PHILIPPINE REPORTS

VOL. 641

AUGUST 4, 2010 TO AUGUST 9, 2010

VOLUME 641

REPORTS OF CASES

DETERMINED IN THE

SUPREME COURT

OF THE

PHILIPPINES

FROM

AUGUST 4, 2010 TO AUGUST 9, 2010

SUPREME COURT
MANILA
2014

Prepared
by

The Office of the Reporter
Supreme Court
Manila
2014

EDNA BILOG-CAMBA
DEPUTY CLERK OF COURT & REPORTER

MA. VIRGINIA OLIVIA VILLARUZ-DUEÑAS
COURT ATTORNEY VI & CHIEF, RECORDS DIVISION

FE CRESCENCIA QUIMSON-BABOR
COURT ATTORNEY VI

MA. VICTORIA JAVIER-IGNACIO
COURT ATTORNEY V

FLOYD JONATHAN LIGOT TELAN
COURT ATTORNEY V & CHIEF, EDITORIAL DIVISION

JOSE ANTONIO CANCINO BELLO
COURT ATTORNEY V

LEUWELYN TECSON-LAT
COURT ATTORNEY IV

FLORDELIZA DELA CRUZ-EVANGELISTA
COURT ATTORNEY IV

ROSALYN ORDINARIO GUMANGAN
COURT ATTORNEY IV

FREDERICK INTE ANCIANO
COURT ATTORNEY III

MA. CHRISTINA GUZMAN CASTILLO
COURT ATTORNEY II

MARIA CORAZON RACELA MILLARES
COURT ATTORNEY II

SUPREME COURT OF THE PHILIPPINES

HON. RENATO C. CORONA Chief Justice
HON. ANTONIO T. CARPIO, Associate Justice
HON. CONCHITA CARPIO MORALES, Associate Justice
HON. PRESBITERO J. VELASCO, JR., Associate Justice
HON. ANTONIO EDUARDO B. NACHURA, Associate Justice
HON. TERESITA J. LEONARDO-DE CASTRO, Associate Justice
HON. ARTURO D. BRION, Associate Justice
HON. DIOSDADO M. PERALTA, Associate Justice
HON. LUCAS P. BERSAMIN, Associate Justice
HON. MARIANO C. DEL CASTILLO, Associate Justice
HON. ROBERTO A. ABAD, Associate Justice
HON. MARTIN S. VILLARAMA, JR., Associate Justice
HON. JOSE P. PEREZ, Associate Justice
HON. JOSE C. MENDOZA, Associate Justice

ATTY. MA. LUISA D. VILLARAMA, Clerk of Court En Banc
ATTY. FELIPA B. ANAMA, Deputy Clerk of Court En Banc

FIRST DIVISION

Chairperson

Hon. Renato C. Corona

Members

Hon. Presbitero J. Velasco, Jr.
Hon. Teresita J. Leonardo-De Castro
Hon. Mariano C. Del Castillo
Hon. Jose P. Perez

Division Clerk of Court

Atty. Enriqueta E. Vidal

SECOND DIVISION

Chairperson

Hon. Antonio T. Carpio

Members

Hon. Antonio Eduardo B. Nachura
Hon. Diosdado M. Peralta
Hon. Roberto A. Abad
Hon. Jose C. Mendoza

Division Clerk of Court

Atty. Ludichi Y. Nunag

THIRD DIVISION

Chairperson

Hon. Conchita Carpio Morales

Members

Hon. Arturo D. Brion
Hon. Lucas P. Bersamin
Hon. Martin S. Villarama, Jr.

Division Clerk of Court

Atty. Lucita A. Soriano

PHILIPPINE REPORTS
CONTENTS

PHILIPPINE REPORTS

Page

Page

Page

Page

REPORT OF CASES

DETERMINED IN THE

SUPREME COURT OF THE PHILIPPINES

EN BANC

[A.M. No. P-02-1625. August 4, 2010]
(Formerly A.M. No. 02-6-144-MCTC)

OFFICE OF THE COURT ADMINISTRATOR, *complainant, vs.* **MARINA GARCIA PACHECO, Clerk of Court, Municipal Circuit Trial Court, Paete, Laguna,** *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; COURT PERSONNEL; CLERK OF COURT; DUTIES, EXPLAINED; RESTITUTION OF FUNDS WILL NOT EXEMPT AN ACCOUNTABLE OFFICER FROM LIABILITY. — The fact that respondent is willing to pay her shortages does not free her from the consequences of her wrongdoing. As Clerk of Court, respondent is entrusted with delicate functions in the collection of legal fees. She acts as cashier and disbursement officer of the court; and is tasked to collect and receive all monies paid as legal fees, deposits, fines and dues, and controls the disbursement of the same. She is designated as custodian of the court's funds and revenues, records, properties and premises, and shall be liable for any loss or shortage thereof. Hence, even when there is restitution of funds, unwarranted failure to fulfill these responsibilities deserves administrative sanction, and not even the full payment of the collection shortages will exempt the accountable officer from liability.

2. ID.; ID.; ID.; ID.; ACTS CONSTITUTIVE OF DISHONESTY, GRAVE MISCONDUCT, AND GROSS NEGLECT OF

DUTY, COMMITTED. — Her failure to account for the shortage in the funds she was handling, to turn over money deposited with her, and to explain and present evidence thereon constitute gross neglect of duty, dishonesty and grave misconduct. These grave offenses are punishable by dismissal under Rule IV, Section 52 of the Uniform Rules on Administrative Cases in the Civil Service. Her acts may, moreover, subject her to criminal liability. As custodian of court funds and revenues, it was also her duty to immediately deposit the funds received by her with the authorized government depositories and not to keep the same in her custody. x x x The records show, however, that respondent deposited the court's collections from 1998 to 2002 with the Rural Bank of Paete instead of the LBP. x x x Her explanation that the transfer of the court's collections to the LBP only on May 5, 2002 was due to heavy workload, is unsatisfactory. As the chief administrative officer of the MCTC, respondent clerk of court is expected to develop a system to efficiently attend to all her tasks. It is the duty of clerks of court to perform their responsibilities faithfully, so that they can fully comply with circulars on deposits of collections. Respondent's continuous violation of the aforesaid circulars only shows that she was grossly negligent in the performance of her duties. This negligence is further compounded by her failure to locate and present the 16 missing official receipts allocated for the Fiduciary Fund. Clearly, she has been remiss in her duties as a custodian of court records.

3. ID.; ID.; ID.; ID.; ID.; PENALTY; MONETARY VALUE OF ACCRUED LEAVE CREDITS APPLIED TO COVER CASH SHORTAGES. — Verily, respondent's grave misdemeanors justify her severance from the service, with forfeiture of all retirement benefits, except accrued leave credits, pursuant to current jurisprudence. We also agree with the OCA that the monetary value of Pacheco's accrued leave benefits can be applied to cover her cash shortages. Based on the records of the OCA's Leave Division, respondent has a total of 353.584 days leave credits. Its monetary value, in the amount of Three Hundred Ten Thousand Five Hundred Fifty Pesos and fifty seven centavos (₱310, 550.57), can be used to restitute the shortages she incurred.

APPEARANCES OF COUNSEL

Pablo M. Esguerra for respondent.

D E C I S I O N

***PER CURIAM*:**

This administrative case stems from an audit conducted by the Financial Audit Team, Office of the Court Administrator (FAT-OCA) in the Municipal Circuit Trial Court (MCTC) of Paete-Pakil-Pangil, Laguna on April 4, 2002 during the incumbency of respondent Marina Garcia Pacheco, Clerk of Court II therein.

The audit was prompted by a letter[1] from Christopher M. Aguilar, Utility Worker I of the court, alleging, among others, that Pacheco tampered with the duplicate and triplicate copies of court receipts; and that she failed to issue receipts for collected fines and forfeited bonds.

The initial report[2] of the FAT-OCA confirmed the veracity of Mr. Aguilar's allegations. The data under the *payor* and *amount* categories in the original copy of several receipts were not truthfully reflected in the triplicate copy, *viz*:

ORIGINAL COPY				TRIPLICATE COPY	
Date	**Payor**	**Amount**	**O.R. No.**	**Payor**	**Amount**
9-28-2000	Potenciano de Guia, *et al.*	₱6,500.00	10514485	Imelda Reynoso	₱20.00
9-28-2000	Imelda Reynoso	₱1,200.00	10514483	Potenciano de Guia	₱20.00
12-1-2000	Jeffrey Gagaring	₱600.00	10514597	Edwin Batislog	₱20.00
9-14-2000	Rolando Martinez, Romil Lizano,	₱2,000.00	10514431	Violeta Mendoza	₱20.00

[1] *Rollo*, p. 156.

[2] Addressed to then Court Administrator Presbitero J. Velasco, Jr., *id.* at 2-7.

	Antonio Dimaranan & Judy Araneta				
11-28-2000	Lydia Ramos	₱300.00	10514591	No name (DUPLICATE)	₱20.00
11-6-2000	Alberto	₱300.00	10514543	Azucena Nine	₱20.00

Respondent also failed to issue receipts for the following collected fines and forfeited bonds:

CRIMINAL CASE #	CASE TITLE	DATE OF SENTENCE	AMOUNT OF FINE/ BOND FORFEITED
3376	*People vs. Viola C. Ferol*	October 25, 2001	₱ 10,000.00
4692	*People vs. Pedro Rarela, Letty Patana, Abe Galay*	Feb. 08, 2002	₱1,500.00 x 3 = 4,500.00 ₱100 x 3 = 300.00 ₱4,800.00

The report further revealed that Pacheco deposited court collections with the Rural Bank of Paete, Inc. instead of the Land Bank of the Philippines (LBP). It was also discovered that there was a discrepancy between the amount of bank deposits (₱611,816.01) and withdrawals made (₱581,816.01).

Adopting the OCA's recommendations in its Memorandum[3] dated June 7, 2002, the Court resolved to place respondent Pacheco on preventive suspension, and direct her to comment on the FAT-OCA report.[4]

In her Comment/Compliance[5] dated September 30, 2002, Pacheco explained that she deposited court collections with the Rural Bank of Paete because it is the bank nearest to the MCTC, and she was informed that LBP is the authorized depository bank of courts only on January 2002. She declared that she

---

[3] *Id.* at 1.

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

[5] *Id.* at 15-18.

was able to transfer the court funds to LBP only on May 25, 2002 due to heavy workload.

Respondent blamed the bank for the inconsistency between the total amount of deposits and total amount of withdrawals. Respondent admitted that she tampered with the duplicate and triplicate copies of the receipts she issued. However, she alleged that the money derived from the tampered receipts was spent for the court's renovation. She stressed that she did not use court funds for her personal gain, and that she even used her personal money to pay for the renovation.

Lastly, respondent maintained that she issued receipts for forfeited cash bonds and fines. In support thereof, she appended photocopies of the said receipts.[6]

In a Resolution[7] dated November 18, 2002, the Court referred the administrative matter to the OCA for evaluation, report and recommendation.

Due to the insufficiency of necessary documents to establish Pacheco's exact financial accountabilities, the Fiscal Management Division, Court Management Office, OCA (FMD-CMO-OCA) conducted a re-examination of the cash and the accounts of MCTC, Paete, Laguna on April 21-25, 2008.

On June 12, 2008, the FMD-CMO-OCA submitted its report[8] disclosing that during her term, respondent Pacheco incurred cash shortages amounting to ₱169, 878.58, computed and detailed in this manner:

"**Judiciary Development Fund (JDF)**

Total Collections for the period from April 1985 to August 31, 2002	396,495.65
Less: Total Remittances for the same period	378,226.65
Balance of Accountability/Under-remittance	**18,269.00**

---

[6] *Id.* at 19.

[7] *Id.* at 22.

[8] *Id.* at 29-41.

Clerk of Court General Fund (COGF)	
Total Collections for the period from October 1995 to August 31, 2002	70,241.14
Less: Total Remittances for the same period	70,161.14
Balance of Accountability/Under-remittance	**80.00**

Due to the unavailability of Ms. Pacheco's financial documents for the period April 1985 to December 2000, her accountability for the Judiciary Development Fund and Clerk of Court General Fund for the same period was arrived at based the entries/postings in the Subsidiary Ledger (SL) of the Revenue Section, Accounting Division, Office of the Court Administrator.

Of the total of ₱18,269.00 financial accountability in the JDF, ₱10,780.00 came from the tampered Official Receipts. Except for the "**date**[,]" all other entries in the original receipt issued by Ms. Pacheco were not truthfully reflected in the duplicate and the triplicate copies in violation of OCA Circular No. 22-94 which provides that the DUPLICATE and TRIPLICATE copies of the receipt will be carbon reproductions in all respects of whatever may have been written in the ORIGINAL. Ms. Pacheco resorted to this practice to conceal whatever collections she had misappropriated.

Fiduciary Fund (FF)		
Total Collections for the period from April 1994 to August 31, 2002		₱1,205,985.62
Less: Total Withdrawals for the same period		934,395.62
Balance of Unwithdrawn FF as of 8/31/02		271,590.00
Deduct: Adjusted bank balance as of 8/31/02:		
Bank Balance as of 8/31/02	89,126.74	
Less: Unwithdrawn Interests as of 8/31/02	24,066.32	65,060.42
Balance of Accountability/Cash Shortage		**206,529.58**
Deduct: Deposits made by Ms. Pacheco on May 30, 2003		55,000.00
Final Accountability/Cash Shortage		**151,529.58**

As of August 31, 2002, a cash shortage of **₱206,529.58** was uncovered in Ms. Pacheco's FF account. However, this was reduced to **₱151,529.58** when Ms. Pacheco deposited **₱55,000.00** to the court's FF account in the Land Bank of the Philippines, Siniloan, Laguna Branch on May 30, 2003."

In the interviews of the MCTC employees, it was found that contrary to Pacheco's claim, the expenses for court renovations were sourced from local funds and not from court collections. Sixteen (16) official receipts allocated for the Fiduciary Fund turned out to be missing and unaccounted for. Finally, the report affirmed that Pacheco indeed issued receipts for fines and forfeited bonds, and the amounts thereof were deposited to the proper accounts.

On October 20, 2008, based on a Memorandum[9] submitted by the OCA, the Court issued a Resolution[10] directing respondent Pacheco to restitute the cash shortages she incurred during her term by depositing the following amounts in their respective accounts:

Amount	Funds/Account
₱18, 269.00	Judiciary Development Fund
80.00	Clerk of Court General Fund
151,529.58	Fiduciary Fund
₱169, 878.58	TOTAL

Respondent was likewise ordered to account for the missing official receipts with serial numbers 7989468, 7989478, 7989479, 7989482, 7989491, 7989492, 7989497, 10514053, 10514055, 10514056, 10514060, 10514062, 10514063, 10514064, 10514067 and 10514070.

The OCA was directed to file the appropriate criminal charges against Ms. Pacheco. To prevent her from leaving the country without settling the shortages, a Hold Departure Order was issued by the Court.[11]

On November 28, 2008, Pacheco filed a *Motion for Reconsideration as to the Computation of Shortages/Missing Official Receipts*[12] claiming that her final accountability should

[9] *Id.* at 27-28.

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

[11] *Id.* at 49-51.

[12] *Id.* at 58-61.

only be ₱95,529.28. She averred that the FMD-CMO-OCA's computation failed to deduct the withdrawals made by Acting Clerk of Court Carmen Regalado on September 24, 2002, March 18, 2003, February 18, 2003, October 4, 2003 and January 7, 2003 amounting to ₱57,000.00. She also asked for a period of six (6) months within which to restitute her cash shortages and to locate the missing receipts.[13]

The motion was referred to the OCA for evaluation, report and recommendation. In its report[14] dated March 20, 2009, the FMD-CMO-OCA maintained its original finding on the amount of respondent's cash shortages.

In a Memorandum[15] for Associate Justice Leonardo A. Quisumbing dated May 11, 2009, then Court Administrator Jose P. Perez[16] recommended the denial of respondent's motion for recomputation, as well as her plea for additional time.

In the same memorandum, Court Administrator Perez found respondent guilty of gross neglect of duty for her failure to ensure that all documents were properly filed, and all funds entrusted to her were well accounted for. Thus, the OCA recommended respondent's dismissal from service.

On June 10, 2009, the Court issued a Resolution[17] denying respondent's motion for recomputation and plea for additional time. The parties were asked to manifest if they were willing to submit the matter for resolution based on pleadings and documents on record. On June 17, 2009, respondent submitted her Manifestation[18] expressing her willingness to submit the matter for resolution based on pleadings filed.

---

[13] Respondent's "*MOTION FOR EXTENSION OF TIME IN COMPLIANCE TO THE RESOLUTION DATED OCTOBER 20, 2008*," *id* at 64-65.

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

[15] *Id.* at 83-90.

[16] Now Associate Justice of this Court.

[17] *Rollo,* pp. 91-92.

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

The Court agrees with the OCA that respondent should be dismissed from the service.

No position demands greater moral righteousness and uprightness from its holder than a judicial office.[19] Those connected with the dispensation of justice, from the highest official to the lowliest clerk, carry a heavy burden of responsibility.[20] As front liners in the administration of justice, they should live up to the strictest standards of honesty and integrity.[21] The Court has been tireless in reminding employees involved in the administration of justice to faithfully adhere to their mandated duties and responsibilities. Whether committed by the highest judicial official or by the lowest member of the workforce, any act of impropriety can seriously erode the people's confidence in the Judiciary. As such, failure to live up to their avowed duty constitutes a transgression of the trust reposed on them as court officers and inevitably leads to the exercise of disciplinary authority.[22]

By these standards, respondent was found wanting, and her admission to tampering the duplicate and triplicate copies of the court's official receipts shows her blatant disregard for her responsibilities as an officer of the court. She violated OCA Circular No. 22-94, which provides that the DUPLICATE and TRIPLICATE copies of court receipt must be carbon reproductions in all respects of whatever may have been written in the ORIGINAL.

---

[19] *Re: Report on the Financial Audit Conducted in the Municipal Trial Court (MTC), Sta. Cruz, Davao Del Sur*, A.M. No. 05-2-41-MTC, September 30, 2005, 471 SCRA 143; *OCA v. Yan*, 496 Phil. 843 (2005); citing *Re: Memorandum dated September 27, 1999 of Ma. Corazon M. Molo*, 459 Phil. 973 (2003).

[20] *Report on the Financial Audit Conducted at the MCTC-Mabalacat, Pampanga*, A.M. No. P-05-1989, October 20, 2005; *In Re: Delayed Remittance of Collections of Odtuhan*, 445 Phil. 220 (2003)*; Office of the Court Administrator v. Ibay*, 441 Phil. 474 (2002).

[21] *Chua v. Paas*, A.M. No. P-05-1933, September 9, 2005, 469 SCRA 471.

[22] *Office of the Court Administrator v. Ofilas, et al.*, A.M. No. P-05-1935, April 23, 2010.

Respondent's unsubstantiated explanation that she spent the money derived from the tampered receipts for renovations in the court, is unconvincing. The investigation and examination conducted by the OCA revealed the contrary, *viz*:

"Interview however with MCTC Paete employees proved that expenses for the court's renovation came from local funds and not from court collections. Ms. Pacheco's claim that she made a timely correction as to the collected fines/bonds covered by tampered receipts is also not true. Although, she issued another set of receipts (14925601 – 14925607) in lieu of the tampered receipts (10514485, 10514483, 10514597, 10514531, 10514591 and 10514543), she however made it appear that only the two (2) sets of receipts were issued on the same day by placing an identical date. As evidence, a set of Official Receipts issued by the Property Division, Office of the Court Administrator on July 12, 2001 was used by Ms. Pacheco in lieu of the tampered receipts which were all issued in CY 2000."[23]

If her allegations were indeed true, she should have submitted the corresponding disbursement vouchers for labor and purchase receipts of materials utilized in the court's renovation instead of the supposedly corrected receipts. As aptly stated by the OCA, her justification was a lame and desperate attempt to disguise the fact of malversation of the court's collections. In so doing, she was able to siphon off ₱10,780.00 from the Judiciary Development Fund (JDF) of the MCTC in the year 2000.[24] This amount forms part of the ₱18,269.00 under-remittances discovered in the MCTC's JDF during respondent clerk of court's tenure.[25]

Respondent also incurred cash shortages in the Clerk of Court General Fund (COGF) amounting to ₱80.00 for the period October 1995 to August 31, 2002, and ₱206,529.58 in the Fiduciary Fund from April 1994 to August 31, 2002. Her failure to remit these amounts upon demand by the auditing team and

---

[23] *Supra* note 8, at 31, 38.

[24] *Supra* note 15, at 85.

[25] *Rollo*, pp. 29-41.

by this Court, in our Resolution dated October 20, 2008,[26] constitutes *prima facie* evidence that she had, indeed, put such missing funds to personal use.[27] Corroboratively, nine months after having been placed on preventive suspension, respondent deposited ₱55,000.00 in the MCTC's fiduciary fund.

The fact that respondent is willing to pay her shortages does not free her from the consequences of her wrongdoing. As Clerk of Court, respondent is entrusted with delicate functions in the collection of legal fees.[28] She acts as cashier and disbursement officer of the court; and is tasked to collect and receive all monies paid as legal fees, deposits, fines and dues, and controls the disbursement of the same.[29] She is designated as custodian of the court's funds and revenues, records, properties and premises, and shall be liable for any loss or shortage thereof.[30] Hence, even when there is restitution of funds, unwarranted failure to fulfill these responsibilities deserves administrative sanction, and not even the full payment of the collection shortages will exempt the accountable officer from liability.[31]

Her failure to account for the shortage in the funds she was handling, to turn over money deposited with her, and to explain and present evidence thereon constitute gross neglect of duty,

---

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

[27] *Concerned Citizen v. Gabral, Jr.,* A.M. No. P-05-2098, December 15, 2005, 478 SCRA 13.

[28] *Office of the Court Administrator v. Valera,* A.M. No. P-06-2113, February 6, 2008, 544 SCRA 10.

[29] *Office of the Court Administrator v. Valera, id.*; *Office of the Court Administrator v. Dureza-Aldevera,* A.M. No. P-01-1499, September 26, 2006, 503 SCRA 18; *Concerned Citizen v. Gabral, Jr., supra* note 27; *Re:Initial Report on the Financial Audit Conducted in the Municipal Trial Court of Pulilan, Bulacan,* A.M. No. 01-11-291-MTC, July 7, 2004, 433 SCRA 486, 494.

[30] *Office of the Court Administrator v. Dureza-Aldevera, id.* at 46; *Office of the Court Administrator v. Fortaleza,* 434 Phil. 511 (2002).

[31] *Office of the Court Administrator v. Ofilas, et al., supra* note 22.

dishonesty and grave misconduct.[32] These grave offenses are punishable by dismissal under Rule IV, Section 52 of the Uniform Rules on Administrative Cases in the Civil Service. Her acts may, moreover, subject her to criminal liability.

As custodian of court funds and revenues, it was also her duty to immediately deposit the funds received by her with the authorized government depositories and not to keep the same in her custody.[33] Supreme Court Circular Nos. 13-92 and 5-93 provide the guidelines for the proper administration of court funds. SC Circular No. 13-92 directs that all fiduciary collections be deposited immediately by the Clerk of Court, upon receipt thereof, with an authorized depository bank. Per SC Circular No. 5-93, LBP is designated as the authorized government depository.[34]

The records show, however, that respondent deposited the court's collections from 1998 to 2002 with the Rural Bank of Paete instead of the LBP. Respondent cannot claim that she was informed of the foregoing rules on deposit only in 2002. SC Circular Nos. 5-93 and 13-92 were issued on April 30, 1993 and July 9, 1993, respectively. When she assumed her post as Clerk of Court II of the MCTC in 1998, it was her duty to know the rules and regulations relative to her official tasks.

Her explanation that the transfer of the court's collections to the LBP only on May 5, 2002 was due to heavy workload, is unsatisfactory. As the chief administrative officer of the MCTC, respondent clerk of court is expected to develop a system to efficiently attend to all her tasks. It is the duty of clerks of

---

[32] *Re: Report on the Financial Audit Conducted in the MTCC-OCC, Angeles City*, A.M. No. P-06-2140, June 26, 2006, 492 SCRA 469, 481.

[33] *Commission on Audit v. Pamposa*, AM No. P-07-2291, June 25, 2007, 525 SCRA 471, 475; *Office of the Court Administrator v. Dureza-Aldevera, supra* note 29, at 46; *Re: Report on the Financial Audit Conducted in the MTCC-OCC, Angeles City, supra* note 32, at 481; *Re:Initial Report on the Financial Audit Conducted in the Municipal Trial Court of Pulilan, Bulacan, supra* note 29, at 492.

[34] See *Re: Report on the Financial Audit Conducted in the MTCC-OCC, Angeles City, id.*; *Cabato-Cortes v. Agtarap*, 445 Phil. 66, 74 (2003).

court to perform their responsibilities faithfully, so that they can fully comply with circulars on deposits of collections.[35] Respondent's continuous violation of the aforesaid circulars only shows that she was grossly negligent in the performance of her duties. This negligence is further compounded by her failure to locate and present the 16 missing official receipts allocated for the Fiduciary Fund. Clearly, she has been remiss in her duties as a custodian of court records.

Verily, respondent's grave misdemeanors justify her severance from the service,[36] with forfeiture of all retirement benefits, except accrued leave credits, pursuant to current jurisprudence.[37]

We also agree with the OCA that the monetary value of Pacheco's accrued leave benefits can be applied to cover her cash shortages. Based on the records of the OCA's Leave Division, respondent has a total of 353.584 days leave credits. Its monetary

---

[35] *Office of the Court Administrator v. Bernardino et al.*, 490 Phil. 500 (2005), *Re: Withholding of Other Emoluments of the Following Clerks of Court: Elsie C. Remoroza, et al.*, 456 Phil. 906 (2003).

[36] Rule IV of the Uniform Rules on Administrative Cases in the Civil Service (Resolution No. 99-1936, which took effect on September 27, 1999), Sec. 52. *Classification of Offenses.* — Administrative offenses with corresponding penalties are classified into grave, less grave or light, depending on their gravity or depravity and effects on the government service.

A. the following are grave offenses with their corresponding penalties:

1. Dishonesty-1st offense-Dismissal
2. Gross Neglect of Duty-1st offense-Dismissal
3. Grave Misconduct-1st offense-Dismissal

[37] *Office of the Court Administrator v. Librada Puno*, A.M. No. P-03-1748, September 22, 2008, citing *Office of the Court Administrator v. Nacuray*, A.M. No. 03-1739, April 7, 2006, 486 SCRA 532, 543; *Office of the Court Administrator v. Bernardino*, *supra* note 35, see also: *Rangel-Roque v. Rivota*, 362 Phil. 136 (1999), citing *Re: Report on the Judicial and Financial Audit of RTC-Br. 4, Panabo, Davao del Norte*, 351 Phil. 1 (1998), *Re: Financial Audit in RTC, General Santos City*, 338 Phil. 13 (1997)*; Office of the Court Administrator v. Sumilang*, 338 Phil. 28 (1977); *JDF Anomaly in the RTC of Ligao, Albay*, 325 Phil. 506 (1996); and *Ferrriols v. Hiam*, A.M. No. P-90-414, August 9, 1993, 225 SCRA 205.

value, in the amount of Three Hundred Ten Thousand Five Hundred Fifty Pesos and fifty seven centavos (₱310, 550.57), can be used to restitute the shortages she incurred.

WHEREFORE, in view of the foregoing, respondent Marina Garcia Pacheco, Clerk of Court II of the Municipal Circuit Trial Court of Paete-Pakil-Pangil, Laguna is hereby found *GUILTY* of *DISHONESTY, GRAVE MISCONDUCT* and *GROSS NEGLECT OF DUTY*. She is *DISMISSED* from the service with forfeiture of all retirement benefits, except accrued leave credits, and with prejudice to reemployment in the Government or any subdivision, agency, or instrumentality thereof, including government-owned or controlled corporations.

The Financial Management Office, Office of the Court Administrator is *DIRECTED* to process the cash value of the accrued leave benefits of respondent, dispensing with the documentary requirements, and to remit the amount of One Hundred Sixty Nine Thousand Eight Hundred Seventy-Eight Pesos and fifty eight centavos (₱169,878.58) to the Metropolitan Circuit Trial Court of Paete-Pakil-Pangil, Laguna to be apportioned as follows:

Judiciary Development Fund	₱ 18,269.00
Clerk of Court General Fund	80.00
Fiduciary Fund	151,529.58

As to the remainder of respondent's accrued leave benefits, the release of the same must be subjected to the submission of the usual documentary requirements.

The Office of the Court Administrator is *ORDERED* to coordinate with the prosecution arm of the government to ensure the expeditious prosecution of respondent Pacheco for her criminal liability.

SO ORDERED.

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

Velasco, Jr. and *Perez, JJ.,* no part.

FIRST DIVISION

[G.R. No. 152092. August 4, 2010]

PILIPINO TELEPHONE CORPORATION, *petitioner, vs.* **RADIOMARINE NETWORK, INC.,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; FORUM SHOPPING; WHEN PRESENT. — Forum shopping exists when the elements of *litis pendentia* are present or when a final judgment in one case will amount to *res judicata* in the other. There is *res judicata* when (1) there is a final judgment or order; (2) the court rendering it has jurisdiction over the subject matter and the parties; (3) the judgment or order is on the merits; and (4) there is between the two cases identity of parties, subject matter and causes of action. For *litis pendentia* to exist, there must be (1) identity of the parties or at least such as representing the same interests in both actions; (2) identity of the rights asserted and relief prayed for, the relief founded on the same facts; and (3) identity of the two cases such that judgment in one, regardless of which party is successful, would amount to *res judicata* in the other.

2. ID.; ID.; ID.; ID.; ELEMENTS OF *LITIS PENDENCIA*, PRESENT IN CASE AT BAR. — In the case at bar, the elements of *litis pendentia* and, consequently, of forum shopping are present in petitioner's petition for *certiorari* along with its supplemental petition for *certiorari* in CA-G.R. SP No. 64155 and in its appeal in CA-G.R. CV No. 71850. Obviously, there is **identity of parties**. Likewise, there is **identity of causes of action** as both cases assign the same errors on the part of the trial court. Finally, there is **identity of reliefs** as both seek the annulment and reversal of the same orders. It is not difficult to conclude that a decision in either case will necessarily have a practical legal effect in the other. x x x [I]t is our view that, though petitioner attempts to make distinctions between them, the two cases at issue are undoubtedly directed against the November 13, 2000 Resolution and the April 23, 2001 Order of the trial court, as well as all rulings of the trial court arising from these two. Clearly, both actions alleged the same

right supposedly violated by the same acts of the trial court which caused the same damage to petitioner, thus, in violation of the rule against forum shopping. The present petition likewise violates the said rule.

3. ID.; ID.; ID; NATURE AND RATIONALE, EXPLAINED. — Forum shopping is the act of a litigant who repetitively avails of several judicial remedies in different courts, simultaneously or successively, all substantially founded on the same transactions and the same essential facts and circumstances, and raising substantially the same issues either pending in, or already resolved adversely by some other court, or to increase his chances of obtaining a favorable decision if not in one court, then in another. The rationale against forum shopping is that a party should not be allowed to pursue simultaneous remedies in two different courts as it constitutes abuse of court processes, which tends to degrade the administration of justice, wreaks havoc upon orderly judicial procedure, and adds to the congestion of the heavily burdened dockets of the courts.

4. ID.; ID.; ID.; FORUM SHOPPING EXISTS WHEN THE ISSUES RAISED AND RELIEFS SOUGHT IN A PETITION FOR *CERTIORARI* AND AN APPEAL ARE IDENTICAL WHICH WOULD MAKE A DECISION ON EITHER ONE AS *RES JUDICATA* ON THE OTHER. — [U]pon the issuance of the April 23, 2001 Order which rendered the previously partial summary judgment as the complete and final judgment disposing of the trial court case and was the subject of petitioner's supplemental petition for *certiorari*, appeal was now open to petitioner which it readily pursued. Since the issues raised and the reliefs sought in its petition for *certiorari* and its appeal are identical which would make a decision in either one as *res judicata* on the other and given that it is axiomatic that the availability of appeal precludes resort to *certiorari*, it was imperative on the part of petitioner to withdraw its petition for *certiorari* which it did not do. This is where the petitioner crossed the line into the forbidden recesses of forum shopping.

5. ID.; SPECIAL CIVIL ACTIONS; *CERTIORARI*; GRAVE ABUSE OF DISCRETION, NOT A CASE OF. — After a careful review of the records, we find that petitioner failed to sufficiently show that the trial court, in rendering a partial summary judgment, so gravely abused its discretion amounting to lack or excess of jurisdiction. Verily, the circumstances of

this case do not show that the trial court's discretion was exercised arbitrarily, capriciously, or despotically because the November 13, 2000 Resolution laid down the factual and legal bases relied upon by the trial court in granting the Motion for Partial Summary Judgment. Even assuming *arguendo*, that the trial court committed errors in its appreciation of the facts and pleadings on record, as petitioner contends in its petition for *certiorari*, we agree with the Court of Appeals that these involve errors of judgment which are not reviewable by *certiorari*.

6. ID.; ID.; ID.; *CERTIORARI* CANNOT CO-EXIST WITH AN APPEAL OR ANY OTHER ADEQUATE REMEDY. — The well-settled rule is that *certiorari* is not available where the aggrieved party's remedy of appeal is plain, speedy and adequate in the ordinary course, the reason being that *certiorari* cannot co-exist with an appeal or any other adequate remedy. The existence and availability of the right of appeal are antithetical to the availment of the special civil action for *certiorari*. These two remedies are mutually exclusive.

7. ID.; ID.; ID.; DISMISSAL OF THE PETITION FOR *CERTIORARI*, PROPER; REASONS. — [T]he petition for *certiorari* was correctly dismissed since superseding events had already rendered it not only improper because appeal already became an available remedy but also superfluous as the appeal that was eventually filed dealt essentially with the same issues. *Second*, when the February 7, 2002 Resolution was issued, there was already a Sheriff's Return issued on September 21, 2001 informing the trial court that the writ of execution pending appeal was fully satisfied rendering the case bereft of any pending incidents at the trial court level and, thus, concluded already which would make an appeal as the proper mode to question it and not a petition for *certiorari*. To reiterate, it is axiomatic that a writ of *certiorari* is available 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. As we have previously discussed, we find that the trial court acted within its jurisdiction when it granted summary judgment and the purported errors attributed to the trial court appear to be

errors of judgment not reviewable by *certiorari* but by appeal. Likewise, we find that the particular circumstances of this case made the remedy of appeal the proper vehicle to thresh out the issues raised by petitioner and rendered the petition for *certiorari* improper and moot, notwithstanding the fact that it was filed earlier than the appeal subsequently filed by petitioner. Premises considered, the petition for *certiorari* was properly dismissed by the Court of Appeals.

APPEARANCES OF COUNSEL

Angara Abello Concepcion Regala & Cruz for petitioner.
Belo Gozon Elma Parel Asuncion & Lucila for respondent.

D E C I S I O N

LEONARDO-DE CASTRO, *J.*:

This is a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court seeking to annul, reverse and set aside the Resolution[1] issued on May 2, 2001 by the former Sixth Division of the Court of Appeals in CA-G.R. SP No. 64155, entitled "*PILIPINO TELEPHONE CORPORATION v. HON. JUDGE REINATO G. QUILALA, in his capacity as Presiding Judge of the Regional Trial Court of Makati, Branch 57, and RADIOMARINE NETWORK (SMARTNET), Inc.*" The assailed Court of Appeals Resolution dismissed Pilipino Telephone Corporation's (PILTEL) petition for *certiorari* under Rule 65 with application for temporary restraining order (TRO) and/or writ of preliminary injunction which sought to set aside the Resolution[2] made by the Regional Trial Court (RTC) of Makati City, Branch 57, dated November 13, 2000, rendering partial summary judgment in Civil Case No. 99-2041, as well as the Order[3]

---

[1] Penned by Associate Justice Marina L. Buzon with Associate Justices Eubulo G. Verzola and Bienvenido L. Reyes, concurring; *rollo*, pp. 77-82.

[2] *Rollo*, pp. 220-224.

[3] *Id.* at 271-272.

of the same trial court dated January 30, 2001 denying the motion for reconsideration thereof. The instant petition also seeks to annul, reverse and set aside the Court of Appeals Resolution[4] issued on February 7, 2002 denying petitioner's motion for reconsideration of the May 2, 2001 Court of Appeals Resolution.

The genesis of this prolonged controversy can be traced back to the execution of a Contract to Sell[5] on December 12, 1996 between petitioner PILTEL and respondent Radiomarine Network, Inc. (RADIOMARINE), wherein the latter agreed to purchase a 3,500-square meter lot located in Makati City covered by Transfer Certificate of Title (TCT) No. T-195516 issued by the Registry of Deeds for Makati City. The terms of payment that were agreed upon by the parties were embodied in Article II of the said contract, to wit:

> The total consideration of FIVE HUNDRED SIXTY MILLION PESOS [₱560,000,000.00] shall be paid by the VENDEE, without the need of any demand, to the VENDOR in the following manner:
>
> [a] a downpayment in the amount of ONE HUNDRED EIGHTY MILLION [₱180,000,000.00] PESOS, to be paid on or before December 28, 1996;
>
> [b] Any and all outstanding payables which the VENDOR owes to the VENDEE in consideration of the cellular phone units and accessories ordered by the VENDOR and delivered by the VENDEE between the initial downpayment date *i.e.* December 28, 1996 and April 30, 1997, shall be credited to the VENDEE as additional payment of the purchase price.
>
> [c] The remaining balance, after deducting [a] and [b] above, shall be paid on or about April 30, 1997. It is expressly understood however, that the VENDOR shall submit to the VENDEE, on or about April 20, 1997, a Statement of Account updating the deliveries of cellular phones and its outstanding amount in order that the VENDEE can prepare the final payment. In this way, the amount of final payment shall be made to the VENDOR on or before April 30, 1997. Should the VENDOR be delayed in the submission of the

---

[4] *Id.* at 83-85.

[5] *Id.* at 111-114.

said Statement on the stipulated date, the date of payment of the remaining balance shall be automatically adjusted for a period equivalent to the number of days by which the VENDOR is delayed in the submission thereof.[6]

Thus, under the terms agreed upon, respondent was to give the amount of ₱180,000,000.00 as down payment. Any outstanding unpaid obligation, which petitioner owed respondent, would be deducted from the obligations of the latter. The balance, if any, should be paid on or before April 30, 1997.

Contemporaneous with the execution of the Contract to Sell, petitioner wrote a Letter[7] to respondent dated December 11, 1996 in which it expressed its willingness, on a purely best effort basis, to purchase from respondent 300,000 units of various models of Motorola, Mitsubishi and Ericsson brand cellular phones and accessories for the entire year of 1997.

Respondent failed to pay the balance of ₱380,000,000.00 on the stipulated period of April 30, 1997 alleging, among other things, that petitioner reneged on its commitment to purchase 300,000 units of cellular phones and accessories from respondent and instead purchased the units from other persons/entities.

On December 19, 1997, petitioner returned to respondent the amount of ₱50,000,000.00, which is part of the ₱180,000,000.00 down payment made by the latter pursuant to the Contract to Sell as evidenced by a Statement of Account[8] issued by the former.

Respondent then filed a Complaint[9] on December 1, 1999 against petitioner PILTEL seeking either the rescission of the Contract to Sell or the partial specific performance of the same with the RTC of Makati City. It prayed that judgment be rendered (a) ordering PILTEL to convey to it at least thirty-two percent (32%) interest in the Valgoson property, representing the value

---

[6] *Id.* at 114.

[7] *Id.* at 115.

[8] *Id.* at 170.

[9] *Id.* at 117-132.

of its down payment of ₱180,000,000.00, or in the alternative, ordering PILTEL to return to it the down payment plus interest; (b) ordering PILTEL to pay to it the amount of ₱81,800,764.96 representing the value of the 300,000 units of various cellular phones which it bought pursuant to the commitment of PILTEL to purchase but which commitment PILTEL disregarded, plus interest, as actual and compensatory damages; and (c) ordering PILTEL to pay to it the attorney's fees in the amount of ₱500,000.00.

Respondent then filed a Motion for Partial Summary Judgment[10] on October 6, 2000 which was opposed by petitioner in its Comment/Opposition[11] filed on October 26, 2000. The motion was eventually granted by the trial court in its assailed Resolution dated November 13, 2000, the dispositive portion of which reads:

> WHEREFORE, the motion for summary judgment is granted and defendant Piltel is hereby ordered to return or to pay to plaintiff Smartnet the down payment of ₱180 Million less the forfeited amount of ₱18 Million and the cash advance of ₱50 Million, or a net of ₱112 Million with interest at 6% per annum from the extrajudicial demand of October 20, 1998 until finality of the judgment and after this judgment becomes final and executory, additional legal interest at 12% per annum on the total obligation until the judgment is satisfied.[12]

On December 5, 2000, petitioner filed a Motion for Reconsideration[13] which was denied for lack of merit by the RTC in the assailed Order dated January 30, 2001. Prior to the issuance of the said Order, respondent filed its Opposition[14] on December 14, 2000 to which petitioner countered with a Reply[15] filed on January 10, 2001.

---

[10] *Id.* at 397-412.

[11] *Id.* at 202-219.

[12] *Id.* at 224.

[13] *Id.* at 225-245.

[14] *Id.* at 451-481.

[15] *Id.* at 246-270.

Respondent then filed a Manifestation and Motion for Execution[16] on March 15, 2001 manifesting its withdrawal of the two remaining causes of action and moving for the issuance of a Writ of Execution. This was followed by an Alternative Motion for Execution Pending Appeal[17] that was filed by respondent on March 20, 2001, praying for execution pending appeal in the event that then defendant PILTEL would be held to have the right to appeal.

On April 4, 2001, petitioner filed a Petition for *Certiorari* under Rule 65[18] of the Rules of Court before the Court of Appeals, with an application for a temporary restraining order and a writ of preliminary injunction, alleging grave abuse of discretion on the part of Judge Reinato Quilala in issuing the November 13, 2000 Resolution and the January 30, 2001 Order. This petition was docketed as CA-G.R. SP No. 64155. A week later, respondent filed before the Court of Appeals its Opposition to the Application for the Issuance of a Temporary Restraining Order and/or Writ of Preliminary Injunction[19] on April 11, 2001 wherein it called the appellate court's attention to what it perceived as then defendant PILTEL's pursuance of simultaneous reliefs before the trial court and the Court of Appeals that all seek to nullify the November 13, 2000 Resolution of the trial court granting the summary judgment.

Meanwhile, in compliance with the trial court's Order[20] dated April 6, 2001, petitioner filed before it on April 16, 2001, by registered mail, a Consolidated Opposition[21] against respondent's Manifestation and Motion for Execution dated March 15, 2001 and the Alternative Motion for Execution Pending Appeal dated March 20, 2001. On April 17, 2001, respondent filed with the

---

[16] *Id.* at 507-511.

[17] *Id.* at 512-519.

[18] *Id.* at 273-320.

[19] *Id.* at 1350-1370.

[20] *Id.* at 563.

[21] *Id.* at 520-534.

trial court its *Ex Parte* Manifestation and Motion[22] stating therein that, upon verification with the records of the court that day, then defendant PILTEL had failed to file its Comment/Opposition to respondent's aforementioned pending motions and, thus, respondent moved to submit both motions for the resolution of the trial court without opposition from then defendant PILTEL. Hence, the trial court issued an Order[23] on April 23, 2001 granting the withdrawal of respondent's remaining causes of action and the execution pending appeal, the dispositive portion of which reads:

> WHEREFORE, the motion for execution pending appeal of the Partial Summary Judgment rendered on November 13, 2000 is GRANTED.
>
> Let the corresponding Writ of Execution be issued and implemented accordingly.

As a result, the corresponding Writ of Execution Pending Appeal[24] was issued on April 24, 2001.

Back at the Court of Appeals, petitioner filed an Urgent Manifestation and Urgent Reiteratory Motion for the Issuance of a Temporary Restraining Order and/or Writ of Preliminary Injunction[25] on April 25, 2001.

On that same date and while its Petition for *Certiorari* under Rule 65 was still pending before the Court of Appeals, petitioner filed with the trial court its Notice of Appeal[26] informing the said court that it will raise before the Court of Appeals the trial court's November 13, 2000 Resolution and April 23, 2001 Order. This appeal was subsequently docketed as CA-G.R. CV No. 71805.

---

[22] *Id.* at 1407-1432.

[23] *Id.* at 535-537.

[24] *Id.* at 579-580.

[25] *Id.* at 542-578.

[26] *Id.* at 538-541.

The following day, on April 26, 2001, petitioner filed with the trial court an Urgent Manifestation to Post Supersedeas Bond and Urgent Motion to Defer Execution Pending Appeal.[27]

On April 30, 2001, respondent filed with the Court of Appeals its Supplement (To: Opposition to the Application for the Issuance of a Temporary Restraining Order and/or Writ of Preliminary Injunction)[28] while, on the other hand, petitioner filed with the trial court another Urgent Motion to Admit Supersedeas Bond[29] on May 2, 2001. On the same day, by virtue of the Writ of Execution Pending Appeal issued by the trial court and there being no TRO issued against it by the Court of Appeals in CA-G.R. SP No. 64155, Sheriff George C. Ragutana issued a Notice of Sale on Execution Pending Appeal of Real Property[30] giving notice to the public that the sale by public auction of the real property described in TCT No. 195516 or the Valgoson property shall be on May 31, 2001. Likewise on the same date, the Court of Appeals denied petitioner's petition for *certiorari* along with the request for the issuance of a TRO in CA-G.R. SP No. 64155, stating:

> We resolve to dismiss the petition.
>
> As pointed out by private respondent, an appeal from a partial summary judgment may be allowed by the trial court under Section 1(g), Rule 41 of the 1997 Rules of Civil Procedure, which reads:
>
> "SECTION 1. Subject of appeal. x x x
>
> No appeal may be taken from:
>
> x x x x x x x x x
>
> (g) A judgment or final order for or against one or more of several parties or in separate claims, counterclaims, cross-claims and third-party complaints, while the main case is pending, unless the court allows an appeal therefrom;

---

[27] *Id.* at 1435-1437.

[28] *Id.* at 1377-1390.

[29] *Id.* at 586-589.

[30] CA *rollo*, pp. 414-415.

x x x x x x x x x"

Thus, petitioner should have filed, with leave of court, a notice of appeal from the partial summary judgment dated November 13, 2000 before resorting to this special civil action of *certiorari*. Moreover with the withdrawal and dismissal of private respondent's remaining two causes of action, the summary judgment dated November 13, 2000 ceased to be partial as it may be considered to have completely disposed of the entire case and, therefore, appealable.

Anent the alleged impropriety of a summary judgment, suffice it to say that *certiorari* will not be issued to cure errors in proceedings or correct erroneous conclusions of law or fact. As long as a court acts within its jurisdiction, any alleged errors committed in the exercise of its jurisdiction will amount to nothing more than errors of judgment which are reviewable by timely appeal and not by *certiorari*.

Petitioner likewise assails the Order of execution dated April 23, 2001. However, the copy of said Order attached to the urgent manifestation and urgent reiteratory motion for the issuance of a temporary restraining order and/or writ of preliminary injunction is a mere unsigned xerox copy thereof, contrary to the requirement in Section 1, Rule 65 of the 1997 Rules of Civil Procedure that the petition be accompanied by a clearly legible duplicate original or certified true copy of the order subject thereof. Thus, Section 3, Rule 46 of the 1997 Rules of Civil Procedure provides that the failure of the petitioner to comply with the requirement, *inter alia*, that the petition be accompanied by a clearly legible duplicate original or certified true copy of the order subject thereof, shall be sufficient ground for the dismissal thereof. As held in *Manila Midtown Hotels and Land Corporation vs. NLRC*, *certiorari*, being an extraordinary remedy, the party who seeks to avail of the same must observe the rules laid down by law.[31]

Thus, the dispositive portion of which reads as follows:

WHEREFORE, the instant petition is DISMISSED for insufficiency in form and substance.[32]

In response to petitioner's May 2, 2001 motion filed in the trial court, respondent filed an Opposition to the Urgent Motion

[31] *Rollo*, pp. 80-81.

[32] *Id.* at 81.

to Admit Supersedeas Bond[33] on May 4, 2001 alleging that the offer to post supersedeas bond does not entitle then defendant PILTEL to a deferment of execution pending appeal since at that time, compelling reasons warrant immediate execution and that PILTEL has resorted to forum shopping in order to have the execution postponed. On May 8, 2001, petitioner filed its Reply (to the Opposition to Motion to Admit Supersedeas Bond)[34] to which respondent filed its Rejoinder[35] on May 9, 2001.

Notwithstanding the dismissal of petitioner's Petition for *Certiorari* (CA-G.R. SP No. 64155), petitioner still filed on May 9, 2001 a Supplemental Petition for *Certiorari*[36] challenging the April 23, 2001 Order of the trial court as having been issued with grave abuse of discretion. Petitioner likewise filed a (Second) Urgent Manifestation and Reiteratory Motion for a Temporary Restraining Order and/or Writ of Preliminary Injunction[37] on May 17, 2001. Both pleadings were merely noted without action by the Court of Appeals in a Resolution[38] dated May 18, 2001, to wit:

> In view of the resolution of this Court dated May 2, 2001 which dismissed the petition, the Supplemental Petition dated May 9, 2001 and (Second) Urgent Manifestation and Reiteratory Motion for a Temporary Restraining Order and/or Writ of Preliminary Injunction dated May 15, 2001 filed by petitioner are hereby NOTED without action.

On May 22, 2001, petitioner filed its Motion for Reconsideration[39] to the May 2, 2001 Court of Appeals Resolution. It followed this up with the filing of a pleading entitled "(A) Third Urgent Manifestation and Reiteratory Motion for a

---

[33] *Id.* at 1438-1449.

[34] *Id.* at 1464-1471.

[35] *Id.* at 1489A-1492.

[36] *Id.* at 608-618.

[37] *Id.* at 1500-1503.

[38] *Id.* at 1507.

[39] *Id.* at 86-110.

Temporary Restraining Order and/or Writ of Preliminary Injunction; and (B) Motion to Set Case for Oral Arguments"[40] on June 1, 2001.

Respondent filed its Comment[41] and Supplemental Comment[42] on June 15, 2001 and June 25, 2001, respectively, to petitioner's May 22, 2001 Motion for Reconsideration. In return, petitioner filed by registered mail its Consolidated Reply (to Smartnet's [1] Comment and [2] Supplemental Comment) on August 23, 2001. Subsequently, respondent filed its Rejoinder[43] on September 17, 2001.

Back at the trial court, it issued an Order[44] on May 11, 2001 denying petitioner's Urgent Manifestation to Post Supersedeas Bond and Urgent Motion to Defer Execution Pending Appeal on the ground that the reasons for the allowance of execution pending appeal still prevail and the posting of a supersedeas bond does not entitle the judgment debtor to a suspension of execution as a matter of right. The dispositive portion of which states:

> WHEREFORE, defendant's Urgent Manifestation to Post Supersedeas Bond, Urgent Motion to Defer Execution Pending Appeal and the Urgent Motion to Admit Supersedeas Bond are hereby denied for lack of merit.[45]

Petitioner then filed on May 30, 2001 a Motion for Reconsideration[46] of the said Order of the trial court. This was subsequently denied by the trial court in an Order[47] issued on August 14, 2001, which likewise granted the withdrawal of all

---

[40] *Id.* at 1533-1536.

[41] *Id.* at 1540-1588.

[42] *Id.* at 1589-1592.

[43] *Id.* at 1654-1677.

[44] *Id.* at 1537-1539.

[45] *Id.* at 1539.

[46] *Id.* at 1736-1740.

[47] *Id.* at 668-669.

the remaining incidents of the case. This Order later became the subject of petitioner's Supplemental Notice of Appeal[48] which it filed on September 4, 2001.

On January 4, 2002, respondent filed a Manifestation[49] in CA-G.R. SP No. 64155 informing the Court of Appeals of the status of the appeal taken by petitioner in CA-G.R. CV No. 71805 and reiterating the gross violations of the rule against forum shopping allegedly committed by the same. A month later, or on February 7, 2002, the Court of Appeals denied petitioner's May 22, 2001 Motion for Reconsideration in CA-G.R. SP No. 64155. In denying petitioner's motion, the appellate court declared that "even assuming that the Petition for *Certiorari* has a practical legal effect because it would lead to the reversal of the Resolution dismissing the Complaint, it would still be denied on the ground of forum shopping." The Court of Appeals concluded that petitioner committed forum shopping because the subject matter of its petition for *certiorari* and the notice of appeal that it subsequently filed are one and the same, to wit:

> It should be noted that after the filing of the instant petition, petitioner appealed to this Court the partial summary judgment dated November 13, 2000 and the Order dated April 23, 2001, declaring the partial summary judgment to have finally disposed of the entire case and granting the motion for execution pending appeal, docketed as CA-G.R. CV No. 71805, which are the same subject matter of the instant petition.[50]

Hence, this petition where petitioner raises the following grounds:

I.

A SPECIAL CIVIL ACTION FOR *CERTIORARI* UNDER RULE 65 OF THE RULES OF COURT IS THE PROPER REMEDY FROM A PARTIAL SUMMARY JUDGMENT.

---

[48] *Id.* at 670-673.

[49] *Id.* at 1719-1725.

[50] *Id.* at 83-84.

A. SECTION 1(G), RULE 41 OF THE RULES OF COURT DOES NOT APPLY TO PARTIAL SUMMARY JUDGMENTS.

B. A PARTIAL SUMMARY JUDGMENT IS AN INTERLOCUTORY ORDER THAT CANNOT BE THE SUBJECT OF AN APPEAL.

C. THE RULES AND EXISTING JURISPRUDENCE DICTATE THAT APPEAL FROM A PARTIAL SUMMARY JUDGMENT MUST BE TAKEN TOGETHER WITH THE JUDGMENT THAT MAY BE RENDERED IN THE ENTIRE CASE AFTER TRIAL.

D. THE REMEDY OF AN AGGRIEVED PARTY FROM A PARTIAL SUMMARY JUDGMENT IS A SPECIAL CIVIL ACTION FOR *CERTIORARI* UNDER RULE 65 OF THE RULES OF COURT.

E. EVEN ASSUMING, ONLY FOR THE SAKE OF ARGUMENT, THAT SECTION 1, RULE 41 IS APPLICABLE, THE GENERAL RULE EVEN AS STATED IN THE SAME SECTION ITSELF, IS THAT "NO APPEAL MAY BE TAKEN FROM A JUDGMENT OR FINAL ORDER FOR OR AGAINST ONE OR MORE OF SEVERAL PARTIES OR IN SEPARATE CLAIMS, COUNTERCLAIMS, CROSS-CLAIMS AND THIRD-PARTY COMPLAINTS, WHILE THE MAIN CASE IS PENDING." MOREOVER, THE EXCEPTION PROVIDED THEREIN IS NOT EVEN MANDATORY.

F. AT THE TIME OF THE FILING OF THE PETITION IN THIS CASE, THE PARTIAL SUMMARY JUDGMENT WAS TRULY "PARTIAL", AND NOT FINAL IN THE SENSE THAT IT DISPOSES OF THE ENTIRE CASE.

II.

EVEN ASSUMING, ONLY FOR THE SAKE OF ARGUMENT, THAT APPEAL IS THE PROPER REMEDY FROM A PARTIAL SUMMARY JUDGMENT, A SPECIAL CIVIL ACTION FOR *CERTIORARI* UNDER RULE 65 OF THE RULES OF COURT IS NOT BARRED.

III.

JUDGE QUILALA COMMITTED PATENT AND GRAVE ABUSE OF DISCRETION, AMOUNTING TO LACK OR EXCESS OF JURISDICTION, IN RENDERING THE ASSAILED PARTIAL SUMMARY JUDGMENT.

IV.

THE ISSUES RAISED IN PILTEL'S PETITION FOR *CERTIORARI* WITH THE COURT OF APPEALS ARE DIFFERENT FROM THE ISSUES RAISED IN PILTEL'S APPEAL.

V.

PILTEL DID NOT COMMIT FORUM SHOPPING.

VI.

THE COURT OF APPEALS FAILED TO APPRECIATE THAT THE URGENT MANIFESTATION AND URGENT REITERATORY MOTION FOR THE ISSUANCE OF A TEMPORARY RESTRAINING ORDER DID NOT ASSAIL THE 23 APRIL 2001 [ORDER]; THE SAID ORDER WAS ASSAILED IN THE ORIGINAL SUPPLEMENTAL PETITION."[51]

A careful perusal of the voluminous pleadings filed by the parties leads us to conclude that this case revolves around the following core issues:

I.

WHETHER OR NOT PETITIONER IS GUILTY OF FORUM SHOPPING

II.

WHETHER OR NOT GRAVE ABUSE OF DISCRETION ATTENDED THE TRIAL COURT'S ISSUANCE OF A SUMMARY JUDGMENT

III.

WHETHER OR NOT THE PETITION FOR *CERTIORARI* WAS PROPERLY DISMISSED

We find the instant petition to be without merit.

Anent the first issue, petitioner asserts that the filing of its Notice of Appeal in CA-G.R. CV No. 71805 subsequent to the filing of its Petition for *Certiorari* before the Court of Appeals in CA-G.R. SP No. 64155 does not amount to forum shopping because the issues raised in the petition for *certiorari* are different

[51] *Id.* at 38-40.

from the issues raised in the appeal since the former seeks to have an order declared null and void for having been rendered with grave abuse of discretion amounting to lack or excess of jurisdiction while the latter deals with the correctness and legal soundness of the questioned decision. Furthermore, petitioner argues that a subsequent appeal was not adequate to address the grave abuse of discretion committed by the trial court judge and could not have provided adequate relief. Lastly, petitioner maintains that the element of *res judicata* is not present in this case so as to amount to forum shopping on the part of petitioner.[52]

We cannot countenance petitioner's nuanced position on this issue. The captions/subheadings of the petitioner's petition for *certiorari* and the argument captions/subheadings of petitioner's appellant's brief may, at first blush, appear to be dissimilar. However, the discussion that expounded on each of them plainly betray a similarity of issues presented, grounds argued, and reliefs sought.

An example is petitioner's first argument in its Petition for *Certiorari* before the Court of Appeals in CA-G.R. SP No. 64155 where it alleged grave abuse of discretion on the part of Judge Quilala in granting summary judgment despite the existence of materially disputed facts and the absence of supporting affidavits, to wit:

I

RESPONDENT JUDGE COMMITTED PATENT AND GRAVE ABUSE OF DISCRETION, AMOUNTING TO LACK OR EXCESS OF JURISDICTION, IN RENDERING SUMMARY JUDGMENT NOTWITHSTANDING THE FACT THAT:

A. THE PLEADINGS READILY AND IMMEDIATELY SHOW THAT THERE ARE MATERIAL DISPUTED FACTS DETERMINATIVE OF THE PARTIES' CLAIMS AND DEFENSES WHICH CANNOT BE SETTLED WITHOUT PRESENTATION OF EVIDENCE.[53]

---

[52] *Id.* at 2309-2326.

[53] *Id.* at 290.

In support of this allegation, petitioner states the following:

51. From the foregoing statement of the positions of the parties, the following questions of material fact determinative of the parties claim and defenses are glaring:

51.1 Does the Letter constitute a valid, binding, and enforceable agreement between the parties?

51.2 Did the parties intend the Letter to form an integral part of the Contract?

51.3 Was the Letter a material consideration for SMARTNET's entering into the Contract?

51.4 Did PILTEL violate or fail to comply with any of its obligations under the Contract?

51.5 Assuming, *arguendo*, that the Letter constitutes a valid binding, and enforceable agreement, did PILTEL violate any of its provisions?

51.6 Is PILTEL guilty of fraud or bad faith in the negotiation, performance or execution of the Contract and/or the Letter?

