARY DAMAGES CANNOT BE THE SUBJECT OF EXECUTION PENDING APPEAL; ELUCIDATED.— Even before the amendment of Section 4, Rule 1 of the Interim Rules, the Court has already held that awards for moral and exemplary damages cannot be the subject of execution pending appeal. In *International School, Inc. (Manila) v. Court of Appeals*, the Court reiterated the ruling in *Radio Communications of the Philippines, Inc. (RCPI) v. Lantin*, and quoted the following reason for such principle: x x x **The execution of any award for moral and exemplary damages is dependent on the outcome of the main case**. Unlike the actual damages for which the petitioners may clearly be held liable if they breach a specific contract and the amounts of which are fixed and certain, liabilities with respect to moral and exemplary damages as well as the exact amounts remain uncertain and indefinite pending resolution by the Intermediate Appellate Court and eventually the Supreme Court. **The existence of the factual bases of these types of damages and their causal relation to the petitioners' act will have to be determined in the light of errors on appeal**. It is possible that the petitioners, after all, while liable for actual damages may not be liable for moral and exemplary damages. Or as in some cases elevated to the Supreme Court, the awards may be reduced.

APPEARANCES OF COUNSEL

Fortun Narvasa & Salazar for petitioners.
Gregorio M. Rubias for respondents.

D E C I S I O N

CARPIO, *J.*:

The Case

For review[1] is the 6 October 2005 Decision[2] and 22 February 2006 Resolution[3] of the Court of Appeals in CA-G.R. CEB-SP No. 00040. The Court of Appeals dismissed the petition for *certiorari* filed by petitioners seeking the nullification of the 13 October 2004 Resolution[4] and the 17 November 2004 writ of execution[5] issued in Corporate Case No. 02-27050. In the assailed resolution, the Court of Appeals denied reconsideration.

The Antecedents

The present controversy originated from Corporate Case No. 02-27050, which involved a Petition for *Mandamus* and Nullification of Delinquency Call and Issuance of Unsubscribed Shares filed by Santiago C. Divinagracia (Santiago) before the Regional Trial Court of Iloilo City.

Santiago alleged that he was then a stockholder of respondent CBS Development Corporation, Inc. (CBSDC), owning 3,000 shares, and was issued CBSDC certificates of stock for 750 shares. In petitioners' Memorandum, they alleged that Santiago opposed a proposal to authorize respondent Rogelio Florete, in his capacity as President of CBSDC, to mortgage all or substantially all of CBSDC's real properties to secure the loan obtained by Newsounds Broadcasting Network, Inc. (NBN), Consolidated Broadcasting System (CBS), and People's Broadcasting Services, Inc. (PBS). However, despite Santiago's

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

[2] *Rollo*, pp. 50-57. Penned by Associate Justice Isaias P. Dicdican with Associate Justices Ramon M. Bato, Jr. and Enrico A. Lanzanas concurring.

[3] *Id.* at 58-59.

[4] *Id.* at 161-166.

[5] *Id.* at 188-190.

and the other stockholders' protest, a majority, representing more than 2/3 of the outstanding capital stock of CBSDC, voted and approved the grant of such authority to the Board.

Subsequently, Santiago, as a dissenting stockholder, wrote a letter objecting to the mortgage and exercising his appraisal right under Section 81 of the Corporation Code. In response, the corporate secretary informed Santiago that a majority of CBSDC's Board of Directors approved the exercise of his appraisal right.

Thereafter, Santiago surrendered his stock certificates to CBSDC and then demanded an appraisal of his shares. The Board indefinitely postponed action on Santiago's appraisal right, to which Santiago protested. The corporate secretary denied Santiago's protest and informed him that his CBSDC shares, including those for which he was issued Certificates of Stock, were declared delinquent and were to be sold on auction on 12 February 2002.

On 6 February 2002, Santiago filed with the Regional Trial Court of Iloilo City a Petition for *Mandamus* and Nullification of Delinquency Call and Issuance of Unsubscribed Shares.

On 12 February 2002, Santiago's CBSDC shares were sold on auction to respondent Diamel, Inc. Consequently, Santiago filed an amended petition on 10 June 2002.

Private respondents filed an Answer with Compulsory Counterclaim.

On 14 April 2004, Santiago died and his heirs substituted him in the case.

On 12 August 2004, respondent Judge rendered a Decision, the dispositive portion of which reads:

> WHEREFORE, in view of the foregoing disquisitions, the instant "Petition" and/or "Amended Petition" is/are hereby DISMISSED for utter lack of merit.
>
> The "Compulsory Counterclaim[s]" of the herein corporate respondents CBS Development Corporation, Inc. (CBSDC) and Diamel, Inc. (Diamel) are hereby given DUE COURSE and GRANTED. Consequently, the Heirs of Santiago Divinagracia, namely:

	NAME	RESIDENCE
1.	Ma. Elena R. Divinagracia	23 Delgado St., Iloilo City
2.	Elsa R. Divinagracia	No., 1st Street Paradise Village Banilad, Cebu City
3.	Ruth Marie R. Divinagracia	Unit 4-C, Torre de Salcedo, Salcedo St., Legaspi Village, Makati City
4.	Liane Grace R. Divinagracia	23 Delgado St., Iloilo City
5.	Ricardo R. Divinagracia	16 Fajardo St., Jaro, Iloilo City
6.	Ma. Fe Emily R. Divinagracia	23 Delgado St., Iloilo City

("Notice of Death And Substitution Of Parties," page 1) are hereby ordered, jointly and severally, to pay each of the aforementioned corporations the following, to wit:

1. ONE HUNDRED THOUSAND PESOS (₱100,000.00) as and for exemplary damages; and

2. ONE HUNDRED THOUSAND PESOS (₱100,000.00) as and for attorney's fees.

No pronouncement as to costs.

SO ORDERED.[6]

On 26 August 2004, petitioners filed a Notice of Appeal of the trial court's decision.

On the other hand, private respondents filed on 30 August 2004 a Motion for Immediate Execution of the trial court's decision, which petitioners opposed.

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[6] *Id.* at 150-151.

On 13 October 2004, respondent Judge issued a Resolution granting the motion and ordering the issuance of a writ of execution.

On 18 October 2004, petitioners filed a Petition for *Certiorari*[7] with Prayer for Temporary Restraining Order and Writ of Injunction before the Court of Appeals-Cebu City assailing the 13 October 2004 Resolution.

Meanwhile, on 17 November 2004, the trial court issued a writ of execution.

On 6 October 2005, the Court of Appeals rendered the assailed Decision, the dispositive portion of which reads:

> WHEREFORE, in view of the foregoing premises, judgment is hereby rendered by us DISMISSING the petition filed in this case and AFFIRMING the assailed resolution issued by the respondent judge on August 12, 2004[8] in Corporate Case No. 02-27050.
>
> SO ORDERED.[9]

On 22 February 2006, the Court of Appeals denied the motion for reconsideration.

Hence, this petition.