52. BECAUSE OF THE INDISPUTABLE EXISTENCE OF THE FOREGOING MATERIAL QUESTIONS OF FACT WHICH GO INTO THE HEART OF THE PARTIES' RESPECTIVE CLAIMS AND DEFENSES, ESPECIALLY SMARTNET'S CLAIM FOR PARTIAL SPECIFIC PERFORMANCE OR (IN THE ALTERNATIVE) FOR RESCISSION, SUMMARY JUDGMENT IS EVIDENTLY NOT PROPER."[54]

On the other hand, petitioner assigned as its first error in its Appellant's Brief in CA-G.R. No. 71805 the following contention:

I.

JUDGE QUILALA GRIEVOUSLY ERRED IN HOLDING THAT THE CONTRACT HAD BEEN "RENDERED VOID AND INEFFECTIVE AND WITHOUT FORCE AND EFFECT."[55]

---

[54] *Id.* at 298-299.

[55] *Id.* at 680.

In discussing this point, petitioner argued that the trial court was required to consider the materially disputed facts before it can properly grant summary judgment instead of directly disputing the finding that the contract had been rendered void, to wit:

> Clearly, then, in order for Judge Quilala to determine whether or not SMARTNET is entitled to any of the relief it prayed for, it had to resolve, among others, the following issues of fact: **Does the Letter constitute a valid, binding, and enforceable agreement between the parties? Did the parties intend the Letter to form an integral part of the Contract? Did PILTEL violate or fail to comply with any of its obligations under the Contract to Sell? Is PILTEL guilty of fraud or bad faith in the negotiation, performance or execution of the Contract to Sell?**[56]

In the present Petition for Review, we likewise find the same arguments, to wit:

> 6.31. In this case, Judge Quilala rendered partial summary judgment notwithstanding the fact that **THE PLEADINGS READILY AND IMMEDIATELY SHOW THAT THERE ARE MATERIAL DISPUTED FACTS DETERMINATIVE OF THE PARTIES' CLAIMS AND DEFENSES WHICH CANNOT BE SETTLED WITHOUT PRESENTATION OF EVIDENCE**.
>
> x x x x x x x x x
>
> The rendition of the foregoing summary judgment is improper because, from the pleadings of the parties and the issues presented at the pre-trial conference, including the issues presented by PILTEL in its pre-trial brief, the following questions of material fact determinative of the parties claim and defenses are glaring:
>
> 1. Does the Letter constitute a valid, binding, and enforceable agreement between the parties?
>
> 2. Did the parties intend the Letter to form an integral part of the Contract?
>
> 3. Was the Letter a material consideration for SMARTNET's entering into the Contract?

---

[56] *Id.* at 719.

4. Did PILTEL violate or fail to comply with any of its obligations under the Contract?

5. Assuming, *arguendo*, that the Letter constitutes a valid, binding, and enforceable agreement, did PILTEL violate any of its provisions?

6. Is PILTEL guilty of fraud or bad faith in the negotiation, performance or execution of the Contract and/or the Letter?[57]

From the foregoing, it can be clearly deduced that petitioner repeated the same argument in its appeal and its petition for *certiorari* filed in the Court of Appeals as well as in the instant petition that the trial court's resolution of the case by summary judgment was invalid allegedly because of materially disputed facts which would render the whole proceeding beyond the purview of the established rules on summary judgment.

Another illustration of petitioner's proclivity to repeat its arguments in different fora can be found in the second argument of its petition for *certiorari* in CA-G.R. SP No. 64155 which reads:

II

EVEN ASSUMING, *ARGUENDO*, THAT SUMMARY JUDGMENT IS PROPER, RESPONDENT JUDGE COMMITTED PATENT AND GRAVE ABUSE OF DISCRETION, AMOUNTING TO LACK OR EXCESS OF JURISDICTION, WHEN HE DISREGARDED THE LAW AND WELL-ESTABLISHED JURISPRUDENCE IN RENDERING JUDGMENT IN FAVOR OF SMARTNET.

A. SMARTNET [RADIOMARINE] WENT TO COURT WITH UNCLEAN HANDS. HENCE, IT IS NOT ENTITLED TO RELIEF FROM THE COURTS.

B. SMARTNET CANNOT RENDER THE CONTRACT VOID AND UNENFORCEABLE THROUGH ITS OWN DEFAULT, BREACH, OR FAILURE.

C. SMARTNET IS NOT ENTITLED TO INTEREST.

---

[57] *Id.* at 51-53.

D. SMARTNET'S OBLIGATION TO PAY THE BALANCE OF THE PURCHASE PRICE IS VALID, BINDING, ENFORCEABLE AND SUBSISTING.[58]

In support of which, petitioner discussed the following points:

83. SMARTNET cannot avoid the Contract by the simple expedient of not paying. Here, the bare truth of the matter is that SMARTNET is invoking its own refusal or failure to comply with its obligation under the Contract to annul or render the Contract ineffective or void.

x x x x x x x x x

85. SMARTNET is in effect saying that, since it has not paid, and it failed and refused, and continues to fail and refuse, to pay the balance of the purchase price for the Valgoson Property, the Contract is automatically annulled or rescinded.

86. Article 1182 of the Civil Code provides that: "**When the fulfillment of the obligation depends upon the sole will of the debtor, the conditional obligation shall be void.**" Thus, in ***Osmena vs. Rama***, it was held that the condition to pay (the balance of the purchase price of shares of stock) as soon as the debtor sells her house is void.

87. Article 1186 of the Civil Code provides that: "**The condition shall be deemed fulfilled when the obligor voluntarily prevents its fulfillment.**" The reason for the rule is that **ONE MUST NOT PROFIT BY HIS OWN FAULT.**

88. In ***Mana vs. Luzon Consolidated Mines & Co.***, a company engaged the services of a contractor to construct a road. Halfway, the company directed the contractor to stop work. The contractor sued for the entire contract price. The company refused, asserting that only half of the project was finished. The Court of Appeals sustained the contractor and directed the company to pay the entire contract price, saying that the project is deemed fulfilled because it was the company that voluntarily prevented its completion.

89. The case of ***Valencia vs. Rehabilitation Finance Corporation and Court of Appeals*** is even more applicable. There, the

---

[58] *Id.* at 291.

Rehabilitation Finance Corporation ("RFC") advertised to the general public an "invitation to bid" for the construction of a building in Davao City. Valencia submitted a bid for the electrical and plumbing works for the building. RFC awarded the plumbing to Valencia. Valencia was asked to put up the performance bond as required under the contract. Valencia did not put up the bond and also did not begin the work. When RFC sued him, among the defenses put up by Valencia was that, since he did not put up a bond, there was no contract since the condition was not complied with. The Supreme Court, affirming the Court of Appeals, held Valencia liable for damages to RFC, saying that:

x x x x x x x x x

90. Article 1308 of the Civil Code states that: "**The contract must bind both contracting parties; its validity or compliance cannot be left to the will of one of them.**" Thus, in ***Fernandez vs. Manila Electric Company***, the Supreme Court held that the validity and fulfillment of contracts can not be left to the will of one of the contracting parties, and the mere fact that one has made a poor bargain is no ground for setting aside an agreement.[59] (citations omitted.)

These same arguments were raised by petitioner in its Appellant's Brief in CA-G.R. CV No. 71805, to wit:

77. SMARTNET is in effect saying that, since it has not paid, and it failed and refused, and continues to fail and refuse, to pay the balance of the purchase price for the Valgoson Property, the Contract to Sell is automatically annulled or rescinded.

78. SMARTNET cannot avoid the Contract by the simple expedient of not paying. The validity of, compliance with, or fulfillment of a contract cannot be left to the will of one of the parties.

79. Article 1182 of the Civil Code provides that: "**When the fulfillment of the obligation depends upon the sole will of the debtor, the conditional obligation shall be void.**" Thus, in ***Osmena vs. Rama***, it was held that the condition to pay (the balance of the purchase price of shares of stock) as soon as the debtor sells her house is void.

---

[59] *Id.* at 308-311.

80. Article 1186 of the Civil Code provides that: "**The condition shall be deemed fulfilled when the obligor voluntarily prevents its fulfillment.**" The reason for the rule is that **ONE MUST NOT PROFIT BY HIS OWN FAULT.**"

81. In ***Mana vs. Luzon Consolidated Mines & Co.***, a company engaged the services of a contractor to construct a road. Halfway, the company directed the contractor to stop work. The contractor sued for the entire contract price. The company refused, asserting that only half of the project was finished. The Court of Appeals sustained the contractor and directed the company to pay the entire contract price, saying that the project is deemed fulfilled because it was the company that voluntarily prevented its completion.

82. The case of ***Valencia vs. Rehabilitation Finance Corporation and Court of Appeals*** is even more applicable. There, the Rehabilitation Finance Corporation ("RFC") advertised to the general public an "invitation to bid" for the construction of a building in Davao City. Valencia submitted a bid for the electrical and plumbing works for the building. RFC awarded the plumbing to Valencia. Valencia was asked to put up the performance bond as required under the contract. Valencia did not put up the bond and also did not begin the work. When RFC sued him, among the defenses put up by Valencia was that, since he did not put up a bond, there was no contract since the condition was not complied with. The Supreme Court, affirming the Court of Appeals, held Valencia liable for damages to RFC, saying that:

x x x x x x x x x

83. Article 1308 of the Civil Code states that: "**The contract must bind both contracting parties; its validity or compliance cannot be left to the will of one of them.**" Thus, in ***Fernandez vs. Manila Electric Company***, the Supreme Court held that the validity and fulfillment of contracts can not be left to the will of one of the contracting parties, and the mere fact that one has made a poor bargain is no ground for setting aside an agreement.[60]

It is apparent from the above that petitioner puts forward in both its petition for *certiorari* and its appeal before the Court of Appeals as well as in the present petition the assertion that

---

[60] *Id.* at 729-732.

the contract at issue was rendered void and unenforceable due to mistakes attributable solely to the respondent in this case.

And finally, the most glaring demonstration of petitioner's penchant for forum shopping can be found in the prayer of its Court of Appeals' petition for *certiorari* and appeal including the instant petition before this Court.

In the present petition for review, petitioner sought in its prayer the following relief:

> WHEREFORE, PILTEL respectfully prays that judgment be rendered:
>
> 1. Annulling, reversing and setting aside the First and Second Assailed Resolutions;
>
> 2. Annulling, reversing and setting aside the **Resolution of the trial court dated 13 November 2000** and the **Order of the trial court dated 30 January 2001**.
>
> PILTEL likewise prays for such further or other relief as may be deemed just and equitable under the circumstances.[61] (Emphasis supplied.)

In its petition for *certiorari* in CA-G.R. SP No. 64155, petitioner prayed for the following:

> 2.1. Annul, reverse and set aside the Assailed **Resolution dated 13 November 2000** and the assailed **Order dated 30 January 2001**, AND DENY SMARTNET'S MOTION FOR PARTIAL SUMMARY JUDGMENT;
>
> 2.2 (a) Order the lower court to proceed with the trial on the merits of the case; or, in the alternative,
>
> (b) dismiss the Complaint, and order SMARTNET to pay PILTEL:
>
> (i) PhP380,000,000.00, representing the balance of the purchase price for the Valgoson Property, plus interest until the same is fully paid;
>
> (ii) PhP5,000,000.00, as moral damages;

---

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

(iii) PhP1,000,000.00, as exemplary damages; and

(iv) PhP1,000,000.00, as attorney's fees and costs of litigation."[62] (Emphasis supplied.)

While in its **Supplemental Petition for *Certiorari*** in the same appellate case, petitioner prayed:

2. After due proceedings, judgment be rendered annulling, reversing and setting aside the **Order of 23 April 2001** in so far as it grants execution pending appeal.[63] (Emphasis supplied.)

Petitioner's Appellant's Brief in CA-G.R. CV No. 71805, on the other hand, sought the following relief:

WHEREFORE, PILTEL respectfully prays that judgment be rendered as follows:

a. Annulling, reversing and setting aside (1) the Assailed **Resolution dated 13 November 2000**, (2) the First Assailed **Order dated 23 April 2001**, and (3) the Second Assailed Order dated 14 August 2001;

b. Remanding the case to the Trial Court and allow the parties to present evidence on their respective claims and defenses; and

c. Ordering SMARTNET to return the amount of Php131,795,836.38 to PILTEL, plus interest.

PILTEL likewise prays for such further or other relief just and equitable under the circumstances."[64] (Emphasis supplied.)

It is plainly apparent from the foregoing that both the then pending suits before the Court of Appeals and the instant petition before this Court raised the same issues and sought the same reliefs, *i.e.*, the annulment of the **November 13, 2000 Resolution** of the trial court granting partial summary judgment, as well as the withdrawal of the other causes of action thereby disposing of the entire case, and the execution of the summary judgment as directed by the trial court in its **April 23, 2001 Order**.

---

[62] *Id.* at 316.

[63] *Id.* at 616.

[64] *Id.* at 736-737.

Forum shopping exists when the elements of *litis pendentia* are present or when a final judgment in one case will amount to *res judicata* in the other.[65] There is *res judicata* when (1) there is a final judgment or order; (2) the court rendering it has jurisdiction over the subject matter and the parties; (3) the judgment or order is on the merits; and (4) there is between the two cases identity of parties, subject matter and causes of action. For *litis pendentia* to exist, there must be (1) identity of the parties or at least such as representing the same interests in both actions; (2) identity of the rights asserted and relief prayed for, the relief founded on the same facts; and (3) identity of the two cases such that judgment in one, regardless of which party is successful, would amount to *res judicata* in the other.[66]

In the case at bar, the elements of *litis pendentia* and, consequently, of forum shopping are present in petitioner's petition for *certiorari* along with its supplemental petition for *certiorari* in CA-G.R. SP No. 64155 and in its appeal in CA-G.R. CV No. 71850. Obviously, there is **identity of parties**. Likewise, there is **identity of causes of action** as both cases assign the same errors on the part of the trial court. Finally, there is **identity of reliefs** as both seek the annulment and reversal of the same orders. It is not difficult to conclude that a decision in either case will necessarily have a practical legal effect in the other.

Petitioner further argues that the petition for *certiorari* alleged grave abuse of discretion on the part of the trial court judge in issuing the November 13, 2000 Resolution and April 23, 2001 Order, while the appeal alleged grave error on the part of the

---

[65] *Santos v. Heirs of Dominga Lustre*, G.R. No. 151016, August 6, 2008, 561 SCRA 120, 128; *Briones v. Henson-Cruz*, G.R. No. 159130, August 22, 2008, 563 SCRA 69, 84-85; *Land Bank of the Philippines v. AMS Farming Corporation*, G.R. No. 174971, October 15, 2008, 569 SCRA 154, 179-180; *Presidential Commission on Good Government v. Sandiganbayan*, G.R. No. 157592, October 15, 2008, 569 SCRA 360, 375; *Rural Bank of the Seven Lakes (S.P.C.), Inc. v. Dan*, G.R. No. 174109, December 24, 2008, 575 SCRA 476, 485-486.

[66] *Coca-Cola Bottlers (Phils.), Inc. v. Social Security Commission*, G.R. No. 159323, July 31, 2008, 560 SCRA 719, 734-736.

trial court judge in its November 13, 2000 Resolution, April 23, 2001 Order, and August 14, 2001 Order which are entirely different issues.[67] However, it is our view that, though petitioner attempts to make distinctions between them, the two cases at issue are undoubtedly directed against the November 13, 2000 Resolution and the April 23, 2001 Order of the trial court, as well as all rulings of the trial court arising from these two. Clearly, both actions alleged the same right supposedly violated by the same acts of the trial court which caused the same damage to petitioner, thus, in violation of the rule against forum shopping. The present petition likewise violates the said rule.

Forum shopping is the act of a litigant who repetitively avails of several judicial remedies in different courts, simultaneously or successively, all substantially founded on the same transactions and the same essential facts and circumstances, and raising substantially the same issues either pending in, or already resolved adversely by some other court, or to increase his chances of obtaining a favorable decision if not in one court, then in another. The rationale against forum shopping is that a party should not be allowed to pursue simultaneous remedies in two different courts as it constitutes abuse of court processes, which tends to degrade the administration of justice, wreaks havoc upon orderly judicial procedure, and adds to the congestion of the heavily burdened dockets of the courts.[68]

Petitioner stresses that when it filed its petition for *certiorari* directed against the November 13, 2000 Resolution granting partial summary judgment, the remedy of appeal was not yet an available option to it as the case in the trial court had yet to be concluded. However, upon the issuance of the April 23, 2001 Order which rendered the previously partial summary judgment as the complete and final judgment disposing of the trial court case and was the subject of petitioner's supplemental petition for *certiorari*, appeal was now open to petitioner which

---

[67] *Rollo*, pp. 2310-2316.

[68] *Tokio Marine Malayan Insurance Company, Incorporated v. Valdez*, G.R. No. 150107, January 28, 2008, 542 SCRA 455, 465.

it readily pursued. Since the issues raised and the reliefs sought in its petition for *certiorari* and its appeal are identical which would make a decision in either one as *res judicata* on the other and given that it is axiomatic that the availability of appeal precludes resort to *certiorari*, it was imperative on the part of petitioner to withdraw its petition for *certiorari* which it did not do. This is where the petitioner crossed the line into the forbidden recesses of forum shopping. The assailed February 7, 2002 Court of Appeals Resolution correctly pointed this out citing the case of ***Ley Construction and Development Corporation v. Hyatt Industrial Manufacturing Corporation,***[69] to wit:

Second, the Petition for *Certiorari* was superseded by the filing, before the Court of Appeals, of a subsequent appeal docketed as CA-G.R. CV No. 57119, questioning *the Resolution and the two Orders*. In this light, there was no more reason for the CA to resolve the Petition for *Certiorari*.

Section 1, Rule 65 of the Rules of Court, clearly provides that a petition for *certiorari* is available only when "there is no appeal, or any plain, speedy and adequate remedy in the ordinary course of law." A petition for *certiorari* cannot coexist with an appeal or any other adequate remedy. The existence and the availability of the right to appeal are antithetical to the availment of the special civil action for *certiorari*. As the Court has held, these two remedies are "mutually exclusive."

In this case, the subsequent appeal constitutes an adequate remedy. In fact it is the appropriate remedy, because it assails not only the Resolution but also the two Orders.

It has been held that "what is determinative of the propriety of *certiorari* is the danger of failure of justice without the writ, not the mere absence of all other legal remedies." The Court is satisfied that the denial of the Petition for *Certiorari* by the Court of Appeals will not result in a failure of justice, for petitioner's rights are adequately and, in fact, more appropriately addressed in the appeal.

Third, petitioner's submission that the Petition for *Certiorari* has a practical legal effect is in fact an admission that the two actions are one and the same. Thus, in arguing that the reversal of the two

---

[69] 393 Phil. 633, 640-642 (2000).

interlocutory Orders "would likely result in the setting aside of the dismissal of petitioner's amended complaint," petitioner effectively contends that its Petition for *Certiorari*, like the appeal, seeks to set aside *the Resolution and the two Orders*.

Such argument unwittingly discloses a recourse to forum shopping, which has been held as "the institution of two or more actions or proceedings grounded on the same cause on the supposition that one or the other court would make a favorable disposition." Clearly, by its own submission, petitioner seeks to accomplish the same thing in its Petition for *Certiorari* and in its appeal: both assail the two interlocutory Orders and both seek to set aside the RTC Resolution.

Hence, even assuming that the Petition for *Certiorari* has a practical legal effect because it would lead to the reversal of the Resolution dismissing the Complaint, it would still be denied on the ground of forum shopping.

With respect to the second issue of whether or not grave abuse of discretion attended the granting of summary judgment by the trial court, we rule that a petition for an extraordinary writ of *certiorari* is not a proper remedy to assail the propriety of the said act. The pertinent provision of law in this particular case is Section 1, Rule 65 of the 1997 Rules of Civil Procedure, to wit:

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, or 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.

In other words, a writ of *certiorari* may be issued only for the correction of errors of jurisdiction or grave abuse of discretion amounting to lack or excess of jurisidiction.[70]

---

[70] *Delos Santos v. Court of Appeals*, G.R. No. 169498, December 11, 2008, 573 SCRA 690, 700.

In *Rizal Security & Protective Services, Inc v. Maraan,*[71] we elaborated on the aforementioned grounds:

> The respondent acts without jurisdiction if he does not have the legal power to determine the case. There is excess of jurisdiction where the respondent, being clothed with the power to determine the case, oversteps his authority as determined by law. And there is grave abuse of discretion where the respondent acts in a capricious, whimsical, arbitrary or despotic manner in the exercise of his judgment as to be said to be equivalent to lack of jurisdiction. x x x.

After a careful review of the records, we find that petitioner failed to sufficiently show that the trial court, in rendering a partial summary judgment, so gravely abused its discretion amounting to lack or excess of jurisdiction. Verily, the circumstances of this case do not show that the trial court's discretion was exercised arbitrarily, capriciously, or despotically because the November 13, 2000 Resolution laid down the factual and legal bases relied upon by the trial court in granting the Motion for Partial Summary Judgment. Even assuming *arguendo*, that the trial court committed errors in its appreciation of the facts and pleadings on record, as petitioner contends in its petition for *certiorari*, we agree with the Court of Appeals that these involve errors of judgment which are not reviewable by *certiorari*. As this Court held:

> As a legal recourse, the special civil action of *certiorari* is a limited form of review. The jurisdiction of this Court is narrow in scope; it is restricted to resolving errors of jurisdiction, not errors of judgment. Indeed, as long as the courts below act within their jurisdiction, alleged errors committed in the exercise of their discretion will amount to mere errors of judgment correctable by an appeal or a petition for review.[72]

---

[71] G.R. No. 124915, February 18, 2008, 546 SCRA 23, 32, citing *Condo Suite Club Travel, Inc. v. National Labor Relations Commission*, 380 Phil. 660, 667 (2000).

[72] *Apostol v. Court of Appeals*, G.R. No. 141854, October 15, 2008, 569 SCRA 80, 92.

Lastly, we resolve the issue of whether or not the petition for *certiorari* filed by petitioner was properly dismissed by the Court of Appeals. In dismissing the said petition, the Court of Appeals ruled in its May 2, 2001 Resolution that appeal and not *certiorari* is the proper remedy available to petitioner — a holding that was restated by the appellate court in its February 7, 2002 Resolution citing the case of *Ley Construction and Development Corporation v. Hyatt Industrial Manufacturing Corporation.*[73]

Petitioner defends its resort to dual remedies by arguing that, under the peculiar circumstances of the case, it could properly avail of a petition for *certiorari* and an appeal and that the former is not barred even with the filing of the latter.[74] However, we deem such a position untenable as established jurisprudence declares otherwise.

The well-settled rule is that *certiorari* is not available where the aggrieved party's remedy of appeal is plain, speedy and adequate in the ordinary course, the reason being that *certiorari* cannot co-exist with an appeal or any other adequate remedy. The existence and availability of the right of appeal are antithetical to the availment of the special civil action for *certiorari*. These two remedies are mutually exclusive.[75]

Moreover, in *Monterey Foods Corporation v. Eserjose*,[76] the Court distinguished when a partial summary judgment is appealable and when it is not, to wit:

Petitioners maintain that the order granting partial summary judgment was merely interlocutory in nature and did not dispose of the action in its entirety. They cite the doctrines laid down in *Province*

---

[73] *Supra* note 69.

[74] *Rollo*, pp. 2288-2290.

[75] *Estinozo v. Court of Appeals*, G.R. No. 150276, February 12, 2008, 544 SCRA 422, 431; *Macawiag v. Balindong*, G.R. No. 159210, September 20, 2006, 502 SCRA 454, 465; *Caballes v. Court of Appeals*, 492 Phil. 410, 420 (2005); *People v. Court of Appeals*, G.R. No. 144332, June 10, 2004, 431 SCRA 610, 617.

[76] 457 Phil. 771, 782 (2003).

of Pangasinan v. Court of Appeals and *Guevarra v. Court of Appeals*, where the Court categorically stated that a partial summary judgment is not a final or appealable judgment.

Petitioners' position is untenable.

The rulings in *Province of Pangasinan* and *Guevarra* is not applicable in the case at bar. The said cases specifically delved on the appeal of a partial summary judgment, which did not dispose of all the reliefs sought in the complaint. In the case at bar, other than the admitted liability of petitioners to respondents under the contract growing agreement, **all other reliefs sought under the complaint had already been expressly waived by respondent before the trial court**. Accordingly, **the assailed November 25, 1999 Order** of the trial court **which granted partial summary judgment** in favor of respondent **was in the nature of a final order which leaves nothing more for the court to adjudicate in respect to the complaint.** x x x. (Emphases supplied.)

Petitioner strongly asserts that the aforementioned Court of Appeals' Resolutions are invalid while conveniently failing to take into account the fact that the petition for *certiorari* it filed before the Court of Appeals had become moot and academic because of the following circumstances: *First*, when the May 2, 2001 Resolution was issued by the Court of Appeals, respondent had already filed its Manifestation and Motion for Execution dated March 15, 2001 withdrawing its remaining causes of action and the RTC had already granted this in an Order dated April 23, 2001. In effect, this Order terminated the case before the RTC and the proper mode to challenge it is through an appeal which petitioner did through a Notice of Appeal on April 25, 2001. Not unlike the factual circumstances found in the *Ley Construction and Development Corporation* case, the petition for *certiorari* was correctly dismissed since superseding events had already rendered it not only improper because appeal already became an available remedy but also superfluous as the appeal that was eventually filed dealt essentially with the same issues. *Second*, when the February 7, 2002 Resolution was issued, there was already a Sheriff's Return[77] issued on September 21, 2001

[77] *Rollo*, pp. 1733-1734.

informing the trial court that the writ of execution pending appeal was fully satisfied rendering the case bereft of any pending incidents at the trial court level and, thus, concluded already which would make an appeal as the proper mode to question it and not a petition for *certiorari*.

To reiterate, it is axiomatic that a writ of *certiorari* is available 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.[78] As we have previously discussed, we find that the trial court acted within its jurisdiction when it granted summary judgment and the purported errors attributed to the trial court appear to be errors of judgment not reviewable by *certiorari* but by appeal. Likewise, we find that the particular circumstances of this case made the remedy of appeal the proper vehicle to thresh out the issues raised by petitioner and rendered the petition for *certiorari* improper and moot, notwithstanding the fact that it was filed earlier than the appeal subsequently filed by petitioner. Premises considered, the petition for *certiorari* was properly dismissed by the Court of Appeals.

WHEREFORE, the petition is hereby *DENIED*, and the assailed Resolutions of the Court of Appeals are *AFFIRMED in toto*. With costs against petitioner.

SO ORDERED.

Corona, C.J. (Chairperson), Bersamin,[*] *Del Castillo,* and *Perez, JJ.*, concur.

---

[78] RULES OF COURT, Rule 65, Sec. 1.

[*] Per Special Order No. 876 dated August 2, 2010.

THIRD DIVISION

[G.R. No. 153736. August 4, 2010]

SPOUSES NICANOR TUMBOKON (deceased), substituted by: ROSARIO SESPEÑE and their Children, namely: NICANOR S. TUMBOKON, JR., NELIA S. TUMBOKON, NEMIA T. SEGOVIA, NOBELLA S. TUMBOKON, NABIGAIL T. TAAY, NAZARENE T. MONTALVO, NORGEL S. TUMBOKON, NEYSA S. TUMBOKON, SILVESTRE S. TUMBOKON, NORA T. MILCZAREK, NONITA T. CARPIO, NERLYN S. TUMBOKON, and NINFA T. SOLIDUM, *petitioners, vs.* **APOLONIA G. LEGASPI, and PAULINA S. DE MAGTANUM,** *respondents.*

SYLLABUS

1. CIVIL LAW; SUCCESSION; A SON-IN-LAW IS NOT A COMPULSORY HEIR. — First of all, the petitioners adduced no competent evidence to establish that Victor Miralles, the transferor of the land to Cresenciana Inog (the petitioners' immediate predecessor in interest) had any legal right in the first place to transfer ownership. He was not himself an heir of Alejandra, being only her son-in-law (as the husband of Ciriaca, one of Alejandra's two daughters). Thus, the statement in the *deed of absolute sale* (Exhibit B) entered into between Victor Miralles and Cresenciana Inog, to the effect that the "parcel of land was inherited from the deceased Alejandra Sespeñe" by Victor Miralles "being the sole heir of the said Alejandra Sespeñe, having no other brothers or sisters," was outrightly false. Secondly, a decedent's compulsory heirs in whose favor the law reserves a part of the decedent's estate are *exclusively* the persons enumerated in Article 887.

2. ID.; ID.; RIGHT OF REPRESENTATION, EXPLAINED AND APPLIED. — Only two forced heirs survived Alejandra upon her death, namely: respondent Apolonia, her daughter, and Crisanto Miralles, her grandson. The latter succeeded Alejandra by right of representation because his mother, Ciriaca, had predeceased Alejandra. Representation is a right created by

fiction of law, by virtue of which the representative is raised to the *place* and the *degree* of the person represented, and acquires the rights which the latter would have if she were living or if she could have inherited. Herein, the representative (Crisanto Miralles) was called to the succession by law and not by the person represented (Ciriaca); he thus succeeded Alejandra, not Ciriaca.

3. ID.; PROPERTY; OWNERSHIP; ACQUISITION OF LAND BY ORAL SALE, NOT PROVEN. — Victor Miralles' supposed acquisition of the land by oral sale from Alejandra had no competent factual support in the records. For one, the oral sale was incompatible with the petitioners' anchor claim that he had acquired the land by inheritance from Alejandra. Also, the evidence that the petitioners adduced on the oral sale was insufficient and incredible, warranting the CA's rejection of the oral sale under the following terms: This also damages and puts to serious doubt their other and contradictory claim that Victor Miralles instead bought the lot from Alejandra Sespeñe. **This supposed sale was oral, one that can of course be facilely feigned. And it is likely to be so for the claim is sweeping, vacuous and devoid of the standard particulars like what was the price, when and where was the sale made, who were present, or who knew of it. The record is bereft too of documentary proof that Victor Miralles exercised the rights and performed the obligations of an owner for no tax declarations nor tax receipt has been submitted or even adverted to.** With Victor Miralles lacking any just and legal right in the land, except as an heir of Ciriaca, the transfer of the land from him to Cresenciana Inog was ineffectual. As a consequence, Cresenciana Inog did not legally acquire the land, and, in turn, did not validly transfer it to the petitioners.

4. REMEDIAL LAW; JUDGMENTS; *RES JUDICATA*; DEFINED AND EXPLAINED. — *Res judicata* means a matter adjudged, a thing judicially acted upon or decided; a thing or matter settled by judgment. The doctrine of *res judicata* is an old axiom of law, dictated by wisdom and sanctified by age, and founded on the broad principle that it is to the interest of the public that there should be an end to litigation by the same parties over a subject once fully and fairly adjudicated. It has been appropriately said that the doctrine is a rule pervading every well-regulated system of jurisprudence, and is put upon

two grounds embodied in various maxims of the common law: the one, public policy and necessity, which makes it to the interest of the State that there should be an end to litigation — *reipublicae ut sit finis litium*; the other, the hardship on the individual that he should be vexed twice for one and the same cause — *nemo debet bis vexari pro una et eadem causa*. A contrary doctrine will subject the public peace and quiet to the will and neglect of individuals and prefer the gratification of the litigious disposition on the part of suitors to the preservation of the public tranquillity and happiness. Under the doctrine of *res judicata*, a final judgment or decree on the merits rendered by a court of competent jurisdiction is conclusive of the rights of the parties or their privies in all later suits and on all points and matters determined in the previous suit. The foundation principle upon which the doctrine rests is that the parties ought not to be permitted to litigate the same issue more than once; that when a right or fact has been judicially tried and determined by a court of competent jurisdiction, so long as it remains unreversed, should be conclusive upon the parties and those in privity with them in law or estate.

5. ID.; ID.; ID.; REQUISITES OF *RES JUDICATA* TO BAR INSTITUTION OF SUBSEQUENT ACTION. — For *res judicata* to bar the institution of a subsequent action, the following requisites must concur: (1) the former judgment must be final; (2) it must have been rendered by a court having jurisdiction over the subject matter and the parties; (3) it must be a judgment on the merits; and (4) there must be between the first and second actions (a) identity of parties, (b) identity of the subject matter, and (c) identity of cause of action.

6. ID.; ID.; ID.; TWO ASPECTS OF *RES JUDICATA*; NOT APPLICABLE. — The doctrine of *res judicata* has two aspects: the first, known as bar by prior judgment, or estoppel by verdict, is the effect of a judgment as a bar to the prosecution of a second action upon the *same* claim, demand, or cause of action; the second, known as conclusiveness of judgment, also known as the rule of *auter action pendant*, ordains that issues actually and directly resolved in a former suit cannot again be raised in any future case between the same parties involving a different cause of action and has the effect of preclusion of issues only. Based on the foregoing standards, this action is not barred by the doctrine of *res judicata*. First of all, bar by prior judgment,

the first aspect of the doctrine, is not applicable, because the causes of action in the civil and the criminal actions were different and distinct from each other. The civil action is for the recovery of ownership of the land filed by the petitioners, while the criminal action was to determine whether the act of the respondents of taking the coconut fruits from the trees growing within the disputed land constituted the crime of qualified theft. In the former, the main issue is the legal ownership of the land, but in the latter, the legal ownership of the land was not the main issue. The issue of guilt or innocence was not dependent on the ownership of the land, inasmuch as a person could be guilty of theft of the growing fruits even if he were the owner of the land. Conclusiveness of judgment is not also applicable. The petitioners themselves commenced both actions, and fully and directly participated in the trial of both actions. Any estoppel from assailing the authority of the CA to determine the ownership of the land based on the evidence presented in the civil action applied only to the petitioners, who should not be allowed to assail the outcome of the civil action after the CA had ruled adversely against them.

7. ID.; ID.; ID.; ID.; DOCTRINE OF CONCLUSIVENESS OF JUDGMENT; EXCEPTIONS, NOT APPLICABLE. — [T]he doctrine of conclusiveness of judgment is subject to exceptions, such as where there is a change in the applicable legal context, or to avoid inequitable administration of justice. Applying the doctrine of conclusiveness of judgments to this case will surely be iniquitous to the respondents who have rightly relied on the civil case, not on the criminal case, to settle the issue of ownership of the land. This action for recovery of ownership was brought precisely to settle the issue of ownership of the property. In contrast, the pronouncement on ownership of the land made in the criminal case was only the response to the respondents having raised the ownership as a matter of defense.

APPEARANCES OF COUNSEL

Adolfo M. Iligan for petitioners.
Porferio T. Taplac for respondents.

D E C I S I O N

BERSAMIN, *J.*:

The question presented in this appeal is whether the ruling in a criminal prosecution for qualified theft (involving coconut fruits) bound the complainant (petitioners herein) and the accused (respondents herein) on the issue of ownership of the land, which was brought up as a defense, as to preclude the Regional Trial Court (RTC) or the Court of Appeals (CA) from adjudicating the same issue in a civil case filed prior to the promulgation of the decision in the criminal case.

Under contention herein are the ownership and possession of that parcel of land with an area of 12,480 square meters, more or less, situated in Barangay Buenavista (formerly Barangay San Isidro, in the Municipality of Ibajay, Province of Aklan. The land — planted to rice, corn, and coconuts — was originally owned by the late Alejandra Sespeñe (Alejandra), who had had two marriages. The first marriage was to Gaudencio Franco, by whom she bore Ciriaca Franco, whose husband was Victor Miralles. The second marriage was to Jose Garcia, by whom she bore respondent Apolonia Garcia (Apolonia), who married Primo Legaspi. Alejandra died without a will in 1935, and was survived by Apolonia and Crisanto Miralles, the son of Ciriaca (who had predeceased Alejandra in 1924) and Victor Miralles; hence, Crisanto Miralles was Alejandra's grandson.

The ownership and possession of the parcel of land became controversial after Spouses Nicanor Tumbokon and Rosario Sespeñe (petitioners) asserted their right in it by virtue of their purchase of it from Cresenciana Inog, who had supposedly acquired it by purchase from Victor Miralles. The tug-of-war over the property between the petitioners and the respondents first led to the commencement of a criminal case. The Spouses Nicanor Tumbokon and Rosario Sespeñe filed a criminal complaint for qualified theft against respondents Apolonia and Paulina S. Magtanum and others not parties herein, namely: Rosendo Magtanum, Antonio Magtanum, Ulpiano Mangilaya, charging them with stealing coconut fruits from the land subject

of the present case.[1] The criminal case, docketed as Criminal Case No. 2269, was assigned to Branch III of the erstwhile Court of First Instance (CFI) of Aklan.[2]

After trial, the CFI found the respondents and their co-accused guilty as charged in its decision dated June 10, 1972. The respondents appealed (C.A.-G.R. No. 13830-CR), but the CA affirmed their conviction on February 19, 1975, whereby the CA rejected respondent Apolonia's defense of ownership of the land.[3]

In the meanwhile, on September 21, 1972, or prior to the CA's rendition of its decision in the criminal case, the petitioners commenced this suit for recovery of ownership and possession of real property with damages against the respondents in the CFI. This suit, docketed as Civil Case No. 240 and entitled *Spouses Nicanor P. Tumbokon and Rosario S. Sespeñe v. Apolonia G. Legaspi, Jesus Legaspi, Alejandra Legaspi, Primo Legaspi, Jose Legaspi, and Paulina S. de Magtanum*, was assigned also to Branch III of the CFI, and involved the same parcel of land from where the coconut fruits subject of the crime of qualified theft in Criminal Case No. 2269 had been taken.

On February 17, 1994, the RTC, which meanwhile replaced the CFI following the implementation of the Judiciary Reorganization Act,[4] rendered its decision in favor of the petitioners herein, holding and disposing thus:

After a careful study of the evidence on record, the Court finds that the plaintiffs were able to establish that plaintiff Rosario Sespeñe

---

[1] CA Decision, CA-G.R. CV-No. 45672 dated May 15, 2001, penned by Justice Roberto A. Barrios (deceased), with Justices Ramon Mabutas, Jr. (retired) and Edgardo P. Cruz (retired), concurring; *rollo*, pp. 24-32.

[2] *Rollo*, p. 25.

[3] *Id.*, pp. 65-71 (The *ponente* was then Associate Justice Ramon C. Fernandez, and the concurring members were then Associate Justice Efren I. Plana and Associate Justice Venicio Escolin, all of whom became Members of the Court, but had since retired).

[4] *Batas Pambansa Blg.* 129.

Tumbokon purchased the land in question from Cresenciana Inog on December 31, 1959 (Exh. "C"). Cresenciana Inog, in turn, acquired the land by purchase from Victor Miralles on June 19, 1957 (Exh. "B"). Seven (7) years before, on May 8, 1950, the land was mortgaged by Victor Miralles to Cresenciana Inog as shown by a Deed of *Pacto de Retro* (Exh. "A"), and from 1950 up to 1959, Cresenciana Inog was in continuous and peaceful possession of the land in question. x x x

x x x x x x x x x

WHEREFORE, finding preponderance of evidence in favor of the plaintiffs, judgment is hereby rendered as follows:

1. The plaintiffs are hereby declared the true and lawful owners, and entitled to the possession of the parcel of land of 12,480 square meters in area, declared in the name of plaintiff Rosario S. Tumbokon, under Tax Declaration No. 29220, situated in Barangay Buenavista (formerly San Isidro), Ibajay, Aklan;

2. The defendants are ordered and directed to vacate the land in question, and restore and deliver the possession thereof to the plaintiffs; and

3. No pronouncement as to damages, but with costs against the defendants.

SO ORDERED.[5]

The respondents appealed to the CA.

On May 15, 2001, the CA reversed the decision of the RTC and dismissed the complaint,[6] opining and ruling thus:

The appellees trace their acquisition of the subject lot to the admitted primal owner Alejandra Sespeñe through her supposed sale of it to her son-in-law Victor Miralles, who sold this to Cresenciana Inog, and who in turn sold it to the appellees. In the process, they presented the *Deed of Absolute Sale* (Exh. "B", June 19, 1957) executed by Victor Miralles in favor of Cresenciana Inog but wherein it is provided in the said instrument that:

---

[5] Penned by Judge Sheila Martelino-Cortes; *rollo*, pp. 35-37.

[6] *Supra*, at note 1.

> That this parcel of land abovementioned was inherited from the deceased Alejandra Sespeñe, by the party of the First Part being the sole heir of the said Alejandra Sespeñe, having no other brothers or sisters.

This claim of being the sole heir is obviously false and erroneous for Alejandra Sespeñe had more than one intestate heir, and Victor Miralles as a mere son-in-law could not be one of them.

This also damages and puts to serious doubt their other and contradictory claim that Victor Miralles instead bought the lot from Alejandra Sespeñe. This supposed sale was oral, one that can of course be facilely feigned. And it is likely to be so for the claim is sweeping, vacuous and devoid of the standard particulars like what was the price, when and where was the sale made, who were present, or who knew of it. The record is bereft too of documentary proof that Victor Miralles exercised the rights and performed the obligations of an owner for no tax declarations nor tax receipt has been submitted or even adverted to.

The testimonial evidence of the appellants as to ownership, the sale and possession is inadequate, with even the appellant Nicanor Tumbokon stating that:

> Q Did you come to know before you purchase (*sic*) the property from whom did V. Miralles acquired (*sic*) the land?
>
> A No, sir.
>
> x x x x x x x x x
>
> Q And you did not come to know out (sic) and why V. Miralles came to possess the land under litigation before it was sold to C. Inog?
>
> A All I was informed was V. Miralles became automatically the heir of A. Sespeñe after the death of the wife which is the only daughter of A. Sespeñe.
>
> Q How did you know that V. Miralles became automatically the heir of the land after the death of his wife?
>
> A He is the only son-in-law. (TSN, pp. 2-3, Feb. 26, 1974; emphasis supplied)

While Victor Miralles may have been in physical possession of the lot for a while, this was not as owner but as mere Administrator as

was clearly appearing in tax declaration no. 21714 (Exhs. "J", "1").The corroboration in this by Lourdes Macawili (TSN, June 7, 1973) does not help the appellees (herein petitioners) any for she never knew the source of the property. Neither does the testimony of Crisanto Miralles succor the appellees (petitioners). He was the son of Victor Miralles and the husband of the said Cresenciana Inog, the supposed buyer, owner and possessor of the land in question from 1950-1957, and yet Crisanto Miralles could only say:

> Q Are there improvements on the land in question?
> A I do not know because I did not bother to go to the land in question.(TSN, p. 4, Aug. 18, 1973; emphasis supplied)]

These strongly suggest that the sales and claim of possession were shams, and are further demolished by the following testimonies:

> Q After the death of Alejandra Sespeñe who inherited this land in question?
> A Apolonia.
>
> Q At present who is in possession of the land in question?
> A Apolonia Legaspi.
>
> Q From the time that Apolonia Legaspi took possession of the land up to the present do you know if anybody interrupted her possession?
> A No sir. (tsn, Urbana Tañ-an *Vda. de* Franco, p. 7, Nov. 24, 1977)
>
> x x x x x x x x x
>
> Q Now, since when did you know the land in question?
> A Since I was at the age of 20 yrs. old. (TSN; Crispina Taladtad, p. 3; Jan. 20, 1977; [she was 74 yrs. old at the time of this testimony]).
>
> x x x x x x x x x
>
> Q And for how long has Apolonia Garcia Legaspi been in possession of the land in question?
> A Since the time I was at the age of 20 yrs. old when I was been (sic) invited there to work up to the present she is in possession of the land.
>
> Q You said that you know Cresenciana Inog, do you know if Cresenciana Inog has ever possessed the land in question?
> A Never.

Q You also said that you know Nicanor Tumbokon and his wife Rosario Tumbokon, my question is do you know if this Nicanor Tumbokon and his wife Rosario have ever possessed and usufructed this land under litigation?
A No, sir.

Q You also stated a while ago that you know Victor Miralles, do you know if Victor Miralles had ever possessed this under litigation?
A No, he had not. (p. 9, *ibid*; emphasis supplied)

Thus neither do We buy the appellee's contention that ownership of the disputed land was acquired by their predecessors-in-interest thru lapse of time. Acquisitive prescription requires possession in the concept of owner, and they have not been able to prove even mere possession.

As proponents it was incumbent upon the appellees to prove that they were the owners of the lot and that they were being unlawfully deprived of their possession thereof. But this they failed to do. *It is a basic rule in evidence that each party must prove his affirmative allegation. Since the burden of evidence lies with the party who asserts the affirmative allegation, the plaintiff or complainant has to prove this affirmative allegations in the complaint and the defendant or the respondent has to prove the affirmative allegation in his affirmative defenses and counterclaim.*(*AKELCO vs. NLRC,* G.R. No. 121439, Jan. 25, 2000)

But this hoary rule also cuts both ways. Appellants too must also prove the allegations to support their prayer to declare the litigated lot *the exclusive property of the defendants Apolonia G. Legaspi and Paulina S. Magtanum;* (Answer, p. 6, record). Apolonia Legaspi however is only one of the putative intestate heirs of Alejandra Sespeñe, the other being Crisanto Miralles who stands in the stead of Ciriaca, his predeceased mother and other daughter of the decedent. But then no judgment can be made as to their successional rights for Crisanto Miralles was never impleaded. Neither is there a proof that can convince that Paulina S. Magtanum who is merely a niece of the decedent, should also be declared a co-owner of the inherited lot.

Because of said inadequacies, We cannot rule beyond the holding that the appellees (petitioners) are not the owners and therefore not entitled to the recovery of the litigated lot.

WHEREFORE, the appealed Decision is REVERSED and SET ASIDE and in its place judgment is rendered DISMISSING the Complaint.

SO ORDERED.[7]

Hence, the petitioners appeal by petition for review on *certiorari*.

Issues

The issues to be resolved are the following:

1. Whether or not the decision in C.A.-G.R. CV 45672 reversing the decision of the RTC in Civil Case No. 240 was supported by law and the evidence on record;

2. Whether or not the decision in C.A.-G.R. No. 13830-CR affirming the decision of the CFI of Aklan in Criminal Case No. 2269 had the effect of *res judicata* on the issue of ownership of the land involved in Civil Case No. 240, considering that such land was the same land involved in Criminal Case No. 2269.

Ruling

The petition has no merit.

A

Reversal by the CA was supported by law and the evidence on record

The CA correctly found that the petitioners' claim of ownership could not be legally and factually sustained.

First of all, the petitioners adduced no competent evidence to establish that Victor Miralles, the transferor of the land to Cresenciana Inog (the petitioners' immediate predecessor in interest) had any legal right in the first place to transfer ownership. He was not himself an heir of Alejandra, being only her son-in-law (as the husband of Ciriaca, one of Alejandra's two daughters). Thus, the statement in the *deed of absolute sale* (Exhibit B) entered into between Victor Miralles and Cresenciana

[7] *Rollo*, pp. 28-32.

Inog, to the effect that the "parcel of land was inherited from the deceased Alejandra Sespeñe" by Victor Miralles "being the sole heir of the said Alejandra Sespeñe, having no other brothers or sisters," was outrightly false.

Secondly, a decedent's compulsory heirs in whose favor the law reserves a part of the decedent's estate are *exclusively* the persons enumerated in Article 887, *Civil Code*, *viz*:

> Article 887. The following are compulsory heirs:
>
> (1) Legitimate children and descendants, with respect to their legitimate parents and ascendants;
>
> (2) In default of the foregoing, legitimate parents and ascendants, with respect to their legitimate children and descendants;
>
> (3) The widow or widower;
>
> (4) Acknowledged natural children, and natural children by legal fiction;
>
> (5) Other illegitimate children referred to in article 287.
>
> Compulsory heirs mentioned in Nos. 3, 4, and 5 are not excluded by those in Nos. 1 and 2; neither do they exclude one another.
>
> In all cases of illegitimate children, their filiation must be duly proved.
>
> The father or mother of illegitimate children of the three classes mentioned, shall inherit from them in the manner and to the extent established by this Code. (807a)

Only two forced heirs survived Alejandra upon her death, namely: respondent Apolonia, her daughter, and Crisanto Miralles, her grandson. The latter succeeded Alejandra by right of representation because his mother, Ciriaca, had predeceased Alejandra. Representation is a right created by fiction of law, by virtue of which the representative is raised to the *place* and the *degree* of the person represented, and acquires the rights which the latter would have if she were living or if she could have inherited.[8] Herein, the representative (Crisanto Miralles)

---

[8] Article 970, *Civil Code*.

was called to the succession by law and not by the person represented (Ciriaca); he thus succeeded Alejandra, not Ciriaca.[9]

The foregoing undeniable facts rendered the hearsay testimony of Nicanor Tumbokon to the effect that *he had been informed* that Victor Miralles had "bec[o]me automatically the heir" of Alejandra "after the death of his wife," the wife being "the only daughter" and he "the only son-in-law" a plain irrelevancy.

Thirdly, Victor Miralles' supposed acquisition of the land by oral sale from Alejandra had no competent factual support in the records. For one, the oral sale was incompatible with the petitioners' anchor claim that he had acquired the land by inheritance from Alejandra. Also, the evidence that the petitioners adduced on the oral sale was insufficient and incredible, warranting the CA's rejection of the oral sale under the following terms:

> This also damages and puts to serious doubt their other and contradictory claim that Victor Miralles instead bought the lot from Alejandra Sespeñe. **This supposed sale was oral, one that can of course be facilely feigned. And it is likely to be so for the claim is sweeping, vacuous and devoid of the standard particulars like what was the price, when and where was the sale made, who were present, or who knew of it. The record is bereft too of documentary proof that Victor Miralles exercised the rights and performed the obligations of an owner for no tax declarations nor tax receipt has been submitted or even adverted to**.[10]

With Victor Miralles lacking any just and legal right in the land, except as an heir of Ciriaca, the transfer of the land from him to Cresenciana Inog was ineffectual. As a consequence, Cresenciana Inog did not legally acquire the land, and, in turn, did not validly transfer it to the petitioners.

B

Bar by *res judicata* is not applicable.

The petitioners submit that the final ruling in the criminal case had already determined the issue of ownership of the land;

---

[9] Article 971, *Civil Code*.

[10] *Supra*, at note 1, p. 28.

and that such ruling in the criminal case barred the issue of ownership in the civil case under the doctrine of *res judicata*.

The submission has no merit.

Res judicata means a matter adjudged, a thing judicially acted upon or decided; a thing or matter settled by judgment.[11] The doctrine of *res judicata* is an old axiom of law, dictated by wisdom and sanctified by age, and founded on the broad principle that it is to the interest of the public that there should be an end to litigation by the same parties over a subject once fully and fairly adjudicated. It has been appropriately said that the doctrine is a rule pervading every well-regulated system of jurisprudence, and is put upon two grounds embodied in various maxims of the common law: the one, public policy and necessity, which makes it to the interest of the State that there should be an end to litigation — *reipublicae ut sit finis litium*; the other, the hardship on the individual that he should be vexed twice for one and the same cause — *nemo debet bis vexari pro una et eadem causa.* A contrary doctrine will subject the public peace and quiet to the will and neglect of individuals and prefer the gratification of the litigious disposition on the part of suitors to the preservation of the public tranquillity and happiness.[12]

Under the doctrine of *res judicata*, a final judgment or decree on the merits rendered by a court of competent jurisdiction is conclusive of the rights of the parties or their privies in all later suits and on all points and matters determined in the previous suit.[13] The foundation principle upon which the doctrine rests is that the parties ought not to be permitted to litigate the same issue more than once; that when a right or fact has been judicially tried and determined by a court of competent jurisdiction, so

---

[11] *Manila Electric Company v. Philippine Consumers Foundation, Inc.*, G.R. No. 101783, January 23, 2002, 374 SCRA 262, 272.

[12] *Allied Banking Corporation v. Court of Appeals*, G.R. No. 108089, January 10, 1994, 229 SCRA 252.

[13] *Dela Cruz v. Joaquin*, G.R. No. 162788, July 28, 2005, 464 SCRA 576.

long as it remains unreversed, should be conclusive upon the parties and those in privity with them in law or estate.[14]

For *res judicata* to bar the institution of a subsequent action, the following requisites must concur: (1) the former judgment must be final; (2) it must have been rendered by a court having jurisdiction over the subject matter and the parties; (3) it must be a judgment on the merits; and (4) there must be between the first and second actions (a) identity of parties, (b) identity of the subject matter, and (c) identity of cause of action.[15]

The doctrine of *res judicata* has two aspects: the first, known as bar by prior judgment, or estoppel by verdict, is the effect of a judgment as a bar to the prosecution of a second action upon the *same* claim, demand, or cause of action; the second, known as conclusiveness of judgment, also known as the rule of *auter action pendant,* ordains that issues actually and directly resolved in a former suit cannot again be raised in any future case between the same parties involving a different cause of action and has the effect of preclusion of issues only.[16]

Based on the foregoing standards, this action is not barred by the doctrine of *res judicata*.

First of all, bar by prior judgment, the first aspect of the doctrine, is not applicable, because the causes of action in the civil and the criminal actions were different and distinct from each other. The civil action is for the recovery of ownership of the land filed by the petitioners, while the criminal action was to determine whether the act of the respondents of taking the coconut fruits from the trees growing within the disputed land constituted the crime of qualified theft. In the former, the main

---

[14] *Republic v. Court of Appeals*, G.R. No. 101115, August 22, 2002, 387 SCRA 549.

[15] *Custodio v. Corrado,* G.R. No. 146082, July 30, 2004, 435 SCRA 500; *Suarez v. Court of Appeals*, G.R. No. 83251, January 23, 1991; 193 SCRA 183; *Filipinas Investment and Finance Corporation v. Intermediate Appellate Court*, G.R. Nos. 66059-60, December 4, 1989 (July 30 2004).

[16] *Rasdas v. Estenor*, G.R. No. 157605, December 13, 2005, 477 SCRA 538, 548.

issue is the legal ownership of the land, but in the latter, the legal ownership of the land was not the main issue. The issue of guilt or innocence was not dependent on the ownership of the land, inasmuch as a person could be guilty of theft of the growing fruits even if he were the owner of the land.

Conclusiveness of judgment is not also applicable. The petitioners themselves commenced both actions, and fully and directly participated in the trial of both actions. Any estoppel from assailing the authority of the CA to determine the ownership of the land based on the evidence presented in the civil action applied only to the petitioners, who should not be allowed to assail the outcome of the civil action after the CA had ruled adversely against them.

Moreover, the doctrine of conclusiveness of judgment is subject to exceptions, such as where there is a change in the applicable legal context, or to avoid inequitable administration of justice.[17] Applying the doctrine of conclusiveness of judgments to this case will surely be iniquitous to the respondents who have rightly relied on the civil case, not on the criminal case, to settle the issue of ownership of the land. This action for recovery of ownership was brought precisely to settle the issue of ownership of the property. In contrast, the pronouncement on ownership of the land made in the criminal case was only the response to the respondents having raised the ownership as a matter of defense.

WHEREFORE, the petition for review on *certiorari* is denied, and the decision rendered on May 15, 2001 by the Court of Appeals is affirmed.

Costs of suit to be paid by the petitioners.

SO ORDERED.

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

---

[17] *Kilosbayan, Inc. v. Morato*, G.R. No. 118910, July 17, 1995, 246 SCRA 540, 561.

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

THIRD DIVISION

[G.R. No. 154124. August 4, 2010]

NATIONAL TOBACCO ADMINISTRATION, *petitioner, vs.* **DANIEL CASTILLO,** *respondent.*

SYLLABUS

1. LEGAL ETHICS; ATTORNEYS; NEGLIGENCE; WHERE COUNSEL'S OVERSIGHT WAS NOT EXCUSABLE. — [T]he oversight of NTA's counsel in not seasonably appealing to the CA was not excusable. For one, mere volume of the work of an attorney has never excused an omission to comply with the period to appeal. Also, NTA itself caused its own counsel to be overburdened with work by not employing additional lawyers to handle its excessive legal work and avoid its present predicament. Clearly, the neglect of counsel in not filing the appeal on time was not something that ordinary diligence and prudence could not have guarded against.

2. ID.; ID.; ATTORNEY-CLIENT RELATIONSHIP; CLIENT IS BOUND BY THE MISTAKE OF HIS COUNSEL; APPLICATION. — A client is generally bound by the mistakes of his lawyer; otherwise, there would never be an end to a litigation as long as a new counsel could be employed, and who could then allege and show that the preceding counsel had not been sufficiently diligent or experienced or learned. The legal profession demands of a lawyer that degree of vigilance and attention expected of a good father of a family; such lawyer should adopt the norm of practice expected of men of good intentions. Moreover, a lawyer owes it to himself and to his clients to adopt an efficient and orderly system of keeping track of the developments in his cases, and should be knowledgeable of the remedies appropriate to his cases.

3. REMEDIAL LAW; APPEALS; EFFECT OF TARDY APPEAL. — Compounding the dire situation of NTA was that its appeal to the CA was too belated. Thereby, the assailed resolution of the CSC attained finality and became executory, resulting in the CSC resolution becoming immutable and unalterable, that is, it might no longer be altered, modified, or reversed in any

respect even if the alteration, modification, or reversal was meant to correct erroneous conclusions of fact or law, and whether the alteration, modification, or reversal would be made by the court or office that rendered the resolution or by the highest court of the land.

APPEARANCES OF COUNSEL

Office of the Government Corporate Counsel for petitioner.

R E S O L U T I O N

BERSAMIN, *J.*:

Petitioner National Tobacco Administration (NTA) seeks the review of the decision dated March 22, 2002 (denying NTA's petition for review),[1] and the resolution dated June 26, 2002 (denying NTA's motion for reconsideration),[2] both promulgated by the Court of Appeals (CA) in CA-G.R. SP No. 67551 entitled *National Tobacco Administration v. Daniel Castillo*.

The respondent was one of the employees adversely affected by the reorganization of NTA. He was terminated from his employment due to the abolition of his item as Cashier I in its Isabela Branch. He appealed to the Civil Service Commission (CSC), which on January 26, 2000 set aside the termination and ordered NTA to re-appoint him "to a position in the new staffing pattern which is comparable to latter's former position under the same employment status."[3] NTA moved for the reconsideration of the CSC resolution, but its *motion for reconsideration* was denied for lack of merit on July 21, 2000.[4] NTA filed a *second motion for reconsideration*, which the CSC

---

[1] *Rollo*, pp. 30-36; penned by Associate Justice Eliezer R. De los Santos (deceased), and concurred in by Associate Justice Buenaventura J. Guerrero (retired) and Associate Justice Rodrigo V. Cosico (retired).

[2] *Id.*, pp. 38-39.

[3] *Id.*, pp. 111-116 (CSC Resolution No. 000239).

[4] *Id.*, pp. 129-131 (CSC Resolution No. 001702).

also denied on October 13, 2000 because its rules allowed only one *motion for reconsideration*.[5] NTA persisted by filing on December 8, 2000 a *petition for the admission of the second motion for reconsideration and of herein supplemental manifestation*.[6] However, the CSC denied the petition for admission on April 2, 2001.[7]

Undaunted, NTA filed a petition for relief in the CSC, arguing that it had been unable to appeal from the CSC's earlier resolutions due to excusable negligence; that it had a meritorious defense; and that the questioned resolutions were inconsistent with the CSC's pronouncement in *Dabu v. NTA* (CSC Case No. 99-0767), a case whose facts were identical to those of this case. It explained that its former counsel's excessively numerous duties (in addition to his being the Deputy Administrator for Operations of NTA) had rendered his compliance with all the legal requirements of NTA's cases physically and mentally impossible for him, leading him to inadvertently and erroneously file a *second motion for reconsideration* instead of taking an appeal to the CA.

On October 12, 2001, the CSC dismissed the petition for relief on the ground that such a recourse was not a proper remedy against an adverse decision under its *Uniform Rules on Administrative Cases in the Civil Service*; and that an appeal in due course to the CA was the proper remedy of NTA.[8]

NTA elevated the dismissal to the CA *via* a petition for review under Rule 43 of the *Rules of Court*. It assailed the CSC's dismissal of its petition for relief, claiming that its failure to file its appeal had been due to excusable negligence.