The Court of Appeals' Ruling

The Court of Appeals found no grave abuse of discretion in respondent judge's granting of private respondents' motion for immediate execution of the 12 August 2004 decision in Corporate Case No. 02-27050. According to the Court of Appeals, respondent judge acted pursuant to Section 4, Rule 1 of the Interim Rules of Procedure for Intra-Corporate Controversies (Interim Rules) which provides that "all decisions rendered in intra-corporate controversies shall immediately be executory."

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

[8] Should be 13 October 2004.

[9] *Rollo*, p. 56.

The Issue

Petitioners raise the sole issue of whether the award of exemplary damages and attorney's fees in favor of private respondents can be immediately executed pending appeal of the corporate case.

The Ruling of the Court

The petition is meritorious.

From the filing of the intra-corporate dispute on 6 February 2002 until the promulgation of the challenged Court of Appeals' decision and resolution on 6 December 2005 and 22 February 2006, respectively, the governing rule, specifically Section 4, Rule 1 of the Interim Rules,[10] provided that:

> All decisions and orders issued under these Rules shall immediately be executory. No appeal or petition taken therefrom shall stay the enforcement or implementation of the decision or order, unless restrained by an appellate court. Interlocutory orders shall not be subject to appeal.

On 19 September 2006, while the present case remained pending before this Court, the Court *en banc* issued a Resolution in A.M. No. 01-2-04-SC titled "Re: Amendment of Section 4, Rule 1 of the Interim Rules of Procedure Governing Intra-Corporate Controversies by Clarifying that Decisions Issued Pursuant to Said Rule are Immediately Executory Except the Awards for Moral Damages, Exemplary Damages and Attorney's Fees, if any." The Court resolved to amend specifically Section 4, Rule 1 of the Interim Rules, to wit:

> Acting on the Resolution dated September 5, 2006 of the Committee on the Revision of Rules of Court, the Court Resolved to AMEND Section 4, Rule 1 of The Interim Rules of Procedure Governing Intra-Corporate Controversies as follows:
>
> xxx xxx xxx

[10] Embodied in A.M. No. 01-2-04-SC (RE: PROPOSED INTERIM RULES OF PROCEDURE GOVERNING INTRA-CORPORATE CONTROVERSIES UNDER R.A. NO. 8799) and issued on 13 March 2001.

> SEC. 4. Executory nature of decisions and orders.— All decisions and orders issued under these Rules shall immediately be executory EXCEPT THE AWARDS FOR MORAL DAMAGES, EXEMPLARY DAMAGES AND ATTORNEY'S FEES, IF ANY. No appeal or petition taken therefrom shall stay the enforcement or implementation of the decision or order, unless restrained by an appellate court. Interlocutory orders shall not be subject to appeal.

The amended provision expressly exempts awards for moral damages, exemplary damages, and attorney's fees from the rule that decisions and orders in cases covered by the *Interim Rules* are immediately executory. As can be gleaned from the title of A.M. No. 01-2-04-SC, the amendment of Section 4, Rule 1 of the Interim Rules was crafted precisely to clarify the previous rule that decisions on intra-corporate disputes are immediately executory, by specifically providing for an exception. Thus, the prevailing rule now categorically provides that awards for moral damages, exemplary damages, and attorney's fees in intra-corporate controversies are ***not*** immediately executory.

Indisputably, the amendment of Section 4, Rule 1 of the Interim Rules is procedural in character. Well-settled is the rule that procedural laws are construed to be applicable to actions pending and undetermined at the time of their passage, and are deemed retroactive in that sense and to that extent. Procedural laws do not fall under the general rule against retroactive operation of statutes.[11] Further, the retroactive application of procedural laws does not violate any personal rights because no vested right has yet attached or arisen from them.[12] Clearly, the amended Section 4, Rule 1 of the Interim Rules must be applied retroactively to the present case. Therefore, the trial court's award of exemplary damages and attorney's fees in favor of private respondents is not immediately executory.

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[11] *Republic of the Philippines v. Court of Appeals*, 447 Phil. 385, 393 (2003).

[12] See *Padua v. Court of Appeals*, G.R. No. 152150, 10 December 2008, 573 SCRA 383, 388.

Moreover, even before the amendment of Section 4, Rule 1 of the Interim Rules, the Court has already held that awards for moral and exemplary damages cannot be the subject of execution pending appeal. In *International School, Inc. (Manila) v. Court of Appeals*,[13] the Court reiterated the ruling in *Radio Communications of the Philippines, Inc. (RCPI) v. Lantin*,[14] and quoted the following reason for such principle:

x x x **The execution of any award for moral and exemplary damages is dependent on the outcome of the main case.** Unlike the actual damages for which the petitioners may clearly be held liable if they breach a specific contract and the amounts of which are fixed and certain, liabilities with respect to moral and exemplary damages as well as the exact amounts remain uncertain and indefinite pending resolution by the Intermediate Appellate Court and eventually the Supreme Court. **The existence of the factual bases of these types of damages and their causal relation to the petitioners' act will have to be determined in the light of errors on appeal.** It is possible that the petitioners, after all, while liable for actual damages may not be liable for moral and exemplary damages. Or as in some cases elevated to the Supreme Court, the awards may be reduced.[15] (Emphasis supplied)

WHEREFORE, we *GRANT* the petition. We *SET ASIDE* the 6 October 2005 Decision and 22 February 2006 Resolution of the Court of Appeals in CA-G.R. CEB-SP No. 00040.

SO ORDERED.

Abad, Villarama, Jr.,[*] *Perez,*[**] and *Mendoza, JJ.*, concur.

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[13] 368 Phil. 791, 804 (1999).

[14] G.R. No. 59311, 31 January 1985, 134 SCRA 395.

[15] *Id.* at 400-401.

[*] Designated additional member per Special Order No. 858.

[**] Designated additional member per Special Order No. 863.

FIRST DIVISION

[G.R. No. 172611. July 9, 2010]

SPS. FEDERICO VALENZUELA and LUZ BUENA-VALENZUELA, *petitioners, vs.* **SPS. JOSE MANO, JR. and ROSANNA REYES-MANO,** *respondents.*

SYLLABUS

1. CIVIL LAW; LAND TITLES; CANNOT BE USED TO PROTECT A USURPER FROM THE TRUE OWNER. — "Settled is the rule that a person, whose certificate of title included by mistake or oversight the land owned by another, does not become the owner of such land by virtue of the certificate alone. The Torrens System is intended to guarantee the integrity and conclusiveness of the certificate of registration but is not intended to perpetrate fraud against the real owner of the land. The certificate of title cannot be used to protect a usurper from the true owner."

2. ID.; DAMAGES; MORAL DAMAGES, EXEMPLARY DAMAGES AND ATTORNEY'S FEES; PROPRIETY THEREOF; APPLICATION IN CASE AT BAR. — Article 2217 of the Civil Code defines what are included in moral damages while Article 2219 enumerates the cases where they may be recovered. Moral damages are in the category of an award designed to compensate the claimant for actual injury suffered and not to impose a penalty on the wrongdoer. "The person claiming moral damages must prove the existence of bad faith by clear and convincing evidence for the law always presumes good faith. It is not enough that one merely suffered sleepless nights, mental anguish, serious anxiety as the result of the actuations of the other party. Invariably such action must be shown to have been willfully done in bad faith or with ill motive." In the same fashion, to warrant the award of exemplary damages, the wrongful act must be accompanied by bad faith, and an award of damages would be allowed only if the guilty party acted in wanton, fraudulent, reckless or malevolent manner. As regards attorney's fees, the law is clear that in the absence of stipulation, attorney's fees may be recovered as actual or compensatory damages under any of the circumstances provided for in Article 2208 of

the Civil Code. Having ruled that Jose committed fraud in obtaining title to the disputed property then he should be liable for both moral and exemplary damages. Likewise, since petitioners were compelled to litigate to protect their rights and having proved that Jose acted in bad faith, attorney's fees should likewise be awarded.