On March 22, 2002, the CA denied NTA's petition for lack of merit, and found NTA's claims of excusable negligence and a meritorious defense unconvincing. The CA held that the assailed

---

[5] *Id.*, pp. 135-136 (CSC Resolution No. 002324).

[6] *Id.*, pp. 137-147.

[7] *Id.*, pp. 148-149 (CSC Resolution No. 010729).

[8] *Id.*, pp. 165-166 (CSC Resolution No. 011656).

resolutions of the CSC had also already become final and executory by virtue of NTA's failure to appeal pursuant to the *Uniform Rules on Administrative Cases in the Civil Service* and the *Rules of Court*.[9]

NTA moved for the reconsideration, but the CA denied its *motion for reconsideration* through the assailed resolution of June 26, 2002.[10]

Hence, this recourse, whereby NTA contends that the CA erred in declaring that the termination of the respondent had been without notice and hearing, and in not finding that NTA's counsel had been guilty of excusable negligence.

The decisive considerations are whether the negligence of NTA's counsel was excusable, and whether NTA's appeal was still allowable.

We rule against NTA.

NTA's argument that its former counsel faced the "herculean task of personally handling the numerous legal cases of the petitioner" without any lawyer assistant in addition to his "regular duties and responsibilities as Deputy Administrator for Operations of the agency,"[11] even assuming it to be true, did not justify the erroneous filing of a *second motion for reconsideration* and a petition for relief from judgment in the CSC where such recourses were not allowed under the *Uniform Rules on Administrative Cases in the Civil Service*. NTA's former counsel ought to have known of the correct recourses to take from the adverse resolution of the CSC.

Moreover, the oversight of NTA's counsel in not seasonably appealing to the CA was not excusable. For one, mere volume of the work of an attorney has never excused an omission to comply with the period to appeal. Also, NTA itself caused its own counsel to be overburdened with work by not employing

---

[9] *Id.*, pp. 30-36.

[10] *Id.*, pp. 38-39.

[11] *Id.*, p. 23.

additional lawyers to handle its excessive legal work and avoid its present predicament. Clearly, the neglect of counsel in not filing the appeal on time was not something that ordinary diligence and prudence could not have guarded against.[12]

A client is generally bound by the mistakes of his lawyer; otherwise, there would never be an end to a litigation as long as a new counsel could be employed, and who could then allege and show that the preceding counsel had not been sufficiently diligent or experienced or learned.[13] The legal profession demands of a lawyer that degree of vigilance and attention expected of a good father of a family; such lawyer should adopt the norm of practice expected of men of good intentions.[14] Moreover, a lawyer owes it to himself and to his clients to adopt an efficient and orderly system of keeping track of the developments in his cases, and should be knowledgeable of the remedies appropriate to his cases.

Compounding the dire situation of NTA was that its appeal to the CA was too belated. Thereby, the assailed resolution of the CSC attained finality and became executory,[15] resulting in the CSC resolution becoming immutable and unalterable, that is, it might no longer be altered, modified, or reversed in any respect even if the alteration, modification, or reversal was meant to correct erroneous conclusions of fact or law, and whether the alteration, modification, or reversal would be made by the court or office that rendered the resolution or by the highest court of the land.[16]

WHEREFORE, we deny the petition for review on *certiorari*, and affirm the decision dated March 22, 2002 and the resolution

---

[12] *Gold Line Transit, Inc. v. Ramos*, 415 Phil. 492 (2001).

[13] *Tesoro v. Court of Appeals*, 153 Phil. 580, 588 (1973).

[14] *Gonzales v. Court of Appeals*, G.R. No. 129090, April 30, 2003, 402 SCRA 247.

[15] *Manipor v. Ricafort,* G.R. No. 150159, July 25, 2003, 407 SCRA 298.

[16] *Union Bank of the Philippines v. Pacific Equipment Corporation,* G.R. No. 172053, October 6, 2008, 567 SCRA 573.

dated June 26, 2002 promulgated by the Court of Appeals in CA-G.R. SP No. 67551.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 158377. August 4, 2010]

HEIRS OF JOSE REYES, JR., namely: MAGDALENA C. REYES, OSCAR C. REYES, GAMALIEL C. REYES, NENITA R. DELA CRUZ, RODOLFO C. REYES, and RODRIGO C. REYES, *petitioners, vs.* **AMANDA S. REYES, CONSOLACION S. REYES, EUGENIA R. ELVAMBUENA, LUCINA R. MENDOZA, PEDRITO S. REYES, MERLINDA R. FAMODULAN, EDUARDO S. REYES, and JUNE S. REYES,** *respondents.*

SYLLABUS

1. CIVIL LAW; MORTGAGE; EQUITABLE MORTGAGE; BADGES THEREOF, PRESENT. — The CA correctly concluded that the true agreement of the parties *vis-à-vis* the *Kasulatan ng Biling Mabibiling Muli* was an equitable mortgage, not a *pacto de retro* sale. There was no dispute that the purported vendors had continued in the possession of the property even after the execution of the agreement; and that the property had remained declared for taxation purposes under Leoncia's name, with the realty taxes due being paid by Leoncia, despite the execution of the agreement. Such established circumstances are among the badges of an equitable mortgage enumerated

---

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

in Article 1602, paragraphs 2 and 5 of the *Civil Code*. x x x The existence of any one of the conditions enumerated under Article 1602 of the *Civil Code*, not a concurrence of all or of a majority thereof, suffices to give rise to the presumption that the contract is an equitable mortgage. Consequently, the contract between the vendors and vendees (Spouses Francia) was an equitable mortgage.

2. ID.; ID.; ID.; THE ACCEPTANCE OF THE PAYMENTS EVEN BEYOND THE 10-YEAR PERIOD OF REDEMPTION ESTOPPED THE MORTGAGEES' HEIRS FROM INSISTING THAT THE PERIOD TO REDEEM THE PROPERTY HAD ALREADY EXPIRED. — Considering that *sa oras na sila'y makinabang*, the period of redemption stated in the *Kasulatan ng Biling Mabibiling Muli*, signified that no definite period had been stated, the period to redeem should be ten years from the execution of the contract, pursuant to Articles 1142 and 1144 of the *Civil Code*. Thus, the full redemption price should have been paid by July 9, 1955; and upon the expiration of said 10-year period, mortgagees Spouses Francia or their heirs *should have* foreclosed the mortgage, but they did not do so. Instead, they accepted Alejandro's payments, until the debt was fully satisfied by August 11, 1970. The acceptance of the payments even beyond the 10-year period of redemption estopped the mortgagees' heirs from insisting that the period to redeem the property had already expired. Their actions impliedly recognized the continued existence of the equitable mortgage. The conduct of the original parties as well as of their successors-in-interest manifested that the parties to the *Kasulatan ng Biling Mabibiling Muli* really intended their transaction to be an equitable mortgage, not a *pacto de retro* sale.

3. ID.; ID.; ID.; AN ASSIGNEE OF THE MORTGAGE AND THE MORTGAGE CREDIT ACQUIRED ONLY THE RIGHTS OF HIS ASSIGNOR. — When Alejandro redeemed the property on August 11, 1970, he did not thereby become a co-owner thereof, because his father Jose, Sr. was then still alive. Alejandro merely became the assignee of the mortgage, and the property continued to be co-owned by Leoncia and her sons Jose, Sr., Jose Jr., and Teofilo. As an assignee of the mortgage and the mortgage credit, Alejandro acquired only the rights of his assignors, nothing more. He himself confirmed

so in the *Magkasanib na Salaysay,* whereby he acknowledged the co-owners' right to redeem the property from him at any time (*sa ano mang oras*) for the same redemption price of ₱500.00.

4. ID.; ID.; ID.; ID.; AN ASSIGNEE OF THE MORTGAGE OR HIS HEIRS CANNOT APPROPRIATE THE MORTGAGED PROPERTY. — The *Kasulatan ng Pagmemeari* executed by Alejandro on August 21, 1970 was ineffectual to predicate the exclusion of the petitioners and their predecessors in interest from insisting on their claim to the property. Alejandro's being an assignee of the mortgage did not authorize him or his heirs to appropriate the mortgaged property for himself without violating the prohibition against *pactum commissorium* contained in Article 2088 of the *Civil Code,* to the effect that "[t]he creditor cannot appropriate the things given by way of pledge or mortgage, or dispose of them[;] [a]ny stipulation to the contrary is null and void."

5. ID.; ID.; ID.; RATIONALE BEHIND THE RULE CONCERNING THE EXTENSION OF THE PERIOD OF REDEMPTION, EXPLAINED. — The provisions of the *Civil Code* governing equitable mortgages disguised as sale contracts, like the one herein, are primarily designed to curtail the evils brought about by contracts of sale with right to repurchase, particularly the circumvention of the usury law and *pactum commissorium.* Courts have taken judicial notice of the well-known fact that contracts of sale with right to repurchase have been frequently resorted to in order to conceal the true nature of a contract, *that is,* a loan secured by a mortgage. It is a reality that grave financial distress renders persons hard-pressed to meet even their basic needs or to respond to an emergency, leaving no choice to them but to sign deeds of absolute sale of property or deeds of sale with *pacto de retro* if only to obtain the much-needed loan from unscrupulous money lenders. This reality precisely explains why the pertinent provision of the *Civil Code* includes a peculiar rule concerning the period of redemption, to wit: Art. 1602. The contract shall be presumed to be an equitable mortgage, in any of the following cases: x x x (3)**When upon or after the expiration of the right to repurchase another instrument extending the period of redemption or granting a new period is executed;** x x x Ostensibly, the law allows a *new* period of redemption to be

agreed upon or granted even after the expiration of the equitable mortgagor's right to repurchase, and treats such extension as one of the indicators that the true agreement between the parties is an equitable mortgage, not a sale with right to repurchase. It was indubitable, therefore, that the *Magkasanib na Salaysay* effectively afforded to Leoncia, Teofilo, Jose, Sr. and Jose, Jr. a fresh period within which to pay to Alejandro the redemption price of ₱500.00.

6. ID.; PROPERTY; CO-OWNERSHIP; ELEMENTS THAT MUST CONCUR BEFORE A CO-OWNER'S POSSESSION MAY BE DEEMED ADVERSE TO THE *CESTI QUE TRUST* OR THE OTHER CO-OWNERS. — In order that a co-owner's possession may be deemed adverse to that of the *cestui que trust* or the other co-owners, the following elements must concur: 1. The co-owner has performed unequivocal acts of repudiation of the co-ownership amounting to an ouster of the *cestui que trust* or the other co-owners; 2. Such positive acts of repudiation have been made known to the *cestui que trust* or the other co-owners; 3. The evidence on the repudiation is clear and conclusive; and 4. His possession is open, continuous, exclusive, and notorious.

7. ID.; ID.; ID.; ID.; ELEMENTS, NOT ESTABLISHED IN CASE AT BAR. — The concurrence of the foregoing elements was not established herein. For one, Alejandro did not have adverse and exclusive possession of the property, as, in fact, the other co-owners had continued to possess it, with Alejandro and his heirs occupying only a portion of it. Neither did the cancellation of the previous tax declarations in the name of Leoncia, the previous co-owner, and the issuance of a new one in Alejandro's name, and Alejandro's payment of the realty taxes constitute repudiation of the co-ownership. The sole fact of a co-owner declaring the land in question in his name for taxation purposes and paying the land taxes did not constitute an unequivocal act of repudiation amounting to an ouster of the other co-owner and could not constitute adverse possession as basis for title by prescription. Moreover, according to *Blatero v. Intermediate Appellate Court*, if a sale *a retro* is construed as an equitable mortgage, then the execution of an affidavit of consolidation by the purported buyer to consolidate ownership of the parcel of land is of no consequence and the "constructive possession" of the parcel of land will not ripen into ownership, because

only possession acquired and enjoyed *in the concept of owner* can serve as title for acquiring dominion. In fine, the respondents did not present proof showing that Alejandro had effectively repudiated the co-ownership. Their bare claim that Alejandro had made oral demands to vacate to his co-owners was self-serving and insufficient. Alejandro's execution of the affidavit of consolidation of ownership on August 21, 1970 and his subsequent execution on October 17, 1970 of the joint affidavit were really equivocal and ambivalent acts that did not manifest his desire to repudiate the co-ownership. The only unequivocal act of repudiation was done by the respondents when they filed the instant action for quieting of title on September 28, 1994, nearly a year after Alejandro's death on September 2, 1993. However, their possession could not ripen into ownership considering that their act of repudiation was not coupled with their *exclusive* possession of the property.

APPEARANCES OF COUNSEL

Mark C. Arcilla for petitioners.
Luzviminda M. Mapalad for respondents.

D E C I S I O N

BERSAMIN, *J.:*

The petitioners[1] assail the decision dated July 31, 2002 rendered in C.A.-G.R. CV No. 53039,[2] by which the Court of Appeals

---

[1] The petitioners were collectively denominated in the caption of the petition as *Heirs of Jose Reyes, Jr., et al., represented by Rodrigo C. Reyes*. On August 11, 2003, the Court required Rodrigo C. Reyes to submit his authority to represent the heirs of Jose Reyes, Jr. within 15 days from notice (*rollo*, p. 65). Rodrigo C. Reyes submitted his compliance on September 24, 2003, enclosing the original of the special power of attorney executed on January 28, 1995 naming Magdalena C. Reyes, Oscar C. Reyes, Gamaliel C. Reyes, Nenita R. Dela Cruz, Rodolfo C. Reyes and Rodrigo C. Reyes as the heirs of Jose Reyes, Jr. (*id.*, pp. 68-69).

[2] *Rollo*, pp.18-33; penned by Associate Justice Romeo J. Callejo, Sr. (later a Member of the Court, since retired), with Associate Justice Remedios Salazar-Fernando and Associate Justice Danilo B. Pine (retired) concurring.

(CA) affirmed the decision dated May 21, 1996 of the Regional Trial Court (RTC), Branch 9, in Malolos, Bulacan.[3]

Antecedents

Antonio Reyes and his wife, Leoncia Mag-isa Reyes (Leoncia), were owners of a parcel of residential land with an area of 442 square meters, more or less, located in Pulilan, Bulacan and covered by Tax Declaration No. 7590. On that land they constructed their dwelling. The couple had four children, namely: Jose Reyes, Sr. (Jose, Sr.), Teofilo Reyes (Teofilo), Jose Reyes, Jr. (Jose, Jr.) and Potenciana Reyes-Valenzuela (Potenciana). Antonio Reyes died intestate, and was survived by Leoncia and their three sons, Potenciana having predeceased her father. Potenciana also died intestate, survived by her children, namely: Gloria ReyesValenzuela, Maria Reyes Valenzuela, and Alfredo Reyes Valenzuela. Jose, Jr., and his family resided in the house of the parents, but Teofilo constructed on the property his own house, where he and his family resided.

On July 9, 1955, Leoncia and her three sons executed a deed denominated *Kasulatan ng Biling Mabibiling Muli*,[4] whereby they sold the land and its existing improvements to the Spouses Benedicto Francia and Monica Ajoco (Spouses Francia) for ₱500.00, subject to the vendors' right to repurchase for the same amount *sa oras na sila'y makinabang.* Potenciana's heirs did not assent to that deed. Nonetheless, Teofilo and Jose, Jr. and their respective families remained in possession of the property and paid the realty taxes thereon.

Leoncia and her children did not repay the amount of ₱500.00.

The Spouses Francia both died intestate (*i.e.*, Monica Ajoco on September 16, 1963, and Benedicto Francia on January 13, 1964).

Alejandro Reyes (Alejandro), the son of Jose, Sr., first partially paid to the Spouses Francia the amount of ₱265.00 for the

---

[3] *Id.*, pp. 54-64.

[4] Records, p. 128 (translated: *Deed of Sale with Right to Repurchase*).

obligation of Leoncia, his uncles and his father. Alejandro later paid the balance of ₱235.00. Thus, on August 11, 1970, the heirs of Spouses Francia executed a deed entitled *Pagsasa-ayos ng Pag-aari at Pagsasalin*,[5] whereby they transferred and conveyed to Alejandro all their rights and interests in the property for ₱500.00.

On August 21, 1970, Alejandro executed a *Kasulatan ng Pagmeme-ari*,[6] wherein he declared that he had acquired all the rights and interests of the heirs of the Spouses Francia, including the ownership of the property, after the vendors had failed to repurchase within the given period. On the basis of the *Kasulatan ng Pagmeme-ari*, Tax Declaration No. 3703 covering the property[7] was canceled by Tax Declaration No. 8715,[8] effective 1971, issued to Alejandro. From then on, he had paid the realty taxes for the property.

Nevertheless, on October 17, 1970, Alejandro, his grandmother (Leoncia), and his father (Jose, Sr.) executed a *Magkakalakip na Salaysay*,[9] by which Alejandro acknowledged the right of Leoncia, Jose, Jr., and Jose, Sr. to repurchase the property at any time for the same amount of ₱500.00.

On October 22, 1970, Leoncia died intestate.[10] She was survived by Jose, Sr., Teofilo, Jose, Jr. and the heirs of Potenciana. Even after Leoncia's death, Teofilo and Jose, Jr., with their respective families, continued to reside in the property.

Subsequently, Tax Declaration 1228,[11] under the name of Alejandro, was issued effective 1980. All of Leoncia's sons eventually died intestate, survived by their respective heirs, namely:

---

[5] *Id.*, pp. 9-10 (Translated: *Settlement of Estate and Assignment*).

[6] *Id.*, p. 11 (Translated: *Deed of Ownership*).

[7] *Id.*, p. 185.

[8] *Id.*, pp. 186-187.

[9] *Id.*, p. 130 (Translated: *Joint Affidavit*).

[10] *Id.*, p. 156.

[11] *Id.*, p. 132.

Name of Decedent	Surviving Heirs
Teofilo	Romeo Reyes, Leonardo Reyes, and Leonora C. Reyes
Jose, Jr.	Rodrigo Reyes, Nenita Reyes-dela Cruz, Rodolfo Reyes, Oscar Reyes, Gamaliel Reyes, Magdalena Reyes (petitioners herein), Efren Reyes and Amado Reyes dela Cruz
Jose, Sr.	Alejandro Reyes (respondents' predecessor)[12]

On September 2, 1993, Alejandro also died intestate.[13] Surviving him were his wife, Amanda Reyes, and their children, namely: Consolacion Reyes, Eugenia Reyes-Elvambuena, Luciana Reyes-Mendoza, Pedrito S. Reyes, Merlinda Reyes-Famodulan, Eduardo Reyes and June S. Reyes (respondents herein).

In 1994, respondent Amanda Reyes asked the heirs of Teofilo and Jose, Jr., to vacate the property because she and her children already needed it. After the petitioners refused to comply, she filed a complaint against the petitioners in the *barangay*, seeking their eviction from the property. When no amicable settlement was reached, the Barangay Lupon issued a *certification to file action* to the respondents on September 26, 1994.[14]

In the interim, petitioner Nenita R. de la Cruz and her brother Romeo Reyes also constructed their respective houses on the property.[15]

RTC Proceedings and Ruling

On September 28, 1994, the respondents initiated this suit for quieting of title and reconveyance in the RTC.[16] The complaint,

---

[12] *Rollo,* p. 20.

[13] Records, p. 155.

[14] *Id.*, p. 152.

[15] *Id.*, pp. 157-159 (Exhibits N to N-5).

[16] *Id.*, pp. 1-5.

docketed as Civil Case No. 817-M-94 and entitled *Amanda Reyes, et al. v. Heirs of Jose Reyes, Jr., et al.*, was later amended.[17] They alleged that their predecessor Alejandro had acquired ownership of the property by virtue of the deed *Pagsasa-ayos ng Pag-aari at Pagsasalin* executed on August 11, 1970 by the heirs of the Spouses Francia; that on the basis of such deed of assignment, Alejandro had consolidated his ownership of the property *via* his *Kasulatan ng Pagmeme-ari;* and that under the *Magkasanib na Salaysay,* Alejandro had granted to Leoncia, his father Jose, Sr., and his uncles, Teofilo and Jose, Jr. the right to repurchase the property, but they had failed to do so.

The respondents prayed for judgment in their favor, as follows:

WHEREFORE, it is respectfully prayed that judgment be rendered:

1. Quieting the title to the property by declaring the plaintiffs (*respondents herein)* as the rightful and lawful owners thereof;

2. Ordering the defendants (*petitioners herein)* to vacate subject premises and reconvey and or surrender possession thereof to the plaintiffs;

3. Ordering the defendants to recognize the right of the plaintiffs as the lawful owners of subject property;

4. Ordering the defendants to pay plaintiffs the following:

   a. Moral damages in the amount of ₱50,000.00;

   b. Exemplary damages in the amount of ₱20,000.00;

   c. Attorney's fees of ₱20,000.00, acceptance fee of ₱10,000.00 and ₱500.00 per recorded Court appearance of counsel;

   d. The costs of this suit.

Plaintiffs further pray for such other relief which the Honorable Court may deem just and equitable under the premises.[18]

---

[17] *Id.*, pp. 83-90.

[18] *Id.*, p. 89.

In their answer,[19] the petitioners averred that the *Kasulatan ng Biling Mabibiling Muli* was an equitable mortgage, not a *pacto de retro* sale; that the mortgagors had retained ownership of the property; that the heirs of the Spouses Francia could not have validly sold the property to Alejandro through the *Pagsasaayos ng Pag-aari at Pagsasalin;* that Alejandro's right was only to seek reimbursement of the ₱500.00 he had paid from the co-owners, namely: Leoncia, Teofilo, Jose, Jr. and Jose, Sr. and the heirs of Potenciana; and that Alejandro could not have also validly consolidated ownership through the *Kasulatan ng Pagmeme-ari,* because a consolidation of ownership could only be effected *via* a court order.

The petitioners interposed a counterclaim for the declaration of the transaction as an equitable mortgage, and of their property as owned in common by all the heirs of Leoncia, Teofilo, Jose, Jr. and Jose, Sr.

On May 21, 1996, the RTC ruled in favor of the respondents, declaring that Alejandro had acquired ownership of the property in 1965 by operation of law upon the failure of the petitioners' predecessors to repurchase the property; that the joint affidavit executed by Alejandro, Leoncia and Jose, Jr. and Jose, Sr., to extend the period of redemption was inefficacious, because there was no more period to extend due to the redemption period having long lapsed by the time of its execution; and that the action should be dismissed insofar as the heirs of Potenciana were concerned, considering that Potenciana, who had predeceased her parents, had no successional rights in the property.

Accordingly, the RTC decreed as follows:

WHEREFORE, on the basis of the evidence adduced and the law/ jurisprudence applicable thereon, judgment is hereby rendered:

a) sustaining the validity of the "*Kasulatan ng Biling Mabibiling Muli"* (Exh. B/Exh. 1) executed on July 9, 1955 by Leoncia Magisa and her sons Teofilo, Jose, Sr. and Jose, Jr., all surnamed Reyes, in favor of Spouses Benedicto Francia and Monica Ajoco as well as

---

[19] *Id.,* pp. 34-41.

the *"Pagsasa-ayos ng Pag-aari at Pagsasalin"* (Settlement of Estate and Assignment) [Exh. C/Exh. 4] executed on August 11, 1970 by the heirs of spouses Benedicto Francia and Monica Ajoco in favor of the spouses Alejandro Reyes and Amanda Salonga;

b) declaring the aforementioned "Kasulatan Ng Biling Mabibili Muli" (Exh. B/ Exh. 1) to be a contract of sale with right to repurchase and not an equitable mortgage;

c) confirming the consolidation of ownership, by operation of law, of spouses Alejandro M. Reyes and Amanda Salonga over the residential lot mentioned and referred to in Exhibit B/Exhibit 1 and Exhibit C/Exhibit 4;

d) allowing the registration with the Registry of Deeds for the Province of Bulacan of the *"Kasulatan ng Pagmeme-ari"* (Document of Ownership) [Exh. E/Exh. 5] executed by Alejandro M. Reyes on August 21, 1970 or of any appropriate deed of consolidation of ownership over the residential lot covered by Exhibit E/Exhibit 5 which the plaintiffs, as eventual owners by succession of the aforementioned proeprty (sic), may deem proper to execute;

e) ordering the defendants and all persons claiming rights under them to vacate the residential lot subject of the above-entitled case and to restore possession thereof unto the plaintiffs;

f) directing the defendants (except the heirs of Potenciana Reyes-Valenzuela) to pay unto the plaintiffs the amount of ₱20,000.00 as attorney's fees; and

g) dismissing the complaint in so far as the defendant heirs of Potenciana Reyes-Valenzuela are concerned as well as their counterclaim for damages and attorney's fees.

No pronouncement as to costs.

SO ORDERED.[20]

Aggrieved, the petitioners appealed to the CA.

CA Ruling

In the CA, the petitioners assailed the RTC's dispositions, except the dismissal of the complaint as against Potenciana's heirs.

---

[20] *Rollo*, pp. 63-64.

In its decision dated July 31, 2002, the CA ruled that the transaction covered by the *Kasulatan ng Biling Mabibiling Muli* was not a *pacto de retro sale* but an equitable mortgage under Article 1602 of the *Civil Code*; that even after the deed's execution, Leoncia, Teofilo, Jose, Jr. and their families had remained in possession of the property and continued paying realty taxes for the property; that the purported vendees had not declared the property for taxation purposes under their own names; and that such circumstances proved that the parties envisaged an equitable mortgage in the *Kasulatan ng Biling Mabibiling Muli*.

The CA observed that the heirs of the Spouses Francia had themselves admitted in paragraph 5 of the *Pagsasa-ayos ng Pag-aari at Pagsasalin* that the property had been mortgaged to their predecessors-in-interest, *viz*:

> Na, sa oras ng kamatayan ay nakaiwan sila ng isang lagay *na lupang nakasanla sa kanila* na makikilala sa kasulatang kalakip nito sa halagang LIMANG DAANG PISO (₱500.00). Ngunit nuong nabubuhay pa ang magasawang Benedicto Francia at Monica Ajoco ay nakatanggap na ng halagang ₱265.00 kay Alejandro Reyes — Filipino, kasal kay Amanda Salonga, may sapat na gulang at naninirahan sa Pulilan, Bulacan.[21]

However, the CA held that the appellants' (petitioners herein) failure to file an action for the reformation of the *Kasulatan ng Biling Mabibiling Muli* to reflect the true intention of the parties within ten years from the deed's execution on July 9, 1955, pursuant to Article 1144 of the *Civil Code*,[22]

, , ,
, .

---

[21] Records, p. 9.

[22] Article 1144. The following actions must be brought within ten years from the time the right of action accrues:

1. Upon a written contract;
2. Upon an obligation created by law;
3. Upon a judgment.

,

17, 1970.

Issues

In this appeal, therefore, the petitioners insist that:[23]

I.

The Honorable Court of Appeals erred in finding that respondents (were) already barred from claiming that the transaction entered into by their predecessors-in-interest was an equitable mortgage and not a *pacto de retro sale*;

II.

The Honorable Court of Appeals erred in affirming the findings of the court *a quo* that the *Magkasanib na Salaysay* (Joint Affidavit), executed by Alejandro, Leoncia and Jose, Jr., wherein Leoncia and her children were granted by Alejandro the right to repurchase the property at anytime for the amount of ₱500.00, was of no legal significance.

Ruling of the Court

The petition is meritorious.

A.

The CA correctly concluded that the true agreement of the parties *vis-à-vis* the *Kasulatan ng Biling Mabibiling Muli* was an equitable mortgage, not a *pacto de retro* sale. There was no dispute that the purported vendors had continued in the possession of the property even after the execution of the agreement; and that the property had remained declared for taxation purposes under Leoncia's name, with the realty taxes due being paid by Leoncia, despite the execution of the agreement. Such established circumstances are among the badges of an equitable mortgage enumerated in Article 1602, paragraphs 2 and 5 of the *Civil Code*, to wit:

[23] *Rollo*, p. 12.

Art. 1602. The contract shall be presumed to be an equitable mortgage, in any of the following cases:

x x x x x x x x x

(2) When the vendor remains in possession as lessee or otherwise;

x x x x x x x x x

(5) When the vendor binds himself to pay the taxes on the thing sold;

x x x x x x x x x

The existence of any one of the conditions enumerated under Article 1602 of the *Civil Code*, not a concurrence of all or of a majority thereof, suffices to give rise to the presumption that the contract is an equitable mortgage.[24] Consequently, the contract between the vendors and vendees (Spouses Francia) was an equitable mortgage.

B.

Are the petitioners now barred from claiming that the transaction under the *Kasulatan ng Biling Mabibiling Muli* was an equitable mortgage by their failure to redeem the property for a long period of time?

The petitioners contend that prescription, if it must apply to them, should as well be applied to the respondents, who had similarly failed to enforce their right under the equitable mortgage within ten years from its execution on July 9, 1955. Consequently, they urge the upholding of the original intention of the parties to the *Kasulatan ng Biling Mabibiling Muli*, without taking prescription into account, because both parties did not enforce their respective rights within the ten-year prescriptive period, is more in keeping with fairness and equity.

We agree with the petitioners.

Considering that *sa oras na sila'y makinabang,* the period of redemption stated in the *Kasulatan ng Biling Mabibiling*

[24] *Raymundo v. Bandong*, G.R. No. 171250, July 4, 2007, 526 SCRA 514, 528.

Muli, signified that no definite period had been stated, the period to redeem should be ten years from the execution of the contract, pursuant to Articles 1142 and 1144 of the *Civil Code*.[25] Thus, the full redemption price should have been paid by July 9, 1955; and upon the expiration of said 10-year period, mortgagees Spouses Francia or their heirs *should have* foreclosed the mortgage, but they did not do so. Instead, they accepted Alejandro's payments, until the debt was fully satisfied by August 11, 1970.

The acceptance of the payments even beyond the 10-year period of redemption estopped the mortgagees' heirs from insisting that the period to redeem the property had already expired. Their actions impliedly recognized the continued existence of the equitable mortgage. The conduct of the original parties as well as of their successors-in-interest manifested that the parties to the *Kasulatan ng Biling Mabibiling Muli* really intended their transaction to be an equitable mortgage, not a *pacto de retro* sale.

In *Cuyugan v. Santos*,[26] the purported buyer under a so-called contract to sell with right to repurchase also accepted partial payments from the purported seller. We held that the acceptance of partial payments was absolutely incompatible with the idea of irrevocability of the title of ownership of the purchaser upon the expiration of the term stipulated in the original contract for the exercise of the right of redemption. Thereby, the conduct of the parties manifested that they had intended the contract to be a mortgage, not a *pacto de retro* sale.

C.

When Alejandro redeemed the property on August 11, 1970, he did not thereby become a co-owner thereof, because his father

---

[25] Article 1144. The following actions must be brought within ten years from the time the right of action accrues:

1) Upon a written contract;

2) Upon an obligation created by law;

3) Upon a judgment.

Article 1142. A mortgage action prescribes after ten years.

[26] G.R. No. L-10265, March 3, 1916, 34 Phil 100, 121.

Jose, Sr. was then still alive. Alejandro merely became the assignee of the mortgage, and the property continued to be co-owned by Leoncia and her sons Jose, Sr., Jose Jr., and Teofilo. As an assignee of the mortgage and the mortgage credit, Alejandro acquired only the rights of his assignors, nothing more. He himself confirmed so in the *Magkasanib na Salaysay*, whereby he acknowledged the co-owners' right to redeem the property from him at any time (*sa ano mang oras*) for the same redemption price of ₱500.00.

It is worthy to note that Alejandro's confirmation in the *Magkasanib na Salaysay* of the co-owners' right to redeem was made despite 15 years having meanwhile elapsed from the execution of the original *Kasulatan ng Biling Mabibiling Muli* (July 9, 1955) until the execution of the *Magkasanib na Salaysay* (August 21, 1970).

D.

Neither did the petitioners' failure to initiate an action for reformation within ten years from the execution of the *Kasulatan ng Biling Mabibiling Muli* bar them from insisting on their rights in the property. The records show that the parties in the *Kasulatan ng Biling Mabibiling Muli* had abided by their true agreement under the deed, to the extent that they and their successors-in-interest still deemed the agreement as an equitable mortgage despite the lapse of 15 years from the execution of the purported *pacto de retro* sale. Hence, an action for reformation of the *Kasulatan ng Biling Mabibiling Muli* was unnecessary, if not superfluous, considering that the reason underlying the requirement for an action for reformation of instrument has been to ensure that the parties to a contract abide by their true intended agreement.

The *Kasulatan ng Pagmeme-ari* executed by Alejandro on August 21, 1970 was ineffectual to predicate the exclusion of the petitioners and their predecessors in interest from insisting on their claim to the property. Alejandro's being an assignee of the mortgage did not authorize him or his heirs to appropriate the mortgaged property for himself without violating the prohibition against *pactum commissorium* contained in Article

2088 of the *Civil Code*, to the effect that "[t]he creditor cannot appropriate the things given by way of pledge or mortgage, or dispose of them[;] [a]ny stipulation to the contrary is null and void." Aptly did the Court hold in *Montevirgen v. Court of Appeals:*[27]

> The declaration, therefore, in the decision of July 1, 1971 to the effect that absolute ownership over the subject premises has become consolidated in the respondents upon failure of the petitioners to pay their obligation within the specified period, is a nullity, for consolidation of ownership is an improper and inappropriate remedy to enforce a transaction declared to be one of mortgage. It is the duty of respondents, as mortgagees, to foreclose the mortgage if he wishes to secure a perfect title to the mortgaged property if he buys it in the foreclosure sale.

Moreover, the respondents, as Alejandro's heirs, were entirely bound by his previous acts as their predecessors-in-interest. Thus, Alejandro's acknowledgment of the effectivity of the equitable mortgage agreement precluded the respondents from claiming that the property had been sold to him with right to repurchase.[28]

E.

What was the effect of the *Magkasanib na Salaysay*?

Both the trial court and the CA declared that the *Magkasanib na Salaysay*, which extended the redemption period of the mortgaged property, was inefficacious, because the period to redeem could no longer be extended after the original redemption period had already expired.

In contrast, the petitioners submit that disregarding the *Magkasanib na Salaysay* made no sense, considering that the respondents' predecessors-in-interest admitted therein that the petitioners had a right to redeem the property.

---

[27] G.R. No. L-44943, March 17, 1982, 112 SCRA 641, 647-648.

[28] The *Civil Code* states:

> Article 1439: Estoppel is effective only as between the parties thereto or their successors-in-interest.

The respondents counter, however, that the *Magkasanib na Salaysay*, which acknowledged the other co-owners' right to redeem the property, was void; that the petitioners could no longer claim to be co-owners entitled to redeem the property, because the co-ownership had come to an end by Alejandro having openly repudiated the co-ownership; that Alejandro's acts of repudiation had consisted of: (*a*) redeeming the property from the Spouses Francia; (*b*) acquiring the property from the heirs of Spouses Francia by virtue of a deed of assignment denominated as *Pag-aayos ng Pag-aari at Pagsasalin;* (*c*) executing an affidavit of consolidation of ownership over the property (*Kasulatan ng Pagmeme-ari)*; (*d*) applying for the cancellation of the tax declaration of property in the name of Leoncia, and the subsequent issuance of a new tax declaration in his name; (*e*) his continuous possession of the property from 1955, which possession the respondents as his heirs had continued up to the present time, or for a period of almost 50 years already; and (*f*) the payment of the taxes by Alejandro and the respondents for more than 30 years without any contribution from the petitioners; and that such repudiation established that Alejandro and his successors-in-interest had already acquired *sole* title over the property through acquisitive prescription.

The respondents' and the lower courts' positions cannot be sustained.

The provisions of the *Civil Code* governing equitable mortgages disguised as sale contracts, like the one herein, are primarily designed to curtail the evils brought about by contracts of sale with right to repurchase, particularly the circumvention of the usury law and *pactum commissorium.*[29] Courts have taken judicial notice of the well-known fact that contracts of sale with right to repurchase have been frequently resorted to in order to conceal the true nature of a contract, *that is*, a loan secured by a mortgage. It is a reality that grave financial distress renders persons hard-pressed to meet even their basic needs or to respond to an

---

[29] *Santos v. Duata*, G.R. No. L-20901, August 31, 1965, 14 SCRA 1041, 1045.

emergency, leaving no choice to them but to sign deeds of absolute sale of property or deeds of sale with *pacto de retro* if only to obtain the much-needed loan from unscrupulous money lenders.[30] This reality precisely explains why the pertinent provision of the *Civil Code* includes a peculiar rule concerning the period of redemption, to wit:

> Art. 1602. The contract shall be presumed to be an equitable mortgage, in any of the following cases:
>
> x x x x x x x x x
>
> (3)**When upon or after the expiration of the right to repurchase another instrument extending the period of redemption or granting a new period is executed;**
>
> x x x x x x x x x

Ostensibly, the law allows a *new* period of redemption to be agreed upon or granted even after the expiration of the equitable mortgagor's right to repurchase, and treats such extension as one of the indicators that the true agreement between the parties is an equitable mortgage, not a sale with right to repurchase. It was indubitable, therefore, that the *Magkasanib na Salaysay* effectively afforded to Leoncia, Teofilo, Jose, Sr. and Jose, Jr. a fresh period within which to pay to Alejandro the redemption price of ₱500.00.

F.

Did Alejandro and his heirs (respondents herein) acquire the mortgaged property through prescription?

It is true that Alejandro became a co-owner of the property by right of representation upon the death of his father, Jose Sr.[31]

---

[30] *Matanguihan v. Court of Appeals*, G.R. No. 115033, July 11, 1997, 275 SCRA 380, 390-391.

[31] Articles 970 and 975 of the *Civil Code* provide thus:

> Art 970. Representation is a right created by fiction of law, by virtue of which the representative is raised to the place and the degree of the person represented, and acquires the rights which the latter would have if he were living or if he could have inherited.

As a co-owner, however, his possession was like that of a trustee and was not regarded as adverse to his co-owners but in fact beneficial to all of them.[32]

Yet, the respondents except to the general rule, asserting that Alejandro, having earlier repudiated the co-ownership, acquired ownership of the property through prescription.

The Court cannot accept the respondents' posture.

In order that a co-owner's possession may be deemed adverse to that of the *cestui que trust* or the other co-owners, the following elements must concur:

1. The co-owner has performed unequivocal acts of repudiation of the co-ownership amounting to an ouster of the *cestui que trust* or the other co-owners;
2. Such positive acts of repudiation have been made known to the *cestui que trust* or the other co-owners;
3. The evidence on the repudiation is clear and conclusive; and
4. His possession is open, continuous, exclusive, and notorious.[33]

The concurrence of the foregoing elements was not established herein. For one, Alejandro did not have adverse and exclusive possession of the property, as, in fact, the other co-owners had continued to possess it, with Alejandro and his heirs occupying only a portion of it. Neither did the cancellation of the previous tax declarations in the name of Leoncia, the previous co-owner, and the issuance of a new one in Alejandro's name, and Alejandro's payment of the realty taxes constitute repudiation

---

Art. 975. When children of one or more brothers or sisters of the deceased survive, they shall inherit from the latter by representation, if they survive with their uncles or aunts. But if they alone survive, they shall inherit in equal portions.

[32] *Salvador v. Court of Appeals*, G.R. No. 109910, April 5, 1995, 243 SCRA 239, 251.

[33] *Adille v. Court of Appeals*, G.R. No. L-44546, January 29, 1988, 157 SCRA 455, 461; *Vda. de Arceo v. Court of Appeals*, G.R. No. 81401, May 18, 1990, 185 SCRA 489, 495.

of the co-ownership. The sole fact of a co-owner declaring the land in question in his name for taxation purposes and paying the land taxes did not constitute an unequivocal act of repudiation amounting to an ouster of the other co-owner and could not constitute adverse possession as basis for title by prescription.[34] Moreover, according to *Blatero v. Intermediate Appellate Court*,[35] if a sale *a retro* is construed as an equitable mortgage, then the execution of an affidavit of consolidation by the purported buyer to consolidate ownership of the parcel of land is of no consequence and the "constructive possession" of the parcel of land will not ripen into ownership, because only possession acquired and enjoyed *in the concept of owner* can serve as title for acquiring dominion.[36]

In fine, the respondents did not present proof showing that Alejandro had effectively repudiated the co-ownership. Their bare claim that Alejandro had made oral demands to vacate to his co-owners was self-serving and insufficient. Alejandro's execution of the affidavit of consolidation of ownership on August 21, 1970[37] and his subsequent execution on October 17, 1970 of the joint affidavit[38] were really equivocal and ambivalent acts that did not manifest his desire to repudiate the co-ownership.

The only unequivocal act of repudiation was done by the respondents when they filed the instant action for quieting of title on September 28, 1994, nearly a year after Alejandro's death on September 2, 1993. However, their possession could not ripen into ownership considering that their act of repudiation was not coupled with their *exclusive* possession of the property.

---

[34] *Laguna v. Levantino*, 71Phil 566 (1941); *Guillen v. Court of Appeals*, G.R. No. 83175, December 4, 1989, 179 SCRA 789,798; *Bicarme v. Court of Appeals*, G.R. No. 51914, June 6, 1990, 186 SCRA 294.

[35] G.R. No. 73889, September 30, 1987, 154 SCRA 530.

[36] *Id.*, pp. 539-541; Article 540, *Civil Code.*

[37] *Kasulatan ng Pagmeme-ari*

[38] *Magkakalakip na Salaysay*

G.

The respondents can only demand from the petitioners the partition of the co-owned property and the reimbursement from their co-owners of the amount advanced by Alejandro to repay the obligation. They may also seek from their co-owners the proportional reimbursement of the realty taxes paid for the property, pursuant to Article 488 of the *Civil Code*.[39] In the alternative, they may opt to foreclose the equitable mortgage, considering that the petitioners' period to redeem the mortgaged property, which was ten years from the execution on October 17, 1970 of the *Magkakasanib na Salaysay*, had already long lapsed. We clarify, however, that the respondents may take these recourses only through the appropriate actions commenced in court.

H.

The petitioners' counterclaim for damages is dismissed for their failure to prove their entitlement to it.[40]

WHEREFORE, we grant the petition for review on *certiorari.*

The decision dated July 31, 2002 rendered by the Court of Appeals is reversed and set aside, and another judgment is rendered:

a) Upholding the validity of the *Kasulatan ng Biling Mabibiling Muli* (Deed of Sale with Right of Repurchase) executed on July 9, 1955 by Leoncia Mag-isa Reyes and her sons Teofilo, Jose, Sr. and Jose, Jr., all surnamed Reyes, in favor of the late Spouses Benedicto Francia and Monica Ajoco

---

[39] Article 488. Each co-owner shall have a right to compel the other co-owners to contribute to the expenses of preservation of the thing or right owned in common and to the taxes. Anyone of the latter may exempt himself from this obligation by renouncing so much of his undivided interest as may be equivalent to his share of the expenses and taxes. No such waiver shall be made if it is prejudicial to the co-ownership.

[40] *People v. Bano*, G.R. No. 148710, January 15, 2004, 419 SCRA 697, 707; *Mahinay v. Velasquez, Jr.* G.R. No. 152753, January 23, 2004, 419 SCRA 118, 121-122.

as well as the *Pagsasa-ayos ng Pag-aari at Pagsasalin* (Settlement of Estate and Assignment) executed on August 11, 1970 by the heirs of the late Spouses Benedicto Francia and Monica Ajoco in favor of the spouses Alejandro Reyes and Amanda Salonga;

b) Declaring the *Kasulatan ng Biling Mabibili Muli* to be an equitable mortgage, not a contract of sale with right to repurchase;

c) Finding the *Magkakalakip na Salaysay* executed on October 17, 1970 by and among Leoncia Mag-isa Reyes, Jose Reyes, Sr. and Alejandro Reyes valid and effective;

c) Nullifying the *Kasulatan ng Pagmeme-ari* executed by Alejandro M. Reyes on August 21, 1970; and

d) Dismissing the petitioners' counterclaim.

Costs of suit to be paid by the respondents.

SO ORDERED.

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

THIRD DIVISION

[G.R. Nos. 177105-06. August 4, 2010]

JOSE REYES *y* VACIO, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

---

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

SYLLABUS

1. CRIMINAL LAW; THE ANTI-GRAFT AND CORRUPT PRACTICES ACT (RA 3019); ESSENTIAL ELEMENTS OF THE OFFENSE UNDER SECTION 3 (e) THEREOF. — The essential elements of the offense under Section 3 (e) are the following: 1. The accused must be a public officer discharging administrative, judicial, or official functions; 2. He must have acted with manifest partiality, evident bad faith, or gross inexcusable negligence; and 3. His action caused any undue injury to any party, including the Government, or gave any private party unwarranted benefits, advantage, or preference in the discharge of his functions.

2. ID.; ID.; ID.; DIFFERENT MODES BY WHICH THE OFFENSE IS COMMITTED, EXPLAINED. — The second element includes the different and distinct modes by which the offense is committed, *that is*, through manifest partiality, evident bad faith, or gross inexcusable negligence. Proof of the existence of any of the modes suffices to warrant conviction under Section 3 (e). Manifest partiality exists when the accused has a clear, notorious, or plain inclination or predilection to favor one side or one person rather than another. It is synonymous with bias, which excites a disposition to see and report matters as they are wished for rather than as they are. Evident bad faith connotes a manifest deliberate intent on the part of the accused to do wrong or to cause damage. It contemplates a breach of sworn duty through some perverse motive or ill will. Gross inexcusable negligence refers to negligence characterized by the want of even the slightest care, acting or omitting to act in a situation where there is duty to act, not inadvertently but willfully and intentionally, with conscious indifference to consequences insofar as other persons may be affected.

3. ID.; ID.; ID.; ESSENTIAL ELEMENTS; ESTABLISHED IN CASE AT BAR. — The first element was established. The petitioner was a public officer when he rendered his decision in DARAB Case No. 034 BUL'88, being then a Provincial Adjudicator of the DARAB discharging the duty of adjudicating the conflicting claims of parties. The second element includes the different and distinct modes by which the offense is committed, *that is*, through manifest partiality, evident bad

faith, or gross inexcusable negligence. Proof of the existence of any of the modes suffices to warrant conviction under Section 3 (e). x x x The petitioner was fully aware of the finality of the decision in AC-G.R. CV No. 02883 *prior to* his promulgation of the decision in DARAB Case No. 034 BUL'88. Indeed, he actually admitted having read and examined the x x x documents (adduced by the Prosecution) prior to his rendition of the decision. x x x Yet, the petitioner still rendered his decision in DARAB Case No. 034 BUL'88 that completely contradicted and disregarded the decision in AC-G.R. CV No. 02883 by invalidating Belen's title on the land and upholding the TCTs of the tenants. He thereby exhibited manifest partiality, for such decision of his was a total and willful disregard of the final decision in AC-G.R. CV No. 02883. His granting the tenants' *motion for execution* made his partiality towards the tenants and bias against Belen that much more apparent. Similarly, the petitioner's evident bad faith displayed itself by his arrogant refusal to recognize and obey the decision in AC-G.R. CV No. 02883, despite his unqualified obligation as Provincial Adjudicator to abide by the CA's ruling that was binding on him as Provincial Adjudicator and on all the parties in DARAB Case No. 034-BUL'88. Worthy of note is that the CA, in CA-G.R. SP No. 39315, and this Court, in G.R. No. 128967, had characterized the petitioner's aforementioned conduct as "an utter disrespect to the judiciary," as vested with a "dishonest purpose," and as constituting "a contumacious attitude which should not be tolerated." These acute characterizations fortify the holding that he harbored a deliberate intent to do wrong to Belen. Correctly did the Sandiganbayan find that the petitioner had displayed manifest partiality and evident bad faith in rendering his decision in DARAB Case No. 034-BUL'88. The third element of the offense — when the act of the accused caused undue injury to any party, including the Government, or, gave any private party unwarranted benefit, advantage or preference in the discharge of the functions of the accused — was also established. In this regard, proof of the extent or quantum of damage was not essential, it being sufficient that the injury suffered or the benefit received could be perceived to be substantial enough and was not merely negligible. Belen was constrained to engage the services of a lawyer and to incur other expenses in order to protect and prosecute her interest in DARAB Case No. 034 BUL'88. In

all, her expenses were in the substantial sum of ₱990,000.00. Moreover, the petitioner's stubborn refusal to recognize and obey the decision in AC-G.R. CV No. 02883 forced a further but needless prejudicial delay in the prompt termination of the cases. The delay proved very costly to Belen, for, in that length of time (*that is*, from March 16, 1993 up to the present), Belen *has been* unduly deprived of her exclusive ownership and undisturbed possession of the land, and the fruits thereof. The injury and prejudice surely equated to undue injury for Belen. Likewise, the petitioner's ruling in DARAB Case No. 034 BUL'88 gave unwarranted benefit, advantage, or preference to the tenants by allowing them to remain in possession of the land and to enjoy the fruits. Given the foregoing considerations, the Sandiganbayan correctly convicted the petitioner in Criminal Case No. 24655 for violating Section 3 (e) of RA 3019.

4. ID.; ID; PENALTY FOR VIOLATION OF SECTION 3 (e) THEREOF. — Under Section 9 of RA 3019, the penalty for violation of Section 3 (e) of RA 3019 is imprisonment for not less than six years and one month nor more than 15 years, and perpetual disqualification from public office. Pursuant to Section 1 of the *Indeterminate Sentence Law*, if the offense is punished by a special law, the accused is punished with an indeterminate sentence the maximum of which does not exceed the maximum fixed by the law violated, and the minimum is not less than the minimum term prescribed by the law violated. Accordingly, in Criminal Case No. 24655, the Sandiganbayan correctly imposed on the petitioner the indeterminate penalty of imprisonment ranging from six years and one month, as minimum, to 10 years as maximum. The penalty of perpetual disqualification from public office was also correctly imposed.

5. ID.; MITIGATING CIRCUMSTANCES; WHEN THE MITIGATING CIRCUMSTANCE OF OLD AGE CANNOT BE APPRECIATED. — The mitigating circumstance of old age under Article 13 (2) of the *Revised Penal Code* applied only when the offender was over 70 years at the time of the commission of the offense. The petitioner, being only 63 years old when he committed the offenses charged, was not entitled to such mitigating circumstance.

APPEARANCES OF COUNSEL

The Firm of Sarmiento Delson Dakanay and Resurreccion for petitioner.

D E C I S I O N

BERSAMIN, *J.*:

The petitioner appeals by petition for review on c*ertiorari* the decision dated January 15, 2007 rendered by the Sandiganbayan, finding him guilty in Criminal Case No. 24655 of a violation of Section 3 (e) of Republic Act No. 3019,[1] and in Criminal Case No. 24656 of usurpation of judicial functions as defined and penalized under Article 241, *Revised Penal Code*.[2]

Antecedents

Belen Lopez *Vda.* de Guia (Belen) was the registered absolute owner of two parcels of agricultural land with an area of 197,594 square meters located in Santa Barbara, Baliwag, Bulacan and covered by Transfer Certificate of Title (TCT) No. 209298 of the Register of Deeds of Bulacan. On March 19, 1975, Belen's son, Carlos de Guia (Carlos), forged a deed of sale, in which he made it appear that his mother had sold the land to him. Consequently, the Register of Deeds of Bulacan cancelled TCT No. 209298 by virtue of the forged deed of sale and issued TCT No. 210108 in Carlos' name.

On March 20, 1975, Carlos sold the land to Ricardo San Juan (Ricardo). On the same date, Ricardo registered the deed of sale in the Registry of Deeds of Bulacan, which cancelled TCT No. 210108 and issued TCT No. 210338 in Ricardo's name. Subsequently, Ricardo mortgaged the land to Simeon Yangco (Simeon).

---

[1] *The Anti-Graft and Corrupt Practices Act.*

[2] Penned by Associate Justice Godofredo L. Legaspi (retired), with Associate Justice Efren N. Dela Cruz and Associate Justice Norberto Y. Geraldez (later Presiding Justice of the Sandiganbayan, now deceased) concurring; *rollo*, pp. 64-98.

Upon learning of the transfers of her land, Belen filed on December 20, 1975 an adverse claim in the Register of Deeds of Bulacan. Her adverse claim was annotated on TCT No. 210338. She also filed in the then Court of First Instance (CFI) of Baliwag, Bulacan a civil action for cancellation of sale, reconveyance, and damages against Carlos, Ricardo and Simeon, docketed as Civil Case No. 655-B.

On January 20, 1981, the CFI decided Civil Case No. 655-B, dismissing Belen's complaint and affirming the validity of the deeds of sale between Belen and Carlos and between Carlos and Ricardo. Belen filed a motion for reconsideration but her motion was denied.

Belen appealed to the Intermediate Appellate Court (IAC), docketed as AC-G.R. CV No. 5524-UDK.

On April 19, 1983, the IAC dismissed Belen's appeal due to non-payment of docket fees. The dismissal became final on May 17, 1983, and entry of judgment was issued on June 21, 1983. The records were remanded to the CFI on July 6, 1983.[3]

Thereafter, the tenants of the land, namely, Paulino Sacdalan, Leonardo Sacdalan, Santiago Sacdalan, Numeriano Bautista and Romeo Garcia (tenants), invoked their right to redeem pursuant to Section 12 of Republic Act No. 3844, as amended.[4] Acting

---

[3] *Rollo*, pp. 66-67.

[4] RA 3844 (*Agricultural Land Reform Code*):

Section 12. *Lessees Right of Redemption*. — In case the landholding is sold to a third person without the knowledge of agricultural lessee, the latter shall have the right to redeem the same at a reasonable price and consideration: *Provided*, That where there are two or more agricultural lessees, each shall be entitled to said right of redemption only to the extent of the area actually cultivated by him. The right of redemption under this Section may be exercised within one hundred eighty days from notice in writing which shall be served by the vendee on all lessees affected and the Department of Agrarian Reform upon the registration of the sale, and shall have priority over any other right of legal redemption. The redemption price shall be the reasonable price of the land at the time of the sale. Upon filing of the corresponding petition or request with the department or corresponding case in court by the agricultural lessee or lessees, the said period of one hundred and eighty days shall cease to

thereon, Ricardo executed a *deed of reconveyance* in favor of the tenants on October 24, 1983.[5]

Upon registration of the *deed of reconveyance*, TCT No. 210338 was cancelled, and TCT No. 301375 was issued in the names of the tenants. The land was subdivided into several lots, and individual TCTs were issued in the names of the tenants.

In the meanwhile, Belen discovered for the first time through a letter-inquiry to the IAC Clerk of Court that her appeal in AC-G.R. CIV No. 5524-UDK had been dismissed for non-payment of docket fees. She thus filed in the IAC a *motion to reinstate* her appeal. The IAC granted her motion.[6] The reinstated appeal was re-docketed as AC-G.R. CV No. 02883.

On February 20, 1986, the IAC promulgated its decision in AC-G.R. CV No. 02883, granting Belen's appeal,[7] thus:

> WHEREFORE, the decision appealed from is hereby REVERSED and SET ASIDE and another one entered:
>
> (1) declaring as null and void and without any effect whatsoever the deed of sale executed by and between appellant Belen Lopez *vda.* De Guia and defendant Carlos de Guia, Exhibit "A";
>
> (2) declaring defendant-appellant Ricardo San Juan as a purchaser in bad faith and ordering him to reconvey to appellant the two (2) parcels of land described in the complaint;
>
> (3) ordering the Register of Deeds of Bulacan to cancel and/or annul TCT No. 210338 in the name of defendant-appellee Ricardo San Juan as well as TCT No. 210108 in the name of defendant-appellee Carlos de Guia for being null and void and to reinstate

---

run. Any petition or request for redemption shall be resolved within sixty days from the filing thereof; otherwise, the said period shall start to run again.

[5] Sandiganbayan records, Volume 2, p. 181.

[6] Folder of Exhibits for the Prosecution, Exhibit Q, p. 3.

[7] Penned by Associate Justice Ramon G. Gaviola, Jr. (retired), with Associate Justice Eduardo P. Caguioa (retired), Associate Justice Ma. Rosario Quetulio-Losa (retired), and Associate Justice Leonor Ines Luciano (retired), concurring; Folder of Exhibits for the Prosecution, Exhibit B.

TCT No. 209298 in the name of appellant as the true and valid title over the lands described therein; and

(4) ordering the defendants-appellees to pay the costs.

SO ORDERED.

The IAC decision became final on March 15, 1986, and entry of judgment was made on November 7, 1986.[8] The records were remanded to the Regional Trial Court (RTC) of Baliwag, Bulacan (RTC).

On December 18, 1986, Belen filed in the RTC a *motion for execution vis-à-vis* the decision in AC-G.R. CV No. 02883. The RTC granted her motion. However, when the *writ of execution* was about to be executed, Belen learned that Ricardo had sold the land to the tenants through a *deed of reconveyance*. Thus, Belen filed in the RTC a motion to declare Ricardo and the tenants in contempt of court for circumventing the final and executory judgment in AC-G.R. CV No. 02883.

On October 12, 1987, the RTC held Ricardo and the tenants in contempt of court and ordered each of them to pay a fine of ₱200.00. It directed Ricardo and the tenants to reconvey the land to Belen and to deliver to her the share in the harvest.

Ricardo and the tenants appealed the RTC order to the Court of Appeals (CA), docketed as CA-G.R. SP No. 14783 entitled *Mariano Bautista, et al. vs. Hon. Felipe N. Villajuan, Jr. as Judge RTC of Malolos, Bulacan, Branch XIV and Belen Lopez Vda. de De Guia*.

On November 8, 1988, Belen, through her daughter and attorney-in-fact, Melba G. Valenzuela (Melba), filed in the Department of Agrarian Reform Adjudication Board (DARAB) a complaint for ejectment and collection of rents against the tenants, entitled *Belen Lopez Vda. De Guia thru her Attorney-in-Fact, Melba G. Valenzuela vs. Paulino Sacdalan, Romeo Garcia, Numeriano Bautista, Leonardo Sacdalan and Santiago Sacdalan* and docketed as DARAB Case No. 034-BUL'88.[9]

[8] Folder of Exhibits for the Prosecution, Exhibit E-1.

[9] Folder of Exhibits for the Prosecution, Exhibit D.

On July 6, 1989, the CA rendered its decision in CA-G.R. SP No. 14783,[10] affirming the RTC order dated October 12, 1987 with modification. It ruled that the RTC correctly ordered Ricardo and the tenants to reconvey the land to Belen, but held that the RTC erred in finding Ricardo and the tenants in contempt of court. This decision became final and executory on July 31, 1989.

On March 16, 1993, the petitioner, as Provincial Adjudicator, rendered a decision in DARAB Case No. 034-BUL'88 entitled *Belen Lopez vda. De Guia thru her Attorney-in-Fact, Melba G. Valenzuela v. Paulino Sacdalan, Romeo Garcia, Numeriano Bautista, Leonardo Sacdalan and Santiago Sacdalan,*[11] dismissing Belen's complaint for ejectment and collection of rents and affirming the respective TCTs of the tenants, *viz*:

> WHEREFORE, premises considered, the Board finds the instant case wanting of merit, the same is hereby dismissed. Consequently, the Transfer Certificate of titles Nos. T-307845, T-307846, T-307856, T-307857, T-307869, T-307870, T-307871, T-307873 and T-307874 issued in the name of Numeriano Bautista, Romeo Garcia, Leonardo Sacdalan, Paulino Sacdalan and Santiago Sacdalan respectively are hereby AFFIRMED. The plaintiff and all other persons acting in their behalf are hereby ordered to permanently cease and desist from committing any acts tending to oust or eject the defendants or their heirs or assigns from the landholding in question.
>
> SO ORDERED.[12]

Belen filed a *notice of appeal* in the DARAB on March 26, 1993.

On March 31, 1993, the petitioner granted the tenants' *motion for execution* in DARAB Case No. 034-BUL'88.[13]

---

[10] Folder of Exhibits of the Prosecution, Exhibit A; penned by Associate Justice Serafin E. Camilon (retired), with Associate Justice Segundo G. Chua (retired) and Associate Justice Justo P. Torres, Jr. (later a Member of this Court, since retired), concurring.

[11] Folder of Exhibits for the Prosecution, Exhibit G.

[12] *Id.*

[13] Folder of Exhibits for the Prosecution, Exhibit K.

Aggrieved, Belen, through Melba, filed an *urgent motion to set aside the writ of execution* in DARAB Case No. 034-BUL'88,[14] but her motion was denied.

On October 24, 1994, the DARAB Central Office affirmed the petitioner's ruling.[15]

After her *motion for reconsideration* was denied, Belen lodged an appeal to the CA (CA-G.R. SP No. 39315).

In due course, the CA reversed and set aside the decision of the DARAB Central Office,[16] and ordered the tenants: (*a*) to vacate the land; (*b*) to deliver its possession to Belen; and (*c*) to pay to Belen the rents on the land corresponding to the period from 1981 until they would have vacated.

The tenants filed a *motion for reconsideration,* but the CA denied their motion.

Thus, the tenants appealed to this Court (G.R. No. 128967), which *affirmed* the CA's decision in CA-G.R. SP No. 39315.[17]

On May 13, 1998, the Office of the Ombudsman filed two informations in the Sandiganbayan, one charging the petitioner with a violation of Section 3 (e) of RA 3019, and the other with usurpation of judicial functions under Article 241 of the *Revised Penal Code*,[18] as follows:

Criminal Case No. 24655
(for violation of section 3 (e) of RA 3019)

That on or about 16 March 1993, or sometime prior or subsequent thereto, in Malolos, Bulacan, Philippines, and within the jurisdiction

---

[14] Folder of Exhibits for the Prosecution, Exhibit L.

[15] Sandiganbayan records, Volume 2, p. 185.

[16] Penned by Associate Justice Angelina Sandoval Gutierrez (later a Member of this Court, since retired), with Associate Justice Arturo D. Buena (later a Member of this Court, since retired) and Associate Justice Conrado M. Vasquez (later a Presiding Justice of the Court of Appeals, since retired), concurring; Folder of Exhibits for the Prosecution, Exhibit C.

[17] Folder of Exhibits for the Prosecution, Exhibit Q.

[18] Sandiganbayan records, Volume 2, pp. 1-4.

of this Honorable Court, the above-named accused Jose V. Reyes, a public officer being then employed as Provincial Adjudicator of the Department of Agrarian Reform Adjudication Board (DARAB) in Malolos, Bulacan, while in the performance of his official function as such and acting with evident bad faith and manifest partiality, did then and there willfully, unlawfully and criminally render his decision in DARAB Case No. 034-Bul-88 favorable to the tenants who were respondents in said agrarian case, thereby ignoring and disregarding the final and executory decision of the Court of Appeals in AC-GR CV-02883 which declared complainant Belen de Guia as the true owner of the lands subject of the litigation in both cases, thus causing undue injury and damage to the said Belen de Guia and to the public interest.[19]

Criminal Case No. 24656
(for usurpation of judicial functions under
Article 241 of the *Revised Penal Code*)

That on or about 16 March 1993, or immediately prior or subsequent thereto, in Malolos, Bulacan, Philippines, above-named accused Jose V. Reyes, a public officer being then employed as Provincial Adjudicator of the Department of Agrarian Reform Adjudication Board (DARAB) in Malolos, Bulacan, while in the performance of his official function as such and taking advantage thereof, with full knowledge of a Decision in AC-GR CV-02883 of the Court of Appeals, which declared Belen de Guia as the true owner of the lands litigated in said case, did then and there willfully, unlawfully and feloniously disregard, obstruct and ignore the said final and executory decision of the Court of Appeals, by rendering a decision in DARAB Case No. 034-Bul-88 thereby favoring and emboldening the tenants-respondents in said DARAB case to unlawfully continue occupying the lands of Belen de Guia, the complainant, to her damage and prejudice, as well as to the public interest.[20]

Arraigned on August 8, 2000, the petitioner, assisted by counsel *de parte*, pleaded *not guilty* to each information.[21]

---

[19] Sandiganbayan records, Volume 2, p. 3.

[20] Sandiganbayan records, Volume 2, p. 1.

[21] Sandiganbayan records, C-Volume 2, pp. 69-70.

After trial, on January 15, 2007, the Sandiganbayan rendered its assailed decision,[22] finding the petitioner guilty of both charges; and sentencing him to suffer: (*a*) in Criminal Case No. 24655 **(**for violation of Section 3 (e) of RA 3019), an indeterminate sentence of imprisonment from six years and one month, as minimum, to 10 years as maximum, with perpetual disqualification from holding public office; and (*b*) in Criminal Case No. 24656 (for usurpation of judicial functions under Article 241 of the *Revised Penal Code*), imprisonment of four months of *arresto mayor*.

The Sandiganbayan denied the petitioner's *motion for reconsideration* on March 15, 2007.[23]

Hence, this appeal by petition for review on *certiorari*.

Issues

The issues raised herein are:

a) Whether the petitioner was guilty of violating Section 3 (e) of RA 3019 in rendering his decision in DARAB CASE NO. 034 BUL'88; and

b) Whether the petitioner was guilty of usurpation of judicial functions under Article 241 of the *Revised Penal Code*.[24]

Anent the first issue, the petitioner maintains that there was no evident bad faith, manifest partiality, and gross inexcusable negligence on his part when he decided DARAB Case No. 034-BUL'88; that his decision therein had been solely based on what he had perceived to be in keeping with the letter and spirit of the pertinent laws; and that his decision had been rendered upon a thorough appreciation of the facts and the law.[25]

As to the second issue, the petitioner insists that his rendition of the decision did not amount to the felony of usurpation of judicial functions.

---

[22] *Rollo,* pp. 64-98.

[23] *Id.*, p. 119.

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

[25] *Id.*, pp. 41-43.

Ruling

The petitioner was correctly held guilty of and liable for violating Section 3 (e) of RA 3019 in rendering his decision in DARAB Case No. 034 BUL'88, but his conviction for usurpation of judicial functions under Article 241 of the *Revised Penal Code* is reversed and set aside.

A.
Elements of Section 3 (e) of RA 3019, established herein

RA 3019 was enacted to repress certain acts of public officers and private persons alike that constitute graft or corrupt practices or may lead thereto.[26] The law enumerates the punishable acts or omissions and provides their corresponding penalties.

Section 3 (e) of RA 3019, under which petitioner was charged and found guilty, relevantly provides:

> Section. 3. *Corrupt practices of public officers.* — In addition to acts or omissions of public officers already penalized by existing law, the following shall constitute corrupt practices of any public officer and are hereby declared to be unlawful:
>
> x x x x x x x x x
>
> (e) Causing any undue injury to any party, including the government, or giving any private party unwarranted benefits, advantage or preference in the discharge of his official, administrative or judicial functions through manifest partiality, evident bad faith or gross inexcusable negligence. This provision shall apply to officers and employees of offices or government corporations charged with the grant of licenses or permits or other concessions.
>
> x x x x x x x x x

The essential elements of the offense under Section 3 (e) are the following:

1. The accused must be a public officer discharging administrative, judicial, or official functions;

---

[26] Section 1, RA 3019.

2. He must have acted with manifest partiality, evident bad faith, or gross inexcusable negligence; and

3. His action caused any undue injury to any party, including the Government, or gave any private party unwarranted benefits, advantage, or preference in the discharge of his functions.[27]

The first element was established. The petitioner was a public officer when he rendered his decision in DARAB Case No. 034 BUL'88, being then a Provincial Adjudicator of the DARAB discharging the duty of adjudicating the conflicting claims of parties.

The second element includes the different and distinct modes by which the offense is committed, *that is*, through manifest partiality, evident bad faith, or gross inexcusable negligence. Proof of the existence of any of the modes suffices to warrant conviction under Section 3 (e).[28]

Manifest partiality exists when the accused has a clear, notorious, or plain inclination or predilection to favor one side or one person rather than another.[29] It is synonymous with bias, which excites a disposition to see and report matters as they are wished for rather than as they are.[30]

Evident bad faith connotes a manifest deliberate intent on the part of the accused to do wrong or to cause damage.[31] It contemplates a breach of sworn duty through some perverse motive or ill will.[32]

---

[27] *Albert v. Sandiganbayan*, G.R. No. 164015, 26 February 2009, 580 SCRA 279, 289-290; *Velasco v. Sandiganbayan*, G.R. No. 160991, 28 February 2005, 452 SCRA 593, 601.

[28] *Fonacier v. Sandiganbayan*, G.R. No. 50691, 5 December 1994, 238 SCRA 655, 688.

[29] *Albert v. Sandiganbayan*, *supra*, note 27.

[30] *Supra*, note 28, p. 687.

[31] *Reyes v. Atienza*, G.R. No. 152243, 23 September 2005, 470 SCRA 670, 683.

[32] *Villanueva v. Sandiganbayan*, G.R. No. 105607, 21 June 1993, 223 SCRA 543, 550, citing *Marcelo v. Sandiganbayan*, G.R. No. 69983, 14 May 1990, 185 SCRA 346, 349-350.

Gross inexcusable negligence refers to negligence characterized by the want of even the slightest care, acting or omitting to act in a situation where there is duty to act, not inadvertently but willfully and intentionally, with conscious indifference to consequences insofar as other persons may be affected.[33]

The decision rendered on February 20, 1986 in AC-G.R. CV No. 02883 — nullifying the forged deed of sale between Belen and Carlos; declaring Ricardo a purchaser in bad faith; ordering Ricardo to reconvey the land to Belen; directing the Register of Deeds of Bulacan to cancel the respective TCTs of Ricardo and Carlos; and reinstating Belen's TCT — became final on March 15, 1986. After the entry of judgment was made on November 7, 1986, the records were remanded to the RTC in Baliwag, Bulacan, which eventually granted Belen's *motion for execution*.

Due to its finality, the decision in AC-G.R. CV No. 02883 became immutable, and could no longer be modified in any respect, whether the modification was to correct erroneous conclusions of fact or law, whether made by the court that rendered it or by the highest court of the land.[34] The reason for such immutability is that a litigation must end sometime, and an effective and efficient administration of justice requires that the winning party be not deprived of the fruits of the verdict once a judgment becomes final.[35]

The petitioner was fully aware of the finality of the decision in AC-G.R. CV No. 02883 *prior to* his promulgation of the decision in DARAB Case No. 034 BUL'88. Indeed, he actually admitted having read and examined the following documents (adduced by the Prosecution) prior to his rendition of the decision,[36] namely:

---

[33] *Supra*, note 28.

[34] *Philippine Veterans Bank v. Estrella*, G.R. No. 138993, 27 June 2003, 405 SCRA 168, 172.

[35] *Salva v. Court of Appeals*, G.R. No. 132250, 11 March 1999, 304 SCRA 632, 645.

[36] TSN, 17 August 2006, pp. 18 and 27-34.

(1) Belen's position paper dated August 7, 1992 submitted to him in DARAB Case No. 034 BUL'88, in which Belen stated that the decision in AC-G.R. CV No. 02883 had become final and executory;[37]

(2) The entry of judgment issued in AC-G.R. CV No. 02883;[38]

(3) Belen's TCT No. 209298, reflecting the entry of judgment issued in AC-G.R. CV No. 02883 and the cancellation of the TCTs of the tenants-lessees by virtue of the decision in AC-G.R. CV No. 02883;[39] and

(4) Addendum to Belen's position paper, mentioning the decree in the decision in AC-G.R. CV No. 02883.[40]

Yet, the petitioner still rendered his decision in DARAB Case No. 034 BUL'88 that completely contradicted and disregarded the decision in AC-G.R. CV No. 02883 by invalidating Belen's title on the land and upholding the TCTs of the tenants. He thereby exhibited manifest partiality, for such decision of his was a total and willful disregard of the final decision in AC-G.R. CV No. 02883. His granting the tenants' *motion for execution* made his partiality towards the tenants and bias against Belen that much more apparent.

Similarly, the petitioner's evident bad faith displayed itself by his arrogant refusal to recognize and obey the decision in AC-G.R. CV No. 02883, despite his unqualified obligation as Provincial Adjudicator to abide by the CA's ruling that was binding on him as Provincial Adjudicator and on all the parties in DARAB Case No. 034-BUL'88.

Worthy of note is that the CA, in CA-G.R. SP No. 39315, and this Court, in G.R. No. 128967, had characterized the petitioner's aforementioned conduct as "an utter disrespect to the judiciary," as vested with a "dishonest purpose," and as constituting "a contumacious attitude which should not be

[37] Folder of Exhibits for the Prosecution, Exhibit E.

[38] *Supra*, note 89.

[39] Folder of Exhibits for the Prosecution, Exhibit E-2.

[40] Folder of Exhibits for the Prosecution, Exhibit F.

tolerated."[41] These acute characterizations fortify the holding that he harbored a deliberate intent to do wrong to Belen.

Correctly did the Sandiganbayan find that the petitioner had displayed manifest partiality and evident bad faith in rendering his decision in DARAB Case No. 034-BUL'88.

The third element of the offense — when the act of the accused caused undue injury to any party, including the Government, or, gave any private party unwarranted benefit, advantage or preference in the discharge of the functions of the accused — was also established. In this regard, proof of the extent or quantum of damage was not essential, it being sufficient that the injury suffered or the benefit received could be perceived to be substantial enough and was not merely negligible.[42]

Belen was constrained to engage the services of a lawyer and to incur other expenses in order to protect and prosecute her interest in DARAB Case No. 034 BUL'88. In all, her expenses were in the substantial sum of ₱990,000.00.[43] Moreover, the petitioner's stubborn refusal to recognize and obey the decision in AC-G.R. CV No. 02883 forced a further but needless prejudicial delay in the prompt termination of the cases. The delay proved very costly to Belen, for, in that length of time (*that is*, from March 16, 1993 up to the present), Belen *has been* unduly deprived of her exclusive ownership and undisturbed possession of the land, and the fruits thereof. The injury and prejudice surely equated to undue injury for Belen.

Likewise, the petitioner's ruling in DARAB Case No. 034 BUL'88 gave unwarranted benefit, advantage, or preference to the tenants by allowing them to remain in possession of the land and to enjoy the fruits.

Given the foregoing considerations, the Sandiganbayan correctly convicted the petitioner in Criminal Case No. 24655 for violating Section 3 (e) of RA 3019.

---

[41] *Supra*, note 16 and 17.

[42] *Supra*, note 28.

[43] Folder of Exhibits for the Prosecution, Exhibit O.

B.

Usurpation of judicial functions

Article 241 of the *Revised Penal Code* states:

> x x x The penalty of *arresto mayor* in its medium period to *prision correcional* in its minimum period shall be imposed upon any officer of the executive branch of the government who shall assume judicial powers or shall obstruct the execution of any order or decision rendered by any judge within his jurisdiction.

In usurpation of judicial function, the accused, who is not a judge, attempts to perform an act the authority for which the law has vested only in a judge.[44] However, the petitioner's task as Provincial Adjudicator when he rendered judgment in DARAB Case No. 034 BUL'88 was to adjudicate the claims of the opposing parties. As such, he performed a quasi-judicial function, closely akin to the function of a judge of a court of law. He could not be held liable under Article 241 of the *Revised Penal Code*, therefore, considering that the acts constitutive of usurpation of judicial function were lacking herein.

C.

Penalties

The Sandiganbayan appreciated the mitigating circumstance of old age in favor of the petitioner by virtue of his being already over 70 years old.

The Sandiganbayan thereby erred. The mitigating circumstance of old age under Article 13 (2) of the *Revised Penal Code* applied only when the offender was over 70 years at the time of the commission of the offense.[45] The petitioner, being only 63 years

---

[44] *Miñoso v. Pamulag*, A.M. No. P-05-2067, 31 August 2005, 468 SCRA 407, 415; *Pace v. Leonardo*, A.M. No. P-03-1675, 6 August 2003, 408 SCRA 359, 362.

[45] *People v. Nacional*, G.R. Nos. 111294-95, 7 September 1995, 248 SCRA 122, 131.

old when he committed the offenses charged,[46] was not entitled to such mitigating circumstance.

Under Section 9 of RA 3019, the penalty for violation of Section 3 (e) of RA 3019 is imprisonment for not less than six years and one month nor more than 15 years, and perpetual disqualification from public office. Pursuant to Section 1 of the *Indeterminate Sentence Law*, if the offense is punished by a special law, the accused is punished with an indeterminate sentence the maximum of which does not exceed the maximum fixed by the law violated, and the minimum is not less than the minimum term prescribed by the law violated.

Accordingly, in Criminal Case No. 24655, the Sandiganbayan correctly imposed on the petitioner the indeterminate penalty of imprisonment ranging from six years and one month, as minimum, to 10 years as maximum. The penalty of perpetual disqualification from public office was also correctly imposed.

WHEREFORE, the Court affirms the conviction of the petitioner in Criminal Case No. 24655 (for violation of section 3 (e) of RA 3019), but reverses and sets aside his conviction in Criminal Case No. 24656 (for usurpation of judicial functions as defined and penalized under Article 241 of the *Revised Penal Code*).

No pronouncement on costs of suit.

SO ORDERED.

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

---

[46] Sandiganbayan records, C-Volume 2, pp. 277-282.

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

SECOND DIVISION

[G.R. No. 178609. August 4, 2010]

MANUEL P. NEY and ROMULO P. NEY, *petitioners, vs.* **SPOUSES CELSO P. QUIJANO and MINA N. QUIJANO,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; ACTIONS; AN ACTION FOR RECONVEYANCE DISTINGUISHED FROM AN ACTION FOR QUIETING OF TITLE. — An action for reconveyance is one that seeks to transfer property, wrongfully registered by another, to its rightful and legal owner. Indeed, reconveyance is an action distinct from an action for quieting of title, which is filed 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 for purposes of removing such cloud or to quiet title.

2. ID.; ID.; WHEN AN ACTION FOR RECONVEYANCE MAY BE TREATED AS AN ACTION TO QUIET TITLE. — [W]e find nothing erroneous in the CA's ruling treating respondents' action for reconveyance as an action to quiet title. In *Mendizabel v. Apao*, we treated a similar action for reconveyance as an action to quiet title x x x Indubitably, the characterization by the CA of respondents' action as in the nature of an action for quieting of title cannot be considered a reversible error.

3. CIVIL LAW; PROPERTY; CO-OWNERSHIP, ESTABLISHED; CERTIFICATE OF TITLE DOES NOT VEST OWNERSHIP. — Petitioners never denied the due execution of the *Deed of Reconveyance*. In fact they admitted that the signatures appearing therein are theirs. The CA cannot, therefore, be faulted for declaring respondents as co-owners of the subject property because it merely confirmed and enforced the *Deed of Reconveyance* voluntarily executed by petitioners in favor of respondents. As aptly pronounced by the CA: [T]he Deed of Reconveyance, duly signed by [petitioners] themselves, put

> to rest the focal issue between the parties. There is no denying that it outweighs the evidence relied upon by [petitioners] despite the fact that they have the transfer certificate of title over the entire subject lot. It is settled that it is not the certificate of title that vests ownership. It merely evidences such title. x x x In a number of cases, the Court has ordered reconveyance of property to the true owner or to one with a better right, where the property had been erroneously or fraudulently titled in another person's name. After all, the Torrens system was not designed to shield and protect one who had committed fraud or misrepresentation and thus holds title in bad faith. Thus, the CA acted correctly in rendering the challenged decision.

APPEARANCES OF COUNSEL

Eddie Tamondong for petitioners.
Narciso E. Ramirez for respondents.

D E C I S I O N

NACHURA, *J.*:

On appeal is the June 29, 2007 Decision[1] of the Court of Appeals (CA) in CA-G.R. No. CV. 86047, setting aside the August 25, 2005 Decision[2] of the Regional Trial Court (RTC) of Manila, Branch 45.

Petitioners Manuel P. Ney and Romulo P. Ney (petitioners) are the registered owners of a residential lot located at 1648 Main Street, Paco Manila, with an area of 120 square meters more or less, covered by Transfer Certificate of Title (TCT) No. 122489.[3] A three (3) door apartment was constructed on the subject lot — one for Manuel, the other for Romulo; and

---

[1] Penned by Associate Justice Magdangal M. De Leon, with Associate Justices Rebecca De Guia-Salvador and Ricardo R. Rosario, concurring, *rollo*, pp. 23-32.

[2] Records, pp. 319-326.

[3] Exhibit "C", Folder of Exhibits.

the last one for their sister Mina N. Quijano and her husband Celso Quijano (respondents).

On October 8, 1999, respondents filed with the RTC of Manila a suit for reconveyance, partition and damages against petitioners. They averred that they are co-owners of the subject property having paid part of its purchase price; that Celso's name was inadvertently omitted as one of the buyers in the execution of the deed of sale. Consequently, TCT No. 122489 covering the subject property was issued only in the names of Manuel and Romulo. To obtain a separate certificate of title, they requested from petitioners the segregation of the portion allotted to them, but the latter refused. They later discovered that the entire property was mortgaged with Metropolitan Bank & Trust Company, prompting them to execute and register their adverse claim with the Register of Deeds; and to file the instant complaint.[4]

Petitioners, in their answer,[5] denied respondents' allegation of co-ownership. They averred that Celso Quijano was not a vendee of the subject lot; thus, his name did not appear on the title. They asserted that respondents cannot validly maintain an action against them because the latter possessed the property by mere tolerance; and even assuming that respondents had a valid cause of action, the same had already been barred by prescription and/or laches. Petitioners, therefore, prayed for the dismissal of the complaint.

After trial, the RTC rendered a Decision[6] dismissing the complaint. It rejected respondents' claim of co-ownership, and declared their documentary and testimonial evidence unreliable. The RTC sustained petitioners' assertion that respondents possessed part of the property through mere tolerance; and that their cause of action, if any, already prescribed. The RTC thus ruled that respondents can no longer demand the segregation or reconveyance of the claimed portion of the property. Finally,

---

[4] Records, pp. 1-5.

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

[6] *Id.* at 319-326.

the RTC granted petitioners' counterclaim and ordered the reimbursement of the expenses they incurred in defending the case.

The dispositive portion of the RTC decision reads:

> WHEREFORE, premises considered, the [respondents'] Complaint is hereby DISMISSED.
>
> On the other hand, finding merit in the [petitioners'] Counterclaim, the [respondents] are hereby ordered to pay the [petitioners]:
>
> a) The reduced amount of ₱50,000.00 for attorney's fees; and
>
> b) The costs of suit.
>
> SO ORDERED.[7]

From the aforesaid Decision, respondents went to the CA. They faulted the RTC for dismissing their complaint and insisted that they are co-owners of the subject lot; and that their share was erroneously included in petitioners' title. Respondents also took exception to the trial court's declaration that their action was already barred by prescription and laches. Citing *Heirs of Jose Olviga v. Court of Appeals*, respondents asserted that their right to institute an action for reconveyance is imprescriptible because they are in possession of the claimed portion of the property.[8]

On June 29, 2007, the CA rendered the now challenged Decision,[9] reversing the RTC. The CA found sufficient evidence to support respondents' claim that they are indeed co-owners of the property; and were excluded by petitioners in the deed of sale and certificate of title. The CA considered respondents' complaint as one for quieting of title which is imprescriptible; and granted to respondents the reliefs that they prayed for.

The CA disposed, thus:

---

[7] *Id.* at p. 326.

[8] See Brief for the Plaintiffs-Appellants, CA *rollo*, pp. 29-50.

[9] *Supra* note 1.

WHEREFORE, the appeal is **GRANTED**. The appealed Decision dated August 25, 2005 of the Regional Trial Court Branch 45, Manila is hereby **SET ASIDE**. In its stead, a **NEW ONE IS ENTERED**, declaring [respondents], spouses Celso and Mina Quijano, as co-owners of the subject lot to the extent of one-third (1/3) thereof which corresponds to that portion where their house stands.

Accordingly, [petitioners] are hereby ordered:

1) to partition the subject lot into three (3) equal portions of forty square meters (40 sq.m.) each, specifically allotting to [respondents] the portion where their house stands;

2) to reconvey to [respondents] the clean title to their portion of the subject lot;

3) to surrender the owner's copy of TCT No. 122489 to the Register of Deeds of Manila for the annotation of [respondents'] share thereon; and

4) to pay [respondents] attorney's fees and the costs of suit in the reasonable amount of ₱50,000.00.

SO ORDERED.[10]

Undaunted, petitioners took the present recourse. They ascribe reversible error to the CA for treating respondents' action as one for quieting of title. They claim that nowhere in the complaint does it state that respondents seek to quiet their title to the property. All that respondents averred and prayed for in their complaint was for petitioners to surrender their certificate of title, and for the partition of the subject property. Petitioners assert that the CA ruled on an issue not raised in the pleadings; and substituted the respondents' action with an entirely new action for quieting of title.

The argument is specious.

The allegations in respondents' complaint read in part:

2) That [respondents] are co-owners of one-third (1/3) portion pro indiviso of the residential lot where their residential house was

---

[10] *Id.* at 31-32.

constructed known as 1648 Main Street, Paco, Manila, covered by Transfer Certificate of Title No. 122489; x x x

3) That in their agreement with the lot owner, the name of the [respondent] Celso P. Quijano appears as one (1) of the Second Party [sic] who purchased the lot at the purchase price of ₱50,000.00 with ₱40,000.00 as down payment and the balance of ₱10,000.00 shall be paid on or before July 14, 1976, wherein the [respondent] Celso P. Quijano have (sic) paid the sum of ₱5,000.00 on the same due date of July 14, 1976;

4) That when the Deed of Absolute Sale was executed by the Vendor, the name of the [respondent] Celso P. Quijano, marr[ie]d to Mina Ney Quijano was omitted and the purchase price appeared to be only ₱20,000.00 and not ₱50,000.00 as appearing in their Agreement, thus when the Absolute Deed of Sale was presented to the Register of Deeds of Manila, only the names of Manuel P. Ney and Romulo P. Ney appeared as the registered owners in the above-mentioned Transfer Certificate of Title No.122489;

5) That Celso Quijano, however, was able to secure a Certification from the Vend[o]r Luz J. Lim the true and correct selling price agreed upon is ₱50,000.00 and the Vendees were Manuel P. Ney, Romulo P. Ney and [respondent] Celso Quijano and that the amount of ₱20,000.00 put in the Deed of Sale was at the instance of the Vendor with the consent of the Vendees;

6) That sometime in March 1991, [respondents] requested from the [petitioners] to segregate their Title to the one-third (1/3) portion of the lot [sic] where their house was constructed with an area of about forty (40) square meters more or less and [petitioners] agreed and executed a Deed of Reconveyance, but when [respondent] Celso P. Quijano presented the document to the Register of Deeds of Manila it [sic] was rejected because he can not present the Owner's copy;

x x x x x x x x x

8) That from the records of the Register of Deeds of Manila, [respondent] Celso P. Quijano discovered that the whole property was mortgaged with [sic] the Metropolitan Bank & Trust Company, thus [respondents] were constrained to execute and register their adverse claim that they are co-owners of one-third (1/3) portion of the lot and their residential house therein;

9) That after the registration of the [respondent's] adverse claim, the Register of Deeds through Expedito A. Javier notified the [petitioners] to surrender the Owner's duplicate copy of Transfer Certificate of Title No. 122489 in order that a Memorandum be made thereon for the Notice of Adverse Claim, but the request of the Register of Deeds was not honored by the [petitioners];

x x x x x x x x x

12) That by reason of the[petitioners'] refusal to surrender the Owner's copy of the Title to the Register of Deeds of Manila for partition and reconveyance, [respondents] were constrained to engage the services of counsel to protect their interest at an agreed amount of ₱50,000.00 as and for attorney's fees.

These allegations make out a case for reconveyance. That reconveyance was one of the reliefs sought was made abundantly clear by respondents in their prayer, *viz.*:

WHEREFORE, it is respectfully prayed that after due hearing judgment be rendered in favor of the [respondents] and against the [petitioners] ordering the latter as follows:

a) To surrender the Owner's copy of TCT No. 122489 to the Court or if refused that an Order be issued ordering the Register of Deeds of Manila to issue to the [respondents] their co-owner's copy if [sic] the Title;

b) Ordering the partition of the lot into equal shares of forty (40) square meters more or less and the lot where the [respondents'] residential house is constructed known as 1648 Main Street, Paco Manila be awarded and be reconveyed to the [respondents] as their share;

c) Ordering the [petitioners] to settle their obligations to [sic] the mortgagee bank, if any, and to reconvey to the [respondents] clean Title over their property.

d) Ordering [petitioners] jointly and severally to pay [respondents] moral damages in the amount of ₱100,000.00, exemplary damages in the sum of ₱100,000.00 and the sum of ₱50,000.00 as and for attorney's fees and costs.

[Respondents] further pray for such other reliefs and remedies as may be just and equitable in the premises.

Undoubtedly, respondents did not only seek the partition of the property and the delivery of the title, but also the reconveyance of their share which was inadvertently included in petitioners' TCT.

An action for reconveyance is one that seeks to transfer property, wrongfully registered by another, to its rightful and legal owner.[11] Indeed, reconveyance is an action distinct from an action for quieting of title, which is filed 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 for purposes of removing such cloud or to quiet title.[12] However, we find nothing erroneous in the CA's ruling treating respondents' action for reconveyance as an action to quiet title.

In *Mendizabel v. Apao*,[13] we treated a similar action for reconveyance as an action to quiet title, explaining, thus:

> The Court has ruled that the 10-year prescriptive period applies only when the person enforcing the trust is not in possession of the property. If a person claiming to be its owner is in actual possession of the property, the right to seek reconveyance, which in effect seeks to quiet title to the property, does not prescribe. The reason is that the one who is in actual possession of the land claiming to be its owner may wait until his possession is disturbed or his title is attacked before taking steps to vindicate his right. 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.

The ruling was reiterated in *Lasquite v. Victory Hills, Inc.*,[14] *viz.*:

---

[11] *Sps. Alfredo v. Sps. Borras*, 452 Phil. 178, 183 (2003).

[12] Article 476, Civil Code.

[13] G.R. No. 143185, February 20, 2006, 482 SCRA 587, 609.

[14] G.R. No. 175375, June 23, 2009, 590 SCRA 616, 631-632.

An action for reconveyance based on an implied trust prescribes in 10 years. The reference point of the 10-year prescriptive period is the date of registration of the deed or the issuance of the title. The prescriptive period applies only if there is an actual need to reconvey the property as when the plaintiff is not in possession of the property. However, if the plaintiff, as the real owner of the property also remains in possession of the property, the prescriptive period to recover title and possession of the property does not run against him. In such a case, an action for reconveyance, if nonetheless filed, would be in the nature of a suit for quieting of title, an action that is imprescriptible.

Indubitably, the characterization by the CA of respondents' action as in the nature of an action for quieting of title cannot be considered a reversible error.

Petitioners next fault the CA for sustaining respondents' claim of co-ownership. They denied that Celso Quijano is a co-owner of the property. Unfortunately for petitioners, the records speak otherwise.

The *Deed of Reconveyance*[15] executed by Manuel and Romulo explicitly states that:

[W]e acknowledge and recognized the rights, interests and participation of Celso P. Quijano, Filipino, of legal age, married to Mina P. Ney and resident of 1648 Main Street, Paco, Manila, as a co-owner of the one-third (1/3) portion of the said lot wherein his residential house is now constructed at the above-stated address, having paid the corresponding amount over the said 1/3 portion of the property for the acquisition costs but whose name does not appear in the Deed of Sale executed in our favor, thus resulting in the non-conclusion (sic) of his name in the above-stated Transfer Certificate of Title when issued as a co-owner.

NOW, THEREFORE, for and in consideration of the foregoing premises WE, MANUEL P. NEY and ROMULO P. NEY, do hereby transfer and convey unto said Spouses Celso P. Quijano and MINA P. NEY their one-third (1/3) portion share of the aforedescribed (sic) parcel of land where their residential house is now situated at

[15] Exhibit "D", Folder of Exhibits.

their above-given address with an area of forty (40) square meters more or less by virtue of this Deed of Reconveyance.

Petitioners never denied the due execution of the *Deed of Reconveyance*. In fact they admitted that the signatures appearing therein are theirs.[16] The CA cannot, therefore, be faulted for declaring respondents as co-owners of the subject property because it merely confirmed and enforced the *Deed of Reconveyance* voluntarily executed by petitioners in favor of respondents.

As aptly pronounced by the CA:

> [T]he Deed of Reconveyance, duly signed by [petitioners] themselves, put to rest the focal issue between the parties. There is no denying that it outweighs the evidence relied upon by [petitioners] despite the fact that they have the transfer certificate of title over the entire subject lot. It is settled that it is not the certificate of title that vests ownership. It merely evidences such title. x x x[17]

In a number of cases, the Court has ordered reconveyance of property to the true owner or to one with a better right, where the property had been erroneously or fraudulently titled in another person's name. After all, the Torrens system was not designed to shield and protect one who had committed fraud or misrepresentation and thus holds title in bad faith.[18] Thus, the CA acted correctly in rendering the challenged decision.

WHEREFORE, the petition is *DENIED*. The assailed Decision of the Court of Appeals in CA-G.R. CV No. 86047 is *AFFIRMED*. Cost against petitioners.

SO ORDERED.

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

---

[16] TSN, February 4, 2003, pp. 4-5.

[17] *Rollo,* p. 29.

[18] *Mendezabel v. Apao, supra* note 13, at 607.

SECOND DIVISION

[A.M. No. RTJ-08-2139. August 6, 2010]

MICHAEL B. BELEN, *complainant, vs.* **JUDGE MEDEL ARNALDO B. BELEN, Regional Trial Court, Calamba City, Branch 36,** *respondent.*

SYLLABUS

1. LEGAL ETHICS; JUDGES; USE OF LETTERHEAD TO PROMOTE PERSONAL INTEREST IS VIOLATIVE OF THE NEW CODE OF JUDICIAL CONDUCT. — Respondent judge wrote letters to government authorities and employees to secure public information regarding complainant's piggery and poultry business; to inform addressees of the laws allegedly being violated by complainant; and to remind the addressees of their duties as government officials or employees and warn them of the possible legal effects of neglect of public duties. In writing these letters, respondent judge's use of his personal stationery with letterhead indicating that he is the Presiding Judge of RTC of Calamba City, Branch 36, and stating that the letter was "from [his] chambers," clearly manifests that respondent judge was trying to use the prestige of his office to influence said government officials and employees, and to achieve with prompt and ease the purpose for which those letters were written. In other words, respondent judge used said letterhead to promote his personal interest. This is violative of Section 4 of Canon 1 and Section 1 of Canon 4 of the New Code of Judicial Conduct for the Philippine Judiciary.

2. ID.; ID.; ID.; VIOLATION OF SUPREME COURT RULES CONSTITUTES A LESS SERIOUS CHARGE; PENALTY. — Section 11(B), in relation to Section 9(4) of Rule 140, as amended by A.M. No. 01-8-10-SC, provides that violation of Supreme Court rules constitutes a less-serious charge punishable by any of the following sanctions: 1. Suspension from office without salary and other benefits for not less than one (1) nor more than three (3) months; or 2. A fine of more than ₱10,000.00 but not exceeding ₱20,000.00. We agree with the recommendation of the investigating justice and the OCA that respondent judge, for his transgression, be meted a penalty

of fine amounting to ₱11,000, with a stern warning that a repetition of the same or similar act shall be dealt with more severely.

D E C I S I O N

CARPIO, *J.*:

The Case

This is an administrative complaint for grave abuse of authority and conduct unbecoming a judge filed by Michael B. Belen against Judge Medel Arnaldo B. Belen, Presiding Judge of the Regional Trial Court (RTC) of Calamba City, Branch 36.

The Facts

Complainant Michael B. Belen filed a Verified Complaint dated 7 March 2001 with the Office of the Court Administrator (OCA) of the Supreme Court, charging Judge Medel Arnaldo B. Belen with grave abuse of authority and conduct unbecoming a judge. According to complainant,[1] sometime in March 2004, respondent judge filed a case for Estafa against complainant's father, Nezer D. Belen, but the same was dismissed for lack of probable cause by Assistant City Prosecutor Ma. Victoria Sunega-Lagman in a Resolution dated 28 July 2004. Respondent judge filed an Omnibus Motion (For Reconsideration and Disqualif[ication]) before the Office of the City Prosecutor of San Pablo City, alleging, *inter alia*, that Sunega-Lagman was always absent during the hearings in the preliminary investigation in the estafa case. Respondent judge likewise filed a complaint for disciplinary action against Sunega-Lagman before the Integrated Bar of the Philippines Commission on Bar Discipline, docketed as CBD Case No. 06-1700. To refute the allegations of respondent judge against Sunega-Lagman, complainant executed an Affidavit dated 19 May 2006, which was submitted by Sunega-Lagman as evidence in the CBD case. Complainant's Affidavit stated that the allegations of respondent judge against

[1] *Rollo*, pp. 5 and 10.

Sunega-Lagman were "false"; that Sunega-Lagman was present during the preliminary investigation hearings dated 14, 21 and 29 April 2004, and that she was absent only once, on 6 May 2004, when she was already on maternity leave; and that it was respondent judge who was absent during the hearings.[2]

Thereafter, respondent judge allegedly started harassing and threatening complainant with the filing of several cases against the latter. On 11 January 2007, at 10:00 in the morning, complainant received a mobile phone text message from the caretaker of his piggery, informing him that respondent judge arrived and was taking pictures of the piggery. Complainant rushed to the area and saw respondent judge, accompanied by the Municipal Agriculturist and Sanitary Inspector and the *Barangay* Chairman, inspecting complainant's piggery.

Respondent judge also wrote several letters addressed to certain local government authorities and employees, requesting information on complainant's piggery and poultry business; advising them of the alleged violations by the complainant of the National Building Code and certain environmental laws; and reminding the local government authorities of their duty to forestall the issuance of municipal clearance and license to complainant's business establishment. We enumerate these letters below.[3]

1. Letter dated 15 January 2007, addressed to the Municipal Engineer of Alaminos, Laguna, requesting confirmation of the issuance by said office of construction, building and occupancy permits to "Michael B. Belen's Piggery and Poultry in Brgy. IV and House in Sta. Rosa," and stating that non-compliance with, or violation of the National Building Code is a criminal offense;[4]

---

[2] Complainant alleged that respondent judge personally attended only the 21 April 2004 hearing, and sent a representative during the 29 April 2004 hearing; *id.* at 10.

[3] *Id.* at 12-18 and 20-21; also enumerated in the Report and Recommendation of Investigating Justice Ramon R. Garcia.

[4] *Id.* at 12, Annex C to the Verified Complaint.

2. A follow-up letter dated 23 January 2007, addressed to the Municipal Engineer of Alaminos, Laguna, referring to respondent judge's previous letter dated 15 January 2007; citing provisions of the National Building Code on Building Use Affecting Health and Safety (Sec. 1.01.05), Building Permits (Sec. 1.02.03), and Inspection and Certificates of Occupancy (Sec. 1.02.05); and stating: "These statutory provisions are mandatory and any violation thereof is subject to appropriate legal sanctions. Thus, in accordance with the National Building Code and Code of Conduct of Public Officers that mandates action and reply to any complaint within 15 days from receipt, may I know your official action and reply on the matter";[5]

3. Letter dated 15 January 2007, addressed to Mayor Samuel Bueser of Alaminos, Laguna, expressing his appreciation of the "immediate action" taken by the mayor in relation to the inspection of the piggery and poultry business establishment of complainant; enumerating the environmental laws violated by the complainant, *i.e.*, Sec. 8 of Presidential Decree (PD) No. 984, Section 3 of PD 953, Section 48 of Republic Act (RA) No. 9003, Section 49 of PD 1152, and Section 27 of Resolution No. 33, Series of 1996; stating that "With the violations of the owner and his farm workers, appropriate criminal actions shall be instituted against them"; and reminding the mayor that municipal officers are mandated by environmental laws not to issue municipal clearance and permits, and to close business enterprises within its jurisdiction, specifically complainant's piggery and poultry, violating environmental laws;[6]

4. A follow-up letter dated 23 January 2007, addressed to Mayor Samuel Bueser of Alaminos, Laguna, inquiring on the official action taken by the mayor in relation to respondent judge's earlier letters and complainant's alleged violation of environmental laws, and emphasizing the responsibility of the mayor to withhold clearances and permits from business establishments violating environmental laws;[7]

5. Letter dated 13 February 2007, addressed to Ms. Gladys D. Apostol, the Municipal Agriculturist of Alaminos, Laguna, requesting a copy of the Inspection report dated 11 January 2007;[8] and

---

[5] *Id.* at 13-14, Annex D to the Verified Complaint.

[6] *Id.* at 15-17, Annex E to the Verified Complaint.

[7] *Id.* at 18, Annex F to the Verified Complaint.

[8] *Id.* at 20, Annex H to the Verified Complaint.

6. Letter dated 13 February 2007, addressed to the Municipal Engineer of Alaminos, Laguna, requesting for prompt action on respondent judge's previous letters dated 15 and 23 January 2007, with a warning that the failure of the said office to reply to respondent judge's inquiries will compel the latter to file administrative and criminal complaints before the Office of the Ombudsman pursuant to Section 5 of RA 6713, otherwise known as the Code of Conduct and Ethical Standards for Public Officials and Employees.[9]

All of the letters enumerated above bore a letterhead indicating respondent judge's official government position, *viz*:

From the Chamber of:

Medel Arnaldo B. Belen
Presiding Judge, RTC-Branch 36
4th Judicial region, Calamba City

Respondent judge also filed a criminal case against complainant for violations of Section 8 of Presidential Decree No. 984 and Section 3 of Presidential Decree No. 953, docketed as I.S. No. 07-246/07-247, before the Office of the Provincial Prosecutor of Laguna.[10]

In his Comment,[11] respondent judge alleged that he never neglected his duties as a judge; that as a landowner and citizen of the Republic of the Philippines, he had the right to file criminal complaints against violators of environmental laws to protect the environment; and that he had the right, under the Constitution and Republic Act No. 6713, to secure public information from government offices, especially about the complainant who was violating numerous laws. Respondent judge also claimed that he did not use the court's official stationery or letterhead in his correspondence with government authorities and employees of Alaminos, Laguna. He emphasized that the court's official letterhead should appear as:

---

[9] *Id.* at 21, Annex I to the Verified Complaint.

[10] *Id.* at 23, Annex K to the Verified Complaint.

[11] Dated 3 August 2007; *id.* at 28-34.

REPUBLIC OF THE PHILIPPINES
REGIONAL TRIAL COURT
4TH JUDICIAL REGION
BRANCH 36
CALAMBA CITY

Respondent judge claimed that he used his personal stationery or letterhead, and signed the same in his private, not judicial, capacity.

The OCA's Report and Recommendation

On 11 March 2008, the OCA submitted its Report[12] finding respondent judge guilty of violating Section 4, Canon 1 of the New Code of Judicial Conduct for the Philippine Judiciary. The OCA stated that while respondent judge did not actually use the court's official letterhead but his own personal stationery, his letters indicated that he is the presiding judge of an RTC in Calamba City, and even stated that his letters were "from the chambers of" the presiding judge. It is apparent from the acts of respondent judge that he intended to use the prestige of his judicial position to promote his personal interest.

The OCA recommended that (a) the administrative case against respondent judge be re-docketed as a regular administrative matter; and (b) that respondent Judge Medel Arnaldo B. Belen be fined in the amount of ₱11,000 for violation of Section 4, Canon 1 of the New Code of Judicial Conduct for the Philippine Judiciary with a stern warning that a repetition of the same or similar act shall be dealt with more severely.[13]

In a Resolution dated 13 August 2008, the Supreme Court resolved, among others, to re-docket the administrative complaint against respondent judge as a regular administrative matter.[14] Subsequently, the OCA, in compliance with the Court's Resolution,[15] designated Court of Appeals Associate Justice

---

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

[13] *Id.* at 4.

[14] *Id.* at 216.

[15] Dated 29 June 2009; *id*. at 222.

Ramon R. Garcia as the investigating justice of the administrative case.

The Findings and Recommendation of the Investigating Justice

Investigating Justice Ramon R. Garcia found respondent judge to have violated Section 4 of Canon 1 and Section 1 of Canon 4 of the New Code of Judicial Conduct for the Philippine Judiciary when he used a letterhead indicating his position as the Presiding Judge of the RTC of Calamba City, Branch 36. According to Justice Garcia, while the computer-printed letterhead of respondent judge is not the official letterhead of the RTC of Calamba City, Branch 36, the use of the same reflects respondent judge's designation and position in the judiciary, and indicates that the letters came from the "chambers" of the presiding judge of Branch 36. Undoubtedly, respondent judge was trying to use the prestige of his judicial office for his own personal interest.

Justice Garcia agreed with the OCA in recommending the imposition of the administrative penalty of fine in the amount of ₱11,000 with a stern warning that a repetition of the same or similar act shall be dealt with more severely.

The Court's Ruling

The findings and recommendations of both the Investigating Justice and the OCA are well-taken.

Respondent judge wrote letters to government authorities and employees to secure public information regarding complainant's piggery and poultry business; to inform addressees of the laws allegedly being violated by complainant; and to remind the addressees of their duties as government officials or employees and warn them of the possible legal effects of neglect of public duties. In writing these letters, respondent judge's use of his personal stationery with letterhead indicating that he is the Presiding Judge of RTC of Calamba City, Branch 36, and stating that the letter was "from [his] chambers," clearly manifests that respondent judge was trying to use the prestige of his office to influence said government officials and employees, and to achieve with prompt and ease the purpose for which those letters were

written. In other words, respondent judge used said letterhead to promote his personal interest. This is violative of Section 4 of Canon 1 and Section 1 of Canon 4 of the New Code of Judicial Conduct for the Philippine Judiciary. We quote these sections below:

CANON 1
INDEPENDENCE

x x x x x x x x x

SECTION. 4. Judges shall not allow family, social, or other relationships to influence judicial conduct or judgment. The prestige of judicial office shall not be used or lent to advance the private interests of others, nor convey or permit others to convey the impression that they are in a special position to influence the judge.

CANON 4
PROPRIETY

Propriety and the appearance of propriety are essential to the performance of all the activities of a judge.

SECTION 1. Judges shall avoid impropriety and the appearance of impropriety in all of their activities.

x x x x x x x x x

In *Oktubre v. Velasco*,[16] this Court held that respondent judge's act of sending several letters bearing his sala's letterhead, in connection with an apparent dispute in the administration of the estates of his relatives, clearly showed the judge's intent to use the prestige of his judicial office, and hence, violative of Rule 2.03 of the Code of Judicial Conduct.[17] The Court considered

---

[16] 478 Phil. 803 (2004).

[17] Rule 2.03 of the Code of Judicial Conduct provides: "A judge shall not allow family, social, or other relationships to influence judicial conduct or judgment. The prestige of judicial office shall not be used or lent to advance the private interests of others, nor convey or permit others to convey the impression that they are in a special position to influence the judge."

Note that *A. M. No. 03-05-01-SC*, otherwise known as The New Code of Judicial Conduct for the Philippine Judiciary, promulgated on 27 April 2004, superseded the Canons of Judicial Ethics and the Code of Judicial Conduct. However, in case of deficiency or absence of specific provisions in the New

respondent Judge Velasco's excuse for using his sala's letterhead, *i.e.*, that he wanted to protect the interest of his maternal co-heirs in the subject properties, as flimsy, and emphasized that respondent judge had no business using his sala's letterhead for private matters, as the same should be used only for official correspondence.[18]

Similarly, in *Rosauro v. Kallos*,[19] it was held that respondent judge's use of his sala's official stationery in his private correspondence with complainant and his counsel constitutes violation of Rule 2.03 of the Code of Judicial Conduct. The Court concluded that: "By using his sala's stationery other than for official purposes, respondent Judge evidently used the prestige of his office to benefit Guerrero (and himself) in violation of Rule 2.03 of the Code."[20]

In *Ladignon v. Garong*,[21] respondent judge's act of using the official letterhead of his court and signing the same using the word "judge" in his letter-complaint to the First United Methodist Church in Michigan, USA, was held to be violative of Canon 2 of the Code of Judicial Ethics and Rule 2.03 of the Code of Judicial Conduct. The Court held, thus:

> We agree with the Report that what is involved here is the rule that "Judges shall avoid impropriety and the appearance of impropriety in all of their activities." (Canon 4, Section 1, New Code of Judicial Conduct) Indeed, members of the Judiciary should be beyond reproach and suspicion in their conduct, and should be free from any appearance of impropriety in the discharge of their official duties as well as in their personal behavior and everyday life. No position exacts a greater demand for moral righteousness and uprightness on the individual than a seat in the Judiciary. x x x
>
> x x x x x x x x x

Code, the Canons of Judicial Ethics and the Code of Judicial Conduct shall be applicable in a suppletory character.

[18] *Oktubre v. Velasco*, *supra* at 815-816.

[19] A.M. No. RTJ-03-1796, 10 February 2006, 482 SCRA 149.

[20] *Id.* at 160.

[21] A.M. No. MTJ-08-172, 20 August 2008, 562 SCRA 365.

x x x As the Report stated, [repondent judge's] use of the letterhead and his designation as a Judge in a situation of potential dispute gave "the appearance that there is an implied or assured consent of the court to his cause." This circumstance, to our mind, was what marked the respondent Judge's use of his letterhead and title as improper. In other words, the respondent Judge's transgression was not *per se* in the use of the letterhead, but in not being very careful and discerning in considering the circumstances surrounding the use of his letterhead and his title.

x x x x x x x x x

x x x the use of a letterhead should not be considered independently of the surrounding circumstances of the use — the underlying reason that marks the use with the element of "impropriety" or "appearance of impropriety." In the present case, the respondent Judge crossed the line of propriety when he used his letterhead to report a complaint involving an alleged violation of church rules and, possibly, of Philippine laws. Coming from a judge with the letter addressed to a foreign reader, such report could indeed have conveyed the impression of official recognition or notice of the reported violation.

The same problem that the use of letterhead poses, occurs in the use of the title of "Judge" or "Justice" in the correspondence of a member of the Judiciary. While the use of the title is an official designation as well as an honor that an incumbent has earned, a line still has to be drawn based on the circumstances of the use of the appellation. While the title can be used for social and other identification purposes, it cannot be used with the intent to use the prestige of his judicial office to gainfully advance his personal, family or other pecuniary interests. Nor can the prestige of a judicial office be used or lent to advance the private interests of others, or to convey or permit others to convey the impression that they are in a special position to influence the judge. (Canon 2, Rule 2.03 of the Code of Judicial Conduct) To do any of these is to cross into the prohibited field of impropriety.[22]

In view of the foregoing, we find respondent judge guilty of violation of Section 4 of Canon 1 and Section 1 of Canon 4 of the New Code of Judicial Conduct for the Philippine Judiciary.

---

[22] *Id.* at 369-371.

Section 11(B), in relation to Section 9(4) of Rule 140, as amended by A.M. No. 01-8-10-SC,[23] provides that violation of Supreme Court rules constitutes a less-serious charge punishable by any of the following sanctions:

1. Suspension from office without salary and other benefits for not less than one (1) nor more than three (3) months; or

2. A fine of more than ₱10,000.00 but not exceeding ₱20,000.00.

We agree with the recommendation of the investigating justice and the OCA that respondent judge, for his transgression, be meted a penalty of fine amounting to ₱11,000, with a stern warning that a repetition of the same or similar act shall be dealt with more severely.

WHEREFORE, we find Judge Medel Arnaldo B. Belen, Presiding Judge of the Regional Trial Court of Calamba City, Branch 36, *GUILTY* of violation of Section 4 of Canon 1 and Section 1 of Canon 4 of the New Code of Judicial Conduct for the Philippine Judiciary, and *FINE* him ₱11,000, with a stern warning that a repetition of the same or similar act shall be dealt with more severely.

SO ORDERED.

Nachura, Peralta, Abad, and *Mendoza, JJ.,* concur.

[23] Effective on 1 October 2001.

SECOND DIVISION

[A.M. No. RTJ-10-2242. August 6, 2010]
[Formerly OCA IPI No. 09-3149-RTJ]

ATTY. RAUL L. CORREA, *complainant, vs.* **JUDGE MEDEL ARNALDO B. BELEN, REGIONAL TRIAL COURT, BRANCH 36, CALAMBA CITY, LAGUNA,** *respondent.*

SYLLABUS

1. JUDICIAL ETHICS; JUDGES; SHOULD BE MODELS OF PROPRIETY AT ALL TIMES IN THE DISCHARGE OF THEIR DUTIES. — [T]he New Code of Judicial Conduct for the Philippine Judiciary exhorts members of the judiciary, in the discharge of their duties, to be models of propriety at all times. Canon 4 mandates — "*CANON 4* **PROPRIETY** Propriety and the appearance of propriety are essential to the performance of all the activities of a judge. SECTION 1. Judges shall avoid impropriety and the appearance of impropriety in all of their activities. x x x SEC. 6. Judges, like any other citizen, are entitled to freedom of expression, belief, association and assembly, but in exercising such rights, they shall always conduct themselves in such a manner as to preserve the dignity of the judicial office and the impartiality and independence of the judiciary."

2. ID.; ID.; SHOULD ENSURE EQUALITY OF TREATMENT TO ALL BEFORE THE COURTS. — The [New] Code [of Judicial Conduct for the Philippine Judiciary] also calls upon judges to ensure equality of treatment to all before the courts. More specifically, Section 3, Canon 5 on Equality provides — "SEC. 3. Judges shall carry out judicial duties with appropriate consideration for all persons, such as the parties, witnesses, lawyers, court staff and judicial colleagues, without differentiation on any irrelevant ground, immaterial to the proper performance of such duties."

3. ID.; ID.; MUST CONSISTENTLY BE TEMPERATE IN WORDS AND IN ACTIONS; CASE AT BAR. — [W]e hold that respondent Judge Belen should be more circumspect in his language in the discharge of his duties. A judge is the visible representation of the law. Thus, he must behave, at all times,

in such a manner that his conduct, official or otherwise, can withstand the most searching public scrutiny. The ethical principles and sense of propriety of a judge are essential to the preservation of the people's faith in the judicial system. A judge must consistently be temperate in words and in actions. Respondent Judge Belen's insulting statements, tending to project complainant's ignorance of the laws and procedure, coming from his inconsiderate belief that the latter mishandled the cause of his client is obviously and clearly insensitive, distasteful, and inexcusable. Such abuse of power and authority could only invite disrespect from counsels and from the public. Patience is one virtue that members of the bench should practice at all times, and courtesy to everyone is always called for.

4. ID.; ID.; CONDUCT UNBECOMING OF A JUDGE; CLASSIFIED AS A LIGHT OFFENSE; PENALTY. — Conduct unbecoming of a judge is classified as a light offense under Section 10, Rule 140 of the Revised Rules of Court, penalized under Section 11 (c) thereof by any of the following: (1) a Fine of not less than ₱1,000.00 but not exceeding ₱10,000.00; (2) Censure; (3) Reprimand; and (4) Admonition with warning. Inasmuch as this is not respondent Judge Belen's first offense, the penalty of fine of ₱10,000.00 is deemed appropriate.

R E S O L U T I O N

NACHURA, *J.*:

Before us is a Verified-Complaint dated February 20, 2009 filed by complainant Atty. Raul L. Correa charging respondent Judge Medel Arnaldo B. Belen of the Regional Trial Court, Branch 36, Calamba City, Laguna of Misconduct.

Complainant narrated that he was one of the Co-Administrators appointed by the court in Special Proceedings No. 660-01C, entitled "*Intestate Estate of Hector Tan*." He revealed that during the hearing of the case, respondent Judge Belen disagreed with various items in the Administrator's Report, including the audited Financial Report covering the said estate, and immediately ruled that they should be disallowed. Complainant added that respondent

Judge Belen scolded their accountant, branded her as an incompetent, and threatened to sue her before the regulatory body overseeing all certified public accountants.

Complainant further claimed that, in the course of the proceedings, he was asked by respondent Judge Belen to stand up while the latter dictated his order on their Administrator's Report. Respondent Judge Belen even rebuked him for some mistakes in managing the affairs of the estate, adding that it is regrettable **"because Atty. Raul Correa is a U.P. Law Graduate and a Bar Topnotcher at that."** Complainant regrets the actuations and statements of respondent Judge Belen, especially because the remark was uncalled for, a left-handed compliment, and a grave insult to his Alma Mater. Worse, respondent Judge Belen ousted complainant as co-administrator of the estate of Hector Tan.

On June 18, 2008, respondent Judge Belen issued an Order citing complainant for indirect contempt, allegedly with administrator Rose Ang Tee, for surreptitiously and unlawfully withdrawing from and emptying the account of the estate of Hector Tan. The June 18, 2008 Order contained snide remarks, *viz* —

> x x x. The action of Rose Tee and Atty. Raul Correa is contumacious and direct challenge to lawful orders, and judicial process of this [c]ourt and malicious assault to the orderly administration of justice, more specifically abhorrent the act and deed of **Atty. Raul Correa, a U.P. Law alumnus and Bar Topnotcher**, who as a lawyer knows very well and fully understands that such action violates his oath of office which the Court cannot countenance. x x x

Lastly, complainant insisted that he should not have been cited for indirect contempt because he had fully explained to the court that he had done his part as co-administrator in good faith, and that, through his efforts, the estate was able to meet the deadline for the latest Tax Amnesty Program of the government, consequently saving the estate the amount of no less than ₱35 Million.

In his Comment dated August 18, 2009, respondent Judge Belen argued that a judge, having the heavy burden to always

conduct himself in accordance with the ethical tenets of honesty, probity and integrity, is duty bound to remind counsel of their duties to the court, to their clients, to the adverse party, and to the opposing counsel.

Respondent Judge Belen claimed that the conduct of complainant in handling the settlement of the estate of Hector Tan violated and breached the tenets and standards of the legal profession and of the Lawyer's Oath. He alleged that, despite the clear tenor of a lawyer-client relationship, complainant associated himself as corresponding counsel and member of the Ongkiko Law Office, the counsel of the opposing party in the settlement proceedings.

Respondent Judge Belen further alleged that complainant, in connivance with Rose Ang Tee, surreptitiously released millions of pesos for the now deceased Purification Tee Tan and to themselves, in clear violation of complainant's legal and fiduciary relationship and responsibilities as court-appointed co-administrator.

Both the Verified-Complaint and the Comment were referred to the Office of the Court Administrator (OCA) for evaluation, report, and recommendation.

In its Report dated March 10, 2010, the OCA found respondent Judge Belen guilty of conduct unbecoming of a judge for his use of intemperate language and inappropriate actions in dealing with counsels, such as complainant, appearing in his sala. The OCA said that respondent Judge Belen should have just ruled on the motion filed by complainant instead of opting for a conceited display of arrogance. The OCA also noted that the incidents subject of this administrative matter were not the first time that respondent Judge Belen had uttered intemperate remarks towards lawyers appearing before him. It noted that in *Mane v. Belen*,[1] the Court found respondent Judge Belen guilty of conduct unbecoming of a judge and was reprimanded for engaging in a supercilious legal and personal discourse.

---

[1] A.M. No. RTJ-08-2119, June 30, 2008; 556 SCRA 555.

Based on its evaluation, the OCA recommended that (a) the administrative case against respondent Judge Belen be re-docketed as a regular administrative matter; and (b) respondent Judge Belen be fined in the amount of ₱10,000.00 for conduct unbecoming of a judge, with a stern warning that a repetition of the same or similar act shall be dealt with more severely.

The findings and the recommendations of the OCA are well taken and, thus, should be upheld.

Indeed, the New Code of Judicial Conduct for the Philippine Judiciary exhorts members of the judiciary, in the discharge of their duties, to be models of propriety at all times. Canon 4 mandates —

CANON 4
PROPRIETY

Propriety and the appearance of propriety are essential to the performance of all the activities of a judge.

SECTION 1. Judges shall avoid impropriety and the appearance of impropriety in all of their activities.

x x x x x x x x x

SEC. 6. Judges, like any other citizen, are entitled to freedom of expression, belief, association and assembly, but in exercising such rights, they shall always conduct themselves in such a manner as to preserve the dignity of the judicial office and the impartiality and independence of the judiciary.