APPEARANCES OF COUNSEL

Elison G. Natividad for petitioners.
Halili Certeza Matibag Law Offices for respondents.

D E C I S I O N

DEL CASTILLO, *J.*:

The rule that a Torrens Certificate of Title is conclusive evidence of ownership of the land described therein[1] does not apply when such land, or a portion thereof, was illegally or erroneously included in said title.

This Petition for Review on *Certiorari*[2] assails the Decision[3] dated January 16, 2006 of the Court of Appeals (CA) in CA-G.R. CV No. 83577, which reversed and set aside the Decision[4] dated March 10, 2004 issued by the Regional Trial Court (RTC) of Bulacan, Branch 14, in Civil Case No. 1065-M-99. Also assailed is the Resolution[5] dated May 3, 2006 denying the motion for reconsideration.

Factual Antecedents

Petitioner Federico Valenzuela (Federico) is the son of Andres Valenzuela (Andres) who was the owner and possessor of a

[1] See *Carvajal v. Court of Appeals*, 345 Phil. 582, 594 (1997).

[2] *Rollo*, pp.12-31.

[3] *Id.* at 46-60; penned by Associate Justice Jose L. Sabio, Jr. and concurred in by Associate Justices Jose C. Mendoza (now a Member of this Court) and Arturo G. Tayag.

[4] *Id.* at 32-44; penned by Judge Petrita Braga Dime.

[5] *Id.* at 67-68.

parcel of land with an area of 938 square meters, more or less, located at Dampol 1st, Pulilan, Bulacan. The property was declared in the name of Andres under Declaration of Real Property No. 7187[6] which described the property as follows:

Location:	Dampol 1st, Pulilan, Bulacan
Boundaries:	
North:	Camino Provincial
East:	Felisa Calderon
South:	Aurea Caleon
West:	Benita Bailon
Kind of Land:	Residential Lot
Area:	938 square meters

Andres died on October 10, 1959, and the possession of said property was transferred to Federico. On August 5, 1980, a document denominated as *Pagmamana sa Labas ng Hukuman at Pagpaparaya o Pagkakaloob*[7] was executed by the heirs of Andres who waived all their rights to the property in favor of Federico.

Meanwhile, on February 7, 1991, a Deed of Conditional Sale[8] was executed between Feliciano Geronimo (Feliciano) and herein respondent Jose Mano, Jr. (Jose), wherein the former agreed to sell to the latter a 2,056-square meter parcel of land located at Dampol 1st, Pulilan, Bulacan. The corresponding Deed of Sale[9] was subsequently executed in March 1991.

On March 4, 1992,[10] Jose applied for a Free Patent and on April 10, 1992, Original Certificate of Title (OCT) No. P-351[11] was issued in his name. This time, the property was indicated as covering an area of 2,739 square meters.

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[6] Records, Vol. I, p.9.

[7] *Id.* at 6-8.

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

[9] *Id.* at 13.

[10] *Id.* at 86.

[11] *Id.* at 153.

Sometime in 1997, Federico declared in his name under Tax Declaration No. 97-19005-01105[12] the property covered by Declaration of Real Property No. 7187 in the name of Andres.

Subsequently, Jose sold a portion of the land covered by OCT No. P-351 to Roberto S. Balingcongan (Balingcongan). On January 8, 1998, Transfer Certificate of Title (TCT) No. T-112865[13] was issued in the name of Balingcongan covering 2,292 square meters. On the same date, TCT No. T-112864[14] was also issued in the name of Jose covering 447 square meters.

Federico transferred his residence to Malabon and so he left the care of the property to his nephew, Vicente Joson (Vicente). Sometime in 1999, Federico instructed Vicente to construct a perimeter fence on his property but he was prevented by Jose, claiming that the 447 square meters was his property as reflected in his TCT No. T-112864. On the other hand, Federico is claiming it as part of the property he inherited from his father, Andres.

When the matter could not be settled amicably, the petitioners lodged a Complaint[15] for Annulment of Title and/or Reconveyance, Damages with the RTC of Malolos, Bulacan. The case was set for pre-trial conference[16] on March 27, 2000. Thereafter, trial ensued.

Ruling of the Regional Trial Court

The RTC found that even before Jose purchased the 2,056 square meters lot from Feliciano on February 7, 1991, he had already caused the survey of a 2,739-square meter lot on January 30, 1991. The document of sale expressly stated that the area sold was 2,056 square meters and that the same is located in Dampol 1st, Pulilan, Bulacan. However, in March, 1991, Jose

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[12] *Id.* at 10.

[13] *Id.* at 156.

[14] *Id.* at 155.

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

[16] *Id.* at 50.

filed his application for free patent using the survey on the 2,739 square meters. He also indicated therein that the property is located in Dampol II, Pulilan, Bulacan and that the land described and applied for is not claimed or occupied by any person. He further claimed that the property was public land which was first occupied and cultivated by Feliciano.

Thus, the trial court found that the preponderance of evidence showed that the disputed area of 447 square meters rightfully belongs to Federico. This was a part of Lot No. 1306 originally owned and possessed by Andres as identified and described in the Declaration of Real Property No. 7187.

On March 10, 2004, the trial court rendered a Decision, the decretal portion of which reads:

> WHEREFORE, judgment is hereby rendered in favor of the plaintiffs and against the defendants, as follows:
>
> 1. Ordering the defendants to return to the plaintiffs the disputed portion consisting of 447 square meters and now covered by TCT No. T-112864 of the Registry of Deeds of Bulacan, in the name of Jose Mano, Jr. married to Rosanna Reyes;
>
> 2. Ordering defendants to immediately demolish and/or remove the concrete fence erected on the premises;
>
> 3. Ordering the defendants to pay plaintiffs the amounts of ₱50,000.00 for moral damages; ₱30,000.00 for exemplary damages and ₱50,000.00 for attorney's fees;
>
> 4. Ordering the Register of Deeds of Bulacan to cancel said TCT No. T-112864 of the Registry of Deeds of Bulacan;
>
> 5. Defendants to pay costs of this suit.
>
> SO ORDERED.[17]

Ruling of the Court of Appeals

Respondents went to the CA on appeal. In a Decision[18] dated January 16, 2006, the CA reversed and set aside the

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[17] *Rollo*, pp. 43-44.