The Code also calls upon judges to ensure equality of treatment to all before the courts. More specifically, Section 3, Canon 5 on Equality provides —

SEC. 3. Judges shall carry out judicial duties with appropriate consideration for all persons, such as the parties, witnesses, lawyers, court staff and judicial colleagues, without differentiation on any irrelevant ground, immaterial to the proper performance of such duties.

We join the OCA in noting that the incidents narrated by complainant were never denied by respondent Judge Belen, who

merely offered his justification and asserted counter accusations against complainant.

Verily, we hold that respondent Judge Belen should be more circumspect in his language in the discharge of his duties. A judge is the visible representation of the law. Thus, he must behave, at all times, in such a manner that his conduct, official or otherwise, can withstand the most searching public scrutiny. The ethical principles and sense of propriety of a judge are essential to the preservation of the people's faith in the judicial system.[2]

A judge must consistently be temperate in words and in actions. Respondent Judge Belen's insulting statements, tending to project complainant's ignorance of the laws and procedure, coming from his inconsiderate belief that the latter mishandled the cause of his client is obviously and clearly insensitive, distasteful, and inexcusable. Such abuse of power and authority could only invite disrespect from counsels and from the public. Patience is one virtue that members of the bench should practice at all times, and courtesy to everyone is always called for.

Conduct unbecoming of a judge is classified as a light offense under Section 10, Rule 140 of the Revised Rules of Court, penalized under Section 11 (c) thereof by any of the following: (1) a Fine of not less than ₱1,000.00 but not exceeding ₱10,000.00; (2) Censure; (3) Reprimand; and (4) Admonition with warning. Inasmuch as this is not respondent Judge Belen's first offense, the penalty of fine of ₱10,000.00 is deemed appropriate.

WHEREFORE, we find Judge Medel Arnaldo B. Belen, Presiding Judge of the Regional Trial Court of Calamba City, Branch 36, *GUILTY* of Conduct Unbecoming of a Judge, and *FINE* him ₱10,000.00, with a stern warning that a repetition of the same or similar act shall be dealt with more severely.

SO ORDERED.

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

---

[2] *Velasco v. Angeles*, A.M. No. RTC-05-1908, August 15, 2007; 530 SCRA 204, 233.

THIRD DIVISION

[A.M. No. RTJ-09-2211. August 9, 2010]
(Formerly OCA I.P.I. No. 07-2752-RTJ)

EVANGELINE VERA CRUZ, *complainant, vs.* **JUDGE WINSTON M. VILLEGAS,** *respondent.*

SYLLABUS

1. **REMEDIAL LAW; EVIDENCE; CREDIBILITY; CHARGES BASED ON MERE SUSPICION AND SPECULATION CANNOT BE GIVEN CREDENCE. —** The charges of violation of the Code of Judicial Conduct and fraternizing with litigants must fail. As the OCA correctly concluded, Evangeline failed to adduce substantial evidence to support Judge Villegas' guilt. Charges based on mere suspicion and speculation cannot be given credence.

2. **JUDICIAL ETHICS; JUDGES; UNDUE DELAY IN RENDERING A DECISION OR ORDER; FAILURE TO DECIDE A CASE OR RESOLVE A MOTION WITHIN THE REGLEMENTARY PERIOD, A CASE OF. —** Judge Villegas is liable for undue delay in rendering a decision or order. x x x Judge Villegas had fallen short of the standards of efficiency and promptness of action required of an administrator of justice. He had become deaf, in this particular case, to the age-old maxim "justice delayed is justice denied." As we stressed in an earlier administrative matter, "Failure to decide a case or resolve a motion within the reglementary period constitutes gross inefficiency and warrants the imposition of administrative sanction against the erring magistrate. The delay in resolving motions and incidents pending before a judge within the reglementary period of ninety (90) days fixed by the Constitution and the law is not excusable."

3. **ID.; ID.; UNDUE DELAY IN RENDERING A DECISION OR ORDER, OR IN TRANSMITTING THE RECORDS OF A CASE; PENALTY. —** Undue delay in rendering a decision or order, or in transmitting the records of a case is classified as a less serious charge. If the respondent is found guilty of a less serious charge, any of the following sanctions

may be imposed: (1) suspension from office without salary and other benefits for not less than one (1) month nor more than three (3) months; or (2) a fine of more than ₱10,000.00 but not exceeding ₱20,000.00.

4. ID.; ID.; ID.; ID.; SHALL BE DETERMINED BY THE SURROUNDING CIRCUMSTANCES OF THE CASE; CASE AT BAR. — In determining the penalty to be imposed, we take into account the surrounding circumstances of the case. In this case, we have to consider that this is Judge Villegas' first offense of this nature. Thus, a fine, rather than the heavier penalty of suspension, is more appropriate. The amount of the fine, on the other hand, has to take into account the extent of the delay. The complainant's case — Civil Case No. 192 — was still on pre-trial as of February 7, 2008, or almost five years since it was filed on March 6, 2003. This delay cannot but be substantial delay given the time that has passed and the status of the case. Thus, a fine in the midrange of the imposable penalty, or ₱15,000.00 is in order.

D E C I S I O N

BRION, *J.*:

We resolve in this Decision the verified complaint, dated November 26, 2007,[1] of Evangeline Vera Cruz against Judge Winston M. Villegas, Regional Trial Court (*RTC*), Branch 43, Tanjay City, Negros Oriental. Evangeline charged Judge Villegas with undue delay in rendering a decision or order; for fraternizing with litigants with a pending case in his court in relation to Civil Case No. 192 (entitled *Evangeline Vera Cruz v. Lorenzo Vera Cruz, et al.*, for declaration of nullity of marriage); and, for violation of the Code of Judicial Conduct.

Evangeline alleged that on September 11, 2007, she went to Dumaguete City to verify the status of the annulment of marriage case she had filed; she wanted to know the reason why it had not moved for more than a year. She went to the court to look at the case folder, but Atty. Jaime Jasmin, the clerk of court,

[1] *Rollo*, pp. 5-7.

could not find it. After a while, he said that the case record is in the house of Judge Villegas and he is willing to accompany her to the place. When they reached the judge's residence, she got the shock of her life when she discovered that Judge Villegas and Dra. Carmelita Vera Cruz, co-defendant in the civil case, are practically neighbors, living in the same *barangay*. She explained that only the Archbishop's palace separates Judge Villegas' house and that of Carmelita; Carmelita's house is situated in a compound across the street fronting the Archbishop's palace; whereas, Judge Villegas' residence is at the back of the palace.

Evangeline further alleged that although she did not want to speculate on the relationship between the judge and Carmelita, she hated to think that something fishy was going on; the delay in the disposition of the case was to Carmelita's benefit and at her expense, a situation too much for her to bear.

On January 31, 2008, Evangeline filed a petition for change of venue of the case[2] — from the sala of Judge Villegas in Dumaguete City to Manila — claiming that she is a stranger to Dumaguete City as she works and lives in Makati City. She expressed apprehension on the outcome of Civil Case No. 192, uncertain that she would receive a fair hearing from Judge Villegas after she filed an administrative complaint against him. She lamented the slow pace the case was taking, pointing out that she filed it on March 6, 2003, and for almost five (5) years since, it was still on pre-trial; it had not moved for more than a year, the last hearing having been held on July 6, 2006.[3]

As required by the Office of the Court Administrator (*OCA*), Judge Villegas submitted, on March 14, 2008, his comment (dated January 31, 2008)[4] on the complaint. Judge Villegas explained that Evangeline did not disclose in the administrative complaint, as well as in Civil Case No. 192, that her marriage

---

[2] *Id.* at 19-20.

[3] *Id.* at 30; Petition, Annex "C".

[4] *Id.* at 45-49.

with Lorenzo Vera Cruz on June 17, 1981 was declared null and void, in a decision dated March 24, 1986, by the RTC, Branch 94, Quezon City,[5] and it became final and executory on June 19, 1986.[6] Lorenzo, the defendant in Civil Case No. 192, moved to dismiss the case on the ground that Evangeline did not present a cause of action in view of the final and executory decision of the Quezon City RTC, Branch 94. Nonetheless, he had already denied Lorenzo's motion to dismiss as a prohibited pleading.[7]

Judge Villegas denied that he and Carmelita are neighbors or that he is fraternizing with her; his house is about 250 meters from Carmelita's house.[8] On the charge of delay in the disposition of the case, Judge Villegas reasoned out that he has to hear no fewer than ten (10) to twelve (12) cases a day with very little time and energy for him to attend to pending incidents, not to mention that the performance of his duties was adversely affected when the power service in the court was cut off due to nonpayment of electric bills. He expressed the commitment to dispose of the case after the hearing scheduled in his order dated December 27, 2007.[9]

In her reply filed on January 28, 2008,[10] Evangeline insisted that the houses of Judge Villegas and Carmelita are proximate to each other, their residences being a few minutes walking distance from one to the other. She bewailed being kept in the dark on the reasons for the delay in the disposition of her case; despite her long distance calls from Makati to inquire about the case, she only got negative answers from the clerk of court. She denied that her marriage with Lorenzo had been annulled, as certified by the Civil Registry of Manila[11] and the National

---

[5] *Id.* at 55-56; Comment, Annex "A".

[6] *Id.* at 57; Comment, Annex "B".

[7] *Id.* at 68-72; Comment, Annex "G".

[8] *Id.* at 60; Comment, Annex "D".

[9] *Id.* at 68-72; Comment, Annex "G".

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

[11] *Id.* at 78.

Statistics Office (*NSO*).[12] The purported annulment had been fabricated and this was the reason why no annulment was registered with the Civil Registry of Manila and with the NSO. She claimed that she had not been given a fair treatment by Judge Villegas. She pleaded that her case be released from the sala of Judge Villegas and be transferred to Manila.

On April 28, 2008, Evangeline filed a Manifestation[13] claiming that in February 2008, when she asked for a copy of her marriage contract from the NSO, she discovered to her surprise that the declaration of nullity of her marriage with Lorenzo, pursuant to the decision of Judge Filemon H. Mendoza, RTC, National Capital Region, Branch XCIV, Quezon City, rendered on March 24, 1986, had been annotated on the copy she obtained.[14] With the declaration of nullity having been registered only on November 15, 2006, or twenty (20) years after the fact, Evangeline could not help but speculate that there had been connivance in the belated submission to the NSO, which happened while Civil Case No. 192 was pending and hardly moving in the sala of Judge Villegas. She pointed to Judge Villegas himself, Lorenzo and his lawyer, Atty. Ramon Orfanel, and her former counsel, Atty. Richard Enojo, as the possible actors in the connivance.

The OCA Report

In a Memorandum dated October 1, 2009,[15] the OCA advised the Court that it found Judge Villegas guilty of undue delay in resolving Lorenzo's Motion to Dismiss and failing to make progress in the case beyond the pre-trial stage, after almost five (5) years since it was filed in 2003. It recommended that Judge Villegas be fined ₱5,000.00, the offense charged being his first.

The OCA, however, recommended that the charges of violation of the Code of Judicial Conduct and fraternizing with a litigant be dismissed for lack of evidence.

---

[12] *Id.* at 79.

[13] *Id.* at 86-88.

[14] *Id.* at 90; Manifestation, Annex "B", "Remarks."

[15] *Id.* at 140-143.

The OCA further recommended that Evangeline's petition for change of venue be denied; the reasons she advanced were not sufficiently compelling and weighty to justify a change of venue.

On November 23, 2009, at the OCA's suggestion, the Court resolved to:

1. re-docket the present administrative complaint as a regular administrative matter against Judge Villegas;
2. require the parties to manifest whether they were willing to submit the matter for resolution on the basis of the pleadings and the records; and
3. deny the request for change of venue for lack of merit.[16]

Evangeline and Judge Villegas submitted the case for resolution on February 4, 2010[17] and March 16, 2010,[18] respectively.

The Court's Ruling

Except for the sanction to be imposed on Judge Villegas, we find the OCA recommendations in order.

First. The charges of violation of the Code of Judicial Conduct and fraternizing with litigants must fail. As the OCA correctly concluded, Evangeline failed to adduce substantial evidence to support Judge Villegas' guilt. Charges based on mere suspicion and speculation cannot be given credence.[19]

Second. Judge Villegas is liable for undue delay in rendering a decision or order. The following discussion from the OCA report[20] clearly establishes the judge's guilt:

---

[16] *Id.* at 144.

[17] *Id.* at 147.

[18] *Id.* at 149.

[19] *Rafael Rondina, et al. v. Associate Justice Eloy R. Bello, Jr., CA,* 501 Phil. 319 (2005).

[20] *Id.* at 141-142; OCA Memorandum, pp. 2-3.

Records show that Civil Case No. 192 was filed on March 6, 2003. The complainant alleges that their last hearing was held on July 6, 2006 as evidenced by the Order issued by the respondent judge granting, among other things, her request to secure the services of another lawyer and to file the corresponding opposition to the Motion to Dismiss filed by Lorenzo Vera Cruz. It was only on December 27, 2007, or after more than one (1) year, that the respondent judge issued another Order denying the Motion to Dismiss and setting the case for pre-trial on February 7, 2008. Hence, it is clear that the respondent judge was guilty of undue delay in resolving the Motion to Dismiss filed by Lorenzo Vera Cruz. The said motion was resolved beyond the 90-day period required by law. Further, it was not refuted that the case was filed in 2003, and after almost five (5) years[,] it remains in the pre-trial stage. Respondent's contentions that he had to hear 10 to 12 cases a day and that the electricity of the court was cut off in September 2007 are untenable to justify delay in the trial and resolution of pending incidents filed before him.

Indeed, Judge Villegas had fallen short of the standards of efficiency and promptness of action required of an administrator of justice. He had become deaf, in this particular case, to the age-old maxim "justice delayed is justice denied." As we stressed in an earlier administrative matter,[21] "Failure to decide a case or resolve a motion within the reglementary period constitutes gross inefficiency and warrants the imposition of administrative sanction against the erring magistrate. The delay in resolving motions and incidents pending before a judge within the reglementary period of ninety (90) days fixed by the Constitution and the law is not excusable."[22]

Undue delay in rendering a decision or order, or in transmitting the records of a case is classified as a less serious charge.[23] If the respondent is found guilty of a less serious charge, any of the following sanctions may be imposed: (1) suspension from office without salary and other benefits for not less than one (1)

---

[21] *Dumaua v. Ramirez*, A.M. No. MTJ-04-1546, July 29, 2005, 465 SCRA 1.

[22] *Id.* at 2.

[23] Rules of Court, Rule 140, Section 9.

month nor more than three (3) months; or (2) a fine of more than ₱10,000.00 but not exceeding ₱20,000.00.[24]

In determining the penalty to be imposed, we take into account the surrounding circumstances of the case. In this case, we have to consider that this is Judge Villegas' first offense of this nature. Thus, a fine, rather than the heavier penalty of suspension, is more appropriate. The amount of the fine, on the other hand, has to take into account the extent of the delay. The complainant's case — Civil Case No. 192 — was still on pre-trial as of February 7, 2008, or almost five years since it was filed on March 6, 2003. This delay cannot but be substantial delay given the time that has passed and the status of the case. Thus, a fine in the midrange of the imposable penalty, or ₱15,000.00 is in order.

WHEREFORE, premises considered, Judge Winston M. Villegas is found *GUILTY* of undue delay in rendering a decision in Civil Case No. 192. Accordingly, he is fined ₱15,000.00, with a *STERN WARNING* against the commission of a similar offense. The charges of violating the Code of Judicial Conduct and of fraternizing with a litigant are *DISMISSED* for lack of evidence.

SO ORDERED.

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

---

[24] *Id.,* Section 11(B).

[*] Designated additional Member of the Third Division, in view of the retirement of Chief Justice Reynato S. Puno, per Special Order No. 843 dated May 17, 2010.

SECOND DIVISION

[G.R. No. 151454. August 9, 2010]

HEIRS OF ANTONIO SANTOS and LUISA ESGUERRA SANTOS, *petitioners, vs.* **HEIRS OF CRISPULO BERAMO, and/or PACIFICO BERAMO, SR., namely, PACIFICO BERAMO, JR., and ROMEO BERAMO; HEIRS OF PETRA BERAMO, namely, VIVENCIO BERAMO PENALOSA and JOSE B. BASINANG; HEIRS OF RAMON BERAMO, namely, BERNABE BERAMO; HEIRS OF AGAPITO BERAMO, namely, JESSIE P. BERAMO and SAMUEL BERAMO,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; MOTION TO DISMISS; TO SUSTAIN A MOTION TO DISMISS FOR LACK OF CAUSE OF ACTION, THE COMPLAINT MUST SHOW THAT THE CLAIM FOR RELIEF DOES NOT EXIST. — When the ground for dismissal is that the complaint states no cause of action under Section 1 (g), Rule 16 of the Rules of Court, such fact must be determined from the allegations of the complaint. In a motion to dismiss, a defendant hypothetically admits the truth of the material allegations of the plaintiff's complaint for the purpose of resolving the motion. The general rule is that the allegations in a complaint are sufficient to constitute a cause of action against the defendant, if, admitting the facts alleged, the court can render a valid judgment upon the same in accordance with the prayer therein. To sustain a motion to dismiss for lack of cause of action, the complaint must show that the claim for relief does not exist.

2. ID.; ID.; CAUSE OF ACTION; IN DETERMINING WHETHER THE ALLEGATIONS OF A COMPLAINT ARE SUFFICIENT TO SUPPORT A CAUSE OF ACTION, THE COMPLAINT DOES NOT HAVE TO ESTABLISH OR ALLEGE FACTS PROVING THE EXISTENCE OF A CAUSE OF ACTION AT THE OUTSET. — Contrary to the contention of petitioners, respondents did not have to present

or append proof of their allegations in the complaint to establish a sufficient cause of action for *reivindicacion* and/or reconveyance in their Amended Complaint. The Court has held that in determining whether the 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.

3. ID.; ID.; SPECIAL CIVIL ACTIONS; *CERTIORARI*; PRINCIPLE AGAINST RAISING ISSUES FOR THE FIRST TIME ON APPEAL; APPLIES TO SPECIAL CIVIL ACTIONS FOR *CERTIORARI*. — The Court of Appeals correctly held that the defenses of *res judicata*, statute of limitations and laches may not be raised for the first time in the special civil action for *certiorari*, citing *Buñag v. Court of Appeals*, which held: "It is settled that an issue which was not raised in the trial court cannot be raised for the first time on appeal. This principle applies to special civil actions for *certiorari* under Rule 65. x x x"

APPEARANCES OF COUNSEL

De Borja Medialdea Bello Guevarra & Gerodias for petitioners.

Jovencio Bereber & Napoleon Oducado for respondents.

D E C I S I O N

PERALTA, *J.*:

This is a petition for review on *certiorari*[1] of the Court of Appeals' Decision, dated May 15, 2001 in CA-G.R. SP No. 57944, and its Resolution dated January 10, 2002, denying petitioners' motion for reconsideration. The Court of Appeals affirmed the Decision dated October 27, 1999 of the Regional Trial Court (RTC) of Roxas City, Branch 18, denying petitioners' motion to dismiss respondents' Amended Complaint.

---

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

The facts, as found by the Court of Appeals,[2] are as follows:

On March 5, 1998, respondents heirs of Crispulo Beramo, Pacifico Beramo, Sr., Petra Beramo, Ramon Beramo and Agapito Beramo filed an Amended Complaint for *reivindicacion* and/or reconveyance of property against the heirs of Cornelio Borreros and Soledad Delfin (Spouses Borreros), Northern Capiz Agro-Industrial Development Corporation (NORCAIC), Central Azucarera de la Carlota and Riverside Commodities Trading, Inc. with the RTC of Roxas City, Branch 18 (trial court), presided over by Judge Charlito F. Fantilanan.

The Amended Complaint alleged that the subject property, Lots 660, 661 and 887 of the Pilar Cadastre, consisting of around 140 hectares, located at Roxas City, Capiz, and initially covered by Original Certificate of Title No. 22668, belonged to respondents' predecessor, the late Don Juan Beramo, by virtue of open, continuous, exclusive and notorious possession and occupation thereof in the concept of owner starting in 1892. Respondents succeeded to the rights, title and interest in the subject property of Don Juan Beramo and his successors-in-interest. Sometime in 1938, the Spouses Borreros convinced Don Juan Beramo to convert the subject property into a fishpond, with Cornelio Borreros as socio-industrial partner-manager-administrator. Later, the Spouses Borreros clandestinely, illegally and unjustly registered the subject property in their name. In 1955, the Spouses Borreros and the spouses Olympio Ramirez and Asuncion Esguerra (Spouses Ramirez) simulated the exchange of the subject property with a public land situated at Sibuyan Island, Romblon. In 1961, one-half of the subject property, then covered by Transfer Certificate of Title (TCT) No. T-3656 in the name of the Spouses Ramirez, was sold by the Spouses Ramirez to the spouses Antonio Santos and Luisa Esguerra (Spouses Santos), resulting in the cancellation of the said TCT and issuance of TCT No. T-6310 in the names of the Spouses Ramirez and the Spouses Santos. On May 13, 1975, the Spouses Santos and the Spouses Ramirez sold the subject property to

---

[2] *Rollo,* pp. 41-46.

NORCAIC. The aforementioned sales/transfers of the subject property were simulated, with the transferees having prior knowledge of the flaw of the transactions. Respondents prayed, among others, that they be declared the rightful owners of the subject parcels of land, and that the possession of Lots 661 and 887, and the northern portion of Lot 660 be ordered to be reconveyed to them.

On May 13, 1999, petitioners heirs of Antonio Santos and Luisa Esguerra Santos filed a Motion to Dismiss[3] on the ground that the Amended Complaint stated no cause of action against them. They pointed out that respondents were unable to substantiate their claim of ownership over the subject property, since they failed to present any documentary proof which established *prima facie* that the subject parcels of land were owned by their predecessor-in-interest. Moreover, respondents did not annex documents to the Amended Complaint evincing their right over the subject property. Petitioners also asserted that respondents failed to substantiate their claim of fraud on the part of defendants spouses Antonio and Luisa Santos; hence, respondents were unable to establish a right that was allegedly violated by the defendants Spouses Santos.

On October 27, 1999, the trial court issued an Order[4] denying the Motion to Dismiss as the grounds relied upon did not appear to be indubitable. The Order states:

x x x x x x x x x

As the grounds relied upon in the defendant heirs of Antonio Santos and Luisa Esguerra Santos as well as in the defendant Northern Capiz Agro-Industrial Development Corporation's Motions to Dismiss do not appear indubitable, since the defendants did not even bother to appear during the hearing to submit their arguments on the questions of law and their evidence on the questions of fact involved pursuant to Sec. 2, Rule 16 of the 1997 Rules of Civil Procedure, said Motions to Dismiss are DENIED for lack of merit.

---

[3] *Id.* at 75-80.

[4] *Id.* at 89.

Petitioners filed a motion for reconsideration,[5] and noted that they were taken to task for allegedly failing to appear before the trial court during the hearing on their motion to dismiss. They averred that during the said hearing, they were represented by Atty. Jul Freeman Emane, collaborating counsel of the law firm handling their case.[6]

In an Order[7] dated January 18, 2000, the trial court denied petitioners' motion for reconsideration, thus:

> Since the issues raised by the motion for reconsideration are mere reiterations of the issues raised by the motion to dismiss, and it appearing that the oversight in the appearance of Atty. Jul Freeman [Emane] during the hearing as collaborating counsel for the movant, brought about by the plurality of counsels, does not make the grounds relied upon by the motion to dismiss indubitable, there is no compelling reason to reconsider the Order dated October 27, 1999.
>
> ACCORDINGLY, the motion for reconsideration by the defendants heirs of Antonio Santos and Luisa Esguerra Santos is DENIED for lack of merit.

Petitioners filed a petition for *certiorari*[8] with the Court of Appeals, alleging that RTC Judge Charlito F. Fantilanan committed grave abuse of discretion amounting to lack or excess of jurisdiction in issuing the Orders dated October 27, 1999 and January 18, 2000.

Petitioners contended that the Amended Complaint showed that private respondents had no valid cause of action against them, since private respondents failed to substantiate their claim of ownership over the subject property. Assuming *arguendo* that a valid cause of action existed, petitioners argued that the same was, nonetheless, barred by *res judicata* and the Statute of Limitations. In addition, petitioners alleged that the title to the subject property was issued in favor of the Spouses Borreros

---

[5] *Id.* at 90-96

[6] *Id.* at 96.

[7] *Id.* at 102.

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

as early as 1939; hence, private respondents' cause of action, if any, was barred by laches.

In a Decision[9] dated May 15, 2001, the Court of Appeals dismissed the petition for lack of merit.

The Court of Appeals held that the general rule is that after denial of a motion to dismiss, the defendant should file an answer, go to trial, and if the decision is adverse, reiterate the issue on appeal. The exception is when the court denying the motion to dismiss acted without or in excess of jurisdiction or with grave abuse of discretion, in which case *certiorari* under Rule 65 of the Rules of Court may be availed of.[10] The appellate court stated that the exception does not apply to this case, since RTC Judge Fantilanan did not commit grave abuse of discretion in issuing the Orders in question.

The appellate court held that the trial court did not gravely abuse its discretion in denying the motion to dismiss, because the allegations in the Amended Complaint made out a case for reconveyance. Moreover, the complaint did not have to establish or allege facts proving the existence of a cause of action at the outset.[11] It also held that the defenses of *res judicata*, statute of limitations and laches may not be raised for the first time in the petition for *certiorari*.

Petitioners' motion for reconsideration was denied by the Court of Appeals in a Resolution[12] dated January 10, 2002.

Petitioners filed this petition raising the following issues:

I

THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN AFFIRMING THE DENIAL OF PETITIONERS' MOTION TO DISMISS.

---

[9] *Rollo*, pp. 41-46.

[10] *Drilon v. Court of Appeals*, 336 Phil. 949, 962 (1997).

[11] *Parañaque Kings Enterprises, Inc. v. Court of Appeals*, 375 Phil. 1184, 1199 (1997).

[12] *Rollo*, p. 48.

II

THE HONORABLE COURT OF APPEALS COMMITTED ERROR WHEN IT REFUSED TO CONSIDER AND RESOLVE THE ISSUES OF *RES JUDICATA* AND PRESCRIPTION RAISED IN THE PETITION FOR *CERTIORARI* FILED BEFORE IT BY HEREIN PETITIONERS.[13]

The main issue is whether or not the Amended Complaint states a cause of action for *reivindicacion* and/or reconveyance of the subject property.

Petitioners contend that the Court of Appeals erred in affirming the denial of their motion to dismiss despite the failure of the Amended Complaint to state a valid cause of action.

Petitioners allege that respondents failed to present any documentary proof which established, at least *prima facie*, that the subject parcels of land were owned by respondents' predecessor-in-interest. Petitioners reiterate that no documents evincing their right over the subject property were appended to the Amended Complaint. Further, petitioners argue that respondents' allegation of fraud was never substantiated; hence, there was no violation of respondents' right by petitioners.

The contention lacks merit.

When the ground for dismissal is that the complaint states no cause of action under Section 1 (g), Rule 16 of the Rules of Court, such fact must be determined from the allegations of the complaint.[14] In a motion to dismiss, a defendant hypothetically admits the truth of the material allegations of the plaintiff's complaint[15] for the purpose of resolving the

---

[13] *Id.* at 27.

[14] *Drilon v. Court of Appeals*, *supra* note 10, at 961; *Sumulong v. Court of Appeals*, G.R. No. 108817, May 10, 1994, 232 SCRA 372, 378; Regalado, *Remedial Law Compendium*, Vol. 1, Seventh Revised Edition, 1999, p. 251, citing *Mindanao Realty Corp. v. Kintanar*, 6 SCRA 814, 818 (1962).

[15] *Jimenez, Jr. v. Jordana*, 486 Phil. 452, 465 (2004).

motion.[16] The general rule is that the allegations in a complaint are sufficient to constitute a cause of action against the defendant, if, admitting the facts alleged, the court can render a valid judgment upon the same in accordance with the prayer therein.[17] To sustain a motion to dismiss for lack of cause of action, the complaint must show that the claim for relief does not exist.[18]

The Court agrees with the Court of Appeals that the Amended Complaint states a cause of action for *reivindicacion* and/or reconveyance. The Court of Appeals correctly found, thus:

> From the amended complaint, it appears that since 1892, private respondents' predecessor, Don Juan Beramo, was in open, continuous, exclusive and notorious possession and occupation of the subject property, an agricultural land of the public domain; that the subject property was merely entrusted by private respondents' predecessor, Don Juan Beramo, to Cornelio Borreros, from whom petitioners derived their title; and that the titling of the subject property and transfers thereof were simulated and fraudulent. These averments indicate that private respondents are the rightful owners of the subject property but the same was wrongfully registered by petitioners' predecessors, the Borreros spouses. Such averments make out a case for reconveyance (*De la Cruz vs. Court of Appeals*, 286 SCRA 230).[19]

Contrary to the contention of petitioners, respondents did not have to present or append proof of their allegations in the complaint to establish a sufficient cause of action for *reivindicacion* and/or reconveyance in their Amended Complaint. The Court has held that in determining whether the 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

---

[16] *Parañaque Kings Enterprises, Inc. v. Court of Appeals, supra* note 11, at 1201.

[17] *Dulay v. Court of Appeals*, 313 Phil. 8, 23-24 (1995).

[18] *Parañaque Kings Enterprises, Inc. v. Court of Appeals, supra* note 11, at 1195.

[19] *Rollo*, pp. 44-45.

outset; this will have to be done at the trial on the merits of the case.[20]

Further, petitioners contend that the Court of Appeals erred when it failed to consider and resolve the issues of *res judicata* and prescription raised in the petition for *certiorari*.

The contention is unmeritorious.

The Court of Appeals correctly held that the defenses of *res judicata,* statute of limitations and laches may not be raised for the first time in the special civil action for *certiorari*, citing *Buñag v. Court of Appeals*,[21] which held:

> It is settled that an issue which was not raised in the trial court cannot be raised for the first time on appeal. This principle applies to special civil actions for *certiorari* under Rule 65. x x x

WHEREFORE, the petition is *DENIED* for lack of merit. The Decision of the Court of Appeals, dated May 15, 2001 in CA-G.R. SP No. 57944, and its Resolution dated January 10, 2002, are hereby *AFFIRMED*.

Costs against petitioner.

SO ORDERED.

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

---

[20] *Parañaque Kings Enterprises, Inc. v. Court of Appeals, supra* note 11, at 1195*; Alberto v. Court of Appeals,* 390 Phil. 253 (2000); *Jimenez, Jr. v. Jordana, supra* note 15.

[21] 363 Phil. 216, 221 (1999).

EN BANC

[G.R. No. 159355. August 9, 2010]

GABRIEL C. SINGSON, ANDRE NAVATO, EDGARDO P. ZIALCITA, ARACELI E. VILLANUEVA, TYRONE M. REYES, JOSE CLEMENTE, JR., FEDERICO PASCUAL, ALEJANDRA C. CLEMENTE, ALBERT P. FENIX, JR., and MELPIN A. GONZAGA, *petitioners, vs.* **COMMISSION ON AUDIT,** *respondent.*

SYLLABUS

1. MERCANTILE LAW; CORPORATION CODE; BOARD OF DIRECTORS; COMPENSATION OF DIRECTORS; INSTANCES WHERE THE DIRECTORS ARE TO BE ENTITLED TO COMPENSATION. — Section 30 of the Corporation Code, which authorizes the stockholders to grant compensation to its directors, states: "Sec. 30. *Compensation of Directors*. — In the absence of any provision in the by-laws fixing their compensation, the directors shall not receive any compensation, as such directors, except for reasonable *per diems*; Provided, however, that any such compensation (other than *per diems*) may be granted to directors by the vote of the stockholders representing at least majority of the outstanding capital stock at a regular or special stockholders' meeting. In no case shall the total yearly compensation of directors, as such directors, exceed ten (10%) percent of the net income before income tax of the corporation during the preceding year." In construing the said provision, it bears stressing that the directors of a corporation shall not receive any compensation for being members of the board of directors, except for reasonable *per diems*. The two instances where the directors are to be entitled to compensation shall be when it is fixed by the corporation's by-laws or when the stockholders, representing at least a majority of the outstanding capital stock, vote to grant the same at a regular or special stockholder's meeting, subject to the qualification that, in any of the two situations, the total yearly compensation of directors, as such directors, shall in no case exceed ten (10%) percent of the net

income before income tax of the corporation during the preceding year.

2. POLITICAL LAW; ADMINISTRATIVE LAW; GOVERNMENT CORPORATIONS; PHILIPPINE INTERNATIONAL CONVENTION CENTER, INCORPORATED; BOARD OF DIRECTORS; ALLOWED TO RECEIVE ONLY *PER DIEMS* FOR EVERY MEETING ACTUALLY ATTENDED; CASE AT BAR. — Section 8 of the Amended By-Laws of PICCI, in consonance with Section 30 of the Corporation Code, restricted the scope of petitioners' compensation by fixing their *per diem* at ₱1,000.00: "Sec. 8. *Compensation*. — Directors, as such, shall not receive any salary for their services but shall receive a *per diem* of one thousand pesos (₱1,000.00) per meeting actually attended; *Provided*, that the Board of Directors at a regular and special meeting may increase and decrease, as circumstances shall warrant, such *per diems* to be received. Nothing herein contained shall be construed to preclude any director from serving the Corporation in any capacity and receiving compensation therefor." The nomenclature for the compensation of the directors used herein is *per diems*, and not salary or any other words of similar import. Thus, petitioners are allowed to receive only *per diems* of ₱1,000.00 for every meeting that they actually attended. However, the Board of Directors may increase or decrease the amount of *per diems*, when the prevailing circumstances shall warrant. No other compensation may be given to them, except only when they serve the corporation in another capacity.

3. ID.; CONSTITUTIONAL COMMISSIONS; CIVIL SERVICE COMMISSION; CONSTITUTIONAL PROSCRIPTION AGAINST DOUBLE COMPENSATION; INAPPLICABLE IN CASE AT BAR; SALARY AND REPRESENTATION AND TRANSPORTATION ALLOWANCE, DISTINGUISHED. — Section 8, Article IX-B of the Constitution provides that no elective or appointive public officer or employee shall receive additional, double or indirect compensation, unless specifically authorized by law, nor accept without the consent of the Congress, any present emolument, office or title of any kind from any foreign government. Pensions and gratuities shall not be considered as additional, double or indirect compensation. This provision, however, does not apply to the present case as there was no double compensation of RATA to the petitioners.

x x x Section 6 of Republic Act No. 7653 (The New Central Bank Act) defines that the powers and functions of the BSP shall be exercised by the BSP Monetary Board, which is composed of seven (7) members appointed by the President of the Philippines for a term of six (6) years. MB Resolution No. 15, dated January 5, 1994, as amended by MB Resolution No. 34, dated January 12, 1994, are valid corporate acts of petitioners that became the bases for granting them additional monthly RATA of ₱1,500.00, as members of the Board of Directors of PICCI. The RATA is distinct from salary (as a form of compensation). Unlike salary which is paid for services rendered, the RATA is a form of allowance intended to defray expenses deemed unavoidable in the discharge of office. Hence, the RATA is paid only to certain officials who, by the nature of their offices, incur representation and transportation expenses. Indeed, aside from the RATA that they have been receiving from the BSP, the grant of ₱1,500.00 RATA to each of the petitioners for every board meeting they attended, in their capacity as members of the Board of Directors of PICCI, in addition to their ₱1,000.00 *per diem*, does not run afoul the constitutional proscription against double compensation.

4. ID.; ADMINISTRATIVE LAW; ADMINISTRATIVE AGENCIES; DEPARTMENT OF BUDGET AND MANAGEMENT; NATIONAL COMPENSATION CIRCULAR NO. 67; PROHIBITS THE DUAL COLLECTION OF REPRESENTATION AND TRANSPORTATION ALLOWANCE BY A NATIONAL OFFICIAL FROM THE BUDGETS OF MORE THAN ONE NATIONAL AGENCY. — In *Leynes v. Commission on Audit*, the Court clarified that what National Compensation Circular (NCC) No. 67 seeks to prevent is the dual collection of RATA by a national official from the budgets of "more than one national agency." In the said case, the interpretation was that NCC No. 67 cannot be construed as nullifying the power of therein local government units to grant allowances to judges under the Local Government Code of 1991. Further, NCC No. 67 applies only to the national funds administered by the DBM, not the local funds of the local government units. Thus, "The pertinent provisions of NCC No. 67 read: 3. Rules and Regulations: 3.1.1 Payment of RATA, whether commutable or reimbursable, shall be in accordance with the rates prescribed for each of the following officials and employees and those of equivalent ranks, and

the conditions enumerated under the pertinent sections of the General Provisions of the annual General Appropriations Act (GAA): x x x 4. Funding Source: *In all cases, commutable and reimbursable RATA shall be paid from the amount appropriated for the purpose and other personal services savings of the agency or project from where the officials and employees covered under this Circular draw their salaries. No one shall be allowed to collect RATA from more than one source.* In construing NCC No. 67, we apply the principle in statutory construction that force and effect should not be narrowly given to isolated and disjoined clauses of the law but to its spirit, broadly taking all its provisions together in one rational view. Because a statute is enacted as a whole and not in parts or sections, that is, one part is as important as the others, the statute should be construed and given effect as a whole. A provision or section which is unclear by itself may be clarified by reading and construing it in relation to the whole statute. Taking NCC No. 67 as a whole then, what it seeks to prevent is the dual collection of RATA by a national official from the budgets of 'more than one national agency.' We emphasize that the *other source* referred to in the prohibition is *another national agency*. This can be gleaned from the fact that the sentence 'no one shall be allowed to collect RATA from more than one source' (the controversial prohibition) immediately follows the sentence that RATA shall be paid from the budget of the national agency where the concerned national officials and employees draw their salaries. The fact that the other source is another national agency is supported by RA 7645 (the GAA of 1993) invoked by respondent COA itself and, in fact, by all subsequent GAAs for that matter, because the GAAs all essentially provide that (1) the RATA of national officials shall be payable from the budgets of their respective national agencies and (2) those officials on detail with other national agencies shall be paid their RATA only from the budget of their parent national agency: x x x *Clearly therefore, the prohibition in NCC No. 67 is only against the dual or multiple collection of RATA by a national official from the budgets of two or more national agencies. Stated otherwise, when a national official is on detail with another national agency, he should get his RATA only from his parent national agency and not from the other national agency he is detailed to.*"

5. ID.; ID.; PUBLIC OFFICERS AND EMPLOYEES; DISALLOWED ALLOWANCES AND BENEFITS; NEED NOT BE REFUNDED WHEN RECEIVED IN GOOD FAITH. — The ruling in *Blaquera,* to which the cited case of *ADEPT v. COA* was consolidated with, is applicable to the present case as petitioners acted in good faith. The disposition in *De Jesus v. Commission on Audit*, which cited *Blaquera*, is instructive: "Nevertheless, our pronouncement in *Blaquera v. Alcala* supports *petitioners'* position on the refund of the benefits they received. In *Blaquera,* the officials and employees of several government departments and agencies were paid incentive benefits which the COA disallowed on the ground that Administrative Order No. 29 dated 19 January 1993 prohibited payment of these benefits. While the Court sustained the COA on the disallowance, it nevertheless declared that: Considering, however, that all the parties here acted in good faith, we cannot countenance the refund of subject incentive benefits for the year 1992, which amounts the petitioners have already received. Indeed, no *indicia* of bad faith can be detected under the attendant facts and circumstances. The officials and chiefs of offices concerned disbursed such incentive benefits in the honest belief that the amounts given were due to the recipients and the latter accepted the same with gratitude, confident that they richly deserve such benefits." x x x As petitioners believed in good faith that they are entitled to the RATA of ₱1,500.00 for every board meeting they attended, in their capacity as members of the Board of Directors of PICCI, pursuant to MB Resolution No. 15 dated January 5, 1994, as amended by MB Resolution No. 34 dated January 12, 1994, of the BSP, the Court sees no need for them to refund their RATA respectively, in the total amount of ₱1,565,000.00, covering the period from 1996-1998.

APPEARANCES OF COUNSEL

The General Counsel of the Bangko Sentral ng Pilipinas for petitioners.

The Solicitor General for respondent.

D E C I S I O N

PERALTA, *J.*:

Before the Court is a petition for *certiorari* seeking to set aside Decision No. 2002-081,[1] dated April 23, 2002, of the Commission on Audit (COA), which affirmed the Decision No. 2000-008,[2] dated June 1, 2000, and the Resolution in CAO I Decision No. 2000-012,[3] dated August 11, 2000, of the Corporate Audit Office I, and the COA Resolution No. 2003-115,[4] dated July 31, 2003, which denied petitioners' motion for reconsideration thereof and upheld the disallowance of petitioners' Representation and Transportation Allowance (RATA) in the total amount of ₱1,565,000.00 under Notice of Disallowance No. 99-001-101 (96-96) dated June 7, 1999.

The antecedents are as follows:

The Philippine International Convention Center, Inc. (PICCI) is a government corporation whose sole stockholder is the *Bangko*

---

[1] Entitled *Re: Petition for Review of Mr. Gabriel C. Singson, et al. of CAO I Decision No. 2000-008 dated June 1, 2000, Affirming the Disallowance of the Representation and Transportation Allowance (RATA) under Notice of Disallowance No. 99-001-101 (96-98) dated June 7, 1999 in the Amount of ₱1,565,000.00*; the signatories were Chairman Guillermo N. Carague (abstain) and Commissioners Raul C. Flores and Emmanuel M. Dalman; *rollo*, pp. 24-28.

[2] Entitled *Re: Lifting of the Disallowance on the Payments of Representation and Travel [should be Transportation] Allowance to the Members of the Board of Directors of PICCI;* per Director Crescencio S. Sunico, Corporate Audit Officer I; *id.* at 74-76.

[3] Entitled *Motion for Reconsideration from CAO I Decision No. 2000-008 Affirming the Disallowance on the Payments of Representation and Travel [should be Transportation] Allowance to the Members of the Board of Directors of PICCI;* per Director Crescencio S. Sunico; *id.* at 80.

[4] Entitled *Motion of Ms. Araceli Villanueva, General Manager, Philippine International Convention Center, Inc. (PICCI), Manila, et al. for Reconsideration of COA Decision No. 2002-081 dated April 23, 2002*; the signatories were Chairman Guillermo N. Carague and Commissioners Raul C. Flores and Emmanuel M. Dalman; *id.* at 29-32.

Sentral ng Pilipinas (BSP). Petitioner Araceli E. Villanueva was then a member of the PICCI Board of Directors and Officer-in-Charge (OIC) of PICCI, while co-petitioners Gabriel C. Singson, Andre Navato, Edgardo P. Zialcita, and Melpin A. Gonzaga, Alejandra C. Clemente, Jose Clemente, Jr., Federico Pascual, Albert P. Fenix, Jr., and Tyrone M. Reyes were then members of the PICCI Board of Directors and officials of the BSP. By virtue of the PICCI By-Laws, petitioners were authorized to receive ₱1,000.00 *per diem* each for every meeting attended. Pursuant to its Monetary Board (MB) Resolution No. 15[5] dated January 5, 1994, as amended by MB Resolution No. 34 dated January 12, 1994, the BSP MB granted additional monthly RATA, in the amount of ₱1,500.00, to each of the petitioners, as members of the Board of Directors of PICCI. Consequently, from January 1996 to December 1998, petitioners received their corresponding RATA in the total amount of ₱1,565,000.00.

On June 7, 1999, then PICCI Corporate Auditor Adelaida A. Aldovino issued Notice of Disallowance No. 99-001-101 (96-98),[6] addressed to petitioner Araceli E. Villanueva (through then OIC Susan M. Galang of the Accounting Division of PICCI), disallowing in audit the payment of petitioners' RATA in the total amount of ₱1,565,000.00,[7] and directing them to settle immediately the said disallowances, due to the following reasons: (a) As to petitioner Araceli E. Villanueva, there was double payment of RATA to her as member of the PICCI Board and as OIC of PICCI, which was in violation of Section 8, Article IX-B of the 1987 Constitution and, moreover, Compensation Policy Guideline No. 6 provides that an official already granted

---

[5] *Rollo*, p. 72.

[6] *Id.* at 50.

[7] *Id.* at 50-57; per audit by Corporate Auditor Adelaida A. Aldovino of the disbursement transactions on a selective basis for the period 1996-1998, the following amounts received by the petitioners have been disallowed in audit: A. E. Villanueva (₱165,000.00), G. C. Singson (₱165,000.00), Andre Navato (₱120,000.00), E. Zialcita (₱165,000.00), M. Gonzaga (₱165,000.00), A. Clemente (₱60,000.00), J. Clemente, Jr. (₱65,000.00), F. Pascual (₱105,000.00), A. P. Fenix, Jr. (₱50,000.00), and T. Reyes (₱157,500.00).

commutable RATA and designated by competent authority to perform duties in concurrent capacity as OIC of another position whether or not in the same agency and entitled to similar benefits, shall not be granted said similar benefits, except where said similar allowances are higher in rates than those of his regular position, in which case he may be allowed to collect the difference thereof; and (b) As to petitioners Gabriel Singson, Andre Navato, Edgardo Zialcita, Melpin Gonzaga, Alejandra Clemente, Jose Clemente, Jr., Federico Pascual, Albert P. Fenix, Jr., and Tyrone M. Reyes, there was double payment of RATA to them as members of the PICCI Board and as officers of BSP, which was in violation of Section 8, Article IX-B of the 1987 Constitution and PICCI By-laws and, further, the contemplation of the constitutional provisions which authorized double compensation is construed to mean statutes passed by the national legislative body and does not include resolutions passed by governing boards, *i.e.*, Section 229 of the Government Accounting and Auditing Manual.

In a letter[8] dated September 27, 1999, petitioners, through Board Member and OIC of PICCI Araceli E. Villanueva, sought reconsideration of the Notice of Disallowance No. 99-001-01 (96-98) dated June 7, 1999.

In a letter[9] dated October 14, 1999, PICCI Corporate Auditor Aldovino denied petitioners' motion for reconsideration and, on February 18, 2000, petitioners filed their Notice of Appeal[10] and Appeal Memorandum.[11]

On June 1, 2000, Director Crescencio S. Sunico of the Corporate Audit Office I, COA, rendered a Decision in CAO I Decision No. 2000-208 affirming the disallowance of the RATA received by petitioners in their capacity as Directors of the PICCI Board. He stated that except for *per diems*, Section 8, Article III of the PICCI By-Laws prohibits the payment of salary to

---

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

[9] *Id.* at 61-63.

[10] *Id.* at 64.

[11] *Id.* at 65-71.

directors in the form of compensation or reimbursement of expenses, based upon the principle *expression unius est exclusio alterius* (the express mention of one thing in a law means the exclusion of others not expressly mentioned). Neither can the payment of RATA be legally founded on Section 30 of the Corporation Code which states that in the absence of any provision in the by-laws fixing their compensation, the directors shall not receive any compensation as such directors, except for reasonable *per diems*; provided, however, that any such compensation (other than *per diems*) may be granted to directors by the vote of the stockholders representing at least a majority of the outstanding capital stock at a regular or special stockholders' meeting. The power to fix the compensation which the directors shall receive, if any, is left to the corporation, to be determined in its by-laws or by the vote of stockholders. The PICC By-Laws allows only the payment of *per diem* to the directors. Thus, the BSP board resolution granting RATA of ₱1,500.00 to petitioners violated the PICCI By-Laws. Director Sunico also explained that although MB Resolution No. 15, dated January 5, 1994, as amended by MB Resolution No. 34, dated January 12, 1994, would have the effect of amending the PICCI By-laws, and may render the grant of RATA valid, such amendment, however, had no effect because it failed to comply with the procedural requirements set forth under Section 48 of the Corporation Code.[12]

---

[12] Sec. 48. *Amendments to by-laws*. — The board of directors or trustees, by a majority vote thereof, and the owners of at least a majority of the outstanding capital stock, or a least a majority of the members of a non-stock corporation, at a regular or special meeting duly called for the purpose, may amend or repeal any by-laws or adopt new by–laws. The owners of two-thirds (2/3) of the outstanding capital stock or two-thirds (2/3) of the members in a non-stock corporation may delegate to the board of directors or trustees the power to amend or repeal any by-laws or adopt new by-laws: *Provided*, That any power delegated to the board of directors or trustees to amend or repeal any by-laws or adopt new by-laws shall be considered as revoked whenever stockholders owning or representing a majority of the outstanding capital stock or a majority of the members in non-stock corporations, shall so vote at a regular or special meeting.

Whenever any amendment or new by-laws are adopted, such amendment or new by-laws shall be attached to the original by-laws in the office of the corporation, and a copy thereof, duly certified under oath by the corporate

On August 11, 2000, Director Sunico issued a Resolution in CAO I Decision No. 2000-012, affirming the disallowance of the RATA received by the petitioners in their capacity as directors in the total amount of ₱1,565,000.00.

On petition for review by petitioners, the COA rendered the assailed COA Decision No. 2002-081 dated April 23, 2002, affirming CAO I Decision No. 2000-008 dated June 1, 2000 and Notice of Disallowance No. 99-001-101 (96-98) dated June 7, 1999. It also directed the Auditor to determine the amounts to be refunded by petitioners and to enforce and monitor their settlement. It ruled that petitioners' receipt of the ₱1,500.00 RATA from the BSP for every meeting they attended as members of the PICCI Board of Directors was not valid.

In COA Decision No. 2003-115, dated July 31, 2003, the COA issued a Resolution denying petitioners' motion for reconsideration and upheld the disallowance of the petitioners' RATA amounting to ₱1,565,000.00.

Hence, this present petition for *certiorari* raising the following grounds:

I.

THE RESPONDENT COA COMMITTED GRAVE ABUSE OF DISCRETION IN FINDING THAT THE PETITIONERS VIOLATED ITS BY-LAWS WHEN SECTION 30 OF THE CORPORATION CODE AUTHORIZES THE STOCKHOLDERS TO GRANT COMPENSATION TO ITS DIRECTORS.

II.

THE RESPONDENT COA COMMITTED GRAVE ABUSE OF DISCRETION IN FINDING THAT THE PAYMENT OF RATA TO BSP OFFICIALS WHO ARE MEMBERS OF THE PICCI BOARD

---

secretary and a majority of the directors or trustees, shall be filed with the Securities and Exchange Commission the same to be attached to the original articles of incorporation and original by-laws.

The amended or new by-laws shall only be effective upon the issuance by the Securities and Exchange Commission of a certification that the same are not inconsistent with this Code. (22a and 23a).

VIOLATED ITEM NO. 4 OF NATIONAL COMPENSATION CIRCULAR (NCC) NO. 67 DATED JANUARY [1], 1992 ISSUED BY THE DEPARTMENT OF BUDGET AND MANAGEMENT (DBM) AS SAID NCC SPECIFICALLY APPLIES ONLY TO "NATIONAL GOVERNMENT OFFICIALS AND EMPLOYEES."

III.

THE RESPONDENT COA COMMITTED GRAVE ABUSE OF DISCRETION IN DIRECTING THE AUDITOR TO ENFORCE REFUND OF THE PAYMENTS TO THE PETITIONERS [WHO ARE] DIRECTORS AS THE PETITIONERS ENJOY THE PRESUMPTION OF GOOD FAITH AND ARE CONVINCED THAT THEY ARE LEGALLY ENTITLED THERETO IN THE LIGHT OF THE SUPREME COURT DECISION IN *ASSOCIATION OF DEDICATED EMPLOYEES OF THE PHILIPPINE TOURISM AUTHORITY (ADEPT) VS. COA*, 295 SCRA 366.[13]

Petitioners contend that since PICCI was incorporated with the Securities and Exchange Commission (SEC) (SEC Regulation No. 68840) and has no original charter, it should be governed by Section 30 of the Corporation Code. According to petitioners, their receipt of RATA as directors of PICCI was sanctioned by PICCI's sole stockholder, BSP (through its own governing body, the Monetary Board), per MB Resolution No. 15 dated January 5, 1994, as amended by MB Resolution No. 34 dated January 12, 1994.

Respondent counters that said provision does not apply to petitioners as Section 8 of the PICCI By-laws provides that the compensation of the members of the PICCI Board of Directors shall be given only through *per diems*.

Section 30 of the Corporation Code, which authorizes the stockholders to grant compensation to its directors, states:

> Sec. 30. *Compensation of Directors*. — In the absence of any provision in the by-laws fixing their compensation, the directors shall not receive any compensation, as such directors, except for reasonable *per diems*; Provided, however, that any such compensation

---

[13] *Rollo*, pp. 12-13.

(other than *per diems*) may be granted to directors by the vote of the stockholders representing at least a majority of the outstanding capital stock at a regular or special stockholders' meeting. In no case shall the total yearly compensation of directors, as such directors, exceed ten (10%) percent of the net income before income tax of the corporation during the preceding year.

In construing the said provision, it bears stressing that the directors of a corporation shall not receive any compensation for being members of the board of directors, except for reasonable *per diems*. The two instances where the directors are to be entitled to compensation shall be when it is fixed by the corporation's by-laws or when the stockholders, representing at least a majority of the outstanding capital stock, vote to grant the same at a regular or special stockholder's meeting, subject to the qualification that, in any of the two situations, the total yearly compensation of directors, as such directors, shall in no case exceed ten (10%) percent of the net income before income tax of the corporation during the preceding year.

Section 8 of the Amended By-Laws of PICCI,[14] in consonance with Section 30 of the Corporation Code, restricted the scope of petitioners' compensation by fixing their *per diem* at ₱1,000.00:

> Sec. 8. *Compensation*. — Directors, as such, shall not receive any salary for their services but shall receive a *per diem* of one thousand pesos (₱1,000.00) per meeting actually attended; ***Provided***, that the Board of Directors at a regular and special meeting may increase and decrease, as circumstances shall warrant, such *per diems* to be received. Nothing herein contained shall be construed to preclude any director from serving the Corporation in any capacity and receiving compensation therefor.[15]

---

[14] Per S.E.C. Registration No. 68840, the amendment to Section 8, Article III of the PICCI By-Laws was approved by the PICCI Board at a regular meeting held on February 22, 1994, and the Amendment to the By-Laws of the PICCI was signed on March 29, 1994 by Chairman Gabriel C. Singson, Members of the Board Edgardo P. Zialcita, Andre Navato, Roberto Y. Garcia, Herman M. Montenegro, Jose S. Clemente, Jr., and Dennis D. Decena, and Corporate Secretary Luis S. Cachero, with an attached notarized Director's Certificate.

[15] Underscoring supplied.

The nomenclature for the compensation of the directors used herein is *per diems*, and not salary or any other words of similar import. Thus, petitioners are allowed to receive only *per diems* of ₱1,000.00 for every meeting that they actually attended. However, the Board of Directors may increase or decrease the amount of *per diems*, when the prevailing circumstances shall warrant. No other compensation may be given to them, except only when they serve the corporation in another capacity.

Petitioners justify their entitlement to ₱1,500.00 RATA from the PICCI, on the theory that:

> [T]he purpose in issuing NCC No. 67 is to ensure uniformity and consistency of actions on claims for RATA which is granted by law to national government officials and employees to cover expenses incurred in the discharge or performance of their duties and responsibilities. Moreover, Item 2 of NCC 67 enumerated the national government officials and employees that are covered by the Circular, to wit:
>
> > [1] Those whose positions are listed under Service Code 18 of the Index of Occupational Services issued by the Department of Budget and Management (DBM), pursuant to NCC No. 57, except for the positions of the President, Vice-President, Lupon Member and Lupon Chairman and positions under the Local Executives Group;
> >
> > [2] Those whose positions are identified as chiefs of division in the Personal Services Itemization;
> >
> > [3] Those whose positions are determined by the DBM to be of equivalent rank with the officials and employees enumerated under Section 2.1 and 2.2 hereof x x x; and
> >
> > [4] Those who are duly designated by competent authority to perform the full-time duties and responsibilities, whether or not in concurrent capacity, as Officers-in-Charge for one (1) final calendar month or more of the positions enumerated in Sections 2.1, 2.2 and 2.3 hereof.

The PICCI is not an originally chartered corporation, but a subsidiary corporation of BSP organized in accordance with the Corporation Code of the Philippines. The Articles of Incorporation of PICCI was registered on July 29, 1976 in the Securities and

Exchange Commission. As such, PICCI does not fall within the coverage of NCC No. 67. As a matter of fact, by virtue of P.D. [No.] 520, PICCI is exempt from the coverage of the civil service law and regulations (and Constitution defining coverage of civil service as limited to those with original [charter] (*TUCP v. NHA*, G.R. No. 49677, May 4, 1089, Article IX-B, Sec. 1). Certainly, if PICCI is not part of the National Government, but a mere subsidiary of a government-owned and/or controlled corporation (BSP), its officers, and more importantly, its directors, are not covered by the term "national government officials and employees" to which NCC No. 67 finds application.

Even the BSP, which is the sole stockholder of PICCI, is not covered by NCC No. 67, not only for the same reasons stated above but for the reason that it enjoys fiscal and administrative autonomy, which is defined as the "guarantee of full flexibility to allocate and utilize their resources with the wisdom and dispatch that their needs require" (*Bengzon v. Drilon*, 208 SCRA 133).[16]

Respondent maintains that petitioners' receipt of RATA from PICCI, in addition to their *per diem* of ₱1,000 per meeting, and another RATA from BSP, violates the rule against double compensation; that as former officers of the BSP, petitioners Gabriel P. Singson, Araceli E. Villanueva, Andre Navato, Edgardo P. Zialcita, and Melpin A. Gonzaga were also receiving RATA from the BSP, in addition to the RATA granted to them as PICCI Directors; that there is double payment of RATA, since petitioners' membership in the PICCI Board is a mere adjunct of their positions as BSP officials; that double compensation refers to two sets of compensations for two different offices held concurrently by one officer; and that while there is no general prohibition against holding two offices which are not incompatible, when an officer accepts a second office, he can draw the salary attached to such second office only when he is specifically authorized by law which does not exist in the present case.

In her letter, dated October 14, 1999, to petitioner Araceli E. Villanueva, Corporate Auditor Adelaida A. Aldovino reiterated

---

[16] Petitioners' Memorandum, pp. 8-9.

her decision disallowing disbursements for RATA of PICCI directors for the reasons set forth in Notice of Disallowance No. 99-001-101 (96-98). Thus,

> Moreover, while the directors are not strictly speaking Officers-in-Charge, but because they are doing duties in concurrent capacities and are already receiving RATA from their principal office, Budget Compensation Policy Guideline No. 6, dated September 1, 1982, is applicable.
>
> No. 3.0 of the guideline provides:
>
> 3.1 An Official/employee already entitled/granted commutable transportation/representation allowances and designated by competent authority to perform duties and responsibilities in concurrent capacity as Officer-in-Charge of another position(s), whether CES or non-CES, whether or not in the same ministry/bureau/office or agency and entitled to similar benefits/allowances, whether commutable or reimbursable, except where similar allowances are higher in rates than those of his regular position, in which case he may be allowed to collect the difference thereof, provided the period of his temporary stewardship is not less than one month on a reimbursable basis.
>
> In view of the foregoing, we are reiterating our decision disallowing disbursement for RATA of PICCI directors for reasons stated in our Notice of Disallowance No. 99-001-01 (96-98).
>
> Further, please be reminded that disallowance not appealed within six (6) months as prescribed under Section 48, 50 and 51 of PD 1445 shall become final and executory.[17]

In COA Decision No. 2002-081 dated April 23, 2002, respondent concluded that the payment of RATA to petitioners violated Item No. 4 of National Compensation Circular (NCC) No. 67, dated January 1, 1992, issued by the DBM, as the petitioners were already drawing RATA from their mother agencies and, hence, their receipt of RATA from PICCI was without legal basis and constituted double compensation of RATA which is prohibited under the Constitution. It also explained that under the By-Laws of PICCI, the compensation of its directors should be in the form of *per diem* and not RATA, and as the

---

[17] *Rollo*, pp. 62-63.

By-Laws have the same force and effect of law as the corporate charter, its directors and officers are under obligation to comply therewith.

Section 8, Article IX-B of the Constitution provides that no elective or appointive public officer or employee shall receive additional, double or indirect compensation, unless specifically authorized by law, nor accept without the consent of the Congress, any present emolument, office or title of any kind from any foreign government. Pensions and gratuities shall not be considered as additional, double or indirect compensation.

This provision, however, does not apply to the present case as there was no double compensation of RATA to the petitioners.

In *Leynes v. Commission on Audit*,[18] the Court clarified that what National Compensation Circular (NCC) No. 67 seeks to prevent is the dual collection of RATA by a national official from the budgets of "more than one national agency." In the said case, the interpretation was that NCC No. 67 cannot be construed as nullifying the power of therein local government units to grant allowances to judges under the Local Government Code of 1991. Further, NCC No. 67 applies only to the national funds administered by the DBM, not the local funds of the local government units. Thus,

> The pertinent provisions of NCC No. 67 read:
>
> 3. Rules and Regulations:
>
> 3.1.1 Payment of RATA, whether commutable or reimbursable, shall be in accordance with the rates prescribed for each of the following officials and employees and those of equivalent ranks, and the conditions enumerated under the pertinent sections of the General Provisions of the annual General Appropriations Act (GAA):
>
> x x x x x x x x x
>
> 4. Funding Source:
>
> *In all cases, commutable and reimbursable RATA shall be paid from the amount appropriated for the purpose and other*

[18] 463 Phil. 557 (2003).

> *personal services savings of the agency or project from where the officials and employees covered under this Circular draw their salaries. No one shall be allowed to collect RATA from more than one source.* (Italics ours)

In construing NCC No. 67, we apply the principle in statutory construction that force and effect should not be narrowly given to isolated and disjoined clauses of the law but to its spirit, broadly taking all its provisions together in one rational view. Because a statute is enacted as a whole and not in parts or sections, that is, one part is as important as the others, the statute should be construed and given effect as a whole. A provision or section which is unclear by itself may be clarified by reading and construing it in relation to the whole statute.

Taking NCC No. 67 as a whole then, what it seeks to prevent is the dual collection of RATA by a national official from the budgets of "more than one national agency." We emphasize that the *other source* referred to in the prohibition is *another national agency*. This can be gleaned from the fact that the sentence "no one shall be allowed to collect RATA from more than one source" (the controversial prohibition) immediately follows the sentence that RATA shall be paid from the budget of the national agency where the concerned national officials and employees draw their salaries. The fact that the other source is another national agency is supported by RA 7645 (the GAA of 1993) invoked by respondent COA itself and, in fact, by all subsequent GAAs for that matter, because the GAAs all essentially provide that (1) the RATA of national officials shall be payable from the budgets of their respective national agencies and (2) those officials on detail with other national agencies shall be paid their RATA only from the budget of their parent national agency:

x x x x x x x x x

> *Clearly therefore, the prohibition in NCC No. 67 is only against the dual or multiple collection of RATA by a national official from the budgets of two or more national agencies. Stated otherwise, when a national official is on detail with another national agency, he should get his RATA only from his parent national agency and not from the other national agency he is detailed to.*[19] (Italics supplied.)

---

[19] *Id.* at 572-574.

Moreover, Section 6 of Republic Act No. 7653 (The New Central Bank Act) defines that the powers and functions of the BSP shall be exercised by the BSP Monetary Board, which is composed of seven (7) members appointed by the President of the Philippines for a term of six (6) years. MB Resolution No. 15,[20] dated January 5, 1994, as amended by MB Resolution No. 34, dated January 12, 1994, are valid corporate acts of petitioners that became the bases for granting them additional monthly RATA of ₱1,500.00, as members of the Board of Directors of PICCI. The RATA is distinct from salary (as a form of compensation). Unlike salary which is paid for services rendered, the RATA is a form of allowance intended to defray expenses deemed unavoidable in the discharge of office. Hence, the RATA is paid only to certain officials who, by the nature of their offices, incur representation and transportation expenses.[21] Indeed, aside from the RATA that they have been receiving from the BSP, the grant of ₱1,500.00 RATA to each of the petitioners for every board meeting they attended, in

---

[20] Min. No. 1 — January 5, 1994

15. *Philippine International Convention Center*. — Decision to authorize the representation and transportation allowance of the Members of its Board of Directors.

ACTION TAKEN

The Board decided as follows:

1. To authorize the representation and transportation allowance in the amount of ₱1,500.[00] a month of the Members of the Board of Directors of the Philippine International Convention Center (PICC);

2. To approve the actual expenditure for 1993;

3. To approve the actual expenses for 1992 incurred by PICC, not covered by the original budget, subject to existing Commission [on] Audit rules and regulations; and

4. To instruct PICC Management to prepare and submit proposal for 1994 within two (2) months from date of receipt.

(Signed)
FE B. BARIN
Secretary

[21] *Department of Budget and Management, represented by Sec. Emilia T. Boncodin v. Olivia D. Leones*, G.R. No. 169726, March 18, 2010.

their capacity as members of the Board of Directors of PICCI, in addition to their ₱1,000.00 *per diem*, does not run afoul the constitutional proscription against double compensation.

Petitioners invoke the ruling of *ADEPT v. COA*[22] whereby the Court took into consideration the good faith of therein petitioners and, thus, allowed them to retain the incentive benefits they had received for the year 1992.

Respondent points out that the records of the case do not support petitioners' claim of good faith, because they themselves were the authors of the By-Laws of PICCI which prohibit the receipt of compensation other than *per diems* and, therefore, should have been conversant with the constitutional prohibition on double compensation.

The Court upholds the findings of respondent that petitioners' right to compensation as members of the PICCI Board of Directors is limited only to *per diem* of ₱1,000.00 for every meeting attended, by virtue of the PICCI By-Laws. In the same vein, we also clarify that there has been no double compensation despite the fact that, apart from the RATA they have been receiving from the BSP, petitioners have been granted the RATA of ₱1,500.00 for every board meeting they attended, in their capacity as members of the Board of Directors of PICCI, pursuant to MB Resolution No. 15[23] dated January 5, 1994, as amended by MB Resolution No. 34 dated January 12, 1994, of the *Bangko Sentral ng Pilipinas*. In this regard, we take into consideration the good faith of petitioners.

The ruling in *Blaquera*, to which the cited case of *ADEPT v. COA* was consolidated with, is applicable to the present case as petitioners acted in good faith. The disposition in *De Jesus v. Commission on Audit*,[24] which cited *Blaquera*, is instructive:

---

[22] G.R. No. 119597, companion case of *Blaquera v. Alcala*, G.R. No. 109406, September 11, 1998, 356 Phil. 678.

[23] *Rollo*, p. 72.

[24] 451 Phil. 812 (2003).

Nevertheless, our pronouncement in *Blaquera v. Alcala*[25] supports *petitioners'* position on the refund of the benefits they received. In *Blaquera,* the officials and employees of several government departments and agencies were paid incentive benefits which the COA disallowed on the ground that Administrative Order No. 29 dated 19 January 1993 prohibited payment of these benefits. While the Court sustained the COA on the disallowance, it nevertheless declared that:

> Considering, however, that all the parties here acted in good faith, we cannot countenance the refund of subject incentive benefits for the year 1992, which amounts the petitioners have already received. Indeed, no *indicia* of bad faith can be detected under the attendant facts and circumstances. The officials and chiefs of offices concerned disbursed such incentive benefits in the honest belief that the amounts given were due to the recipients and the latter accepted the same with gratitude, confident that they richly deserve such benefits.

This ruling in *Blaquera* applies to the instant case. Petitioners here received the additional allowances and bonuses in good faith under the honest belief that LWUA Board Resolution No. 313 authorized such payment. At the time petitioners received the additional allowances and bonuses, the Court had not yet decided *Baybay Water District [v. Commission on Audit]*.[26] Petitioners had no knowledge that such payment was without legal basis. Thus, being in good faith, petitioners need not refund the allowances and bonuses they received but disallowed by the COA.[27]

In subsequent cases,[28] the Court took into account the good faith of the recipients of the allowances, bonuses, and other benefits disallowed by respondent and ruled that they need not refund the same.

---

[25] *Supra* note 22.

[26] 425 Phil. 326 (2000).

[27] *De Jesus v. COA, supra* note 24, at 823-824.

[28] *Molen, Jr. v. Commission on Audit,* G.R. No. 150222, March 18, 2005, 453 SCRA 769; *Querubin v. Regional Cluster Director, Legal and Adjudication Office, COA Regional Office VI, Pavia, Iloilo City,* G.R. No. 159299, July 7, 2004, 433 SCRA 769; *De Jesus v. Commission on Audit,* G.R. No. 156641, February 5, 2004, 422 SCRA 287; *Philippine International Trading Corporation v. Commission on Audit,* 461 Phil. 737 (2003).

As petitioners believed in good faith that they are entitled to the RATA of ₱1,500.00 for every board meeting they attended, in their capacity as members of the Board of Directors of PICCI, pursuant to MB Resolution No. 15[29] dated January 5, 1994, as amended by MB Resolution No. 34 dated January 12, 1994, of the BSP, the Court sees no need for them to refund their RATA respectively, in the total amount of ₱1,565,000.00, covering the period from 1996-1998.

WHEREFORE, the petition is *DISMISSED*. Decision No. 2002-081, dated April 23, 2002, of the Commission on Audit and its Resolution No. 2003-115, dated July 31, 2003, which denied petitioners' motion for reconsideration thereof and upheld the disallowance of petitioners' Representation and Transportation Allowance (RATA) in the total amount of ₱1,565,000.00 under Notice of Disallowance No. 99-001-101 (96-96) dated June 7, 1999, are *AFFIRMED WITH MODIFICATION*. Petitioners need not refund the Representation and Transportation Allowance (RATA) they received pursuant to Monetary Board Resolution No. 15[30] dated January 5, 1994, as amended by Monetary Board Resolution No. 34 dated January 12, 1994, of the *Bangko Sentral ng Pilipinas* granting each of them an additional monthly RATA of ₱1,500.00, for every meeting attended, in their capacity as members of the Board of Directors of Philippine International Convention Center, Inc. (PICCI), or in the total amount of ₱1,565,000.00, covering the period from 1996-1998.

SO ORDERED.

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

Velasco, Jr., J., on official leave.

Brion, J., on leave.

Corona, C.J., no part.

---

[29] *Rollo,* p. 72.

[30] *Rollo,* p. 72.

SECOND DIVISION

[G.R. No. 160828. August 9, 2010]

PICOP RESOURCES, INCORPORATED (PRI), *petitioner, vs.* **ANACLETO L. TAÑECA, GEREMIAS S. TATO, JAIME N. CAMPOS, MARTINIANO A. MAGAYON, JOSEPH B. BALGOA, MANUEL G. ABUCAY, MOISES M. ALBARAN, MARGARITO G. ALICANTE, JERRY ROMEO T. AVILA, LORENZO D. CAÑON, RAUL P. DUERO, DANILO Y. ILAN, MANUEL M. MATURAN, JR., LUISITO R. POPERA, CLEMENTINO C. QUIMAN, ROBERTO Q. SILOT, CHARLITO D. SINDAY, REMBERT B. SUZON ALLAN J. TRIMIDAL, and NAMAPRI-SPFL,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; THE PROPER REMEDY TO REVIEW THE DECISIONS OF THE NATIONAL LABOR RELATIONS COMMISSION. — The power of the Court of Appeals to review NLRC decisions via Rule 65 or Petition for *Certiorari* has been settled as early as in our decision in *St. Martin Funeral Home v. National Labor Relations Commission*. This Court held that the proper vehicle for such review was a Special Civil Action for *Certiorari* under Rule 65 of the Rules of Court, and that this action should be filed in the Court of Appeals in strict observance of the doctrine of the hierarchy of courts. Moreover, it is already settled that under Section 9 of *Batas Pambansa Blg.* 129, as amended by Republic Act No. 7902[10] (An Act Expanding the Jurisdiction of the Court of Appeals, amending for the purpose of Section Nine of *Batas Pambansa Blg*. 129 as amended, known as the *Judiciary Reorganization Act of 1980*), the Court of Appeals — pursuant to the exercise of its original jurisdiction over Petitions for *Certiorari* — is specifically given the power to pass upon the evidence, if and when necessary, to resolve factual issues.

2. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; COLLECTIVE BARGAINING AGREEMENT; UNION SECURITY; UNION SHOP, MAINTENANCE OF MEMBERSHIP SHOP AND CLOSED SHOP, DISTINGUISHED. — "Union security" is a generic term, which is applied to and comprehends "closed shop," "union shop," "maintenance of membership," or any other form of agreement which imposes upon employees the obligation to acquire or retain union membership as a condition affecting employment. There is union shop when all new regular employees are required to join the union within a certain period as a condition for their continued employment. There is maintenance of membership shop when employees, who are union members as of the effective date of the agreement, or who thereafter become members, must maintain union membership as a condition for continued employment until they are promoted or transferred out of the bargaining unit, or the agreement is terminated. A closed shop, on the other hand, may be defined as an enterprise in which, by agreement between the employer and his employees or their representatives, no person may be employed in any or certain agreed departments of the enterprise unless he or she is, becomes, and, for the duration of the agreement, remains a member in good standing of a union entirely comprised of or of which the employees in interest are a part.

3. ID.; ID.; TERMINATION OF EMPLOYMENT; TERMINATION OF EMPLOYMENT BY ENFORCING THE UNION SECURITY CLAUSE; REQUISITES. — [I]n terminating the employment of an employee by enforcing the union security clause, the employer needs to determine and prove that: (1) the union security clause is applicable; (2) the union is requesting for the enforcement of the union security provision in the CBA; and (3) there is sufficient evidence to support the decision of the union to expel the employee from the union. These requisites constitute just cause for terminating an employee based on the union security provision of the CBA.

4. ID.; ID.; ID.; ID.; THE MERE SIGNING OF THE AUTHORIZATION IN SUPPORT OF THE PETITION FOR CERTIFICATION ELECTION BEFORE THE FREEDOM PERIOD IS NOT SUFFICIENT TO TERMINATE EMPLOYMENT; CASE AT BAR. — We are

in consonance with the Court of Appeals when it held that the mere signing of the authorization in support of the Petition for Certification Election of FFW on March 19, 20 and 21, or before the "freedom period," is not sufficient ground to terminate the employment of respondents inasmuch as the petition itself was actually filed during the freedom period. Nothing in the records would show that respondents failed to maintain their membership in good standing in the Union. Respondents did not resign or withdraw their membership from the Union to which they belong. Respondents continued to pay their union dues and never joined the FFW. Significantly, petitioner's act of dismissing respondents stemmed from the latter's act of signing an authorization letter to file a petition for certification election as they signed it outside the freedom period. However, we are constrained to believe that an "authorization letter to file a petition for certification election" is different from an actual "Petition for Certification Election." Likewise, as per records, it was clear that the actual Petition for Certification Election of FFW was filed only on May 18, 2000. Thus, it was within the ambit of the freedom period which commenced from March 21, 2000 until May 21, 2000. Strictly speaking, what is prohibited is the filing of a petition for certification election outside the 60-day freedom period. This is not the situation in this case. If at all, the signing of the authorization to file a certification election was merely preparatory to the filing of the petition for certification election, or an exercise of respondents' right to self-organization.

5. ID.; LABOR RELATIONS; COLLECTIVE BARGAINING AGREEMENT; REPRESENTATION ISSUE; PROVISION FOR STATUS QUO; CONDITIONED ON THE FACT THAT NO CERTIFICATION ELECTION IS FILED DURING THE FREEDOM PERIOD. — The provision of Article 256 of the Labor Code is particularly enlightening. x x x Applying the same provision, it can be said that while it is incumbent for the employer to continue to recognize the majority status of the incumbent bargaining agent even after the expiration of the freedom period, they could only do so when no petition for certification election was filed. The reason is, with a pending petition for certification, any such agreement entered into by management with a labor organization is fraught with the risk that such a labor union may not be chosen thereafter as the collective bargaining representative. The provision for

status quo is conditioned on the fact that no certification election was filed during the freedom period. Any other view would render nugatory the clear statutory policy to favor certification election as the means of ascertaining the true expression of the will of the workers as to which labor organization would represent them.

6. ID.; ID.; ID.; ID.; AUTOMATIC RENEWAL; PERTAINS ONLY TO THE ECONOMIC PROVISIONS OF THE COLLECTIVE BARGAINING AGREEMENT (CBA), AND DOES NOT INCLUDE REPRESENTATIONAL ASPECT OF THE CBA. — [T]he last sentence of Article 253 which provides for automatic renewal pertains only to the economic provisions of the CBA, and does not include representational aspect of the CBA. An existing CBA cannot constitute a bar to a filing of a petition for certification election. When there is a representational issue, the *status quo* provision in so far as the need to await the creation of a new agreement will not apply. Otherwise, it will create an absurd situation where the union members will be forced to maintain membership by virtue of the union security clause existing under the CBA and, thereafter, support another union when filing a petition for certification election. If we apply it, there will always be an issue of disloyalty whenever the employees exercise their right to self-organization. The holding of a certification election is a statutory policy that should not be circumvented, or compromised.

7. ID.; ID.; ID.; BARGAINING REPRESENTATIVES; EMPLOYEES SHOULD BE GIVEN THE FREEDOM TO CHOOSE WHO WOULD BE THEIR BARGAINING REPRESENTATIVE. — Time and again, we have ruled that we adhere to the policy of enhancing the welfare of the workers. Their freedom to choose who should be their bargaining representative is of paramount importance. The fact that there already exists a bargaining representative in the unit concerned is of no moment as long as the petition for certification election was filed within the freedom period. What is imperative is that by such a petition for certification election the employees are given the opportunity to make known of who shall have the right to represent them thereafter. Not only some, but all of them should have the right to do so. What is equally important

is that everyone be given a democratic space in the bargaining unit concerned.

8. ID.; ID.; TERMINATION OF EMPLOYMENT; POWER TO DISMISS; MUST BE EXERCISED BY EMPLOYERS WITH GREAT CAUTION. — [T]he power to dismiss is a normal prerogative of the employer. This, however, is not without limitations. The employer is bound to exercise caution in terminating the services of his employees especially so when it is made upon the request of a labor union pursuant to the Collective Bargaining Agreement. Dismissals must not be arbitrary and capricious. Due process must be observed in dismissing an employee, because it affects not only his position but also his means of livelihood. Employers should, therefore, respect and protect the rights of their employees, which include the right to labor.

9. ID.; ID.; ID.; ILLEGAL DISMISSAL; AN EMPLOYEE WHO IS ILLEGALLY DISMISSED IS ENTITLED TO THE TWIN RELIEFS OF FULL BACKWAGES AND REINSTATEMENT; EXPLAINED. — An employee who is illegally dismissed is entitled to the twin reliefs of full backwages and reinstatement. If reinstatement is not viable, separation pay is awarded to the employee. In awarding separation pay to an illegally dismissed employee, in lieu of reinstatement, the amount to be awarded shall be equivalent to one month salary for every year of service. Under Republic Act No. 6715, employees who are illegally dismissed are entitled to full backwages, inclusive of allowances and other benefits, or their monetary equivalent, computed from the time their actual compensation was withheld from them up to the time of their actual reinstatement. But if reinstatement is no longer possible, the backwages shall be computed from the time of their illegal termination up to the finality of the decision.

10. CIVIL LAW; DAMAGES; ATTORNEY'S FEES; AWARDED IN ILLEGAL DISMISSAL CASES; CASE AT BAR. — [R]espondents, having been compelled to litigate in order to seek redress for their illegal dismissal, are entitled to the award of attorney's fees equivalent to 10% of the total monetary award.

APPEARANCES OF COUNSEL

Calingin Gallardo Calingin & Associates Law Office for petitioner.

Alciso Castillo Malazarte Paniamogan & Associates Law Office for Anacleto Tañeca, *et al.*

Wibur T. Fuentes for NAMAPRI-SPFL.

D E C I S I O N

PERALTA, *J.*:

This is a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court seeking the reversal of the Decision[1] dated July 25, 2003 and Resolution[2] dated October 23, 2003 of the Court of Appeals in CA-G.R. SP No. 71760, setting aside the Resolutions dated October 8, 2001[3] and April 29, 2002[4] of the National Labor Relations Commission in NLRC CA No. M-006309-2001 and reinstating the Decision[5] dated March 16, 2001 of the Labor Arbiter.

The facts, as culled from the records, are as follows:

On February 13, 2001, respondents Anacleto Tañeca, Loreto Uriarte, Joseph Balgoa, Jaime Campos, Geremias Tato, Martiniano Magayon, Manuel Abucay and fourteen (14) others filed a Complaint for unfair labor practice, illegal dismissal and money claims against petitioner PICOP Resources, Incorporated (PRI), Wilfredo Fuentes (*in his capacity as PRI's Vice President/Resident Manager*), Atty. Romero Boniel (*in his capacity as PRI's Manager of Legal/Labor)*, Southern

---

[1] Penned by Associate Justice Remedios Salazar-Fernando, with Associate Justices Delilah Vidallon-Magtolis and Edgardo F. Sundiam, concurring; *rollo*, pp. 50-65.

[2] *Id.* at 48.

[3] *Rollo*, pp. 219-227.

[4] *Id.* at 233-234.

[5] *Id.* at 166-178.

Philippines Federation of Labor (SPFL), Atty. Wilbur T. Fuentes (*in his capacity as Secretary General of SPFL*), Pascasio Trugillo (*in his capacity as Local President of Nagkahiusang Mamumuo sa PICOP Resources, Inc.- SPFL [NAMAPRI-SPFL]* and Atty. Proculo Fuentes, Jr.[6] *(in his capacity as National President of SPFL).*

Respondents were regular rank-and-file employees of PRI and *bona fide* members of *Nagkahiusang Mamumuo sa* PRI Southern Philippines Federation of Labor (NAMAPRI-SPFL), which is the collective bargaining agent for the rank-and-file employees of petitioner PRI.

PRI has a collective bargaining agreement (CBA) with NAMAPRI-SPFL for a period of five (5) years from May 22, 1995 until May 22, 2000.

The CBA contained the following union security provisions:

Article II- Union Security and Check-Off

Section 6. *Maintenance of membership.*

6.1 ***All employees within the appropriate bargaining unit who are members of the UNION at the time of the signing of this AGREEMENT shall, as a condition of continued employment by the COMPANY, maintain their membership in the UNION in good standing during the effectivity of this AGREEMENT.***

6.2 Any employee who may hereinafter be employed to occupy a position covered by the bargaining unit shall be advised by the COMPANY that they are required to file an application for membership with the UNION within thirty (30) days from the date his appointment shall have been made regular.

6.3 ***The COMPANY, upon the written request of the UNION and after compliance with the requirements of the New Labor Code, shall give notice of termination of services of any employee who shall fail to fulfill the condition provided in Section 6.1 and 6.2 of this Article,*** but it assumes no obligation to discharge any employee if it has reasonable grounds to believe either that membership in the UNION was not available to the employee on the same terms

[6] Now deceased.

and conditions generally applicable to other members, or that membership was denied or terminated for reasons other than voluntary resignation or non-payment of regular union dues. Separation under the Section is understood to be for cause, consequently, the dismissed employee is not entitled to separation benefits provided under the New Labor Code and in this AGREEMENT."[7]

On May 16, 2000, Atty. Proculo P. Fuentes (Atty. Fuentes) sent a letter to the management of PRI demanding the termination of employees who allegedly campaigned for, supported and signed the Petition for Certification Election of the Federation of Free Workers Union (FFW) during the effectivity of the CBA. NAMAPRI-SPFL considered said act of campaigning for and signing the petition for certification election of FFW as an act of disloyalty and a valid basis for termination for a cause in accordance with its Constitution and By-Laws, and the terms and conditions of the CBA, specifically Article II, Sections 6.1 and 6.2 on Union Security Clause.

In a letter dated May 23, 2000, Mr. Pascasio Trugillo requested the management of PRI to investigate those union members who signed the Petition for Certification Election of FFW during the existence of their CBA. NAMAPRI-SPFL, likewise, furnished PRI with machine copy of the authorization letters dated March 19, 20 and 21, 2000, which contained the names and signatures of employees.

Acting on the May 16 and May 23, 2000 letters of the NAMAPRI-SPFL, Atty. Romero A. Boniel issued a memorandum addressed to the concerned employees to explain in writing within 72 hours why their employment should not be terminated due to acts of disloyalty as alleged by their Union.

Within the period from May 26 to June 2, 2000, a number of employees who were served "explanation memorandum" submitted their explanation, while some did not.

In a letter dated June 2, 2000, Atty. Boniel endorsed the explanation letters of the employees to Atty. Fuentes for evaluation and final disposition in accordance with the CBA.

---

[7] Emphasis supplied.

After evaluation, in a letter dated July 12, 2000, Atty. Fuentes advised the management of PRI that the Union found the member's explanations to be unsatisfactory. He reiterated the demand for termination, but only of 46 member-employees, including respondents.

On October 16, 2000, PRI served notices of termination for causes to the 31 out of the 46 employees whom NAMAPRIL-SPFL sought to be terminated on the ground of "acts of disloyalty" committed against it when respondents allegedly supported and signed the Petition for Certification Election of FFW before the "freedom period" during the effectivity of the CBA. A Notice dated October 21, 2000 was also served on the Department of Labor and Employment Office (DOLE), Caraga Region.

Respondents then accused PRI of Unfair Labor Practice punishable under Article 248 (a), (b), (c), (d) and (e) of the Labor Code, while Atty. Fuentes and Wilbur T. Fuentes and Pascasio Trujillo were accused of violating Article 248 (a) and (b) of the Labor Code.

Respondents alleged that none of them ever withdrew their membership from NAMAPRI-SPFL or submitted to PRI any union dues and check-off disauthorizations against NAMAPRI-SPFL. They claimed that they continue to remain on record as *bona fide* members of NAMAPRI-SPFL. They pointed out that a patent manifestation of one's disloyalty would have been the explicit resignation or withdrawal of membership from the Union accompanied by an advice to management to discontinue union dues and check-off deductions. They insisted that mere affixation of signature on such authorization to file a petition for certification election was not *per se* an act of disloyalty. They claimed that while it may be true that they signed the said authorization before the start of the freedom period, the petition of FFW was only filed with the DOLE on May 18, 2000, or 58 days after the start of the freedom period.

Respondents maintained that their acts of signing the authorization signifying support to the filing of a Petition for Certification Election of FFW was merely prompted by their

desire to have a certification election among the rank-and-file employees of PRI with hopes of a CBA negotiation in due time; and not to cause the downfall of NAMAPRI-SPFL.

Furthermore, respondents contended that there was lack of procedural due process. Both the letter dated May 16, 2000 of Atty. Fuentes and the follow-up letter dated May 23, 2000 of Trujillo addressed to PRI did not mention their names. Respondents stressed that NAMAPRI-SPFL merely requested PRI to investigate union members who supported the Petition for Certification Election of FFW. Respondents claimed that they should have been summoned individually, confronted with the accusation and investigated accordingly and from where the Union may base its findings of disloyalty and, thereafter, recommend to management the termination for causes.

Respondents, likewise, argued that at the time NAMAPRI-SPFL demanded their termination, it was no longer the bargaining representative of the rank-and-file workers of PRI, because the CBA had already expired on May 22, 2000. Hence, there could be no justification in PRI's act of dismissing respondents due to acts of disloyalty.

Respondents asserted that the act of PRI, Wilfredo Fuentes and Atty. Boniel in giving in to the wishes of the Union in discharging them on the ground of disloyalty to the Union amounted to interference with, restraint or coercion of respondents' exercise of their right to self-organization. The act indirectly required petitioners to support and maintain their membership with NAMAPRI-SPFL as a condition for their continued employment. The acts of NAMAPRI-SPFL, Atty. Fuentes and Trujillo amounted to actual restraint and coercion of the petitioners in the exercise of their rights to self-organization and constituted acts of unfair labor practice.

In a Decision[8] dated March 16, 2001, the Labor Arbiter declared the respondents' dismissal to be illegal and ordered PRI to reinstate respondents to their former or equivalent positions

---

[8] *Rollo,* pp. 166-175.

without loss of seniority rights and to jointly and solidarily pay their backwages. The dispositive portion of which reads:

WHEREFORE, premises considered, judgment is hereby entered:

1. Declaring complainants' dismissal illegal; and

2. Ordering respondents Picop Resources Inc. (PRI) and NAMAPRI-SPFL to reinstate complainants to their former or equivalent positions without loss of seniority rights and to jointly and solidarily pay their backwages in the total amount of ₱420,339.30 as shown in the said Annex "A" plus damages in the amount of ₱10,000.00 each, or a total of ₱210,000.00 and attorney's fees equivalent to 10% of the total monetary award.

SO ORDERED.[9]

PRI and NAMAPRI-SPFL appealed to the National Labor Relations Commission (NLRC), which reversed the decision of the Labor Arbiter; thus, declaring the dismissal of respondents from employment as legal.

Respondents filed a motion for reconsideration, but it was denied on April 29, 2001 for lack of merit.

Unsatisfied, respondents filed a petition for *certiorari* under Rule 65 before the Court of Appeals and sought the nullification of the Resolution of the NLRC dated October 8, 2001 which reversed the Decision dated March 16, 2001 of Labor Arbiter and the Resolution dated April 29, 2002, which denied respondent's motion for reconsideration.

On July 25, 2003, the Court of Appeals reversed and set aside the assailed Resolutions of the NLRC and reinstated the Decision dated March 16, 2001 of the Labor Arbiter.

Thus, before this Court, PRI, as petitioner, raised the following issues:

I

WHETHER AN EXISTING COLLECTIVELY (sic) BARGAINING AGREEMENT (CBA) CAN BE GIVEN ITS FULL FORCE AND

[9] *Id.* at 175.

EFFECT IN ALL ITS TERMS AND CONDITION INCLUDING ITS UNION SECURITY CLAUSE, EVEN BEYOND THE 5-YEAR PERIOD WHEN NO NEW CBA HAS YET BEEN ENTERED INTO.

II

WHETHER OR NOT AN HONEST ERROR IN THE INTERPRETATION AND/OR CONCLUSION OF LAW FALL WITHIN THE AMBIT OF THE EXTRAORDINARY REMEDY OF *CERTIORARI* UNDER RULE 65, REVISED RULES OF COURT.[10]

We will first delve on the technical issue raised.

PRI perceived a patent error in the mode of appeal elected by respondents for the purpose of assailing the decision of the NLRC. It claimed that assuming that the NLRC erred in its judgment on the legal issues, its error, if any, is not tantamount to abuse of discretion falling within the ambit of Rule 65.

Petitioner is mistaken.

The power of the Court of Appeals to review NLRC decisions via Rule 65 or Petition for *Certiorari* has been settled as early as in our decision in *St. Martin Funeral Home v. National Labor Relations Commission*.[11] This Court held that the proper vehicle for such review was a Special Civil Action for *Certiorari* under Rule 65 of the Rules of Court, and that this action should be filed in the Court of Appeals in strict observance of the doctrine of the hierarchy of courts.[12] Moreover, it is already settled that under Section 9 of *Batas Pambansa Blg.* 129, as amended by Republic Act No. 7902[10] (An Act Expanding the Jurisdiction of the Court of Appeals, amending for the purpose of Section Nine of *Batas Pambansa Blg.* 129 as amended, known as the *Judiciary Reorganization Act of 1980*), the Court of Appeals — pursuant to the exercise of its original jurisdiction over Petitions for *Certiorari* — is specifically given the power to

---

[10] *Id.* at 30.

[11] 356 Phil. 811 (1998).

[12] *VMC Rural Electric Service Cooperative, Inc. v. Court of Appeals*, G.R. No. 153144, October 12, 2006, 504 SCRA 336, 348.

pass upon the evidence, if and when necessary, to resolve factual issues.[13]

We now come to the main issue of whether there was just cause to terminate the employment of respondents.

PRI argued that the dismissal of the respondents was valid and legal. It claimed to have acted in good faith at the instance of the incumbent union pursuant to the Union Security Clause of the CBA.

Citing Article 253 of the Labor Code,[14]

,

60 /

.

Petitioner's argument is untenable.

"Union security" is a generic term, which is applied to and comprehends "closed shop," "union shop," "maintenance of membership," or any other form of agreement which imposes upon employees the obligation to acquire or retain union membership as a condition affecting employment. There is union shop when all new regular employees are required to join the union within a certain period as a condition for their continued employment. There is maintenance of membership shop when employees, who are union members as of the effective date of the agreement, or who thereafter become members, must maintain union membership as a condition for continued employment until they are promoted or transferred out of the bargaining unit, or

---

[13] *Id.*

[14] Art. 253. *Duty to bargain collectively when there exists a collective bargaining agreement.* — When there is a collective bargaining agreement, the duty to bargain collectively shall also mean that neither party shall terminate nor modify such agreement during its lifetime. However, either party can serve a written notice to terminate or modify the agreement at least sixty (60) days prior to its expiration date. It shall be the duty of both parties to keep the *status quo* and to continue in full force and effect the terms and conditions of the existing agreement during the 60-day period and/or until a new agreement is reached by the parties.

the agreement is terminated. A closed shop, on the other hand, may be defined as an enterprise in which, by agreement between the employer and his employees or their representatives, no person may be employed in any or certain agreed departments of the enterprise unless he or she is, becomes, and, for the duration of the agreement, remains a member in good standing of a union entirely comprised of or of which the employees in interest are a part.[15]

However, in terminating the employment of an employee by enforcing the union security clause, the employer needs to determine and prove that: (1) the union security clause is applicable; (2) the union is requesting for the enforcement of the union security provision in the CBA; and (3) there is sufficient evidence to support the decision of the union to expel the employee from the union. These requisites constitute just cause for terminating an employee based on the union security provision of the CBA.[16]

As to the first requisite, there is no question that the CBA between PRI and respondents included a union security clause, specifically, a maintenance of membership as stipulated in Sections 6 of Article II, Union Security and Check-Off. Following the same provision, PRI, upon written request from the Union, can indeed terminate the employment of the employee who failed to maintain its good standing as a union member.

Secondly, it is likewise undisputed that NAMAPRI-SPFL, in two (2) occasions demanded from PRI, in their letters dated May 16 and 23, 2000, to terminate the employment of respondents due to their acts of disloyalty to the Union.

However, as to the third requisite, we find that there is no sufficient evidence to support the decision of PRI to terminate the employment of the respondents.

---

[15] *Inguillo v. First Philippine Scales, Inc.*, G.R. No. 165407, June 5, 2009, 588 SCRA 471, 485-486.

[16] *Alabang Country Club, Inc. v. National Labor Relations Commission*, G.R. No. 170287, February 14, 2008, 545 SCRA 351, 362.

PRI alleged that respondents were terminated from employment based on the alleged acts of disloyalty they committed when they signed an authorization for the Federation of Free Workers (FFW) to file a Petition for Certification Election among all rank-and-file employees of PRI. It contends that the acts of respondents are a violation of the Union Security Clause, as provided in their Collective Bargaining Agreement.

We are unconvinced.

We are in consonance with the Court of Appeals when it held that the mere signing of the authorization in support of the Petition for Certification Election of FFW on March 19, 20 and 21, or before the "freedom period," is not sufficient ground to terminate the employment of respondents inasmuch as the petition itself was actually filed during the freedom period. Nothing in the records would show that respondents failed to maintain their membership in good standing in the Union. Respondents did not resign or withdraw their membership from the Union to which they belong. Respondents continued to pay their union dues and never joined the FFW.

Significantly, petitioner's act of dismissing respondents stemmed from the latter's act of signing an authorization letter to file a petition for certification election as they signed it outside the freedom period. However, we are constrained to believe that an "authorization letter to file a petition for certification election" is different from an actual "Petition for Certification Election." Likewise, as per records, it was clear that the actual Petition for Certification Election of FFW was filed only on May 18, 2000.[17] Thus, it was within the ambit of the freedom period which commenced from March 21, 2000 until May 21, 2000. Strictly speaking, what is prohibited is the filing of a petition for certification election outside the 60-day freedom period.[18]

---

[17] *Rollo,* p. 131.

[18] Art. 253-A. *Terms of a collective bargaining agreement.* — Any Collective Bargaining Agreement that the parties may enter into shall, insofar as the representation aspect is concerned, be for a term of five (5) years. No petition questioning the majority status of the incumbent bargaining agent

This is not the situation in this case. If at all, the signing of the authorization to file a certification election was merely preparatory to the filing of the petition for certification election, or an exercise of respondents' right to self-organization.

Moreover, PRI anchored their decision to terminate respondents' employment on Article 253 of the Labor Code which states that "***it shall be the duty of both parties to keep the status quo and to continue in full force and effect the terms and conditions of the existing agreement during the 60-day period and/or until a new agreement is reached by the parties."*** It claimed that they are still bound by the Union Security Clause of the CBA even after the expiration of the CBA; hence, the need to terminate the employment of respondents.

Petitioner's reliance on Article 253 is misplaced.

The provision of Article 256 of the Labor Code is particularly enlightening. It reads:

Article 256. *Representation issue in organized establishments.* — In organized establishments, when a verified petition questioning the majority status of the incumbent bargaining agent is filed before the Department of Labor and Employment within the sixty-day period before the expiration of a collective bargaining agreement, the Med-Arbiter shall automatically order an election by secret ballot when the verified petition is supported by the written consent of at least twenty-five percent (25%) of all the employees in the bargaining unit to ascertain the will of the employees in the appropriate bargaining

---

shall be entertained and no certification election shall be conducted by the Department of Labor and Employment outside of the sixty-day period immediately before the date of expiry of such five-year term of the Collective Bargaining Agreement. All other provisions of the Collective Bargaining Agreement shall be renegotiated not later than three (3) years after its execution. Any agreement on such other provisions of the Collective Bargaining Agreement entered into within six (6) months from the date of expiry of the term of such other provisions as fixed in such Collective Bargaining Agreement, shall retroact to the day immediately following such date. If any such agreement is entered into beyond six months, the parties shall agree on the duration of retroactivity thereof. In case of a deadlock in the renegotiation of the Collective Bargaining Agreement, the parties may exercise their rights under this Code. (As amended by Section 21, Republic Act No. 6715, March 21, 1989).

unit. To have a valid election, at least a majority of all eligible voters in the unit must have cast their votes. The labor union receiving the majority of the valid votes cast shall be certified as the exclusive bargaining agent of all the workers in the unit. When an election which provides for three or more choices results in no choice receiving a majority of the valid votes cast, a run-off election shall be conducted between the labor unions receiving the two highest number of votes: *Provided*, That the total number of votes for all contending unions is at least fifty per cent (50%) of the number of votes cast.

At the expiration of the freedom period, the employer shall continue to recognize the majority status of the incumbent bargaining agent where no petition for certification election is filed.[19]

Applying the same provision, it can be said that while it is incumbent for the employer to continue to recognize the majority status of the incumbent bargaining agent even after the expiration of the freedom period, they could only do so when no petition for certification election was filed. The reason is, with a pending petition for certification, any such agreement entered into by management with a labor organization is fraught with the risk that such a labor union may not be chosen thereafter as the collective bargaining representative.[20] The provision for *status quo* is conditioned on the fact that no certification election was filed during the freedom period. Any other view would render nugatory the clear statutory policy to favor certification election as the means of ascertaining the true expression of the will of the workers as to which labor organization would represent them.[21]

In the instant case, four (4) petitions were filed as early as May 12, 2000. In fact, a petition for certification election was already ordered by the Med-Arbiter of DOLE Caraga Region on August 23, 2000.[22] Therefore, following Article 256, at the

---

[19] Emphasis supplied.

[20] *Vassar Industries Employees Union [VIEU] v. Estrella*, 172 Phil. 272, 278-279 (1978); *Today's Knitting Free Workers Union v. Noriel*, No. L-45057, February 28, 1977, 75 SCRA 450.

[21] Labor Code, Article 253-A.

[22] *Rollo*, pp. 130-136.

expiration of the freedom period, PRI's obligation to recognize NAMAPRI-SPFL as the incumbent bargaining agent does not hold true when petitions for certification election were filed, as in this case.

Moreover, the last sentence of Article 253 which provides for automatic renewal pertains only to the economic provisions of the CBA, and does not include representational aspect of the CBA. An existing CBA cannot constitute a bar to a filing of a petition for certification election. When there is a representational issue, the *status quo* provision in so far as the need to await the creation of a new agreement will not apply. Otherwise, it will create an absurd situation where the union members will be forced to maintain membership by virtue of the union security clause existing under the CBA and, thereafter, support another union when filing a petition for certification election. If we apply it, there will always be an issue of disloyalty whenever the employees exercise their right to self-organization. The holding of a certification election is a statutory policy that should not be circumvented,[23] or compromised.

Time and again, we have ruled that we adhere to the policy of enhancing the welfare of the workers. Their freedom to choose who should be their bargaining representative is of paramount importance. The fact that there already exists a bargaining representative in the unit concerned is of no moment as long as the petition for certification election was filed within the freedom period. What is imperative is that by such a petition for certification election the employees are given the opportunity to make known of who shall have the right to represent them thereafter. Not only some, but all of them should have the right to do so. What is equally important is that everyone be given a democratic space in the bargaining unit concerned.[24]

We will emphasize anew that the power to dismiss is a normal prerogative of the employer. This, however, is not without

---

[23] *Associated Labor Unions (ALU) v. Ferrer-Calleja*, G.R. No. 85085, November 6, 1989, 179 SCRA 127, 134

[24] *Id.*

limitations. The employer is bound to exercise caution in terminating the services of his employees especially so when it is made upon the request of a labor union pursuant to the Collective Bargaining Agreement. Dismissals must not be arbitrary and capricious. Due process must be observed in dismissing an employee, because it affects not only his position but also his means of livelihood. Employers should, therefore, respect and protect the rights of their employees, which include the right to labor.[25]

An employee who is illegally dismissed is entitled to the twin reliefs of full backwages and reinstatement. If reinstatement is not viable, separation pay is awarded to the employee. In awarding separation pay to an illegally dismissed employee, in lieu of reinstatement, the amount to be awarded shall be equivalent to one month salary for every year of service. Under Republic Act No. 6715, employees who are illegally dismissed are entitled to full backwages, inclusive of allowances and other benefits, or their monetary equivalent, computed from the time their actual compensation was withheld from them up to the time of their actual reinstatement. But if reinstatement is no longer possible, the backwages shall be computed from the time of their illegal termination up to the finality of the decision. Moreover, respondents, having been compelled to litigate in order to seek redress for their illegal dismissal, are entitled to the award of attorney's fees equivalent to 10% of the total monetary award.[26]

WHEREFORE, the petition is *DENIED*. The Decision dated July 25, 2003 and the Resolution dated October 23, 2003 of the Court of Appeals in CA-G.R. SP No. 71760, which set aside the Resolutions dated October 8, 2001 and April 29, 2002 of the National Labor Relations Commission in NLRC CA No. M-006309-2001, are *AFFIRMED* accordingly. Respondents are

---

[25] *Liberty Cotton Mills Workers Union v. Liberty Cotton Mills, Inc.*, 179 Phil. 317, 321-322 (1979); *Cariño v. National Labor Relations Commission*, G.R. No. 91086, May 8, 1990, 185 SCRA 177, 189.

[26] See *General Milling Corporation v. Ernesto Casio, et al.*, G.R. No. 149552, March 10, 2010.

hereby awarded full backwages and other allowances, without qualifications and diminutions, computed from the time they were illegally dismissed up to the time they are actually reinstated. Let this case be remanded to the Labor Arbiter for proper computation of the full backwages due respondents, in accordance with Article 279 of the Labor Code, as expeditiously as possible.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 163582. August 9, 2010]

WILLIAM GOLANGCO CONSTRUCTION CORPORATION, *petitioner, vs.* **RAY BURTON DEVELOPMENT CORPORATION,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; FORMAL REQUIREMENTS; NON-COMPLIANCE THEREWITH WARRANTS THE DISMISSAL OF THE PETITION; CASE AT BAR. — Petitioner is correct that it was grave error for the CA to have given due course to respondent's petition for *certiorari* despite its failure to attach copies of relevant pleadings in CIAC Case No. 13-2002. In *Tagle v. Equitable PCI Bank*, the party filing the petition for *certiorari* before the CA failed to attach the *Motion to Stop Writ of Possession* and the Order denying the same. On the ground of non-compliance with the rules, the CA dismissed said petition for *certiorari*. When the case was elevated to this Court *via* a petition for *certiorari*, the same was likewise dismissed. In said case, the Court emphasized the importance

of complying with the formal requirements for filing a petition for *certiorari* x x x. In the present case, herein petitioner (private respondent below) strongly argued against the CA's granting due course to the petition, pointing out that pertinent pleadings such as the *Complaint* before the CIAC, herein respondent's *Motion to Dismiss*, herein petitioner's *Comment and Opposition* (Re: Motion to Dismiss), and the *Motion to Suspend Proceedings*, have not been attached to the petition. Herein respondent (petitioner before the CA) argued in its Reply before the CA that it did not deem such pleadings or documents germane to the petition. However, in the CA Resolution dated July 4, 2002, the appellate court itself revealed the necessity of such documents by ordering the submission of copies of pleadings relevant to the petition. Indeed, such pleadings are necessary for a judicious resolution of the issues raised in the petition and should have been attached thereto. As mandated by the rules, the failure to do so is sufficient ground for the dismissal of the petition. The CA did not give any convincing reason why the rule regarding requirements for filing a petition should be relaxed in favor of herein respondent. Therefore, it was error for the CA to have given due course to the petition for *certiorari* despite herein respondent's failure to comply with the requirements set forth in Section 1, Rule 65, in relation to Section 3, Rule 46, of the Revised Rules of Court.

2. POLITICAL LAW; STATUTES; EXECUTIVE ORDER NO. 1008 (THE CONSTRUCTION INDUSTRY ARBITRATION LAW); CONSTRUCTION INDUSTRY ARBITRATION COMMISSION; HAS ORIGINAL AND EXCLUSIVE JURISDICTION OVER DISPUTES ARISING FROM, OR CONNECTED WITH, CONTRACTS ENTERED INTO BY PARTIES INVOLVED IN CONSTRUCTION IN THE PHILIPPINES. — [T]he subject matter of petitioner's claims arose from differences in interpretation of the contract, and under the terms thereof, such disputes are subject to voluntary arbitration. Since, under Section 4 of Executive Order No. 1008 the CIAC shall have original and exclusive jurisdiction over disputes arising from, or connected with, contracts entered into by parties involved in construction in the Philippines and all that is needed for the CIAC to acquire jurisdiction is for the parties to agree to submit the same to voluntary arbitration,

there can be no other conclusion but that the CIAC had jurisdiction over petitioner's complaint.

3. ID.; ID.; ID.; ID.; CONSTRUCTION INDUSTRY ARBITRATION COMMISSION (CIAC) RULES OF PROCEDURE; CONSTRUCTION CONTRACT; AN ARBITRATION CLAUSE THEREIN OR A SUBMISSION TO ARBITRATION OF A CONSTRUCTION DISPUTE SHALL BE DEEMED AS AN AGREEMENT TO SUBMIT AN EXISTING OR FUTURE CONTROVERSY TO CIAC JURISDICTION. — Section 1, Article III of the CIAC Rules of Procedure Governing Construction Arbitration (CIAC Rules) further provide that "[a]n arbitration clause in a construction contract or a submission to arbitration of a construction dispute shall be deemed an agreement to submit an existing or future controversy to CIAC jurisdiction, notwithstanding the reference to a different arbitration institution or arbitral body in such contract or submission." Thus, even if there is no showing that petitioner previously brought its claims before a Board of Arbitrators constituted under the terms of the contract, this circumstance would not divest the CIAC of jurisdiction.

APPEARANCES OF COUNSEL

Santos Parungao Aquino & Santos Law Offices for petitioner.
Britanico Sarmiento and Franco Law Offices for respondent.

D E C I S I O N

PERALTA, *J.*:

This resolves the Petition for Review on *Certiorari* under Rule 45 of the Rules of Court, praying that the Decision[1] of the Court of Appeals (CA) dated December 19, 2003, holding that the Construction Industry Arbitration Commission (CIAC) had no jurisdiction over the dispute between herein parties, and the

[1] Penned by Associate Justice Eloy R. Bello, Jr., with Associate Justices Amelita G. Tolentino and Arturo D. Brion (now a member of this Court), concurring; *rollo*, pp. 88-94.

CA Resolution[2] dated May 24, 2004, denying herein petitioner's motion for reconsideration, be reversed and set aside.

The undisputed facts, as accurately narrated in the CA Decision, are as follows.

> On July 20, 1995, petitioner Ray Burton Development Corporation [herein respondent] (RBDC for brevity) and private respondent William Golangco Construction Corporation [herein petitioner] (WGCC) entered into a Contract for the construction of the Elizabeth Place (Office/Residential Condominium).
>
> On March 18, 2002, private respondent WGCC filed a complaint with a request for arbitration with the Construction Industry Arbitration Commission (hereinafter referred to as CIAC). In its complaint, private respondent prayed that CIAC render judgment ordering petitioner to pay private respondent the amount of, to wit:
>
> 1. ₱24,703,132.44 for the unpaid balance on the contract price;
>
> 2. ₱10,602,670.25 for the unpaid balance on the labor cost adjustment;
>
> 3. ₱9,264,503.70 for the unpaid balance of additive works;
>
> 4. ₱2,865,615.10 for extended overhead expenses;
>
> 5. ₱1,395,364.01 for materials cost adjustment and trade contractors' utilities expenses;
>
> 6. ₱4,835,933.95 for interest charges on unpaid overdue billings on labor cost adjustment and change orders.
>
> or for a total of Fifty Three Million Six Hundred Sixty-Seven Thousand Two Hundred Nineteen and 45/xx (₱53,667,219.45) and interest charges based on the prevailing bank rates on the foregoing amount from March 1, 2002 and until such time as the same shall be fully paid.
>
> On April 12, 2002, petitioner RBDC filed a Motion to Dismiss the aforesaid complaint on the ground of lack of jurisdiction. It is petitioner's contention that the CIAC acquires jurisdiction over disputes arising from or connected with construction contracts only

---

[2] *Id*. at 96.

when the parties to the contract agree to submit the same to voluntary arbitration. In the contract between petitioner and private respondent, petitioner claimed that only disputes by reason of differences in interpretation of the contract documents shall be deemed subject to arbitration.

Private respondent filed a Comment and Opposition to the aforesaid Motion dated April 15, 2002. Private respondent averred that the claims set forth in the complaint require contract interpretation and are thus cognizable by the CIAC pursuant to the arbitration clause in the construction contract between the parties. Moreover, even assuming that the claims do not involve differing contract interpretation, they are still cognizable by the CIAC as the arbitration clause mandates their direct filing therewith.

On May 6, 2002, the CIAC rendered an Order the pertinent portion of which reads as follows:

> The Commission has taken note of the foregoing arguments of the parties. After due deliberations, the Commission resolved to DENY Respondent's motion on the following grounds:
>
> [1] Clause 17.2 of Art. XVII of the Contract Agreement explicitly provides that "any dispute" arising under the construction contract shall be submitted to "the Construction Arbitration Authority created by the Government." Even without this provision, the bare agreement to submit a construction dispute to arbitration vests in the Commission original and exclusive jurisdiction by virtue of Sec. 4 of Executive Order No. 1008, whether or not a dispute involves a collection of sum of money or contract interpretation as long as the same arises from, or in connection with, contracts entered into by the parties involved. The Supreme Court jurisprudence on *Tesco vs. Vera* case referred to by respondent is no longer controlling as the same was based on the old provision of Article III, Sec. 1 of the CIAC Rules which has long been amended.
>
> [2] The issue raised by Respondent in its Motion to Dismiss is similar to the issue set forth in CA-G.R. Sp. No. 67367, *Continental Cement Corporation vs. CIAC and EEI Corporation*, where the appellate court upheld the ruling of the CIAC thereon that since the parties agreed to submit to arbitration any dispute, the same does not exclude disputes relating to claims for payment in as much as the said dispute

> originates from execution of the works. As such, the subject dispute falls within the original and exclusive jurisdiction of the CIAC.
>
> WHEREFORE, in view of the foregoing, Respondent's Motion to Dismiss is **DENIED** for lack of merit. Respondent is given anew an inextendible period of ten (10) days from receipt hereof within which to file its Answer and nominees for the Arbitral Tribunal. If Respondent shall fail to comply within the prescribed period, the Commission shall proceed with arbitration in accordance with its Rules. x x x

Thereafter, petitioner filed a Motion to Suspend Proceedings praying that the CIAC order a suspension of the proceedings in Case No. 13-2002 until the resolution of the negotiations between the parties, and consequently, that the period to file an Answer be held in abeyance.

Private respondent filed an Opposition to the aforesaid Motion and a Counter-Motion to Declare respondent to Have Refused to Arbitrate and to Proceed with Arbitration *Ex Parte*.

On May 24, 2002 the CIAC issued an Order, the pertinent portion of which reads:

> In view of the foregoing, Respondent's (petitioner's) Motion to Suspend Proceedings is **DENIED**. Accordingly, respondent is hereby given a non-extendible period of five (5) days from receipt thereof within which to submit its Answer and nominees for the Arbitral Tribunal. In default thereof, claimant's (private respondent's) Counter-Motion is deemed granted and arbitration shall proceed in accordance with the CIAC Rules Governing Construction Arbitration.
>
> SO ORDERED. x x x

On June 3, 2002, petitioner RBDC filed [with the Court of Appeals (CA)] a petition for *Certiorari* and Prohibition with prayer for the issuance of a temporary restraining order and a writ of preliminary injunction. Petitioner contended that CIAC acted without or in excess of its jurisdiction when it issued the questioned order despite the clear showing that there is lack of jurisdiction on the issue submitted by private respondent for arbitration.[3]

---

[3] *Rollo*, pp. 88-91.

On December 19, 2003, the CA rendered the assailed Decision granting the petition for *certiorari*, ruling that the CIAC had no jurisdiction over the subject matter of the case because the parties agreed that only disputes regarding differences in interpretation of the contract documents shall be submitted for arbitration, while the allegations in the complaint make out a case for collection of sum of money. Petitioner moved for reconsideration of said ruling, but the same was denied in a Resolution dated May 24, 2004.

Hence, this petition where it is alleged that:

I.

THE COURT OF APPEALS ACTED WITH GRAVE ABUSE OF DISCRETION IN FAILING TO DISMISS PRIVATE RESPONDENT RBDC'S PETITION IN CA-G.R. SP NO. 70959 OUTRIGHT IN VIEW OF RBDC'S FAILURE TO FILE A MOTION FOR RECONSIDERATION OF THE CIAC'S ORDER, AS WELL AS FOR RBDC'S FAILURE TO ATTACH TO THE PETITION THE RELEVANT PLEADINGS IN CIAC CASE NO. 13-2002, IN VIOLATION OF THE REQUIREMENT UNDER RULE 65, SECTIONS 1 AND 2, PARAGRAPH 2 THEREOF, AND RULE 46, SECTION 3, PARAGRAPH 2 THEREOF.

II.

THE COURT OF APPEALS ERRED GRAVELY IN NOT RULING THAT THE CIAC HAS JURISDICTION OVER WGCC'S CLAIMS, WHICH ARE IN THE NATURE OF ARBITRABLE DISPUTES COVERED BY CLAUSE 17.1 OF ARTICLE XVII INVOLVING CONTRACT INTERPRETATION.

x x x x x x x x x

III.

THE COURT OF APPEALS ERRED GRAVELY IN FAILING TO DISCERN THAT CLAUSE 17.2 OF ARTICLE XVII CANNOT BE TREATED AS BEING "LIMITED TO DISPUTES ARISING FROM INTERPRETATION OF THE CONTRACT."

x x x x x x x x x

IV.

THE COURT OF APPEALS ERRED GRAVELY IN NOT RULING THAT RBDC IS ESTOPPED FROM DISPUTING THE JURISDICTION OF THE CIAC.

x x x x x x x x x

V.

FINALLY, THE COURT OF APPEALS COMMITTED GRAVE ABUSE OF DISCRETION IN REFUSING TO PAY HEED TO THE DECLARATION IN EXECUTIVE ORDER NO. 1008 THAT THE POLICY OF THE STATE IS IN FAVOR OF ARBITRATION OF CONSTRUCTION DISPUTES, WHICH POLICY HAS BEEN REINFORCED FURTHER BY THE RECENT PASSAGE OF THE "ALTERNATIVE DISPUTE RESOLUTION ACT OF 2004"(R.A. NO. 9285).[4]

The petition is meritorious.

The aforementioned issues boil down to (1) whether the CA acted with grave abuse of discretion in failing to dismiss the petition for *certiorari* filed by herein respondent, in view of the latter's failure to file a motion for reconsideration of the assailed CIAC Order and for failure to attach to the petition the relevant pleadings in CIAC Case No. 13-2002; and (2) whether the CA gravely erred in not upholding the jurisdiction of the CIAC over the subject complaint.

Petitioner is correct that it was grave error for the CA to have given due course to respondent's petition for *certiorari* despite its failure to attach copies of relevant pleadings in CIAC Case No. 13-2002. In *Tagle v. Equitable PCI Bank*,[5] the party filing the petition for *certiorari* before the CA failed to attach the *Motion to Stop Writ of Possession* and the Order denying the same. On the ground of non-compliance with the rules, the CA dismissed said petition for *certiorari*. When the case was elevated to this Court *via* a petition for *certiorari*, the same was likewise dismissed. In said case, the Court emphasized the

---

[4] *Id.* at 34-36.

[5] G.R. No. 172299, April 22, 2008, 552 SCRA 424.

importance of complying with the formal requirements for filing a petition for *certiorari* and held as follows:

x x x Sec. 1, Rule 65, in relation to Sec. 3, Rule 46, of the Revised Rules of Court. Sec. 1 of Rule 65 reads:

> 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 [its or his] jurisdiction, and there is no appeal, or any plain, speedy, and adequate remedy in the ordinary course of law, a person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered annulling or modifying the proceedings of such tribunal, board or officer, and granting such incidental reliefs as law and justice may require.
>
> *The petition shall be accompanied by a certified true copy of the judgment, order or resolution subject thereof, copies of all pleadings and documents relevant and pertinent thereto*, and a sworn certification of non-forum shopping as provided in the third paragraph of Section 3, Rule 46. (Emphasis supplied.)

And Sec. 3 of Rule 46 provides:

> SEC. 3. *Contents and filing of petition; effect of non-compliance with requirements.* — The petition shall contain the full names and actual addresses of all the petitioners and respondents, a concise statement of the matters involved, the factual background of the case, and the grounds relied upon for the relief prayed for.
>
> In actions filed under Rule 65, the petition shall further indicate the material dates showing when notice of the judgment or final order or resolution subject thereof was received, when a motion for new trial or reconsideration, if any, was filed and when notice of the denial thereof was received.
>
> It shall be filed in seven (7) clearly legible copies together with proof of service thereof on the respondent with the original copy intended for the court indicated as such by the petitioner and *shall be accompanied by a clearly legible duplicate original or certified true copy of the judgment, order, resolution, or*

ruling subject thereof, such material portions of the record as are referred to therein, and other documents relevant or pertinent thereto. The certification shall be accomplished by the proper clerk of court or by his duly-authorized representative, or by the proper officer of the court, tribunal, agency or office involved or by his duly authorized representative. The other requisite number of copies of the petition shall be accompanied by clearly legible plain copies of all documents attached to the original.

x x x x x x x x x

The failure of the petitioner to comply with any of the foregoing requirements shall be sufficient ground for the dismissal of the petition. (Emphasis supplied.)