[18] *Id.* at 46-60.

ruling of the RTC and dismissed the complaint. According to the CA, respondents satisfactorily proved their ownership over the disputed property. The Free Patent No. 031418-92-463 and the TCT No. T-112864, as well as the tax declaration offered in evidence by respondents are more convincing than the evidence presented by the petitioners. Also, petitioners failed to prove by clear and convincing evidence the fact of fraud allegedly committed by Jose in obtaining title to the disputed property.

The Motion for Reconsideration filed by petitioners was denied by the CA through its Resolution[19] dated May 3, 2006.

Issues

Hence, this petition raising the following issues:

I.

Whether the CA gravely abused its discretion when it declared that petitioners were unable to prove ownership of the disputed portion notwithstanding evidence introduced and admitted.

II.

Whether the CA gravely abused its discretion, amounting to lack of jurisdiction, when it reversed the decision of the lower court finding fraud committed by the respondent in obtaining title to the property in question.

Simply put, the issues raised are: (1) Did the CA err in holding that the respondents are the owners of the disputed 447 square meter property? and (2) Did the CA err in finding that no fraud was committed by the respondents in obtaining title to the disputed property?

Petitioners' Arguments

Petitioners argue that the CA erred in not holding that they are the rightful owners as Federico inherited the property from his father Andres, who died on October 10, 1959. Jose purchased a parcel of land from Feliciano measuring only 2,056 square meters but his application for free patent indicated a lot with

[19] CA *rollo*, pp. 109-110.

a total area of 2,739 square meters. Moreover, he indicated the same to be located at Dampol II, Pulilan, Bulacan; however, it is actually located at Dampol 1st. He also declared that the said property is not claimed or occupied by any person but the truth is that the 447 square meters is owned and possessed by Federico.

Respondents' Arguments

Respondents, on the other hand, contend that they have a better title to the property. The certificate of title issued in their name is an absolute and indefeasible evidence of ownership of the property. It is binding and conclusive upon the whole world. There was also no proof or evidence presented to support the alleged fraud on the part of Jose, nor was there any allegation of specific acts committed by him which constitute fraud.

Our Ruling

After serious consideration, we find petitioners' arguments to be meritorious.

There is preponderance of evidence that Federico is the owner of the disputed property.

We rule that Federico is the owner of the disputed 447 square meter lot. The Deed of Conditional Sale described the property purchased by Jose as follows:

> A part of parcel of land (T.D. No. 14312) situated at Dampol 1st, Pulilan, Bulacan. Bounded on the North- Lot 6225; East- Lot 1306 & 1311; South- Lot 1307 and 1308 and West- Lot 1304 & 1299. *Containing an area of Two Thousand Fifty Six (2,056) square meters, more or less*. (Bulacan)."

Feliciano sold a portion of Lot 1305 to Jose. After the sale was made, a Sketch/Special Plan[20] was prepared by Geodetic Engineer Fortunato E. Chavez. It is clear from such document that Lot 1305-A representing the upper portion with an area

[20] Records, Vol. I, p. 201.

of 1,112 square meters was retained by Feliciano and what was sold was the lower portion thereof which became Lot No. 1305-B with a total area of 2,292 square meters. This exceeds the area of 2,056 square meters indicated in the above sale transaction.

In another Sketch/Special Plan[21] prepared by Geodetic Engineer Norberto C. Chavez, it is shown that Lot No. 10176-B with an area of 2,292 square meters with a right of way going to Camino Provincial Highway was the one sold to Jose and which was also sold by him to the Balingcongan spouses. This is also known as Lot No. 1305-B. TCT No. T-112865 was issued in the name of the spouses Balingcongan. Lot No. 10175 which represents the upper portion of Lot No. 1305 was retained by Feliciano. This is also known as Lot No. 1305-A. However, what is surprising is that the said plan showed that Lot No. 10176-A with an area of 447 square meters had been made to appear as part of the lot sold by Feliciano to Jose. TCT No. T-112864 was issued in the name of Jose. If indeed this disputed area is part of Lot No. 1305 then it should have been part of Lot No. 1305-A which was retained by Feliciano as it is at the East side of the said property.

Moreover, during the ocular inspection,[22] it was observed that all the neighboring lots are either square or rectangle. There is an old fence, measuring about 40 meters long (abutting the newly constructed fence), which bounds the true and actual area purchased by Jose. Thus, if the old fence is followed, the land purchased would either be square or rectangular like the adjoining lots. However, if the disputed 447 square meters would be included in the land purchased by Jose, the same would slant remarkably to the right, to the extent of covering the entire area fronting the provincial road, which as per tax declaration of Federico, is the boundary of his land on the north.

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[21] *Id.* at 205.

[22] *Id.* at 237-241.

Furthermore, Feliciano, the owner of Lot No. 1305 from whom Jose acquired the property through sale, testified that his lot is only about 2,000 square meters and that Andres owns the adjoining lot which is enclosed by a fence. Part of his testimony is copied verbatim to wit:

ATTY. NATIVIDAD:

Q. But before they caused the measuring of the lot in question, do you have any idea how much is the area of the lot?
A. About 2,000 plus, sir.

Q. This property measuring about 2,000 plus, as you mentioned a while ago before it was surveyed by them, who is the present owner of this property?
A. Jose Mano, sir.

Q. How did Jose Mano become the owner of the property?
A. I sold it to him in 1991, sir.

xxx xxx xxx

Q. Mr. Geronimo, I withdraw the manifestation.

May we further request that the description of the land indicated in the first page thereof particularly the boundary and the area be bracketed and be marked as Exhibit D-3, your Honor.
Do you know your boundary owners of this lot located at Dampol 1st, Pulilan, Bulacan?
A. Teresa and Andres Valenzuela, sir.

Q. Who else if you know?
A. It is all that I could remember of, sir.

Q. At the time that the property was acquired from you by Jose Mano or by the defendants, do you have any fence erected on your property?
A. None, sir. The adjacent lot has, sir.

COURT:
On all sides?

A. On Teresa and Andres Valenzuela's side, sir.

Q. They were fenced?
A. Yes, there is, sir.[23]

The testimony of Feliciano from whom Jose purchased the property coincides with the observation made during the ocular inspection conducted by the RTC that there is an old fence, measuring about 40 meters which encloses the true and actual area purchased by Jose. Feliciano retained the upper portion of Lot No. 1305 which eventually became Lot No. 1305-A because it is along the national highway. The disputed 447 square meters property is located at the eastern side of Lot No. 1305-A. He gave Jose a right of way at the western side[24] of the lot he retained for himself. This supports the theory that Feliciano was fully aware that the property at the eastern part of his property belonged to Andres from whom Federico inherited the said lot. This is the reason why a right of way going to the national highway was given to Jose between Lot No. 1305-A and Lot No. 1304. If the disputed property is part of the sale as claimed by Jose then Feliciano would not have given the said right of way but would rather keep it to himself.

"Settled is the rule that a person, whose certificate of title included by mistake or oversight the land owned by another, does not become the owner of such land by virtue of the certificate alone. The Torrens System is intended to guarantee the integrity and conclusiveness of the certificate of registration but is not intended to perpetrate fraud against the real owner of the land. The certificate of title cannot be used to protect a usurper from the true owner."[25]

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[23] TSN, September 18, 2001, pp. 4-11.

[24] Records, Vol. I, p. 201.