The afore-quoted provisions are plain and unmistakable. Failure to comply with the requirement that the petition be accompanied by a duplicate original or certified true copy of the judgment, order, resolution or ruling being challenged is sufficient ground for the dismissal of said petition. Consequently, **it cannot be said that the Court of Appeals acted with grave abuse of discretion amounting to lack or excess of jurisdiction in dismissing the petition x x x for non-compliance with Sec. 1, Rule 65, in relation to Sec. 3, Rule 46, of the Revised Rules of Court**.[6]

In the present case, herein petitioner (private respondent below) strongly argued against the CA's granting due course to the petition, pointing out that pertinent pleadings such as the *Complaint* before the CIAC, herein respondent's *Motion to Dismiss*, herein petitioner's *Comment and Opposition* (Re: Motion to Dismiss), and the *Motion to Suspend Proceedings*, have not been attached to the petition. Herein respondent (petitioner before the CA) argued in its Reply[7] before the CA that it did not deem such pleadings or documents germane to the petition. However, in the CA Resolution[8] dated July 4, 2002, the appellate court itself revealed the necessity of such documents

---

[6] *Id.* at 442-444. (Emphasis supplied.)

[7] CA *rollo*, pp. 293-303.

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

by ordering the submission of copies of pleadings relevant to the petition. Indeed, such pleadings are necessary for a judicious resolution of the issues raised in the petition and should have been attached thereto. As mandated by the rules, the failure to do so is sufficient ground for the dismissal of the petition. The CA did not give any convincing reason why the rule regarding requirements for filing a petition should be relaxed in favor of herein respondent. Therefore, it was error for the CA to have given due course to the petition for *certiorari* despite herein respondent's failure to comply with the requirements set forth in Section 1, Rule 65, in relation to Section 3, Rule 46, of the Revised Rules of Court.

Even on the main issue regarding the CIAC's jurisdiction, the CA erred in ruling that said arbitration body had no jurisdiction over the complaint filed by herein petitioner. There is no question that, as provided under Section 4 of Executive Order No. 1008, also known as the "Construction Industry Arbitration Law," the CIAC has original and exclusive jurisdiction over disputes arising from, or connected with, contracts entered into by parties involved in construction in the Philippines and all that is needed for the CIAC to acquire jurisdiction is for the parties to agree to submit the same to voluntary arbitration. Nevertheless, respondent insists that the only disputes it agreed to submit to voluntary arbitration are those arising from interpretation of contract documents. It argued that the claims alleged in petitioner's complaint are not disputes arising from interpretation of contract documents; hence, the CIAC cannot assume jurisdiction over the case.

Respondent's contention is tenuous.

The contract between herein parties contained an arbitration clause which reads as follows:

17.1.1. Any dispute arising in the course of the execution of this Contract by reason of differences in interpretation of the Contract Documents which the OWNER and the CONTRACTOR are unable to resolve between themselves, shall be submitted by either party for resolution or decision, x x x to a Board of Arbitrators composed of three (3) members, to be chosen as follows:

> One (1) member each shall be chosen by the OWNER and the CONTRACTOR. The said two (2) members, in turn, shall select a third member acceptable to both of them. The decision of the Board of Arbitrators shall be rendered within fifteen (15) days from the first meeting of the Board. The decision of the Board of Arbitrators when reached through the affirmative vote of at least two (2) of its members shall be final and binding upon the OWNER and the CONTRACTOR.

17.2 Matters not otherwise provided for in this Contract or by special agreement of the parties shall be governed by the provisions of the Construction Arbitration Law of the Philippines. As a last resort, any dispute which is not resolved by the Board of Arbitrators shall be submitted to the Construction Arbitration Authority created by the government.[9]

In gist, the foregoing provisions mean that herein parties agreed to submit disputes arising by reason of differences in interpretation of the contract to a Board of Arbitrators the composition of which is mutually agreed upon by the parties, and, as a last resort, **any other dispute** which had not been resolved by the Board of Arbitrators shall be submitted to the Construction Arbitration Authority created by the government, which is no other than the CIAC. Moreover, other matters not dealt with by provisions of the contract or by special agreements shall be governed by provisions of the Construction Industry Arbitration Law, or Executive Order No. 1008.

The Court finds that petitioner's claims that it is entitled to payment for several items under their contract, which claims are, in turn, refuted by respondent, involves a "dispute arising from differences in interpretation of the contract." Verily, the matter of ascertaining the duties and obligations of the parties under their contract all involve interpretation of the provisions of the contract. Therefore, if the parties cannot see eye to eye regarding each other's obligations, *i.e.*, the extent of work to be expected from each of the parties and the valuation thereof, this is properly a dispute arising from differences in the interpretation of the contract.

---

[9] *Rollo*, pp. 494-495.

Note, further, that in respondent's letter[10] dated February 14, 2000, it stated that disputed items of work such as Labor Cost Adjustment and interest charges, retention, processing of payment on Cost Retained by WGCC, Determination of Cost of Deletion for miscellaneous Finishing Works, are considered "unresolved dispute[s] as to the proper interpretation of our respective obligations under the Contract," which should be referred to the Board of Arbitrators. Even if the dispute subject matter of said letter had been satisfactorily settled by herein parties, the contents of the letter evinces respondent's frame of mind that the claims being made by petitioner in the complaint subject of this petition, are indeed matters involving disputes arising from differences in interpretation.

Clearly, the subject matter of petitioner's claims arose from differences in interpretation of the contract, and under the terms thereof, such disputes are subject to voluntary arbitration. Since, under Section 4 of Executive Order No. 1008 the CIAC shall have original and exclusive jurisdiction over disputes arising from, or connected with, contracts entered into by parties involved in construction in the Philippines and all that is needed for the CIAC to acquire jurisdiction is for the parties to agree to submit the same to voluntary arbitration, there can be no other conclusion but that the CIAC had jurisdiction over petitioner's complaint. Furthermore, Section 1, Article III of the CIAC Rules of Procedure Governing Construction Arbitration (CIAC Rules) further provide that "[a]n arbitration clause in a construction contract or a submission to arbitration of a construction dispute shall be deemed an agreement to submit an existing or future controversy to CIAC jurisdiction, notwithstanding the reference to a different arbitration institution or arbitral body in such contract or submission." Thus, even if there is no showing that petitioner previously brought its claims before a Board of Arbitrators constituted under the terms of the contract, this circumstance would not divest the CIAC of jurisdiction. In *HUTAMA-RSEA Joint Operations, Inc. v. Citra Metro Manila Tollways Corporation*,[11] the Court held that:

---

[10] *Id.* at 270-271.

[11] G.R. No. 180640, April 24, 2009, 586 SCRA 746.

Under Section 1, Article III of the CIAC Rules, an arbitration clause in a construction contract shall be deemed as an agreement to submit an existing or future controversy to CIAC jurisdiction, "**notwithstanding** the reference to a different arbitration institution or arbitral body in such contract x x x." Elementary is the rule that when laws or rules are clear, it is incumbent on the court to apply them. When the law (or rule) is unambiguous and unequivocal, application, not interpretation thereof, is imperative.

Hence, the bare fact that the parties herein incorporated an arbitration clause in the EPCC is sufficient to vest the CIAC with jurisdiction over any construction controversy or claim between the parties. The arbitration clause in the construction contract *ipso facto* vested the CIAC with jurisdiction. This rule applies, regardless of whether the parties specifically choose another forum or make reference to another arbitral body. Since the jurisdiction of CIAC is conferred by law, it cannot be subjected to any condition; nor can it be waived or diminished by the stipulation, act or omission of the parties, as long as the parties agreed to submit their construction contract dispute to arbitration, or if there is an arbitration clause in the construction contract. The parties will not be precluded from electing to submit their dispute to CIAC, because this right has been vested in each party by law.

x x x x x x x x x

It bears to emphasize that **the mere existence of an arbitration clause in the construction contract is considered by law as an agreement by the parties to submit existing or future controversies between them to CIAC jurisdiction, without any qualification or condition precedent.** To affirm a condition precedent in the construction contract, which would **effectively suspend** the jurisdiction of the CIAC until compliance therewith, would be **in conflict** with the recognized intention of the law and rules to **automatically vest** CIAC with jurisdiction over a dispute should the construction contract contain an arbitration clause.

Moreover, the CIAC was created in recognition of the contribution of the construction industry to national development goals. Realizing that delays in the resolution of construction industry disputes would also hold up the development of the country, Executive Order No. 1008 expressly mandates the CIAC to **expeditiously** settle construction industry disputes and, for this purpose, vests in the CIAC original and exclusive jurisdiction over disputes arising from,

or connected with, contracts entered into by the parties involved in construction in the Philippines.[12]

Thus, there is no question that in this case, the CIAC properly took cognizance of petitioner's complaint as it had jurisdiction over the same.

IN VIEW OF THE FOREGOING, the Petition is *GRANTED*. The Decision of the Court of Appeals, dated December 19, 2003, and its Resolution dated May 24, 2004 in CA-G.R. SP No. 70959 are *REVERSED and SET ASIDE*. The Order of the Construction Industry Arbitration Commission is *REINSTATED*.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 164538. August 9, 2010]

METROPOLITAN BANK and TRUST COMPANY, *petitioner, vs.* **ROGELIO REYNADO and JOSE C. ADRANDEA,**[*] *respondents.*

SYLLABUS

1. CRIMINAL LAW; ESTAFA; CRIMINAL LIABILITY FOR ESTAFA; NOT EXTINGUISHED BY A COMPROMISE OR SETTLEMENT ENTERED INTO AFTER THE COMMISSION OF THE CRIME. — "[N]ovation is not one

---

[12] *Id.* at 760-763. (Emphasis supplied.)

[*] Sometimes referred to as Jose C. Andraneda and Jose C. Adraneda in other parts of the records.

of the grounds prescribed by the Revised Penal Code for the extinguishment of criminal liability." In a catena of cases, it was ruled that criminal liability for estafa is not affected by a compromise or novation of contract. In *Firaza v. People* and *Recuerdo v. People,* this Court ruled that in a crime of estafa, reimbursement or belated payment to the offended party of the money swindled by the accused does not extinguish the criminal liability of the latter. We also held in *People v. Moreno* and in *People v. Ladera* that "criminal liability for estafa is not affected by compromise or novation of contract, for it is a public offense which must be prosecuted and punished by the Government on its own motion even though complete reparation should have been made of the damage suffered by the offended party." Similarly in the case of *Metropolitan Bank and Trust Company v. Tonda* cited by petitioner, we held that in a crime of estafa, reimbursement of or compromise as to the amount misappropriated, after the commission of the crime, affects only the civil liability of the offender, and not his criminal liability. Thus, the doctrine that evolved from the aforecited cases is that a compromise or settlement entered into after the commission of the crime does not extinguish accused's liability for estafa. Neither will the same bar the prosecution of said crime. Accordingly, in such a situation, as in this case, the complaint for estafa against respondents should not be dismissed just because petitioner entered into a Debt Settlement Agreement with Universal.

2. CIVIL LAW; OBLIGATIONS AND CONTRACTS; PRINCIPLE OF RELATIVITY OF CONTRACTS; PROVIDES THAT CONTRACTS CAN ONLY BIND PARTIES WHO ENTERED INTO IT, AND CANNOT FAVOR OR PREJUDICE A THIRD PERSON, EVEN IF HE IS AWARE OF SUCH CONTRACT AND HAS ACTED WITH KNOWLEDGE THEREOF. — Under Article 1311 of the Civil Code, "contracts take effect only between the parties, their assigns and heirs, except in case where the rights and obligations arising from the contract are not transmissible by their nature, or by stipulation or by provision of law." The civil law principle of relativity of contracts provides that "contracts can only bind the parties who entered into it, and it cannot favor or prejudice a third person, even if he is aware of such contract and has acted with knowledge thereof."

3. REMEDIAL LAW; CRIMINAL PROCEDURE; PRELIMINARY INVESTIGATION; PROBABLE CAUSE; DETERMINATION THEREOF IS A FUNCTION OF PUBLIC PROSECUTORS; PROBABLE CAUSE; DEFINED. — In a preliminary investigation, a public prosecutor determines whether a crime has been committed and whether there is probable cause that the accused is guilty thereof. The Secretary of Justice, however, may review or modify the resolution of the prosecutor. "Probable cause is defined as such facts and circumstances that will engender a well-founded belief that a crime has been committed and that the respondent is probably guilty thereof and should be held for trial."

4. ID.; ID.; ID.; PUBLIC PROSECUTORS ARE AFFORDED WIDE LATITUDE OF DISCRETION IN THE CONDUCT OF PRELIMINARY INVESTIGATION; EXCEPTION. — Generally, a public prosecutor is afforded a wide latitude of discretion in the conduct of a preliminary investigation. By way of exception, however, judicial review is allowed where respondent has clearly established that the prosecutor committed grave abuse of discretion that is, when he has exercised his discretion "in an arbitrary, capricious, whimsical or despotic manner by reason of passion or personal hostility, patent and gross enough as to amount to an evasion of a positive duty or virtual refusal to perform a duty enjoined by law."

5. ID.; ID.; ID.; PROBABLE CAUSE; DOES NOT REQUIRE AN INQUIRY INTO WHETHER THERE IS SUFFICIENT EVIDENCE TO PROCURE A CONVICTION. — [A] preliminary investigation for the purpose of determining the existence of probable cause is "not a part of the trial. A full and exhaustive presentation of the parties' evidence is not required, but only such as may engender a well-grounded belief that an offense has been committed and that the accused is probably guilty thereof." A "finding of probable cause does not require an inquiry into whether there is sufficient evidence to procure a conviction. It is enough that it is believed that the act or omission complained of constitutes the offense charged."

6. ID.; SPECIAL CIVIL ACTIONS; *CERTIORARI*; GRAVE ABUSE OF DISCRETION; MAY ARISE WHEN A LOWER COURT OR TRIBUNAL VIOLATES AND CONTRAVENES

THE CONSTITUTION, THE LAW OR EXISTING JURISPRUDENCE. — [C]onfronted with the issue on whether the public prosecutor and the Secretary of Justice committed grave abuse of discretion in disposing of the case of petitioner, given the sufficiency of evidence on hand, we do not hesitate to rule in the affirmative. We have previously ruled that grave abuse of discretion may arise when a lower court or tribunal violates and contravenes the Constitution, the law or existing jurisprudence.

7. ID.; CRIMINAL PROCEDURE; PROSECUTION OF OFFENSES; COMPLAINT OR INFORMATION; CANNOT BE DISMISSED DUE TO NON-INCLUSION OF ALL THE PERSONS WHO APPEAR TO BE RESPONSIBLE FOR THE OFFENSE CHARGED; CASE AT BAR. — Section 2, Rule 110 of the Rules of Court mandates that all criminal actions must be commenced either by complaint or information in the name of the People of the Philippines against all persons who appear to be responsible therefor. Thus the law makes it a legal duty for prosecuting officers to file the charges against whomsoever the evidence may show to be responsible for the offense. The proper remedy under the circumstances where persons who ought to be charged were not included in the complaint of the private complainant is definitely not to dismiss the complaint but to include them in the information. As the OSG correctly suggested, the proper remedy should have been the inclusion of certain employees of Universal who were found to have been in cahoots with respondents in defrauding petitioner. The DOJ, therefore, cannot seriously argue that because the officers of Universal were not indicted, respondents themselves should not likewise be charged. Their non-inclusion cannot be perversely used to justify desistance by the public prosecutor from prosecution of the criminal case just because not all of those who are probably guilty thereof were charged.

8. ID.; SPECIAL CIVIL ACTIONS; *MANDAMUS*; PROPER REMEDY WHERE A PROSECUTOR DELIBERATELY REFUSES TO PERFORM A DUTY ENJOINED BY LAW; CASE AT BAR. — *Mandamus* is a remedial measure for parties aggrieved. It shall issue when "any tribunal, corporation, board, officer or person unlawfully neglects the performance of an act which the law specifically enjoins as a duty resulting from an office, trust or station." The writ of *mandamus* is not available

to control discretion neither may it be issued to compel the exercise of discretion. Truly, it is a matter of discretion on the part of the prosecutor to determine which persons appear responsible for the commission of a crime. However, the moment he finds one to be so liable it becomes his inescapable duty to charge him therewith and to prosecute him for the same. In such a situation, the rule loses its discretionary character and becomes mandatory. Thus, where, as in this case, despite the sufficiency of the evidence before the prosecutor, he refuses to file the corresponding information against the person responsible, he abuses his discretion. His act is tantamount to a deliberate refusal to perform a duty enjoined by law. The Secretary of Justice, on the other hand, gravely abused his discretion when, despite the existence of sufficient evidence for the crime of estafa as acknowledged by the investigating prosecutor, he completely ignored the latter's finding and proceeded with the questioned resolution anchored on purely evidentiary matters in utter disregard of the concept of probable cause as pointed out in *Balangauan*. To be sure, findings of the Secretary of Justice are not subject to review unless shown to have been made with grave abuse. The present case calls for the application of the exception. Given the facts of this case, petitioner has clearly established that the public prosecutor and the Secretary of Justice committed grave abuse of discretion.

APPEARANCES OF COUNSEL

Alfonso M. Cruz Law Offices for petitioner.
Santos & Luceres for Jose C. Adrandea.
Isip Baria Alcid & Associates for Rogelio Reynado.

D E C I S I O N

DEL CASTILLO, *J.*:

"It is a hornbook doctrine in our criminal law that the criminal liability for estafa is not affected by a compromise, for it is a public offense which must be prosecuted and punished by the government on its own motion, even though complete reparation [has] been made of the damage suffered by the private offended

party. Since a criminal offense like estafa is committed against the State, the private offended party may not waive or extinguish the criminal liability that the law imposes for the commission of the crime."[1]

This Petition for Review on *Certiorari* under Rule 45 of the Rules of Court seeks the reversal of the Court of Appeals' (CA's) Decision[2] dated October 21, 2002 in CA-G.R. SP No. 58548 and its further Resolution[3] dated July 12, 2004 denying petitioner's Motion for Reconsideration.[4]

Factual Antecedents

On January 31, 1997, petitioner Metropolitan Bank and Trust Company charged respondents before the Office of the City Prosecutor of Manila with the crime of estafa under Article 315, paragraph 1(b) of the Revised Penal Code. In the affidavit[5] of petitioner's audit officer, Antonio Ivan S. Aguirre, it was alleged that the special audit conducted on the cash and lending operations of its Port Area branch uncovered anomalous/ fraudulent transactions perpetrated by respondents in connivance with client Universal Converter Philippines, Inc. (Universal); that respondents were the only voting members of the branch's credit committee authorized to extend credit accommodation to clients up to ₱200,000.00; that through the so-called Bills Purchase Transaction, Universal, which has a paid-up capital of only ₱125,000.00 and actual maintaining balance of ₱5,000.00, was able to make withdrawals totaling ₱81,652,000.00[6] against

---

[1] *Tamayo v. People*, G.R No. 174698, July 28, 2008, 560 SCRA 312, 323-324.

[2] CA *rollo*, pp. 195-202; penned by Associate Justice Edgardo P. Cruz and concurred in by Associate Justices Oswaldo D. Agcaoili and Amelita G. Tolentino.

[3] *Id.* at 249-251; penned by Associate Justice Edgardo P. Cruz and concurred in by Associate Justices Martin S. Villarama, Jr. (now a Member of this Court) and Amelita G. Tolentino.

[4] *Id.* at 205-215.

[5] *Id.* at 33-47.

[6] *Id.* at 43.

uncleared regional checks deposited in its account at petitioner's Port Area branch; that, consequently, Universal was able to utilize petitioner's funds even before the seven-day clearing period for regional checks expired; that Universal's withdrawals against uncleared regional check deposits were without prior approval of petitioner's head office; that the uncleared checks were later dishonored by the drawee bank for the reason "Account Closed"; and, that respondents acted with fraud, deceit, and abuse of confidence.

In their defense, respondents denied responsibility in the anomalous transactions with Universal and claimed that they only intended to help the Port Area branch solicit and increase its deposit accounts and daily transactions.

Meanwhile, on February 26, 1997, petitioner and Universal entered into a Debt Settlement Agreement[7] whereby the latter acknowledged its indebtedness to the former in the total amount of ₱50,990,976.27[8] as of February 4, 1997 and undertook to pay the same in bi-monthly amortizations in the sum of ₱300,000.00 starting January 15, 1997, covered by postdated checks, "plus balloon payment of the remaining principal balance and interest and other charges, if any, on December 31, 2001."[9]

Findings of the Prosecutor

Following the requisite preliminary investigation, Assistant City Prosecutor Winnie M. Edad (Prosecutor Edad) in her Resolution[10] dated July 10, 1997 found petitioner's evidence insufficient to hold respondents liable for estafa. According to Prosecutor Edad:

> The execution of the Debt Settlement Agreement puts complainant bank in estoppel to argue that the liability is criminal. Since the agreement was made even before the filing of this case, the relations

---

[7] *Id.* at 65-69.

[8] *Id.* at 65.

[9] *Id.* at 69.

[10] *Id.* at 48-50.

between the parties [have] change[d], novation has set in and prevented the incipience of any criminal liability on the part of respondents.[11]

Thus, Prosecutor Edad recommended the dismissal of the case:

> WHEREFORE, for insufficiency of evidence, it is respectfully recommended that the case be dismissed.[12]

On December 9, 1997, petitioner appealed the Resolution of Prosecutor Edad to the Department of Justice (DOJ) by means of a Petition for Review.[13]

Ruling of the Department of Justice

On June 22, 1998, the DOJ dismissed the petition ratiocinating that:

> It is evident that your client based on the same transaction chose to file estafa only against its employees and treat with kid gloves its big time client Universal who was the one who benefited from this transaction and instead, agreed that it should be paid on installment basis.
>
> To allow your client to make the choice is to make an unwarranted classification under the law which will result in grave injustice against herein respondents. Thus, if your client agreed that no estafa was committed in this transaction with Universal who was the principal player and beneficiary of this transaction[,] more so with herein respondents whose liabilities are based only on conspiracy with Universal.
>
> Equivocally, there is no estafa in the instant case as it was not clearly shown how respondents misappropriated the ₱53,873,500.00 which Universal owed your client after its checks deposited with Metrobank were dishonored. Moreover, fraud is not present considering that the Executive Committee and the Credit Committee of Metrobank were duly notified of these transactions which they

---

[11] *Id.* at 49.

[12] *Id.* at 50.

[13] *Id.* at 51-64.

approved. Further, no damage was caused to your client as it agreed [to] the settlement [with] Universal.[14]

A Motion for Reconsideration[15] was filed by petitioner, but the same was denied on March 1, 2000 by then Acting Secretary of Justice Artemio G. Tuquero.[16]

Aggrieved, petitioner went to the CA by filing a Petition for *Certiorari* & *Mandamus*.[17]

Ruling of the Court of Appeals

By Decision[18] of October 21, 2002, the CA affirmed the twin resolutions of the Secretary of Justice. Citing jurisprudence[19] wherein we ruled that while novation does not extinguish criminal liability, it may prevent the rise of such liability as long as it occurs prior to the filing of the criminal information in court.[20] Hence, according to the CA, "[j]ust as Universal cannot be held responsible under the bills purchase transactions on account of novation, private respondents, who acted in complicity with the former, cannot be made liable [for] the same transactions."[21] The CA added that "[s]ince the dismissal of the complaint is founded on legal ground, public respondents may not be compelled by *mandamus* to file an information in court."[22]

Incidentally, the CA totally ignored the Comment[23] of the Office of the Solicitor General (OSG) where the latter, despite

---

[14] . 72.

[15] *Id.* at 73-85.

[16] *Id.* at 86.

[17] *Id.* at 2-32.

[18] *Id.* at 195-202.

[19] *Diongzon v. Court of Appeals*, 378 Phil. 1090 (1999).

[20] *Id.* at 1097.

[21] CA *rollo*, p. 201.

[22] *Id.*

[23] *Id.* at 139-147.

being the statutory counsel of public respondent DOJ, agreed with petitioner that the DOJ erred in dismissing the complaint. It alleged that where novation does not extinguish criminal liability for estafa neither does restitution negate the offense already committed.[24]

Additionally, the OSG, in sharing the views of petitioner contended that failure to implead other responsible individuals in the complaint does not warrant its dismissal, suggesting that the proper remedy is to cause their inclusion in the information.[25] This notwithstanding, however, the CA disposed of the petition as follows:

> WHEREFORE, the petition is DENIED due course and, accordingly, DISMISSED. Consequently, the resolutions dated June 22, 1998 and March 1, 2000 of the Secretary of Justice are AFFIRMED.
>
> SO ORDERED.[26]

Hence, this instant petition before the Court.

On November 8, 2004, we required[27] respondents to file Comment, not a motion to dismiss, on the petition within 10 days from notice. The OSG filed a Manifestation and Motion in Lieu of Comment[28] while respondent Jose C. Adraneda (Adraneda) submitted his Comment[29] on the petition. The Secretary of Justice failed to file the required comment on the OSG's Manifestation and Motion in Lieu of Comment and respondent Rogelio Reynado (Reynado) did not submit any. For which reason, we issued a show cause order[30] on July 19, 2006. Their persistent non-compliance with our directives constrained

---

[24] *Id.* at 142-143.

[25] *Id.* at 144.

[26] *Id.* at 202.

[27] *Rollo*, p. 197.

[28] *Id.* at 219-235.

[29] *Id.* at 208-217.

[30] *Id.* at 240.

us to resolve that they had waived the filing of comment and to impose a fine of ₱1,000.00 on Reynado. Upon submission of the required memorandum by petitioner and Adraneda, the instant petition was submitted for resolution.

Issues

Petitioner presented the following main arguments for our consideration:

1. Novation and undertaking to pay the amount embezzled do not extinguish criminal liability.

2. It is the duty of the public prosecutor to implead all persons who appear criminally liable for the offense charged.

Petitioner persistently insists that the execution of the Debt Settlement Agreement with Universal did not absolve private respondents from criminal liability for estafa. Petitioner submits that the settlement affects only the civil obligation of Universal but did not extinguish the criminal liability of the respondents. Petitioner thus faults the CA in sustaining the DOJ which in turn affirmed the finding of Prosecutor Edad for committing apparent error in the appreciation and the application of the law on novation. By petitioner's claim, citing *Metropolitan Bank and Trust Co. v. Tonda*,[31] the "negotiations pertain [to] and affect only the civil aspect of the case but [do] not preclude prosecution for the offense already committed."[32]

In his Comment, Adraneda denies being a privy to the anomalous transactions and passes on the sole responsibility to his co-respondent Reynado as the latter was able to conceal the pertinent documents being the head of petitioner's Port Area branch. Nonetheless, he contends that because of the Debt Settlement Agreement, they cannot be held liable for estafa.

The OSG, for its part, instead of contesting the arguments of petitioner, even prayed before the CA to give due course to the

---

[31] 392 Phil. 797 (2000).

[32] *Id.* at 811.

petition contending that DOJ indeed erred in dismissing the complaint for estafa.

Given the facts of the case, the basic issue presented before this Court is whether the execution of the Debt Settlement Agreement precluded petitioner from holding respondents liable to stand trial for estafa under Art. 315 (1)(b) of the Revised Penal Code.[33]

Our Ruling

We find the petition highly meritorious.

Novation not a mode of extinguishing criminal liability for estafa; Criminal liability for estafa not affected by compromise or novation of contract.

Initially, it is best to emphasize that "novation is not one of the grounds prescribed by the Revised Penal Code for the extinguishment of criminal liability."[34]

---

[33] ART. 315. *Swindling (estafa).* — Any person who shall defraud another by any of the means mentioned hereinbelow shall be punished by:

x x x x x x x x x

1. With unfaithfulness or abuse of confidence, namely:

x x x x x x x x x

(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;

x x x x x x x x x

[34] *Ocampo-Paule v. Court of Appeals*, 426 Phil. 463, 471 (2002); Revised Penal Code, Art. 89. *How criminal liability is totally extinguished.* — Criminal liability is totally extinguished: 1) By the death of the convict, as to the personal penalties; and as to pecuniary penalties, liability therefor is extinguished only when the death of the offender occurs before final judgment; 2) By service of the sentence; 3) By amnesty, which completely extinguishes the penalty and all its effects; 4) By absolute pardon; 5) By prescription of the crime; 6) By prescription of the penalty; and 7) By the marriage of the offended woman, as provided in Article 344 of this Code.

In a catena of cases, it was ruled that criminal liability for estafa is not affected by a compromise or novation of contract. In *Firaza v. People*[35] and *Recuerdo v. People*,[36] this Court ruled that in a crime of estafa, reimbursement or belated payment to the offended party of the money swindled by the accused does not extinguish the criminal liability of the latter. We also held in *People v. Moreno*[37] and in *People v. Ladera*[38] that "criminal liability for estafa is not affected by compromise or novation of contract, for it is a public offense which must be prosecuted and punished by the Government on its own motion even though complete reparation should have been made of the damage suffered by the offended party." Similarly in the case of *Metropolitan Bank and Trust Company v. Tonda*[39] cited by petitioner, we held that in a crime of estafa, reimbursement of or compromise as to the amount misappropriated, after the commission of the crime, affects only the civil liability of the offender, and not his criminal liability.

Thus, the doctrine that evolved from the aforecited cases is that a compromise or settlement entered into after the commission of the crime does not extinguish accused's liability for estafa. Neither will the same bar the prosecution of said crime. Accordingly, in such a situation, as in this case, the complaint for estafa against respondents should not be dismissed just because petitioner entered into a Debt Settlement Agreement with Universal. Even the OSG arrived at the same conclusion:

> Contrary to the conclusion of public respondent, the Debt Settlement Agreement entered into between petitioner and Universal Converter Philippines extinguishes merely the civil aspect of the latter's liability as a corporate entity but not the criminal liability of the persons who actually committed the crime of estafa against petitioner Metrobank. x x x[40]

---

[35] G.R. No. 154721, March 22, 2007, 518 SCRA 681, 694.

[36] G.R. No. 168217, June 27, 2006, 493 SCRA 517, 536.

[37] 373 Phil 336, 349 (1999).

[38] 398 Phil. 588, 602 (2000).

[39] *Supra* note 31 at 811-812.

[40] CA *rollo*, p. 219.

Unfortunately for petitioner, the above observation of the OSG was wittingly glossed over in the body of the assailed Decision of the CA.

Execution of the Debt Settlement Agreement did not prevent the incipience of criminal liability.

Even if the instant case is viewed from the standpoint of the law on contracts, the disposition absolving the respondents from criminal liability because of novation is still erroneous.

Under Article 1311 of the Civil Code, "contracts take effect only between the parties, their assigns and heirs, except in case where the rights and obligations arising from the contract are not transmissible by their nature, or by stipulation or by provision of law." The civil law principle of relativity of contracts provides that "contracts can only bind the parties who entered into it, and it cannot favor or prejudice a third person, even if he is aware of such contract and has acted with knowledge thereof."[41]

In the case at bar, it is beyond cavil that respondents are not parties to the agreement. The intention of the parties thereto not to include them is evident either in the onerous or in the beneficent provisions of said agreement. They are not assigns or heirs of either of the parties. Not being parties to the agreement, respondents cannot take refuge therefrom to bar their anticipated trial for the crime they committed. It may do well for respondents to remember that the criminal action commenced by petitioner had its genesis from the alleged fraud, unfaithfulness, and abuse of confidence perpetrated by them in relation to their positions as responsible bank officers. It did not arise from a contractual dispute or matters strictly between petitioner and Universal. This being so, respondents cannot rely on subject settlement agreement to preclude prosecution of the offense already committed to the end of extinguishing their criminal liability or prevent the incipience of any liability that may arise from the criminal offense. This only demonstrates that the execution of

---

[41] *Integrated Packaging Corporation v. Court of Appeals*, 388 Phil. 835, 845 (2000).

the agreement between petitioner and Universal has no bearing on the innocence or guilt of the respondents.

Determination of the probable cause, a function belonging to the public prosecutor; judicial review allowed where it has been clearly established that the prosecutor committed grave abuse of discretion.

In a preliminary investigation, a public prosecutor determines whether a crime has been committed and whether there is probable cause that the accused is guilty thereof.[42] The Secretary of Justice, however, may review or modify the resolution of the prosecutor.

"Probable cause is defined as such facts and circumstances that will engender a well-founded belief that a crime has been committed and that the respondent is probably guilty thereof and should be held for trial."[43] Generally, a public prosecutor is afforded a wide latitude of discretion in the conduct of a preliminary investigation. By way of exception, however, judicial review is allowed where respondent has clearly established that the prosecutor committed grave abuse of discretion that is, when he has exercised his discretion "in an arbitrary, capricious, whimsical or despotic manner by reason of passion or personal hostility, patent and gross enough as to amount to an evasion of a positive duty or virtual refusal to perform a duty enjoined by law."[44] Tested against these guidelines, we find that this case falls under the exception rather than the general rule.

A close scrutiny of the substance of Prosecutor Edad's Resolution dated July 10, 1997 readily reveals that were it not for the Debt Settlement Agreement, there was indeed probable cause to indict respondents for the crime charged. From her own assessment of the Complaint-Affidavit of petitioner's auditor,

---

[42] Rules of Court, Rule 112, Section 1.

[43] *Baviera v. Paglinawan*, G.R. Nos. 168380 and 170602, February 8, 2007, 515 SCRA 170, 184.

[44] *Glaxosmithkline Philippines, Inc. v. Khalid Mehmood Malik*, G.R. No. 166924, August 17, 2006, 499 SCRA 268, 273.

her preliminary finding is that "Ordinarily, the offense of estafa has been sufficiently established."[45] Interestingly, she suddenly changed tack and declared that the agreement altered the relation of the parties and that novation had set in preventing the incipience of any criminal liability on respondents. In light of the jurisprudence herein earlier discussed, the prosecutor should not have gone that far and executed an apparent somersault. Compounding further the error, the DOJ in dismissing petitioner's petition, ruled out estafa contrary to the findings of the prosecutor. Pertinent portion of the ruling reads:

> Equivocally, there is no estafa in the instant case as it was not clearly shown how respondents misappropriated the ₱53,873,500.00 which Universal owed your client after its checks deposited with Metrobank were dishonored. Moreover, fraud is not present considering that the Executive Committee and the Credit Committee of Metrobank were duly notified of these transactions which they approved. Further, no damage was caused to your client as it agreed [to] the settlement [with] Universal.[46]

The findings of the Secretary of Justice in sustaining the dismissal of the Complaint are matters of defense best left to the trial court's deliberation and contemplation after conducting the trial of the criminal case. To emphasize, a preliminary investigation for the purpose of determining the existence of probable cause is "not a part of the trial. A full and exhaustive presentation of the parties' evidence is not required, but only such as may engender a well-grounded belief that an offense has been committed and that the accused is probably guilty thereof."[47] A "finding of probable cause does not require an inquiry into whether there is sufficient evidence to procure a conviction. It is enough that it is believed that the act or omission complained of constitutes the offense charged."[48] So we held in *Balangauan v. Court of Appeals*:[49]

---

[45] CA *rollo*, p. 49.

[46] *Id.* at 72.

[47] *Ledesma v. Court of Appeals*, 344 Phil. 207, 226 (1997).

[48] *Ang-Abaya v. Ang*, G.R. No. 178511, December 4, 2008, 573 SCRA 129, 142.

[49] G.R. No. 174350, August 13, 2008, 562 SCRA 184, 206-207.

Applying the foregoing disquisition to the present petition, the reasons of DOJ for affirming the dismissal of the criminal complaints for estafa and/or qualified estafa are determinative of whether or not it committed grave abuse of discretion amounting to lack or excess of jurisdiction. In requiring "hard facts and solid evidence" as the basis for a finding of probable cause to hold petitioners Bernyl and Katherene liable to stand trial for the crime complained of, the DOJ disregards the definition of probable cause — that it is a reasonable ground of presumption that a matter is, or may be, well-founded, such a state of facts in the mind of the prosecutor as would lead a person of ordinary caution and prudence to believe, or entertain an honest or strong suspicion, that a thing is so. The term does not mean "actual and positive cause" nor does it import absolute certainty. It is merely based on opinion and reasonable belief; that is, the belief that the act or omission complained of constitutes the offense charged. While probable cause demands more than "bare suspicion," it requires "less than evidence which would justify conviction." Herein, the DOJ reasoned as if no evidence was actually presented by respondent HSBC when in fact the records of the case were teeming; or it discounted the value of such substantiation when in fact the evidence presented was adequate to excite in a reasonable mind the probability that petitioners Bernyl and Katherene committed the crime/s complained of. In so doing, the DOJ whimsically and capriciously exercised its discretion, amounting to grave abuse of discretion, which rendered its resolutions amenable to correction and annulment by the extraordinary remedy of *certiorari*.

In the case at bar, as analyzed by the prosecutor, a *prima facie* case of estafa exists against respondents. As perused by her, the facts as presented in the Complaint-Affidavit of the auditor are reasonable enough to excite her belief that respondents are guilty of the crime complained of. In *Andres v. Justice Secretary Cuevas*[50] we had occasion to rule that the "presence or absence of the elements of the crime is evidentiary in nature and is a matter of defense that may be passed upon after a full-blown trial on the merits."[51]

Thus confronted with the issue on whether the public prosecutor and the Secretary of Justice committed grave abuse of discretion

[50] 499 Phil. 36 (2005).

[51] *Id.* at 49-50.

in disposing of the case of petitioner, given the sufficiency of evidence on hand, we do not hesitate to rule in the affirmative. We have previously ruled that grave abuse of discretion may arise when a lower court or tribunal violates and contravenes the Constitution, the law or existing jurisprudence.

Non-inclusion of officers of Universal not a ground for the dismissal of the complaint.

The DOJ in resolving to deny petitioner's appeal from the resolution of the prosecutor gave another ground — failure to implead the officers of Universal. It explained:

> To allow your client to make the choice is to make an unwarranted classification under the law which will result in grave injustice against herein respondents. Thus, if your client agreed that no estafa was committed in this transaction with Universal who was the principal player and beneficiary of this transaction[,] more so with herein respondents whose liabilities are based only on conspiracy with Universal.[52]

The ratiocination of the Secretary of Justice conveys the idea that if the charge against respondents rests upon the same evidence used to charge co-accused (officers of Universal) based on the latter's conspiratorial participation, the non-inclusion of said co-accused in the charge should benefit the respondents.

The reasoning of the DOJ is flawed.

Suffice it to say that it is indubitably within the discretion of the prosecutor to determine who must be charged with what crime or for what offense. Public prosecutors, not the private complainant, are the ones obliged to bring forth before the law those who have transgressed it.

Section 2, Rule 110 of the Rules of Court[53] mandates that all criminal actions must be commenced either by complaint or

---

[52] CA *rollo*, p. 72.

[53] SEC. 2. *The complaint or information*. — The complaint or information shall be in writing, in the name of the People of the Philippines and against all persons who appear to be responsible for the offense involved.

information in the name of the People of the Philippines against all persons who appear to be responsible therefor. Thus the law makes it a legal duty for prosecuting officers to file the charges against whomsoever the evidence may show to be responsible for the offense. The proper remedy under the circumstances where persons who ought to be charged were not included in the complaint of the private complainant is definitely not to dismiss the complaint but to include them in the information. As the OSG correctly suggested, the proper remedy should have been the inclusion of certain employees of Universal who were found to have been in cahoots with respondents in defrauding petitioner. The DOJ, therefore, cannot seriously argue that because the officers of Universal were not indicted, respondents themselves should not likewise be charged. Their non-inclusion cannot be perversely used to justify desistance by the public prosecutor from prosecution of the criminal case just because not all of those who are probably guilty thereof were charged.

Mandamus a proper remedy when resolution of public respondent is tainted with grave abuse of discretion.

Mandamus is a remedial measure for parties aggrieved. It shall issue when "any tribunal, corporation, board, officer or person unlawfully neglects the performance of an act which the law specifically enjoins as a duty resulting from an office, trust or station."[54] The writ of *mandamus* is not available to control discretion neither may it be issued to compel the exercise of discretion. Truly, it is a matter of discretion on the part of the prosecutor to determine which persons appear responsible for the commission of a crime. However, the moment he finds one to be so liable it becomes his inescapable duty to charge him therewith and to prosecute him for the same. In such a situation, the rule loses its discretionary character and becomes mandatory. Thus, where, as in this case, despite the sufficiency of the evidence before the prosecutor, he refuses to file the

[54] Rules of Court, Rule 65, Sec. 3.

corresponding information against the person responsible, he abuses his discretion. His act is tantamount to a deliberate refusal to perform a duty enjoined by law. The Secretary of Justice, on the other hand, gravely abused his discretion when, despite the existence of sufficient evidence for the crime of estafa as acknowledged by the investigating prosecutor, he completely ignored the latter's finding and proceeded with the questioned resolution anchored on purely evidentiary matters in utter disregard of the concept of probable cause as pointed out in *Balangauan*. To be sure, findings of the Secretary of Justice are not subject to review unless shown to have been made with grave abuse.[55] The present case calls for the application of the exception. Given the facts of this case, petitioner has clearly established that the public prosecutor and the Secretary of Justice committed grave abuse of discretion.

WHEREFORE, the petition is *GRANTED*. The assailed Decision of the Court of Appeals in CA-G.R. SP No. 58548 promulgated on October 21, 2002 affirming the Resolutions dated June 22, 1998 and March 1, 2000 of the Secretary of Justice, and its Resolution dated July 12, 2004 denying reconsideration thereon are hereby *REVERSED and SET ASIDE.* The public prosecutor is ordered to file the necessary information for estafa against the respondents.

SO ORDERED.

Corona, C.J. (Chairperson), Leonardo-de Castro, Bersamin,[**] and *Perez, JJ.,* concur.

---

[55] *Public Utilities Department v. Hon. Guingona, Jr.*, 417 Phil. 798, 805 (2001).

[**] In lieu of Associate Justice Presbitero J. Velasco, Jr., per Special Order No. 876 dated August 2, 2010.

FIRST DIVISION

[G.R. No. 165770. August 9, 2010]

HEIRS OF FRANCISCA MEDRANO, namely YOLANDA R. MEDRANO, ALFONSO R. MEDRANO, JR., EDITA M. ALFARO, MARITES M. PALENTINOS, and GIOVANNI MEDRANO, represented by their legal representative, Marites Medrano-Palentinos, *petitioners, vs.* **ESTANISLAO DE VERA,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; PARTIES TO CIVIL ACTIONS; TRANSFER OF INTEREST; TRANSFEREE *PENDENTE LITE*; MAY BE ALLOWED TO JOIN THE ORIGINAL DEFENDANTS; CASE AT BAR. — De Vera is a transferee *pendente lite* of the named defendants (by virtue of the Deed of Renunciation of Rights that was executed in his favor during the pendency of Civil Case No. U-7316). His rights were derived from the named defendants and, as transferee *pendente lite*, he would be bound by any judgment against his transferors under the rules of *res judicata*. Thus, De Vera's interest cannot be considered and tried separately from the interest of the named defendants. It was therefore wrong for the trial court to have tried Medrano's case against the named defendants (by allowing Medrano to present evidence *ex parte* against them) after it had already admitted De Vera's answer. What the trial court should have done is to treat De Vera (as transferee *pendente lite*) as having been joined as a party-defendant, and to try the case on the basis of the answer De Vera had filed and with De Vera's participation. As transferee *pendente lite*, De Vera may be allowed to join the original defendants under Rule 3, Section 19: "SEC. 19. *Transfer of interest. — In case of any transfer of interest*, the action may be continued by or against the original party, unless *the court upon motion directs the person to whom the interest is transferred to be substituted in the action or joined with the original party*."

2. ID.; ID.; ID.; ID.; ID.; THE TRIAL COURT IS GIVEN DISCRETION TO ALLOW OR DISALLOW THE

SUBSTITUTION OR JOINDER BY THE TRANSFEREE; RATIONALE. — [Rule 3, Section 19] gives the trial court discretion to allow or disallow the substitution or joinder by the transferee. Discretion is permitted because, in general, the transferee's interest is deemed by law as adequately represented and protected by the participation of his transferors in the case. There may be no need for the transferee *pendente lite* to be substituted or joined in the case because, in legal contemplation, he is not really denied protection as his interest is one and the same as his transferors, who are already parties to the case.

3. ID.; ID.; EFFECT OF FAILURE TO PLEAD; EFFECT OF PARTIAL DEFAULT; THE DEFAULT OF THE ORIGINAL DEFENDANTS SHOULD NOT RESULT IN THE *EX PARTE* PRESENTATION OF EVIDENCE WHEN A TRANSFEREE *PENDENTE LITE* HAS FILED AN ANSWER; CASE AT BAR. — While the rule allows for discretion, the paramount consideration for the exercise thereof should be the protection of the parties' interests and their rights to due process. In the instant case, the circumstances demanded that the trial court exercise its discretion in favor of allowing De Vera to join in the action and participate in the trial. It will be remembered that the trial court had already admitted De Vera's answer when it declared the original defendants in default. As there was a transferee *pendente lite* whose answer had already been admitted, the trial court should have tried the case on the basis of that answer, based on Rule 9, Section 3(c): "*Effect of partial default.* — When a pleading asserting a claim states a common cause of action against several defending parties, some of whom answer and the others fail to do so, the court shall try the case against all upon the answers thus filed and render judgment upon the evidence presented." Thus, the default of the original defendants should not result in the *ex parte* presentation of evidence because De Vera (a transferee *pendente lite* who may thus be joined as defendant under Rule 3, Section 19) filed an answer. The trial court should have tried the case based on De Vera's answer, which answer is deemed to have been adopted by the non-answering defendants. To proceed with the *ex parte* presentation of evidence against the named defendants after De Vera's answer had been admitted would not only be a violation of Rule 9, Section 3(c), but would also be a gross disregard of De Vera's right to due

process. This is because the *ex parte* presentation of evidence would result in a default judgment which would bind not just the defaulting defendants, but also De Vera, precisely because he is a transferee *pendente lite*. This would result in an anomaly wherein De Vera would be bound by a default judgment even if he had filed an answer and expressed a desire to participate in the case.

4. ID.; ID.; INTERVENTION; PURPOSE. — The purpose of intervention is to enable a stranger to an action to become a party in order for him to protect his interest and for the court to settle all conflicting claims. Intervention is allowed to avoid multiplicity of suits more than on due process considerations. The intervenor can choose not to participate in the case and he will not be bound by the judgment.

5. ID.; ID.; PARTIES TO CIVIL ACTIONS; TRANSFER OF INTEREST; TRANSFEREE *PENDENTE LITE*; DEEMED JOINED IN THE PENDING ACTION FROM THE MOMENT WHEN THE TRANSFER OF INTEREST IS PERFECTED; CASE AT BAR. — De Vera is *not* a stranger to the action but a transferee *pendente lite*. x x x [A] transferee *pendente lite* is deemed joined in the pending action from the moment when the transfer of interest is perfected. His participation in the case should have been allowed by due process considerations.

6. ID.; ID.; JUDGMENTS; A VOID JUDGMENT CANNOT ATTAIN FINALITY AND ITS EXECUTION HAS NO BASIS IN LAW; CASE AT BAR. — We likewise adopt with approval the appellate court's observation that De Vera's failure to file a pleading-in-intervention will not change the long foregone violation of his right to due process. The *ex parte* presentation of evidence had already been terminated when the trial court required De Vera to file his pleading-in-intervention. Even if he complied with the order to file a pleading-in-intervention, the damage had already been done. The precipitate course of action taken by the trial court rendered compliance with its order moot. Given the Court's finding that the *ex parte* presentation of evidence constituted a violation of due process rights, the trial court's judgment by default cannot bind De Vera. A void judgment cannot attain finality and its execution has no basis in law. The case should be

remanded to the trial court for trial based on De Vera's answer and with his participation.

7. ID.; ID.; APPEALS; AN APPEAL SEEKS TO CORRECT ERRORS OF JUDGMENT. — We agree with respondent that ordinary appeal was not an adequate remedy under the circumstances of the case. An appeal seeks to correct errors of judgment committed by a court, which has jurisdiction over the person and the subject matter of the dispute. In the instant case, the trial court maintained that it had no jurisdiction over De Vera because it did not consider him a party to the case. Its stance is that De Vera, as a non-party to the case, could not participate therein, much less assail any of the orders, resolutions, or judgments of the trial court. An appeal would have been an illusory remedy in this situation because his notice of appeal would have certainly been denied on the ground that he is not a party to the case.

8. ID.; ID.; SPECIAL CIVIL ACTIONS; *CERTIORARI*; AN EXTRAORDINARY REMEDY FOR THE CORRECTION OF ERRORS OF JURISDICTION; CASE AT BAR. — *[C]ertiorari* is an extraordinary remedy for the correction of errors of jurisdiction. It is proper if the court acted without or in grave abuse of discretion amounting to lack or excess of jurisdiction and there is no appeal or any plain, speedy, and adequate remedy in law. Given the circumstance that the final decision in Civil Case No. U-7316 prejudices De Vera's rights despite the fact that he was not recognized as a party thereto and was not allowed to assail any portion thereof, De Vera's remedy was to annul the trial court proceedings on the ground that it was conducted with grave abuse of discretion amounting to lack of jurisdiction. With such annulment, the trial court should hear the case anew with De Vera fully participating therein.

APPEARANCES OF COUNSEL

Corazon A. Merrera for petitioners.
Simplicio Sevilleja for respondent.

D E C I S I O N

DEL CASTILLO, *J.*:

In cases where the subject property is transferred by the defendant during the pendency of the litigation, the interest of the transferee *pendente lite* cannot be considered independent of the interest of his transferors. If the transferee files an answer while the transferor is declared in default, the case should be tried on the basis of the transferee's answer and with the participation of the transferee.

This Petition for Review on *Certiorari*[1] assails the June 25, 2004 Decision[2] of the Court of Appeals (CA) in CA-G.R. SP No. 80053, which contained the following dispositive portion:

> WHEREFORE, premises considered, the petition is hereby GRANTED and this Court orders that the case be remanded to the court *a quo* for further trial.
>
> SO ORDERED.[3]

Likewise assailed is the appellate court's October 6, 2004 Resolution[4] denying petitioners' Motion for Reconsideration.

Factual Antecedents

This case concerns a 463-square meter parcel of land[5] covered by Transfer Certificate of Title (TCT) No. 41860 in the name of Flaviana De Gracia (Flaviana). In 1980, Flaviana died[6]

---

[1] *Rollo*, pp. 14-56.

[2] CA *rollo*, pp. 152-160; penned by Associate Justice Eugenio S. Labitoria and concurred in by Associate Justices Jose L. Sabio, Jr. and Jose C. Mendoza (now a Member of this Court).

[3] *Id.* at 160.

[4] *Id.* at 205-206.

[5] Located at Roxas St., cor. Cerezo St, Barangay Guiset Norte, San Manuel, Pangasinan.

[6] Flaviana De Gracia died on February 14, 1980 per Certificate of Death, records, p. 10.

intestate, leaving her half-sisters Hilaria Martin-Paguyo (Hilaria) and Elena Martin-Alvarado (Elena) as her compulsory heirs.

In September 1982, Hilaria and Elena, by virtue of a private document denominated "*Tapno Maamoan ti Sangalobongan*,"[7] waived all their hereditary rights to Flaviana's land in favor of Francisca Medrano (Medrano). It stated that the waiver was done in favor of Medrano in consideration of the expenses that she incurred for Flaviana's medication, hospitalization, wake and burial. In the same year, Medrano built her concrete bungalow on the land in question without any objection from Hilaria and Elena or from their children.

When Hilaria and Elena died, some of their children affirmed the contents of the private document executed by their deceased mothers. To that end, they executed separate Deeds of Confirmation of Private Document and Renunciation of Rights in favor of Medrano.[8] They likewise affirmed in said documents that Medrano had been occupying and possessing the subject property as owner since September 1982.

Due to the refusal of the other children[9] to sign a similar renunciation, Medrano filed a Complaint[10] on April 27, 2001 for quieting of title, reconveyance, reformation of instrument, and/or partition with damages against Pelagia M. Paguyo-Diaz (Pelagia), Faustina Paguyo-Asumio (Faustina), Jesus Paguyo (Jesus), Veneranda Paguyo-Abrenica, Emilio a.k.a. Antonio Alvarado, Francisca Alvarado-Diaz (Francisca) and Estrellita Alvarado-Cordero (Estrellita). The case was docketed as Civil

---

[7] Exhibit "C", Folder of Exhibits.

[8] Two of Hilaria's children, Victorio and Miguel Paguyo, executed the Deed of Confirmation on September 23, 1998, Exhibit "D", Folder of Exhibits; while four of Elena's children, Elet, Francisco, Dolores, and Felipe, executed their own Deed of Confirmation on January 26, 2000, Exhibit "E", Folder of Exhibits.

[9] Pelagia Diaz, Faustina Asumio, Jesus Paguyo, Veneranda Abrenica, Emilio a.k.a. Antonio Alvarado, Francisca Diaz, and Estrellita Cordero.

[10] Records, pp. 2-8 with Annexes.

Case No. U-7316 and raffled to Branch 48 of the Regional Trial Court (RTC) of Urdaneta, Pangasinan. Medrano then caused the annotation of a notice of *lis pendens* on TCT No. 41860[11] on May 3, 2001.

Summons upon the original complaint was duly served upon Pelagia and_Estrellita .[12]

On August 29, 2001, Medrano filed an Amended Complaint[13] impleading the widow and children of Antonio Alvarado, in view of the latter's death.[14] Summons upon the amended complaint was served upon the other defendants,[15] but no longer served upon Pelagia and Estrellita.

On April 2, 2002, respondent Estanislao D. De Vera (De Vera) filed an Answer with Counterclaim.[16] De Vera presented himself as the real party-in-interest on the ground that some of the named defendants (Faustina, Pelagia, Francisca, Elena Kongco-Alvarado, Jesus, and Estrellita) had executed a Deed of Renunciation of Rights[17] in his favor on March 23, 2002. He maintained that the "*Tapno Maamoan ti Sangalobongan*" that was executed by the defendants' predecessors in favor of Medrano was null and void for want of consideration. Thus, while some children affirmed the renunciation of their deceased mothers' rights in the lot in favor of Medrano, the other children renounced their hereditary rights in favor of De Vera.

Medrano filed a Motion to Expunge Answer with Counterclaim of Estanislao D. De Vera and to Declare Defendants in Default.[18]

---

[11] Entry No. 196296, *rollo*, p. 103.

[12] Records, p. 32.

[13] *Id.* at 136-146.

[14] *Ex-Parte* Notice of Death and Motion to Amend Complaint, *id.* at 134-135.

[15] *Id.* at 170 and 197.

[16] *Id.* at 188-194.

[17] *Id.* at 192-193.

[18] *Id.* at 206-208. Dated July 1, 2002 and filed on July 9, 2002.

She argued that respondent De Vera had no personality to answer the complaint since he was not authorized by the named defendants to answer in their behalf.

In an Order,[19] dated July 30, 2002, the trial court disagreed with Medrano's argument and admitted De Vera's Answer with Counterclaim. The trial court opined that De Vera did not need a special power of attorney from the defendants because he did not answer the complaint in their behalf. De Vera made a voluntary appearance in the case as the transferee of the defendants' rights to the subject property. The trial court further explained that when the presence of other parties is required for granting complete relief, the court shall order them to be brought in as defendants. While it was unsure whether De Vera was an indispensable party to the case, the trial court opined that at the very least he was a necessary party for granting complete relief. It thus held that the admission of De Vera's Answer with Counterclaim is proper in order to avoid multiplicity of suits.[20] In the same Order, the court declared the named defendants in default for not answering the complaint despite valid service of summons. Thus, it appears that the court *a quo* treated the named defendants and De Vera as distinct and separate parties.

Medrano's response to the aforesaid order was two-fold. With regard to the order declaring the named defendants in default, Medrano filed on February 13, 2003 a Motion to Set Reception of Evidence Before the Branch Clerk of Court.[21] She argued that she could present evidence *ex parte* against the defaulting defendants on the ground that she presented alternative causes of action against them in her complaint. Her cause of action on the basis of acquisitive prescription can be raised solely against the defaulting original defendants.[22] She thus prayed to be allowed to present evidence *ex parte* with respect to her claim of acquisitive

---

[19] *Id.* at 225-226; penned by Judge Alicia B. Gonzales-Decano.

[20] *Id.* at 226.

[21] *Id.* at 230-231.

[22] *Id.* at 231.

prescription against the defaulting defendants. As for the order admitting De Vera's Answer with Counterclaim, Medrano filed on February 21, 2003 a Motion for Reconsideration of Order dated July 30, 2002.[23] She asked the court to order De Vera to file a pleading-in-intervention so that he could be properly named as a defendant in the case.

In an Order[24] dated March 6, 2003, the trial court resolved to grant Medrano's Motion to Set Reception of Evidence. It ordered the conduct of *ex parte* presentation of evidence on the same day and the continuation thereof to proceed on March 10, 2003. Thus, Medrano presented her evidence *ex parte* on the set dates. On March 10, 2003, the case was submitted for resolution.[25]

Given the court's standing order which admitted De Vera's Answer with Counterclaim, De Vera filed a Motion to Set the Case for Preliminary Conference on March 27, 2003.[26]

The trial court resolved petitioners' and De Vera's respective pending motions in its March 31, 2003 Order.[27] The trial court granted Medrano's motion and set aside its Order which admitted De Vera's Answer with Counterclaim. Citing Rule 19 of the Rules of Court, the court ordered De Vera to file a pleading-in-intervention so that he could be recognized as a party-defendant. As a necessary consequence to this ruling, the trial court denied De Vera's motion to set the case for preliminary conference for prematurity.

De Vera did not comply with the court's order despite service upon his lawyer, Atty. Simplicio M. Sevilleja, on April 2, 2003.

---

[23] *Id.* at 233-234.

[24] *Id.* at 237.

[25] *Id.* at 239. Meanwhile, Francisca Medrano died and her daughter Edith M. Alfaro was entered as her legal representative (*Id.* at 248).

[26] *Id.* at 247.

[27] *Id.* at 249-250.

Ruling of the Regional Trial Court

The RTC rendered its Decision[28] on April 21, 2003. It ruled that ownership over the titled property has vested in petitioners by virtue of good faith possession for more than 10 years; thus, it was no longer necessary to compel the defendants — heirs of Hilaria and Elena — to execute an instrument to confirm Medrano's rightful ownership over the land.

The trial court likewise held that the private document denominated as "*Tapno Maamoan Ti Sangalobongan*" sufficiently conveyed to Medrano the subject property. The court held that the conveyance was done in consideration of the various expenses that Medrano incurred for Flaviana's benefit. While the court conceded that the parcel of land was not adequately described in the "*Tapno Maamoan ti Sangalobongan*," its location, metes and bounds were nonetheless confirmed by the defendants' siblings in their respective deeds of confirmation.

The dispositive portion of the Decision reads, *in toto*:

> WHEREFORE, judgment is hereby rendered:
>
> (1) Declaring [Medrano], substituted by her heirs, as the rightful and lawful owner of the land covered by T.C.T. No. 41860;[29]
>
> (2) Ordering the Register of Deeds of Tayug, Pangasinan to cancel T.C.T. No. 41860 and to issue another Transfer Certificate of Title in the name of [Medrano];
>
> All other claims are hereby denied for lack of merit.
>
> SO ORDERED.[30]

De Vera filed a Motion for Reconsideration[31] arguing that he was an indispensable party who was not given an opportunity

---

[28] *Id.* at 254-262.

[29] See Order dated December 11, 2003, *id.* at 390.

[30] *Id.* at 262.

[31] *Id.* at 269-271.

to present his evidence in the case. He also maintained that Medrano was not the owner of the property, but a mere administratrix of the land as evidenced by the records in SP Proc. No. 137577.[32]

De Vera's motion was denied[33] for lack of merit on July 22, 2003. The court noted that De Vera had no legal personality to file a motion for reconsideration because he did not file a pleading-in-intervention. The trial court explained it would have allowed De Vera to present his evidence in the case had he complied with the court's order to file a pleading-in-intervention.

On September 10, 2003, De Vera filed a Manifestation[34] informing the trial court of his intention to file a petition for *certiorari* and *mandamus* before the CA, pursuant to Rule 41, Section 1, second paragraph and Rule 65 of the Rules of Court.

On October 7, 2003, petitioners filed a Motion for Entry of Judgment and Execution[35] before the trial court. They also filed a Counter-Manifestation[36] to De Vera's Manifestation. Petitioners insisted that De Vera, as a transferee *pendente lite*, was bound by the final judgment or decree rendered against his transferors. Even assuming that De Vera had a right to appeal, the period therefor had already lapsed on August 12, 2003.