[25] *Heirs of Toribio Waga v. Sacabin*, G.R. No. 159131, July 27, 2009, 594 SCRA 41, 45.

Jose committed fraud in obtaining the title to the disputed property.

Anent the second issue, we rule that Jose committed fraud in obtaining title to the disputed property. The chain of events leading to the issuance of title in his name shows beyond cavil the bad faith or a fraudulent pattern on his part. The evidence on record disclosed that even before Jose purchased the 2,056 square meters from Feliciano, he had already caused on January 30, 1991 the survey of a 2,739 square meters lot. Although the document of sale expressly stated that the area sold was 2,056 square meters and is located at Dampol 1st, Pulilan, Bulacan, however, when he filed his application for free patent in March 1991, he used the survey on the 2,739 square meters and indicated the same to be located at Dampol II, Pulilan, Bulacan. Also, in his application, he stated that the land described and applied for is not claimed or occupied by any person when in reality the same is owned and possessed by Federico.

Petitioners are entitled to an award of moral and exemplary damages.

Article 2217[26] of the Civil Code defines what are included in moral damages while Article 2219 enumerates the cases where they may be recovered. Moral damages are in the category of an award designed to compensate the claimant for actual injury suffered and not to impose a penalty on the wrongdoer.[27] "The person claiming moral damages must prove the existence of bad faith by clear and convincing evidence for the law always presumes good faith. It is not enough that one merely suffered sleepless nights, mental anguish, serious anxiety as the result of the actuations of the other party. Invariably such action must

[26] Art. 2217. Moral damages include physical suffering, mental anguish, fright, serious anxiety, besmirched reputation, wounded feelings, moral shock, social humiliation, and similar injury. Though incapable of pecuniary computation, moral damages may be recovered if they are the proximate result of the defendant's wrongful act or omission.

[27] *ABS-CBN Broadcasting Corp. v. Court of Appeals*, 361 Phil 499, 529 (1999).

be shown to have been willfully done in bad faith or with ill motive."[28] In the same fashion, to warrant the award of exemplary damages, the wrongful act must be accompanied by bad faith, and an award of damages would be allowed only if the guilty party acted in wanton, fraudulent, reckless or malevolent manner.[29] As regards attorney's fees, the law is clear that in the absence of stipulation, attorney's fees may be recovered as actual or compensatory damages under any of the circumstances provided for in Article 2208[30] of the Civil Code.

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[28] *Ace Haulers Corp. v. Court of Appeals*, 393 Phil 220, 230 (2000).

[29] *Francisco v. Ferrer, Jr.*, 405 Phil. 741, 750 (2001).

[30] It reads as follows:

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

(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.

Having ruled that Jose committed fraud in obtaining title to the disputed property then he should be liable for both moral and exemplary damages. Likewise, since petitioners were compelled to litigate to protect their rights and having proved that Jose acted in bad faith, attorney's fees should likewise be awarded.

WHEREFORE, the instant petition for review on *certiorari* is *GRANTED*. The assailed Decision of the Court of Appeals in CA-G.R. CV No. 83577 dated January 16, 2006 and its May 3, 2006 Resolution are *REVERSED and SET ASIDE*. The Decision of the Regional Trial Court of Bulacan, Branch 14 in Civil Case No. 1065-M-99 dated March 10, 2004 is *REINSTATED and AFFIRMED*.

SO ORDERED.

Corona, C.J. (Chairperson), Brion,[*] *Abad,*[**] and *Perez, JJ.*, concur.

SECOND DIVISION

[G.R. No. 177219. July 9, 2010]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **ROGELIO ALARCON,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; RAPE; GUIDING PRINCIPLES. —Three principles guide the courts in resolving rape cases: (1) an accusation for rape can be made with facility; it is difficult to prove but more difficult for the accused, though innocent, to disprove; (2) in view of the intrinsic nature of the crime of rape

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[*] Per Special Order No. 856 dated July 1, 2010.

[**] Per Special Order No. 869 dated July 5, 2010.

in which only two persons are usually involved, the testimony of the complainant must be scrutinized with extreme caution; and (3) the evidence for the prosecution must stand or fall on its own merits, and cannot be allowed to draw strength from the weakness of the evidence for the defense. Thus, in a determination of guilt for the crime of rape, primordial is the credibility of the complainant's testimony. In rape cases, the accused may be convicted solely on the testimony of the victim, provided it is credible, natural, convincing, and consistent with human nature and the normal course of things.

2. REMEDIAL LAW; EVIDENCE; FINDINGS OF TRIAL COURT, RESPECTED. — As the Court of Appeals decided not to disturb the findings of the trial court with respect to her credibility, the Court finds no reason to do otherwise. It has consistently held that the findings of the trial court on the credibility of witnesses are entitled to the highest respect and are not to be disturbed on appeal in the absence of any clear showing that the trial court overlooked, misunderstood or misapplied facts or circumstances of weight and substance that would have affected the result of the case.

3. ID.; ID.; CREDIBILITY OF WITNESSES; NOT NECESSARILY AFFECTED BY DELAY IN REPORTING THE CRIME; CASE AT BAR. — Failure of a victim to immediately report the rape does not necessarily weaken the case against the accused. The charge of rape is rendered doubtful only if the delay was unreasonable and unexplained. In this case, AAA did not report what her father did to her because she was terribly afraid that he would harm her. This is a normal reaction by minors – to hide the truth because they are easily intimidated by threats on their person and other members of the family. Besides, the Court cannot underestimate the trauma to a young girl's mind of the realization that her own father, who is supposed to be her natural protector, has sexually violated her. When she was cross-examined, she replied that she could not even tell her own siblings of her plight because they were all afraid of their father. The only time she felt safe was after they had moved out of their father's house.

4. ID.; ID.; DENIAL; CANNOT PREVAIL OVER POSITIVE TESTIMONY. — Denial, if unsupported by clear and convincing evidence, is negative and self-serving evidence, which deserves

no weight in law and cannot be given greater evidentiary value over the testimonies of credible witnesses who testify on affirmative matters.

5. ID.; ID.; ALIBI; REQUIRES PHYSICAL IMPOSSIBILITY TO BE AT THE SCENE OF CRIME AT THE TIME OF CRIME. — For alibi to prosper, it is not enough for the accused to prove that he was somewhere else when the crime was committed; he must likewise demonstrate that it was physically impossible for him to have been at the scene of the crime at the time of its commission.

6. CRIMINAL LAW; QUALIFIED RAPE; DAMAGES; PROPER CIVIL INDEMNITY AND MORAL DAMAGES. — With respect to the damages, the Court affirms the award of civil indemnity of ₱50,000.00 and the award of ₱50,000.00 as moral damages, for each count of rape, without need of pleading or proof of its basis following current jurisprudence. Civil indemnity, which is actually in the nature of actual or compensatory damages, is mandatory upon the finding of the fact of rape. Moral damages are automatically granted in a rape case without need of further proof other than the fact of its commission. For it is assumed that a rape victim actually suffered moral injuries entitling her to such an award.

7. ID.; ID.; ID.; AWARD OF EXEMPLARY DAMAGES, PROPER. — The award of exemplary damages is likewise proper. As held in *People v. Dalisay*, "being corrective in nature, exemplary damages, therefore, can be awarded, not only in the presence of an aggravating circumstance, but also where the circumstances of the case show the highly reprehensible or outrageous conduct of the offender." In much the same way as Article 2230 of the Civil Code prescribes an instance when exemplary damages may be awarded, Article 2229, the main provision, lays down the very basis of the award. Thus, in *People v. Matrimonio*, the Court imposed exemplary damages to deter other fathers with perverse tendencies or aberrant sexual behavior from sexually abusing their own daughters. Also, in *People v. Cristobal*, the Court awarded exemplary damages on account of the moral corruption, perversity and wickedness of the accused in sexually assaulting a pregnant married woman. Recently, in *People v. Cristino Cañada, People v. Pepito Neverio* and *People v. Lorenzo Layco, Sr.*, the Court awarded exemplary damages to

set a public example, to serve as deterrent to elders who abuse and corrupt the youth, and to protect the latter from sexual abuse. It must be noted that, in the said cases, the Court used as basis Article 2229, rather than Article 2230, to justify the award of exemplary damages. Indeed, the deplorable act of the accused in defiling his daughter must not go unpunished. The award of exemplary damages for each count of rape in the amount of ₱25,000.00 should, however, be increased to ₱30,000.00 following prevailing jurisprudence.

APPEARANCES OF COUNSEL

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

D E C I S I O N

MENDOZA, *J.*:

This is an appeal from the November 27, 2006 Decision[1] of the Court of Appeals in CA-G.R. CR-HC No. 00971 modifying the April 18, 2005 Decision[2] of the Regional Trial Court, Branch 36, Calamba, Laguna *(RTC)*, which initially found accused Rogelio Alarcon guilty of 24 counts of rape and imposed upon him the penalty of *reclusion perpetua* with civil indemnity of ₱50,000.00 and moral damages of ₱50,000.00 for each charge of rape.

THE FACTS

Accused Rogelio Alarcon was indicted for 24 counts[3] of rape defined and penalized under Article 266-A in relation to

[1] *Rollo*, pp. 2-20. Penned by Associate Justice Fernanda Lampas-Peralta with Associate Justice Bienvenido L. Reyes and Associate Justice Myrna Dimaranan-Vidal concurring.

[2] CA *rollo*, pp. 11-18.

[3] *Records*, pp. 1-25. Crim. Case No. 9089-2001-C; Crim. Case No. 9090-2001-C; Crim. Case No. 9091-2001-C; Crim. Case No. 9092-2001-C; Crim. Case No. 9093-2001-C; Crim. Case No. 9094-2001-C; Crim. Case No. 9095-2001-C; Crim. Case No. 9096-2001-C; Crim. Case No. 9097-2001-C; Crim. Case No. 9098-2001-C; Crim. Case No. 9099-2001-C; Crim. Case No. 9100-2001-C; Crim. Case No. 9101-2001-C; Crim. Case No. 9102-2001-C; Crim.

Article 266-B of the Revised Penal Code,[4] in separate Informations, all dated November 7, 2001. Except for the case numbers, date and time of the commission, the informations (for Criminal Case Nos. 9089-2001-C to 9113-2001-C) uniformly alleged that accused had sexual intercourse with AAA,[5] his minor daughter, against her will. Thus:

INFORMATION
(Criminal Case No. 9089-2001-C)

The undersigned Asst. Provincial Prosecutor hereby accused ROGER ALARCON, with the crime of "RAPE," committed as follows:

That at around 10:00 o' clock in the evening of the 12th day of November 2000 at Brgy. Putho-Tuntungin, Municipality of Los Baños, Province of Laguna, and within the jurisdiction of the Honorable Court, the above-named accused, with lewd design, and by means of force, violence and intimidation, did then and there, willfully, unlawfully and feloniously had carnal knowledge with one AAA, a minor and his daughter, against her will and to her damage and prejudice.

CONTRARY TO LAW.[6]

It also appears that another daughter of the accused, CCC, and his son, DDD, filed a separate case against their father, docketed as Criminal Case No. 9088-01-C, for the alleged rape of CCC.

Case No. 9103-2001-C; Crim. Case No. 9104-2001-C; Crim. Case No. 9105-2001-C; Crim. Case No. 9106-2001-C; Crim. Case No. 9107-2001-C; Crim. Case No. 9108-2001-C; Crim. Case No. 9109-2001-C; Crim. Case No. 9110-2001-C; Crim. Case No. 9111-2001-C; Crim. Case No. 9112-2001-C; Crim. Case No. 9113-2001-C.

[4] Republic Act No. 8353, "The Anti-Rape Law of 1997."

[5] Pursuant to Republic Act No. 9262, otherwise known as the "Anti-Violence Against Women and Their Children Act of 2004" and its implementing rules, the real name of the victim, together with the real names of her immediate family members, is withheld and fictitious initials instead are used to represent her, both to protect her privacy *(People v. Cabalquinto*, G.R. No. 167693, September 19, 2006, 502 SCRA 419, 421-426).

[6] *Rollo*, pp. 4-5.

Upon arraignment, the accused pleaded not guilty to the charges. On December 12, 2001, at the joint pre-trial, the prosecution and the defense stipulated on the following:

1. that complainant AAA is the biological daughter of accused Roger Alarcon; and

2. that accused, prior to his arrest, was also residing at Sitio Boot, Brgy. Putho-Tuntungin, Los Baños, Laguna.[7]

During the joint trial, the prosecution presented, as witnesses, the three children of the accused, AAA, CCC, and DDD, to prove that their father physically and sexually abused them.

As culled from their testimonies, it appears that at around 10:00 o'clock in the evening of November 12, 2000, 14-year-old AAA and her siblings, BBB, CCC and DDD, were sleeping inside their one bedroom house in Barangay Putho-Tuntungin, Los Baños, Laguna; that she felt someone on top of her and was surprised to see that it was her father raising her t-shirt and removing her undergarments; that she pleaded, *"Tay, wag,"* but her father ignored her pleas and angrily ordered her not to move;[8] that her father then proceeded and succeeded in sexually abusing her; that she could not put up a fight for fear that he would hit her as he usually maltreated his children; that at that time, her siblings were also in the same room but were fast asleep; that after the first incident on the 12th, she was again raped two days later on November 14;[9] that it happened again on December 26, with her remembering the date because it was right after Christmas;[10] that she remembered also the incident which happened on January 1, 2001, as she could still hear the fireworks outside,[11] and on January 7, 2001, on her brother's birthday;[12] that when he ravished her again on January 18,

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[7] *Records*, pp. 37-38.

[8] TSN, dated January 17, 2002, p. 9.

[9] *Id.* at 10.

[10] *Id.* at 11.

[11] *Id.* at 12.

[12] *Id.* at 13-14.

2001, she marked the date on their calendar;[13] that, thereafter, he raped her almost daily in the month of February, 2001, particularly on the 3rd, 5th, 7th, 8th, 10th, 12th, 14th, 16th, 18th, 20th, 22nd, 24th, 26th and 28th, which dates she all marked on their calendar;[14] that notwithstanding the repeated incidents of sexual abuse committed against her, AAA did not immediately reveal her ordeal to anybody because of her fear for her life and her siblings; that the last time she was abused was on March 24, 2001[15] and on that day, she, together with her siblings, ran away from their house and proceeded to the *Tahanan ng Ama Retreat House* in Calamba, Laguna.

Her eight-year-old sister, CCC,[16] and her six-year-old brother, DDD,[17] testified that the accused also touched their private parts.

To debunk the charges, the defense presented the accused and his brother, Asencion Alarcon, on the witness stand. The accused categorically denied the charges. He asserted that he was not in their house on those dates because he worked overtime at a motor shop in Cabuyao, Laguna. He explained that he frequently rendered overtime work because he was a good father who provided for his children.[18]

His alibi was corroborated by his brother, Asencion, who confirmed that they were co-workers at the motor shop where they usually worked overtime including the dates when the accused supposedly raped AAA. The defense unfortunately could not present the time record of the shop to support their claim.[19]

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[13] *Id.* at 14.

[14] *Id.* at 14-15.

[15] *Id.* at 17.

[16] TSN, dated January 24, 2002, pp. 6-7.

[17] TSN, dated January 31, 2002, p. 5.

[18] CA *rollo*, p. 13.

[19] *Id*.

On April 18, 2005, the trial court rendered its decision and convicted the accused of 24 counts of rape.[20] It did not give weight to his defense of denial and alibi.[21] It did not, however, consider her minority and relationship as special qualifying circumstances for failure of the prosecution to produce proof thereof.[22] Nevertheless, for each count of rape, the trial court sentenced him to suffer the penalty of *reclusion perpetua* and to pay the victim ₱50,000.00, as civil indemnity, and another ₱50,000.00, as moral damages. Specifically, the dispositive portion of said decision reads:

"WHEREFORE, the Court finds Accused Rogelio T. Alarcon GUILTY beyond reasonable doubt of the simple crime of rape in Criminal Case Numbers 9089-010C to 9113-2001-01-C or for a total of twenty four (24) counts of rape. The accused is sentenced to suffer the penalty of *reclusion perpetua* in each of the twenty four (24) cases to pay victim [AAA] ₱50,000.00 as civil liability and another ₱50,000.00 as moral damages for each case in Criminal Cases No. 9089-2001-C to 9113-2001-C.

SO ORDERED."

The accused appealed the case to the Court of Appeals[23] assigning this lone error:

THE COURT *A QUO* GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY BEYOND REASONABLE DOUBT OF TWENTY FOUR COUNTS OF RAPE.

In his brief, the accused denied having defiled his daughter AAA. He surmised that the charges were filed against him because he physically hurt his children.[24] He further argued that the charges were unbelievable because they were not immediately reported by his daughter.

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[20] *Id.* at 11-18.

[21] *Id.* at 16.

[22] *Id.* at 16-18.

[23] *Id.* at 19.

[24] *Id.* at 43.

He also questioned his conviction on 24 counts of rape when his daughter narrated only 21 incidents. If he were to be criminally liable, it should only be for those incidents duly proven at the trial.[25]

In its November 27, 2006 Decision, the Court of Appeals *modified* the decision of the RTC. Explaining the modification, the CA wrote:

"Nonetheless, although accused-appellant was charged with twenty five (25) counts of rape in twenty five (25) separate informations, records show that the alleged four incidents committed in March 2001 (except the incident on March 24, 2001) were not proved beyond reasonable doubt.

With respect to the alleged rapes committed on March 2, 3, 5 and 7, 2001, as alleged in the information in Criminal Cases Nos. 9109-2001-C, 9110-2001-C, 9111-2001-C and 9112-2001-C, there is reasonable doubt on accused-appellant's guilt, because private complainant herself testified that she was raped only once during March 2001.

xxx xxx xxx

Accordingly, accused-appellant should be convicted for twenty one (21) counts of rape which occurred on the following dates: November 12 and 14, 2000, December 26, 2000, January 1, 7 and 18, 2001, February 3, 5, 7, 8, 10,12, 14, 16, 18, 20, 22, 24, 26, and 28, 2001 and March 24, 2001."

In addition, the CA also awarded exemplary damages of ₱25,000.00 to deter fathers from sexually abusing their daughters and "considering that the commission of the offense was attended by an aggravating circumstance of relationship."[26] Thus, the decretal portion of the CA decision reads:

WHEREFORE, the appealed Decision dated April 18, 2005 is affirmed, subject to the modification that accused-appellant is hereby convicted of twenty one (21) counts of rape in Criminal Cases Nos. 9089-2001-C to 9108-2001-C and 9113-2001-C, and accused-appellant

[25] *Id.* at 45-46.

[26] *Id.* at 19.

is furthered ordered to pay private complainant exemplary damages of ₱25,000.00 in each case.

With respect to Criminal Cases Nos. 9109-2001-C, 9110-2001-C, 9111-2001-C and 9112-2001-C, accused-appellant is acquitted on the ground of reasonable doubt.

SO ORDERED.

Hence, this appeal.

In its Resolution dated June 20, 2007, the Court accepted the appeal and notified the parties that they could file their respective supplemental briefs, if they so desire.[27] Both accused and the Office of the Solicitor General *(OSG)*, representing the People of the Philippines, filed their respective Manifestations[28] that they were adopting their respective briefs filed before the CA.

Accordingly, the principal issue in this appeal is the question of whether or not the accused is guilty of 21 counts of rape beyond reasonable doubt.

The Court rules in the affirmative.

Three principles guide the courts in resolving rape cases: (1) an accusation for rape can be made with facility; it is difficult to prove but more difficult for the accused, though innocent, to disprove; (2) in view of the intrinsic nature of the crime of rape in which only two persons are usually involved, the testimony of the complainant must be scrutinized with extreme caution; and (3) the evidence for the prosecution must stand or fall on its own merits, and cannot be allowed to draw strength from the weakness of the evidence for the defense.[29]

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[27] *Rollo*, pp. 24-25.

[28] *Id.* at 35-37 (for appellant); *Id.* at 29-31 (for the People).

[29] *People v. Antonio Dalisay*, G.R. No. 188106, November 25, 2009, 605 SCRA 807, citing *People v. Glivano*, G.R. No. 177565, January 28, 2008, 542 SCRA 656, 662.

Thus, in a determination of guilt for the crime of rape, primordial is the credibility of the complainant's testimony. In rape cases, the accused may be convicted solely on the testimony of the victim, provided it is credible, natural, convincing, and consistent with human nature and the normal course of things.[30]

In the case at bench, the trial court, which had the opportunity to observe AAA's demeanor in court, found her account of the incidents to be credible. It wrote: "the victim testified in a straightforward, natural and spontaneous manner. She gave clear and concise recitals of facts. She was a credible witness. The victim's testimony was believable, positive, clear and convincing. The victim's testimony bore the hallmarks of truth. The victim's testimony was simple and spontaneous, unflawed by any inconsistency or contradiction. As a minor, her language was of innocence and truth. She showed no prejudice or sinister motive against the accused-her father. In fact, she exhibited fear and anxiety towards the accused."[31]

As the Court of Appeals decided not to disturb the findings of the trial court with respect to her credibility, the Court finds no reason to do otherwise. It has consistently held that the findings of the trial court on the credibility of witnesses are entitled to the highest respect and are not to be disturbed on appeal in the absence of any clear showing that the trial court overlooked, misunderstood or misapplied facts or circumstances of weight and substance that would have affected the result of the case.[32]

The Court is neither persuaded that the delay in the reporting of the rape incidents seriously affected the veracity of her complaints.

Failure of a victim to immediately report the rape does not necessarily weaken the case against the accused. The charge

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[30] *People v. Pascua*, 426 Phil. 245 (2003).

[31] CA *rollo*, pp. 14-15.

[32] *People v. Sta. Ana*, 353 Phil. 388 (1998).

of rape is rendered doubtful only if the delay was unreasonable and unexplained.[33] In this case, AAA did not report what her father did to her because she was terribly afraid that he would harm her. This is a normal reaction by minors – to hide the truth because they are easily intimidated by threats on their person and other members of the family. Besides, the Court cannot underestimate the trauma to a young girl's mind of the realization that her own father, who is supposed to be her natural protector, has sexually violated her. When she was cross-examined, she replied that she could not even tell her own siblings of her plight because they were all afraid of their father.[34] The only time she felt safe was after they had moved out of their father's house. As written in *People vs. Macapanas*,[35]

> x x x. How the victim comforted herself after the incident was not significant as it had nothing to do with the elements of the crime of rape. Not all rape victims can be expected to act conformably to the usual expectations of everyone. Different and varying degrees of behavioral responses are expected in the proximity of, or in confronting, an aberrant episode. It is settled that different people react differently to a given situation or type of situation and there is no standard form of human behavioral response when one is confronted with a strange, startling or frightful experience.

Thus, the delay in the reporting of her harrowing experience in the hands of her father does not vitiate the integrity of her testimony. It must be considered that after she and her siblings were able to free themselves from their father, they did not waste time in denouncing him and filing the necessary charges.

In view of the foregoing, the Court cannot give weight to the defense of denial and alibi interposed by the accused. Denial, if unsupported by clear and convincing evidence, is negative and self-serving evidence, which deserves no weight in law

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[33] *People v. Macapanas*, G.R. No. 187049, May 4, 2010.

[34] TSN, dated January 17, 2002, p. 18.

[35] *People v. Macapanas*, *supra* note 33.

and cannot be given greater evidentiary value over the testimonies of credible witnesses who testify on affirmative matters.[36]

For alibi to prosper, it is not enough for the accused to prove that he was somewhere else when the crime was committed; he must likewise demonstrate that it was physically impossible for him to have been at the scene of the crime at the time of its commission.[37] Here, the accused claimed that he could not have committed the acts imputed to him because he was working overtime at a motor shop in Cabuyao, Laguna. This is a weak defense.The accused committed to adduce substantiating evidence that he actually did overtime work when the rape incidents took place, but failed to do so. Even if he did, it would not conclusively exclude him as the perpetrator. Aside from being positively identified by his very own daughter, Cabuyao, the place where the motor shop is located, is very near Los Baños, Laguna, and it cannot be said that it was impossible for him to be at the scene of the incidents.

In view of the foregoing, the Court sees no compelling reason to deviate from the factual findings of the trial court, as affirmed by the CA, that the accused had indeed raped AAA on 21 separate occasions.

With respect to the damages, the Court affirms the award of civil indemnity of ₱50,000.00 and the award of ₱50,000.00 as moral damages, for each count of rape, without need of pleading or proof of its basis following current jurisprudence.[38] Civil indemnity, which is actually in the nature of actual or compensatory damages, is mandatory upon the finding of the fact of rape. Moral damages are automatically granted in a rape case without need of further proof other than the fact of

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[36] *People v. Manalili,* G.R. No. 184598, June 23, 2009, 590 SCRA 695.

[37] *People v. Matunhay*, G.R. No. 178274, March 5, 2010, citing *People v. Mingming*, G.R. No. 174195, December 10, 2008, 573 SCRA 509.

[38] *People v. Ofemiano*, G.R. No. 187155, February 1, 2010.

its commission. For it is assumed that a rape victim actually suffered moral injuries entitling her to such an award.[39]

The award of exemplary damages is likewise proper. As held in *People v. Dalisay*,[40] "being corrective in nature, exemplary damages, therefore, can be awarded, not only in the presence of an aggravating circumstance, but also where the circumstances of the case show the highly reprehensible or outrageous conduct of the offender." In much the same way as Article 2230 of the Civil Code prescribes an instance when exemplary damages may be awarded, Article 2229, the main provision, lays down the very basis of the award. Thus, in *People v. Matrimonio*,[41] the Court imposed exemplary damages to deter other fathers with perverse tendencies or aberrant sexual behavior from sexually abusing their own daughters. Also, in *People v. Cristobal*,[42] the Court awarded exemplary damages on account of the moral corruption, perversity and wickedness of the accused in sexually assaulting a pregnant married woman. Recently, in *People v. Cristino Cañada*,[43] *People v. Pepito Neverio*[44] and *People v. Lorenzo Layco, Sr.*,[45] the Court awarded exemplary damages to set a public example, to serve as deterrent to elders who abuse and corrupt the youth, and to protect the latter from sexual abuse. It must be noted that, in the said cases, the Court used as basis Article 2229, rather than Article 2230, to justify the award of exemplary damages. Indeed, the deplorable act of the accused in defiling his daughter must not go unpunished.

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[39] *People v. Bautista Iroy*, G.R. No. 187743, March 3, 2010.

[40] G.R. No. 188106, November 25, 2009, 605 SCRA 807, 820.

[41] G.R. Nos. 82223-24, November 13, 1992, 215 SCRA 613, 634.

[42] 322 Phil. 551 (1996).

[43] G.R. No. 175317, October 2, 2009, 602 SCRA 378.

[44] G.R. No. 182792, August 25, 2009, 597 SCRA 149.

[45] G.R. No. 182191, May 8, 2009, 587 SCRA 803.

The award of exemplary damages for each count of rape in the amount of ₱25,000.00 should, however, be increased to ₱30,000.00 following prevailing jurisprudence.[46]

WHEREFORE, the November 27, 2006 Decision of the Court of Appeals in CA-G.R. CR-HC No. 00971 is *AFFIRMED with MODIFICATION* in that the award of exemplary damages is hereby increased from ₱25,000.00 to ₱30,000.00 for each count of rape.

SO ORDERED.

Carpio (Chairperson), Del Castillo,[*] *Abad,* and *Villarama, Jr.,*[**] *JJ.,* concur.

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[46] *People v. Anguac*, G.R. No. 176744, June 5, 2009, 588 SCRA 716; *People v. Dalisay*, G.R. 188106, November 25, 2009, 605 SCRA 807.

[*] Designated as additional member in lieu of Associate Justice Diosdado M. Peralta who inhibited (Per raffle of March 15, 2010).

[**] Designated as additional member in lieu of Justice Antonio Eduardo B. Nachura per raffle dated June 16, 2010.

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