In its Order[37] dated December 10, 2003, the court *a quo* maintained that De Vera was not a party to the suit, hence his appeal would not stay the finality and execution of judgment. Thus the trial court ordered the entry of judgment in Civil Case No. U-7316. The writ of execution was issued on December 12, 2003.

---

[32] *Id.* at 275-276.

[33] *Id.* at 285-286.

[34] *Id.* at 289.

[35] *Id.* at 297-299.

[36] *Id.* at 306-307.

[37] *Id.* at 386-387.

De Vera sought reconsideration[38] of the above order but the same was denied[39] on the basis that De Vera had no personality to assail any order, resolution, or decision of the trial court in Civil Case No. U-7316.

The Register of Deeds of Tayug, Pangasinan complied with the writ by canceling TCT No. 41860 in the name of Flaviana De Gracia and issuing TCT No. 65635 in the names of petitioners[40] on April 19, 2004.

Proceedings before the Court of Appeals

De Vera argued in his Petition for *Certiorari* and *Mandamus*[41] before the CA that the trial court erred in declaring the defendants in default and sought a writ compelling the trial court to try the case anew. He insisted that he stepped into the shoes of the defendants with regard to the subject property by virtue of the quitclaim that the defendants executed in his favor. Thus, the trial court should have considered the defendants as properly substituted by De Vera when he filed his Answer.

The standing order of the trial court with regard to De Vera at the time that it allowed Medrano to present her evidence was to admit De Vera's Answer with Counterclaim. Thus, De Vera argued that it was improper for the trial court to have allowed Medrano to present her evidence *ex parte* because it had yet to rule on whether De Vera had personality to participate in the proceedings.

---

[38] *Id.* at 397-399.

[39] Order dated May 13, 2004; *id.* at 415.

[40] *Id.* at 428-429.

[41] Filed on October 23, 2003. Entitled *Pelagia M. Paguyo-Diaz, Jesus M. Paguyo, Faustina M. Paguyo-Asumio, Franscisca M. Alvarado-Diaz, Elena Kongco-Alvarado, and Estrellita M. Alvarado-Cordero, substituted by Estanislao de Vera v. Regional Trial Court, First Judicial Region, Branch 48, Urdaneta City, Pangasinan, Heirs of Francisca R. Medrano, namely: Alfonso Medrano, Jr., Editha M. Alfaro, Marites M. Palentinos, and Giovani Medrano, represented by their legal representative, Editha M. Alfaro.* CA *rollo,* pp. 10-27.

Ruling of the Court of Appeals

The appellate court agreed with De Vera. The CA noted that the *ex parte* presentation of evidence took place on March 6 and 10, 2003; while the Motion to Expunge Answer and Require Filing of Pleading-in-Intervention was granted much later on March 31, 2003. The CA held that the trial court gravely abused its discretion by allowing Medrano to present her evidence *ex parte* while De Vera's personality to participate in the case still remained unresolved. The premature *ex parte* presentation of evidence rendered a pleading-in-intervention moot and academic.

The CA pointed out that the trial court should have exercised its authority to order the substitution of the original defendants instead of requiring De Vera to file a pleading-in-intervention. This is allowed under Rule 3, Section 19 of the Rules of Court. Since a transferee *pendente lite* is a proper party[42] to the case, the court can order his outright substitution for the original defendants.

The CA further held that De Vera's failure to file the necessary pleading-in-intervention was a technical defect that could have been easily cured. The trial court could have settled the controversy completely on its merits had it admitted De Vera's Answer with Counterclaim. Not affording De Vera his right to adduce evidence is not only a manifest grave abuse of discretion amounting to lack or excess of jurisdiction but also runs counter to the avowed policy of avoiding multiplicity of suits.

The appellate court then ordered the case remanded to the trial court to afford De Vera an opportunity to present his evidence.

Petitioners filed a Motion for Reconsideration,[43] which motion was denied[44] for lack of merit on October 6, 2004.

---

[42] *Heirs of Francisco Guballa, Sr. v. Court of Appeals*, G.R. Nos. 78223 and 79403, December 19, 1988, 168 SCRA 518, 534.

[43] CA *rollo*, pp. 165-184.

[44] *Id.* at 205-206.

Issues

I

Whether De Vera could participate in Civil Case No. U-7316 without filing a motion to intervene

II

Whether De Vera is bound by the judgment against his transferors

III

Whether it was proper for the CA to take cognizance of respondent's Petition for *Certiorari* and *Mandamus*

Our Ruling

We sustain the CA's ruling that the trial court gravely abused its discretion in refusing to allow De Vera to participate in the case and requiring him to file a motion to intervene.

The trial court misjudged De Vera's interest in Civil Case No. U-7316. It held that De Vera's right to participate in the case was *independent* of the named defendants. Because of its ruling that De Vera had an "independent interest," the trial court considered his interest as separate from Medrano's claims against the named defendants, and allowed the latter to be tried separately. Thus, it admitted De Vera's Answer with Counterclaim but declared the named defendants in default and allowed the *ex parte* presentation of evidence by Medrano against the named defendants.

The trial court's approach is seriously flawed because De Vera's interest is not independent of or severable from the interest of the named defendants. De Vera is a transferee *pendente lite* of the named defendants (by virtue of the Deed of Renunciation of Rights that was executed in his favor during the pendency of Civil Case No. U-7316). His rights were derived from the named defendants and, as transferee *pendente lite*, he would be bound by any judgment against his transferors under the rules of *res judicata*.[45]

[45] RULES OF COURT, Rule 39, Section 47(b).

Thus, De Vera's interest cannot be considered and tried separately from the interest of the named defendants.

It was therefore wrong for the trial court to have tried Medrano's case against the named defendants (by allowing Medrano to present evidence *ex parte* against them) after it had already admitted De Vera's answer. What the trial court should have done is to treat De Vera (as transferee *pendente lite*) as having been joined as a party-defendant, and to try the case on the basis of the answer De Vera had filed and with De Vera's participation. As transferee *pendente lite*, De Vera may be allowed to join the original defendants under Rule 3, Section 19:

> SEC. 19. *Transfer of interest. — In case of any transfer of interest*, the action may be continued by or against the original party, unless *the court upon motion directs the person to whom the interest is transferred to be substituted in the action or joined with the original party*. (Emphasis supplied)

The above provision gives the trial court discretion to allow or disallow the substitution or joinder by the transferee. Discretion is permitted because, in general, the transferee's interest is deemed by law as adequately represented and protected by the participation of his transferors in the case. There may be no need for the transferee *pendente lite* to be substituted or joined in the case because, in legal contemplation, he is not really denied protection as his interest is one and the same as his transferors, who are already parties to the case.[46]

While the rule allows for discretion, the paramount consideration for the exercise thereof should be the protection of the parties' interests and their rights to due process. In the instant case, the circumstances demanded that the trial court exercise its discretion in favor of allowing De Vera to join in the action and participate in the trial. It will be remembered that the trial court had already admitted De Vera's answer when it declared the original

---

[46] *Santiago Land Development Corporation v. Court of Appeals*, 334 Phil. 741, 748 (1997), and its Resolution in 342 Phil. 643, 649 (1997).

defendants in default. As there was a transferee *pendente lite* whose answer had already been admitted, the trial court should have tried the case on the basis of that answer, based on Rule 9, Section 3(c):

> *Effect of partial default.* — When a pleading asserting a claim states a common cause of action against several defending parties, some of whom answer and the others fail to do so, the court shall try the case against all upon the answers thus filed and render judgment upon the evidence presented.

Thus, the default of the original defendants should not result in the *ex parte* presentation of evidence because De Vera (a transferee *pendente lite* who may thus be joined as defendant under Rule 3, Section 19) filed an answer. The trial court should have tried the case based on De Vera's answer, which answer is deemed to have been adopted by the non-answering defendants.[47]

To proceed with the *ex parte* presentation of evidence against the named defendants after De Vera's answer had been admitted would not only be a violation of Rule 9, Section 3(c), but would also be a gross disregard of De Vera's right to due process. This is because the *ex parte* presentation of evidence would result in a default judgment which would bind not just the defaulting defendants, but also De Vera, precisely because he is a transferee *pendente lite*.[48] This would result in an anomaly wherein De Vera would be bound by a default judgment even if he had filed an answer and expressed a desire to participate in the case.

We note that under Rule 3, Section 19, the substitution or joinder of the transferee is "upon motion," and De Vera did not file any motion for substitution or joinder. However, this technical flaw may be disregarded for the fact remains that the court had

---

[47] See *Heirs of Mamerto Manguiat v. Court of Appeals*, G.R. Nos. 150768 and 160176, August 20, 2008, 562, SCRA 422, 432-433. See also *Grageda v. Gomez*, G.R. No. 169536, September 21, 2007, 533 SCRA 677, 692-693.

[48] RULES OF COURT, Rule 39, Section 47(b).

already admitted his answer and such answer was on record when the *ex parte* presentation of evidence was allowed by the court. Because De Vera's answer had already been admitted, the court should not have allowed the *ex parte* presentation of evidence.

We are not persuaded by petitioners' insistence that De Vera could not have participated in the case because he did not file a motion to intervene. The purpose of intervention is to enable a stranger to an action to become a party in order for him to protect his interest and for the court to settle all conflicting claims. Intervention is allowed to avoid multiplicity of suits more than on due process considerations. The intervenor can choose not to participate in the case and he will not be bound by the judgment.

In this case, De Vera is *not* a stranger to the action but a transferee *pendente lite*. As mentioned, a transferee *pendente lite* is deemed joined in the pending action from the moment when the transfer of interest is perfected.[49] His participation in the case should have been allowed by due process considerations.[50]

We likewise adopt with approval the appellate court's observation that De Vera's failure to file a pleading-in-intervention will not change the long foregone violation of his right to due process. The *ex parte* presentation of evidence had already been terminated when the trial court required De Vera to file his pleading-in-intervention. Even if he complied with the order to file a pleading-in-intervention, the damage had already been done. The precipitate course of action taken by the trial court rendered compliance with its order moot.

---

[49] *Santiago Land Development Corporation v. Court of Appeals, supra* note 46 at 748.

[50] See also *Dela Cruz v. Joaquin*, G.R. No. 162788, July 28, 2005, 464 SCRA 576, 584, which states: "The rule on the substitution of parties was crafted to protect every party's right to due process. x x x [N]o adjudication can be made against the successor of the deceased if the fundamental right to a day in court is denied. The Court has nullified not only trial proceedings conducted without the appearance of the legal representatives of the deceased, but also the resulting judgments."

Given the Court's finding that the *ex parte* presentation of evidence constituted a violation of due process rights, the trial court's judgment by default cannot bind De Vera. A void judgment cannot attain finality and its execution has no basis in law. The case should be remanded to the trial court for trial based on De Vera's answer and with his participation.

Certiorari petition before the CA proper

Petitioners point out that De Vera admitted receiving the trial court's Order denying his motion for reconsideration on July 28, 2003. Thus he only had until August 12, 2003 to file an appeal of the decision. Having lost his right to appeal by allowing the period therefor to lapse, respondent has also lost his right to file a petition for *certiorari* before the CA. A special civil action for *certiorari* is not a substitute for the lost remedy of appeal.

Respondent argues that a Rule 65 *certiorari* petition before the CA is proper because an ordinary appeal would not have been speedy and adequate remedy to properly relieve him from the injurious effects of the trial court's orders.

We agree with respondent that ordinary appeal was not an adequate remedy under the circumstances of the case. An appeal seeks to correct errors of judgment committed by a court, which has jurisdiction over the person and the subject matter of the dispute. In the instant case, the trial court maintained that it had no jurisdiction over De Vera because it did not consider him a party to the case. Its stance is that De Vera, as a non-party to the case, could not participate therein, much less assail any of the orders, resolutions, or judgments of the trial court. An appeal would have been an illusory remedy in this situation because his notice of appeal would have certainly been denied on the ground that he is not a party to the case.

On the other hand, *certiorari* is an extraordinary remedy for the correction of errors of jurisdiction. It is proper if the court acted without or in grave abuse of discretion amounting to lack or excess of jurisdiction and there is no appeal or any plain, speedy, and adequate remedy in law. Given the circumstance

that the final decision in Civil Case No. U-7316 prejudices De Vera's rights despite the fact that he was not recognized as a party thereto and was not allowed to assail any portion thereof, De Vera's remedy was to annul the trial court proceedings on the ground that it was conducted with grave abuse of discretion amounting to lack of jurisdiction. With such annulment, the trial court should hear the case anew with De Vera fully participating therein.

WHEREFORE, the petition is *DENIED*. The June 25, 2004 Decision of the Court of Appeals in CA-G.R. SP No. 80053 and its October 6, 2004 Resolution are *AFFIRMED*.

Costs against petitioners.

SO ORDERED.

Corona, C.J. (Chairperson), Leonardo-de Castro, Bersamin,[*] and *Perez, JJ.,* concur.

SECOND DIVISION

[G.R. No. 168672. August 9, 2010]

EQUITABLE PCI BANK, INC., *petitioner, vs.* **DNG REALTY AND DEVELOPMENT CORPORATION,** *respondent*.

SYLLABUS

1. CIVIL LAW; ACT 3135 (REAL ESTATE MORTGAGE LAW); EXTRAJUDICIAL FORECLOSURE OF REAL ESTATE MORTGAGE; WRIT OF POSSESSION; ISSUANCE THEREOF BECOMES A MATTER OF RIGHT AND IS

---

[*] In lieu of Associate Justice Presbitero J. Velasco, Jr., per Special Order No. 876 dated August 2, 2010.

MERELY A MINISTERIAL FUNCTION AFTER THE CONSOLIDATION OF TITLE IN THE BUYER'S NAME FOR FAILURE OF THE MORTGAGOR TO REDEEM. — Act 3135, as amended by Act 4118, which regulates the methods of effecting an extrajudicial foreclosure of mortgage explicitly authorizes the issuance of such writ of possession. x x x Section 7 of Act 3135, as amended, refers to a situation wherein the purchaser seeks possession of the foreclosed property during the redemption period. Upon the purchaser's filing of the *ex parte* petition and posting of the appropriate bond, the RTC shall, as a matter of course, order the issuance of the writ of possession in the purchaser's favor. But equally well settled is the rule that a writ of possession will issue as a matter of course, even without the filing and approval of a bond, after consolidation of ownership and the issuance of a new TCT in the name of the purchaser. Thus, if under Section 7 of Act 3135, as amended, the RTC has the power during the period of redemption to issue a writ of possession on the *ex parte* application of the purchaser, there is no reason why it should not also have the same power after the expiration of the redemption period, especially where a new title had already been issued in the name of the purchaser. Thus, after the consolidation of title in the buyer's name for failure of the mortgagor to redeem, the writ of possession becomes a matter of right and the issuance of such writ of possession to a purchaser in an extrajudicial foreclosure is merely a ministerial function. The basis of this right to possession is the purchaser's ownership of the property.

2. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI* AND PROHIBITION; WHEN AVAILED OF. — A special civil action for *certiorari* and prohibition could be availed of only if a 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 if there is no appeal or other plain, speedy, and adequate remedy in the ordinary course of law. In this case, respondent DNG failed to redeem the foreclosed property within the reglementary period; thus, petitioner EPCIB consolidated its ownership over the property in its favor and annotated the same in respondent's title. Thus, respondent DNG's title was cancelled and a new title was issued in petitioner EPCIB's name. The RTC's issuance of a writ of

possession in favor of petitioner EPCIB as the new registered owner of the subject property was in compliance with the express provisions of Act 3135 as amended. It cannot, therefore, be charged with grave abuse of discretion as there is no showing that, in the exercise of its judgment, it acted in a capricious, whimsical, arbitrary or despotic manner tantamount to lack of jurisdiction.

3. ID.; ID.; *CERTIORARI*, PROHIBITION AND *MANDAMUS*; PROPER WHEN THERE IS NEITHER AN APPEAL NOR ANY PLAIN, SPEEDY OR ADEQUATE RELIEF IN THE ORDINARY COURSE OF LAW. — [A] writ of *certiorari, prohibition and mandamus* will only be issued if there is neither appeal nor any plain, speedy or adequate relief in the ordinary course of law. However, Section 8 of Act 3135 provides the plain, speedy, and adequate remedy in opposing the issuance of a writ of possession. x x x [A] party may file a petition to set aside the foreclosure sale and to cancel the writ of possession in the same proceedings where the writ of possession was requested. The aggrieved party may thereafter appeal from any disposition by the court on the matter. In this case, respondent DNG had the right to file a petition to set aside the sale and writ of possession issued by the RTC and to file an appeal in case of an adverse ruling. However, respondent DNG did not file such petition and, instead, filed the petition for *certiorari, prohibition and mandamus* with the CA. Hence, they were barred from filing such petition from the RTC Order and the writ of possession issued by it. Respondent's recourse to the CA via Rule 65 was inappropriate even though the Sheriff had demanded that they vacate the property. Section 8 of Act No. 3135 mandates that even if an appeal is interposed from an order granting a petition for a writ of possession, such order shall continue to be in effect during the pendency of an appeal.

4. MERCANTILE LAW; 2000 INTERIM RULES OF PROCEDURE ON CORPORATE REHABILITATION; PETITION FOR REHABILITATION; STAY ORDER; WHEN ISSUED. — Section 6 of the Interim Rules of Procedure on Corporate Rehabilitation provides: "SEC. 6. *Stay Order.* — If the court finds the petition to be sufficient in form and substance, it shall, not later than five (5) days from the filing of the petition, issue an Order (a) appointing a Rehabilitation Receiver and

fixing his bond; (b) staying enforcement of all claims, whether for money or otherwise and whether such enforcement is by court action or otherwise, against the debtor, its guarantors and sureties not solidarily liable with the debtor; (c) prohibiting the debtor from selling, encumbering, transferring, or disposing in any manner any of its properties except in the ordinary course of business; (d) prohibiting the debtor from making any payment of its liabilities outstanding as of the date of filing of the petition; (e) prohibiting the debtor's suppliers of goods or services from withholding supply of goods and services in the ordinary course of business for as long as the debtor makes payments for the services and goods supplied after the issuance of the stay order; (f) directing the payment in full of all administrative expenses incurred after the issuance of the stay order; (g) fixing the initial hearing on the petition not earlier than forty five (45) days but not later than sixty (60) days from the filing thereof; (h) directing the petitioner to publish the Order in a newspaper of general circulation in the Philippines once a week for two (2) consecutive weeks; (i) directing all creditors and all interested parties (including the Securities and Exchange Commission) to file and serve on the debtor a verified comment on or opposition to the petition, with supporting affidavits and documents, not later than ten (10) days before the date of the initial hearing and putting them on notice that their failure to do so will bar them from participating in the proceedings; and (j) directing the creditors and interested parties to secure from the court copies of the petition and its annexes within such time as to enable themselves to file their comment on or opposition to the petition and to prepare for the initial hearing of the petition."

5. ID.; ID.; ID.; SUSPENSION OF ACTIONS FOR CLAIMS; SHALL COMMENCE ONLY FROM THE TIME THE MANAGEMENT COMMITTEE OR RECEIVER IS APPOINTED. — The suspension of the enforcement of all claims against the corporation is subject to the rule that it shall commence only from the time the Rehabilitation Receiver is appointed. x x x We find merit in petitioner EPCIB's argument on the applicability of *RCBC v. IAC*, an *en banc* case decided in 1999, to the instant case. There, we ruled that RCBC can rightfully move for the extrajudicial foreclosure of the mortgage on the BF Home properties on October 26, 1984, because a management committee was not appointed by the SEC until

> March 18, 1985. Such ruling was a reversal of our earlier decision in the same case where we found that the prohibition against foreclosure attaches as soon as a petition for rehabilitation was filed. x x x [W]e reversed our previous decision and granted reconsideration for the cogent reason that suspension of actions for claims commenced only from the time a management committee or receiver was appointed by the SEC. We said that RCBC, therefore, could have rightfully, as it did, move for the extrajudicial foreclosure of its mortgage on October 26, 1984, because a management committee was not appointed by the SEC until March 18, 1985.

APPEARANCES OF COUNSEL

Divina Matibag Magturo Banzon Buenaventura & Yusi and *Divina & Uy Law Offices* for petitioner.

Romeo C. Dela Cruz & Associates for respondent.

D E C I S I O N

PERALTA, *J.*:

Before us is a petition for review on *certiorari* with prayer for the issuance of a temporary restraining order and/or writ of preliminary injunction filed by petitioner Equitable PCI Bank, Inc., seeking to set aside the June 23, 2005 Decision[1] of the Court of Appeals (CA) in CA-G.R. SP No. 86950.

The undisputed facts, as found by the CA, are as follows:

> (Respondent) DNG Realty and Development Corporation (DNG) obtained a loan of ₱20M from x x x Equitable PCI Bank (EPCIB) secured by a real estate mortgage over the 63,380 sq. meter land of the former situated in Cabanatuan City. Due to the Asian Economic Crisis, DNG experienced liquidity problems disenabling DNG from paying its loan on time. For this reason, EPCIB sought the extrajudicial foreclosure of the said mortgage by filing a petition for sale on 30

---

[1] Penned by Associate Justice Rosmari D. Carandang, with Associate Justices Remedios A. Salazar-Fernando and Monina Arevalo-Zenarosa, concurring; *rollo*, pp. 39-47.

June 2003 before the Office of the *Ex-Officio* Sheriff. On 4 September 2003, the mortgage property was sold at public auction, which was eventually awarded to EPCIB as the highest bidder. That same day, the Sheriff executed a Certificate of Sale in favor of EPCIB.

On October 21, 2003, DNG filed a petition for rehabilitation under Rule 4 of the Interim Rules of Procedure on Corporate Rehabilitation before the Regional Trial Court, Branch 28, docketed as Special Proceeding No. 125. Pursuant to this, a Stay Order was issued by RTC Branch 28 on 27 October 2003. The petition for rehabilitation was then published in a newspaper of general circulation on 19 and 26 November 2003.

On the other hand, EPCIB caused the recording of the Sheriff's Certificate of Sale on 3 December 2003 with the Registry of Deeds of Cabanatuan City. EPCIB executed an Affidavit of Consolidation of Ownership and had the same annotated on the title of DNG (TCT No. 57143). Consequently, the Register of Deeds cancelled DNG's title and issued TCT No. T-109482 in the name of EPCIB on 10 December 2003. This prompted DNG to file Civil Case No. 4631 with RTC-Br. 28 for annulment of the foreclosure proceeding before the Office of the *Ex-Officio* Sheriff. This case was dismissed for failure to prosecute.

In order to gain possession of the foreclosed property, EPCIB on 17 March 2004 filed an *Ex-Parte* Petition for Issuance of Writ of Possession docketed as Cadastral Case No. 2414-AF before RTC Br. 23 in Cabanatuan City. After hearing, RTC-Br. 23 on 6 September 2004 issued an order directing the issuance of a writ of possession. On 4 October 2004, RTC-Br. 23 issued the Writ of Possession. Consequently, the Office of the *Ex-Officio* Sheriff issued the Notice to Vacate dated 6 October 2004.[2]

On October 15, 2004, respondent filed with the CA a petition for *certiorari*, prohibition and *mandamus* with prayer for the issuance of temporary restraining order/ preliminary injunction entitled *DNG Realty and Development Corporation v. Hon. LYDIA BAUTO HIPOLITO, in her capacity as the Presiding Judge of Branch 23, Regional Trial Court, Third Judicial Region, Cabanatuan City; the OFFICE OF THE EX-OFFICIO*

[2] *Id.* at 40-42.

SHERIFF of the Regional Trial Court, Third Judicial Region, Cabanatuan City; the OFFICE OF THE REGISTER OF DEEDS OF CABANATUAN CITY; and EQUITABLE PCIBANK, INC. The petition for *certiorari* sought to nullify (1) the affidavit of consolidation of ownership dated December 2, 2003; (2) the cancellation of DNG's TCT No. T-57143 covering the mortgaged property and the issuance of TCT No. T-109482 in favor of petitioner EPCIB by the Register of Deeds of Cabanatuan City; (3) the Order dated September 6, 2004 issued by the RTC, Branch 23, directing the issuance of the writ of possession and the writ of possession issued pursuant thereto; and (4) the sheriff's Notice to Vacate dated October 6, 2004, while the petition for prohibition sought to enjoin petitioner EPCIB, their agents and representatives from enforcing and implementing the above-mentioned actions. And the petition for *mandamus* sought to require petitioner EPCIB to cease and desist from taking further action both in the foreclosure proceedings as well as in Cadastral Case No. 2414-AF, where the writ of possession was issued until the petition for rehabilitation pending before Branch 28 of the Regional Trial Court (RTC) of Cabanatuan City has been terminated or dismissed.

On October 22, 2004, the CA issued a temporary restraining order (TRO).[3]

After the parties filed their respective pleadings, the CA issued its assailed Decision, the dispositive portion of which reads:

> WHEREFORE, the instant petition is GRANTED. The Order of 6 September 2004 directing the issuance of a writ of possession; the Writ of Possession issued pursuant thereto; and the Notice to Vacate are all REVERSED and SET ASIDE for being premature and untimely issued. Lastly, the Transfer Certificate of Title No. T-109482 under the name of Equitable PCI Bank is hereby ordered CANCELLED for equally being issued prematurely and untimely, and in lieu thereof the Transfer Certificate of Title No. 57143 is ordered REINSTATED.[4]

---

[3] CA *rollo*, pp. 89-90.

[4] *Rollo*, p. 47.

In finding the petition meritorious, the CA stated that under A.M. No. 00-8-10-SC adopting the Interim Rules of Procedure on Corporate Rehabilitation, all petitions for rehabilitation by corporations, partnerships and associations under Presidential Decree (PD) 902-A, as amended by Republic Act (RA) 8799, were directed to be transferred from the Securities and Exchange Commission (SEC) to the RTCs, and allowed the RTCs to issue a stay order, *i.e.*, staying enforcements of all claims, whether for money or otherwise, and whether such enforcement is by court action or otherwise, against the debtor. And under Section 6 (c) of PD 902-A, the Commission (now the RTC) upon appointment of a management committee, rehabilitation receiver, board or body, all actions or claims against the corporations, partnerships or associations under management or receivership pending before any court, tribunal, board or body shall be suspended accordingly. The CA, relying in *Bank of the Philippine Islands v. Court of Appeals (BPI v. CA)*[5] found no merit to petitioner EPCIB's claim that the foreclosure sale of the property was made prior to the issuance of the Stay Order and was, therefore, *fait accompli*; and that with the consummation of the extrajudicial foreclosure sale, all the valid and legal consequences of such could no longer be stayed. The CA ruled that after the issuance of the Stay Order, effective from the date of its issuance, all subsequent actions pertaining to respondent DNG's Cabanatuan property should have been held in abeyance. Petitioner EPCIB should have refrained from executing its Affidavit of Consolidation of ownership or filing its *ex-parte* petition for issuance of a writ of possession before the RTC Branch 23; respondent Office of the Register of Deeds of Cabanatuan City should not have cancelled respondent DNG's title and issued a new one in petitioner EPCIB's name; and that respondent Judge and the *Ex-Officio* Sheriff should have abstained from issuing the writ of possession and the notice to vacate, respectively.

The CA found no forum shopping committed by respondent DNG as Civil Case No. 4631 filed before Branch 28 sought to annul the foreclosure sale and the certificate of sale over

[5] G.R. No. 97178, January 10, 1994, 229 SCRA 223.

respondent DNG's property, while Cadastral Case No. 2414-AF instituted by petitioner EPCIB, was an *ex-parte* petition to wrest possession of the same property from respondent DNG. On the other hand, the present petition sought only to stay all proceedings on respondent DNG's property after the Stay Order was issued. Thus, the causes of action and the reliefs sought in each of those proceedings were not identical.

The CA also found that, despite the Stay Order issued, petitioner EPCIB's over-zealousness in consolidating its title and taking possession of the respondent's property left the latter without any plain, speedy and adequate remedy but to file the petition.

Dissatisfied, petitioner EPCIB filed the instant petition where it raises the errors committed by the CA as follows:

THE COURT OF APPEALS COMMITTED GRAVE, PALPABLE, AND REVERSIBLE ERRORS IN TAKING COGNIZANCE OF AN ORIGINAL PETITION FOR *CERTIORARI*, PROHIBITION AND *MANDAMUS*, AND IN ISSUING A TEMPORARY RESTRAINING ORDER, AGAINST THE MINISTERIAL IMPLEMENTATION OF A WRIT OF POSSESSION.

THE COURT OF APPEALS COMMITTED A GRAVE, PALPABLE AND REVERSIBLE ERROR IN HOLDING THAT THE 1994 CASE OF *BPI VS. CA* IS SQUARELY IN POINT IN THE PRESENT CONTROVERSY.

THE COURT OF APPEALS GRAVELY AND SERIOUSLY ERRED IN HOLDING THAT SINCE THE CONSOLIDATION OF TITLE, THE APPLICATION FOR THE ISSUANCE OF A WRIT OF POSSESSION, THE CANCELLATION OF RESPONDENT'S TITLE AND THE ISSUANCE OF A NEW ONE UNDER EPCIBANK'S NAME, THE ISSUANCE OF THE WRIT OF POSSESSION, AND THE SERVICE OF A NOTICE TO VACATE HAVE BEEN MADE AFTER THE ISSUANCE OF THE STAY ORDER, THE SAME WERE UNTIMELY AND PREMATURE.

THE COURT OF APPEALS COMMITTED A GRAVE, PALPABLE AND REVERSIBLE ERROR IN HOLDING THAT THE RESPONDENT HAD NO OTHER PLAIN, SPEEDY AND ADEQUATE REMEDY.[6]

---

[6] *Rollo* pp. 13-14.

Petitioner contends that upon failure to redeem the foreclosed property, consolidation of title becomes a matter of right on the part of the auction buyer, and the issuance of a certificate of title in favor of the purchaser becomes ministerial upon the Register of Deeds; that the issuance and implementation of a writ of possession are both ministerial in character, thus, a writ of *certiorari*, prohibition and *mandamus* which respondent DNG filed with the CA and which were all directed to address the abuse of discretion allegedly committed by the cadastral court and the sheriff will not lie; and that the CA erred in finding grave abuse of discretion or excess of jurisdiction upon the cadastral court which issued the writ of possession and the sheriff who implemented the same, as they acted in compliance with the express provision of Act 3135 as amended.

Petitioner claims that the CA's reliance in *BPI v. CA* in ruling that all subsequent actions pertaining to respondent DNG's Cabanatuan property, *i.e.*, consolidation of ownership, cancellation of respondent's title and the issuance of a new title in petitioner's name and the issuance of a writ of possession by Branch 23 of the RTC in Cadastral Case No. 2414-F, and the notice to vacate, which were all made after the issuance of the Stay Order by the rehabilitation court, should have been held in abeyance is erroneous. Petitioner EPCIB cites the case of *Rizal Commercial Banking Corporation v. Intermediate Appellate Court (RCBC v. IAC)*[7] as the applicable jurisprudence in this case. Petitioner argues that since the extrajudicial foreclosure sale of respondent DNG's property was conducted on September 4, 2003, or prior to the filing of the petition for rehabilitation on October 21, 2003 and the issuance of the Stay Order on October 27, 2003, the enforcement of a creditor claim via an extrajudicial foreclosure sale conducted on September 4, 2003 could no longer be stayed for having been fully consummated prior to the issuance of the Stay Order.

Petitioner argues that the CA erred in its finding that there was no other plain, speedy and adequate remedy available to

---

[7] 378 Phil. 10 (1999).

respondent but to file the petition for *certiorari*, prohibition and *mandamus* with the CA, since Section 8 of Act 3135 provides for the proper remedy against an order granting the issuance of a writ of possession.

In its Comment, respondent echoed the findings made by the CA. Petitioner filed its Reply.

The issues for resolution are (1) whether respondent DNG's *petition for certiorari, prohibition and mandamus* filed in the CA was a proper remedy; (2) whether the CA correctly held that all subsequent actions pertaining to respondent DNG's Cabanatuan property should have been held in abeyance after the Stay Order was issued by the rehabilitation court.

We answer both issues in the negative.

Anent the first issue, respondent DNG filed before the CA a *petition for certiorari, prohibition and mandamus* with prayer for the issuance of a TRO and a writ of preliminary injunction seeking to annul the RTC Order dated September 6, 2004 issued in Cadastral Case No. 2414-AF, *i.e.*, in re *ex-parte* petition filed by petitioner EPCIB for the issuance of a writ of possession, which ordered the issuance of the writ of possession in petitioner EPCIB's favor as the new registered owner of the property covered by TCT No. T-109482. We find that the CA erred in acting on the petition. Act 3135, as amended by Act 4118, which regulates the methods of effecting an extrajudicial foreclosure of mortgage explicitly authorizes the issuance of such writ of possession.[8] Section 7 of Act 3135 as amended provides:

> Section 7. *Possession during redemption period*. — In any sale made under the provisions of this Act, the purchaser may petition the [Regional Trial Court] of the province or place where the property or any part thereof is situated, to give him possession thereof during the redemption period, furnishing bond in an amount equivalent to the use of the property for a period of twelve months, to indemnify the debtor in case it be shown that the sale was made without violating the mortgage or without complying with the requirements of this

[8] *Samson v. Rivera*, G.R. No. 154355, May 20, 2004, 428 SCRA 759.

Act. Such petition shall be made under oath and filed in the form of an *ex parte* motion in the registration or cadastral proceedings if the property is registered, or in special proceedings in the case of property registered under the Mortgage Law or under section one hundred and ninety-four of the Administrative Code, or of any other real property encumbered with a mortgage duly registered in the office of any register of deeds in accordance with any existing law, and in each case the clerk of court shall, upon the filing of such petition, collect the fees specified in paragraph eleven of section one hundred and fourteen of Act Numbered Twenty-eight hundred and sixty-six, and the court shall, upon approval of the bond, order that a writ of possession issue, addressed to the sheriff of the province in which the property is situated, who shall execute said order immediately.

Section 7 of Act 3135, as amended, refers to a situation wherein the purchaser seeks possession of the foreclosed property during the redemption period. Upon the purchaser's filing of the *ex parte* petition and posting of the appropriate bond, the RTC shall, as a matter of course, order the issuance of the writ of possession in the purchaser's favor.[9] But equally well settled is the rule that a writ of possession will issue as a matter of course, even without the filing and approval of a bond, after consolidation of ownership and the issuance of a new TCT in the name of the purchaser.[10] Thus, if under Section 7 of Act 3135 as amended, the RTC has the power during the period of redemption to issue a writ of possession on the *ex parte* application of the purchaser, there is no reason why it should not also have the same power after the expiration of the redemption period, especially where a new title had already been issued in the name of the purchaser.[11] Thus, after the consolidation of title in the buyer's name for failure of the mortgagor to redeem, the writ of possession becomes a matter of right and the issuance of such writ of possession

---

[9] *Top Art Shirt Manufacturing, Inc. v. Metropolitan Bank and Trust Co.*, G.R. No. 184005, August 4, 2009, 595 SCRA 323, 334.

[10] *Id.* at 335, citing *Sps. Ong v. CA*, 388 Phil. 857, 866-866 (2000).

[11] *Id.*, citing *IFC Service Leasing and Acceptance Corporation v. Nera*, 125 Phil. 595 (1967).

to a purchaser in an extrajudicial foreclosure is merely a ministerial function.[12] The basis of this right to possession is the purchaser's ownership of the property.[13]

Respondent's *petition for certiorari, prohibition and mandamus* filed with the CA was not the proper remedy. A special civil action for *certiorari* and prohibition could be availed of only if a 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 if there is no appeal or other plain, speedy, and adequate remedy in the ordinary course of law.[14]

In this case, respondent DNG failed to redeem the foreclosed property within the reglementary period; thus, petitioner EPCIB consolidated its ownership over the property in its favor and annotated the same in respondent's title. Thus, respondent DNG's title was cancelled and a new title was issued in petitioner EPCIB's name. The RTC's issuance of a writ of possession in favor of petitioner EPCIB as the new registered owner of the subject property was in compliance with the express provisions of Act 3135 as amended. It cannot, therefore, be charged with grave abuse of discretion as there is no showing that, in the exercise of its judgment, it acted in a capricious, whimsical, arbitrary or despotic manner tantamount to lack of jurisdiction.[15]

In *Santiago v. Merchants Rural Bank of Talavera, Inc.*,[16] we said that:

Case law has it that after the consolidation of title in the name of the respondent as the buyer of the property, upon failure of the mortgagor to redeem the property, the writ of possession becomes

---

[12] *Arquiza v. CA*, G.R. No. 160479, 459 SCRA 753, 765 (2005).

[13] *Id.*

[14] Rules of Court, Rule 65, Secs. 1, 2, 3.

[15] *Saguan v. Philippine Bank of Communications*, G.R. 159882, November 23, 2007, 538 SCRA 390, 402.

[16] G.R. No. 147820, March 18, 2005, 453 SCRA 756.

a matter of right. Its issuance to the purchaser is merely a ministerial function. As such, the court neither exercises its discretion nor judgment. Indeed, in an avuncular case, we held that:

> The right of the petitioner to the possession of the property is clearly unassailable. It is founded on its right of ownership. As the purchaser of the properties in the foreclosure sale, and to which the respective titles thereto have already been issued, petitioner's right over the property has become absolute, vesting upon him the right of possession over an enjoyment of the property which the Court must aid in effecting its delivery. After such delivery, the purchaser becomes the absolute owner of the property. As We said in *Tan Soo Huat vs. Ongwico*, the deed of conveyance entitled the purchaser to have and to hold the purchased property. This means, that the purchaser is entitled to go immediately upon the real property, and that it is the Sheriff's inescapable duty to place him in such possession.[17]

Thus, in *Philippine National Bank v. Sanao Marketing Corporation*,[18] we ruled that:

> x x x The judge issuing the order following these express provisions of [Act 3135] cannot be charged with having acted without jurisdiction or with grave abuse of discretion. If only to stress the writ's ministerial character, we have, in previous cases, disallowed injunction to prohibit its issuance, just as we have held that the issuance of the same may not be stayed by a pending action for annulment of mortgage or the foreclosure itself.[19]

Moreover, a writ of *certiorari, prohibition and mandamus* will only be issued if there is neither appeal nor any plain, speedy or adequate relief in the ordinary course of law. However, Section 8 of Act 3135 provides the plain, speedy, and adequate remedy in opposing the issuance of a writ of possession.[20] The provision reads:

---

[17] *Id.* at 767-768.

[18] G.R. No. 153951, July 29, 2005, 465 SCRA 287.

[19] *Id.* at 303.

[20] *Samson v. Rivera, supra* note 8, at 770.

Section 8. *Setting aside of sale and writ of possession.* — The debtor may, in the proceedings in which possession was requested, but not later than thirty days after the purchaser was given possession, petition that the sale be set aside and the writ of possession cancelled, specifying the damages suffered by him, because the mortgage was not violated or the sale was not made in accordance with the provisions hereof, and the court shall take cognizance of this petition in accordance with the summary procedure provided for in section one hundred and twelve of Act Numbered Four hundred and ninety-six; and if it finds the complaint of the debtor justified, it shall dispose in his favor of all or part of the bond furnished by the person who obtained possession. Either of the parties may appeal from the order of the judge in accordance with section fourteen of Act Numbered Four hundred and ninety-six; but the order of possession shall continue in effect during the pendency of the appeal.

Clearly, a party may file a petition to set aside the foreclosure sale and to cancel the writ of possession in the same proceedings where the writ of possession was requested.[21] The aggrieved party may thereafter appeal from any disposition by the court on the matter.[22]

In this case, respondent DNG had the right to file a petition to set aside the sale and writ of possession issued by the RTC and to file an appeal in case of an adverse ruling. However, respondent DNG did not file such petition and, instead, filed the petition for *certiorari, prohibition and mandamus* with the CA. Hence, they were barred from filing such petition from the RTC Order and the writ of possession issued by it.[23] Respondent's recourse to the CA via Rule 65 was inappropriate even though the Sheriff had demanded that they vacate the property.[24] Section 8 of Act No. 3135 mandates that even if an appeal is interposed from an order granting a petition for a

---

[21] *Saguan v. Philippine Bank of Communications*, *supra* note 15, at 399.

[22] *Santiago v. Merchants Rural Bank of Talavera, Inc.*, *supra* note 16, at 762, citing *Government Service Insurance System v. CA*, 169 SCRA 244 (1989).

[23] *Id.* at 763.

[24] *Id.* at 762.

writ of possession, such order shall continue to be in effect during the pendency of an appeal.[25]

As to the second issue of whether the CA correctly held that after the issuance of the Stay Order by the rehabilitation court, all subsequent actions in this case pertaining to respondent's Cabanatuan property should have been held in abeyance is devoid of merit.

Respondent DNG's petition for rehabilitation filed in Branch 28 of the RTC of Cabanatuan City on October 21, 2003 was made pursuant to the 2000 Interim Rules of Procedure on Corporate Rehabilitation, which was the applicable law on rehabilitation petitions filed by corporations, partnerships or associations, including rehabilitation cases transferred from the SEC to the RTCs pursuant to RA 8799 or the *Securities Regulation Code*.[26]

Section 6 of the Interim Rules of Procedure on Corporate Rehabilitation[27] provides:

SEC. 6. *Stay Order*. — If the court finds the petition to be sufficient in form and substance, it shall, not later than five (5) days from the filing of the petition, issue an Order (a) appointing a Rehabilitation Receiver and fixing his bond; (b) staying enforcement of all claims, whether for money or otherwise and whether such enforcement is by court action or otherwise, against the debtor, its guarantors and sureties not solidarily liable with the debtor; (c) prohibiting the debtor from selling, encumbering, transferring, or disposing in any manner any of its properties except in the ordinary course of business; (d) prohibiting the debtor from making any payment of its liabilities outstanding as of the date of filing of the petition; (e) prohibiting the debtor's suppliers of goods or services from withholding supply of goods and services in the ordinary course of business for as long as the debtor makes payments for the services and goods supplied after the issuance of the stay order; (f) directing the payment in full of all administrative expenses incurred after the issuance of the

---

[25] *Id*.

[26] *New Frontier Sugar Corporation v. RTC, Branch 39, Iloilo City*, G.R. No. 165001, January 31, 2007, 513 SCRA 601, 605.

[27] A.M. No. 00-8-10-SC which took effect on December 15, 2000.

stay order; (g) fixing the initial hearing on the petition not earlier than forty five (45) days but not later than sixty (60) days from the filing thereof; (h) directing the petitioner to publish the Order in a newspaper of general circulation in the Philippines once a week for two (2) consecutive weeks; (i) directing all creditors and all interested parties (including the Securities and Exchange Commission) to file and serve on the debtor a verified comment on or opposition to the petition, with supporting affidavits and documents, not later than ten (10) days before the date of the initial hearing and putting them on notice that their failure to do so will bar them from participating in the proceedings; and (j) directing the creditors and interested parties to secure from the court copies of the petition and its annexes within such time as to enable themselves to file their comment on or opposition to the petition and to prepare for the initial hearing of the petition.

The suspension of the enforcement of all claims against the corporation is subject to the rule that it shall commence only from the time the Rehabilitation Receiver is appointed.[28]

The CA annulled the RTC Order dated September 6, 2004 directing the issuance of a writ of possession, as well as the writ of possession issued pursuant thereto on October 4, 2004, and the notice to vacate issued by the Sheriff for being premature and untimely and ordered the cancellation of TCT No. T-109482 in the name of petitioner EPCIB as they were all done after the Stay Order was issued on October 27, 2003 by the rehabilitation court. In so ruling, the CA relied on *BPI v. CA*.[29]

In *BPI v. CA*, BPI filed with the RTC a complaint for foreclosure of real estate mortgage against Ruby Industrial Corporation (RUBY). After RUBY filed its Answer with Counterclaim, it submitted a motion for suspension of proceedings, since the SEC had earlier issued an Order placing RUBY under a rehabilitation plan, pursuant to Section 6 par. (c) of PD 902-A which also declared that with the creation of the Management Committee, all actions or claims against RUBY

---

[28] *New Frontier Sugar Corporation v. RTC, Branch 39, Iloilo City, supra* note 26, at 607.

[29] *Supra* note 5.

pending before any court, tribunal, branch or body were suspended. Thus, the RTC suspended the proceedings. BPI moved for the reopening of the proceedings; however, the RTC denied it, citing the case of *Alemar's Sibal and Sons, Inc. v. Elbinias* where we held that suspension of payments applied to all creditors, whether secured or unsecured, in order to place them on equal footing. As BPI's motion for reconsideration was denied, it went to the CA in a petition for *certiorari* and *mandamus* alleging grave abuse of discretion on the RTC in refusing to reopen the case, which was dismissed by the CA. BPI filed its appeal with Us wherein the issue presented was whether BPI, a secured creditor of RUBY, may still judicially enforce its claim against RUBY which had already been placed by the SEC under Rehabilitation. We denied the petition and found that BPI's action for foreclosure of real estate mortgage had been filed against RUBY and was pending with the RTC when RUBY was placed by the SEC under rehabilitation through the creation of a management committee. Thus, with the SEC order, which directed that all actions or claims against RUBY pending before any court, tribunal, branch or body be deemed suspended, the RTC's jurisdiction over the foreclosure case was also considered suspended; and that SEC had acquired jurisdiction with the appointment of a rehabilitation receiver for the distressed corporation and had directed all proceedings or claims against Ruby suspended. We then ruled that:

> x x x whenever a distressed corporation asks [the] SEC for rehabilitation and suspension of payments, preferred creditors may no longer assert such preference, but x x x stand on equal footing with other creditors. Foreclosure shall be disallowed so as not to prejudice other creditors, or cause discrimination among them. If foreclosure is undertaken despite the fact that a petition for rehabilitation has been filed, the certificate of sale shall not be delivered pending rehabilitation. If this has already been done, no transfer certificate of title shall likewise be effected within the period of rehabilitation. The rationale behind PD 902-A, as amended, is to effect a feasible and viable rehabilitation. This cannot be achieved if one creditor is preferred over the others.[30]

---

[30] *Id.* at 227-228.

BPI case is not in all fours with the instant case. Notably, in BPI, the action for judicial foreclosure of the real estate mortgage was still pending with the RTC when the stay order was issued; thus, there was no judgment on the foreclosure for payment and the sale of the mortgaged property at a public auction. In contrast to this case, herein respondent's mortgaged property had already been extrajudicially foreclosed and sold to petitioner as the highest bidder and a Certificate of Sale was issued on September 4, 2003, which was prior to the issuance of the Stay Order on October 27, 2003.

We find merit in petitioner EPCIB's argument on the applicability of *RCBC v. IAC*,[31] an *en banc* case decided in 1999, to the instant case. There, we ruled that RCBC can rightfully move for the extrajudicial foreclosure of the mortgage on the BF Home properties on October 26, 1984, because a management committee was not appointed by the SEC until March 18, 1985. Such ruling was a reversal of our earlier decision in the same case where we found that the prohibition against foreclosure attaches as soon as a petition for rehabilitation was filed.

In *RCBC v. IAC*, BF Homes filed a petition for rehabilitation and for suspension of payments with the SEC on September 28, 1984. On October 26, 1984, RCBC requested the Provincial Sheriff to extrajudicially foreclose its real estate mortgage on some of BF Homes' properties; thus, notices were sent to the parties. BF Homes filed a motion with the SEC for the issuance of a TRO to enjoin RCBC and the sheriff from proceeding with the auction sale, which the SEC granted by issuing a TRO for twenty days. The sale was rescheduled to January 29, 1985. On January 25, 1985, the SEC ordered the issuance of a writ of preliminary injunction conditioned upon BF Homes' filing of a bond which the latter failed to do not until January 29, the day of the auction sale. As the sheriff was not aware of the filing of the bond, he proceeded with the auction on January 29, wherein RCBC emerged as the highest bidder.

---

[31] *Supra* note 7.

On February 5, 1985, BF Homes filed with the SEC a consolidated motion to annul the auction sale and to cite RCBC and the sheriff for contempt. The sheriff then withheld the delivery of a certificate of sale to the RCBC due to the SEC proceedings. On March 13, 1985, RCBC filed with the RTC of Rizal, Branch 140, an action for *mandamus* against the Provincial Sheriff of Rizal and his deputy to compel them to execute in its favor a certificate of sale of the auctioned properties. The sheriffs filed their answer saying that they proceeded with the sale since no writ of preliminary injunction was issued as of the auction sale, but they informed the SEC that they would suspend the issuance of the certificate of sale.

On March 18, 1985, the SEC appointed a management committee for BF Homes.

On May 8, 1985, the RTC, Branch 140, rendered a judgment on the pleading in the *mandamus* case filed by RCBC which ordered the sheriff to execute and deliver to RCBC the certificate of sale of January 29, 1984. BF Homes filed with the IAC an original complaint for annulment of the RTC judgment. The IAC set aside the RTC decision by dismissing the *mandamus* case and ordered the suspension of the issuance to RCBC of new land titles[32] until the SEC had resolved the petition for rehabilitation.

RCBC filed an appeal with us. During the pendency of the appeal, RCBC filed a manifestation informing us that the SEC issued an Order on October 16, 1986 denying the motion to annul the auction sale and to cite RCBC and the sheriff for contempt. Thus, by virtue of the said SEC Order, the Register of Deeds of Pasay effected transfer of titles over the auctioned properties to RCBC and the issuance of new titles in its name. Thereafter, RCBC presented with us a motion for the dismissal of its petition, since the issuance of new titles in its name rendered the petition moot and academic. In our original decision dated September 14, 1992, we denied petitioner's motion to dismiss,

---

[32] RCBC admitted that the Sheriff's Certificate of Sale had been registered on BF Homes' TCTs.

finding basis for nullifying and setting aside the TCTs in the name of RCBC. We dismissed the RCBC petition and upheld the IAC decision dismissing the *mandamus* case filed by RCBC. We ordered the nullification of the new titles already issued in RCBC's name and reinstated the old titles in the name of BF Homes. In setting aside RCBC's acquisition of title and nullifying the TCTs issued to it, we held that prohibition against foreclosure attaches as soon as a petition for rehabilitation was filed.

However, as we have said earlier, upon RCBC's motion for reconsideration, we reversed our previous decision and granted reconsideration for the cogent reason that suspension of actions for claims commenced only from the time a management committee or receiver was appointed by the SEC. We said that RCBC, therefore, could have rightfully, as it did, move for the extrajudicial foreclosure of its mortgage on October 26, 1984, because a management committee was not appointed by the SEC until March 18, 1985.

In RCBC, we upheld the extrajudicial foreclosure sale of the mortgage properties of BF Homes wherein RCBC emerged as the highest bidder as it was done before the appointment of the management committee. Noteworthy to mention was the fact that the issuance of the certificate of sale in RCBC's favor, the consolidation of title, and the issuance of the new titles in RCBC's name had also been upheld notwithstanding that the same were all done after the management committee had already been appointed and there was already a suspension of claims. Thus, applying *RCBC v. IAC* in this case, since the foreclosure of respondent DNG's mortgage and the issuance of the certificate of sale in petitioner EPCIB's favor were done prior to the appointment of a Rehabilitation Receiver and the Stay Order, all the actions taken with respect to the foreclosed mortgage property which were subsequent to the issuance of the Stay Order were not affected by the Stay Order. Thus, after the redemption period expired without respondent redeeming the foreclosed property, petitioner becomes the absolute owner of the property and it was within its right to ask for the consolidation of title and the issuance of new title in its name as a consequence

of ownership; thus, it is entitled to the possession and enjoyment of the property.

WHEREFORE, the petition is *GRANTED*. The Decision dated June 23, 2005 of the Court of Appeals in CA-G.R. SP No. 86950 is hereby *REVERSED* and *SET ASIDE*.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 169170. August 9, 2010]

D.M. CONSUNJI, INC., *petitioner, vs.* **ANTONIO GOBRES, MAGELLAN DALISAY, GODOFREDO PARAGSA, EMILIO ALETA and GENEROSO MELO,** *respondents.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; KINDS OF EMPLOYEES; PROJECT EMPLOYEE; DEFINED. — A project employee is defined under Article 280 of the Labor Code as one whose "employment has been fixed for a specific project or undertaking the completion or termination of which has been determined at the time of the engagement of the employee or where the work or services to be performed is seasonal in nature and the employment is for the duration of the season."

2. ID.; ID.; TERMINATION OF EMPLOYMENT; PRIOR NOTICE OF TERMINATION; NOT REQUIRED IN THE TERMINATION OF EMPLOYMENT OF PROJECT EMPLOYEES IF THE TERMINATION IS BROUGHT

ABOUT BY THE COMPLETION OF THE CONTRACT OR PHASE THEREOF. — As project employees, respondents' termination is governed by Section 1 (c) and Section 2 (III), Rule XXIII (Termination of Employment), Book V of the Omnibus Rules Implementing the Labor Code. Section 1 (c), Rule XXIII, Book V of the Omnibus Rules Implementing the Labor Code states: "Section 1. *Security of tenure*. — "x x x (c) In cases of project employment or employment covered by legitimate contracting or sub-contracting arrangements, no employee shall be dismissed ***prior*** to the completion of the project or phase thereof for which the employee was engaged, or prior to the expiration of the contract between the principal and contractor, unless the dismissal is for just or authorized cause subject to the requirements of due process or prior notice, or is brought about by the completion of the phase of the project or contract for which the employee was engaged." Records show that respondents were dismissed after the expiration of their respective project employment contracts, and due to the completion of the phases of work respondents were engaged for. Hence, the cited provision's requirements of due process or prior notice when an employee is dismissed for just or authorized cause (under Articles 282 and 283 of the Labor Code) prior to the completion of the project or phase thereof for which the employee was engaged do not apply to this case. Further, Section 2 (III), Rule XXIII, Book V of the Omnibus Rules Implementing the Labor Code provides: "Section 2. *Standard of due process: requirements of notice*. — In all cases of termination of employment, the following standards of due process shall be substantially observed. x x x III. **If the termination is brought about by the completion of the contract or phase thereof, no prior notice is required.** If the termination is brought about by the failure of an employee to meet the standards of the employer in the case of probationary employment, it shall be sufficient that a written notice is served the employee within a reasonable time from the effective date of termination." In this case, the Labor Arbiter, the NLRC and the Court of Appeals all found that respondents were validly terminated due to the completion of the phases of work for which respondents' services were engaged. The above rule clearly states, "**If the termination is brought about by the completion of the contract or phase thereof, no prior notice is required.**" *Cioco, Jr. v. C.E. Construction Corporation*

explained that this is because completion of the work or project automatically terminates the employment, in which case, the employer is, under the law, only obliged to render a report to the DOLE on the termination of the employment. Hence, prior or advance notice of termination is not part of procedural due process if the termination is brought about by the completion of the contract or phase thereof for which the employee was engaged. Petitioner, therefore, did not violate any requirement of procedural due process by failing to give respondents advance notice of their termination; thus, there is no basis for the payment of nominal damages.

APPEARANCES OF COUNSEL

Bernas Pagaspas Sese Miquiabas for petitioner.
Ricardo M. Perez for respondents.

D E C I S I O N

PERALTA, *J.*:

This is a petition for review on *certiorari*[1] of the Decision of the Court of Appeals in CA-G.R. SP No. 70708, dated March 9, 2005, and its Resolution, dated August 2, 2005, denying petitioner's motion for reconsideration.

The facts are as follows:

Respondents Antonio Gobres, Magellan Dalisay, Godofredo Paragsa, Emilio Aleta and Generoso Melo worked as carpenters in the construction projects of petitioner D.M. Consunji, Inc., a construction company, on several occasions and/or at various times. Their termination from employment for each project was reported to the Department of Labor and Employment (DOLE), in accordance with Policy Instruction No. 20, which was later superseded by Department Order No. 19, series of 1993. Respondents' last assignment was at Quad 4-Project in Glorietta, Ayala, Makati, where they started working on September 1, 1998.

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

On October 14, 1998, respondents saw their names included in the Notice of Termination posted on the bulletin board at the project premises.

Respondents filed a Complaint with the Arbitration Branch of the National Labor Relations Commission (NLRC) against petitioner D.M. Consunji, Inc. and David M. Consunji for illegal dismissal, and non-payment of 13th month pay, five (5) days service incentive leave pay, damages and attorney's fees.

Petitioner D.M. Consunji, Inc. and David M. Consunji countered that respondents, being project employees, are covered by Policy Instruction No. 20, as superseded by Department Order No. 19, series of 1993 with respect to their separation or dismissal. Respondents were employed per project undertaken by petitioner company and within varying estimated periods indicated in their respective project employment contracts. Citing the employment record of each respondent, petitioner and David M. Consunji averred that respondents' services were terminated when their phases of work for which their services were engaged were completed or when the projects themselves were completed. Respondents' notices of termination were filed with the DOLE, in compliance with Policy Instruction No. 20,[2] superseded by

---

[2] **Policy No. 20: Stabilizing Employer-Employee Relations in the Construction Industry**

In the interest of stabilizing employer-employee relations in the construction industry and taking into consideration its unique characteristics, the following policy instructions are hereby issued for the guidance of all concerned:

Generally, there are two types of employees in the construction industry, namely: a) Project employees, and 2) Non-Project employees.

Project employees are those employed in connection with a particular construction project. x x x

Project employees are not entitled to termination pay if they are terminated as a result of the completion of the project or any phase thereof in which they are employed, regardless of the number of projects in which they have been employed by a particular construction company. Moreover, the company is not required to obtain a clearance from the Secretary of Labor in connection with such termination. What is required of the company is a report to the nearest Public Employment Office for statistical purposes.

Department Order No.19, series of 1993.[3] With respect to respondent Generoso G. Melo, petitioner and David M. Consunji maintained the same positions they had against the case of Melo's co-complainants.[4] Petitioner contended that since respondents were terminated by reason of the completion of their respective phases of work in the construction project, their termination was warranted and legal.[5]

---

[3] **Department Order No. 19, series of 1993**

x x x x x x x x x

2.2 Indicators of project employment. Either one or more of the following circumstances, among others, may be considered as indicators that an employee is a project employee.

(a) The duration of the specific/identified undertaking for which the worker is engaged is reasonably determinable.

(b) Such duration, as well as the specific work/service to be performed, is defined in an employment agreement and is made clear to the employee at the time of hiring.

(c) The work/service performed by the employee is in connection with the particular project/undertaking for which he is engaged.

(d) The employee, while not employed and awaiting engagement, is free to offer his services to any other employer.

(e) ***The termination of his employment in the particular project/ undertaking is reported to the Department of Labor and Employment (DOLE) Regional Office having jurisdiction over the workplace within 30 days following the date of his separation from work, using the prescribed form on employees' terminations dismissals suspensions***.

(f) An undertaking in the employment contract by the employer to pay completion bonus to the project employee as practiced by most construction companies.

x x x x x x x x x

6.1. Requirements of labor and social legislations. (a) The construction company and the general contractor and/or subcontractor referred to in Sec. 2.5 shall be responsible for the workers in its employ on matters of compliance with the requirements of existing laws and regulations on hours of work, wages, wage related benefits, health, safety and social welfare benefits, including **submission to the DOLE-Regional Office of Work Accident/Illness Report, Monthly Report on Employees' Terminations/ Dismissals/Suspensions** and other reports x x x. (Emphasis supplied.)

[4] Decision of the Labor Arbiter, *rollo*, p. 264.

[5] Respondents' Position Paper, CA *rollo*, p. 27; *Id.*

Moreover, petitioner claimed that respondents have been duly paid their service incentive leave pay and 13th month pay through their respective bank accounts, as evidenced by bank remittances.[6]

Respondents replied that the Quad 4-Project at Glorietta, Ayala, Makati City was estimated to take two years to finish, but they were dismissed within the two-year period. They had no prior notice of their termination. Hence, granting that they were project employees, they were still illegally dismissed for non-observance of procedural due process.[7]

On October 4, 1999, the Labor Arbiter rendered a Decision[8] dismissing respondents' complaint. The Labor Arbiter found that respondents were project employees, that they were dismissed from the last project they were assigned to when their respective phases of work were completed, and that petitioner D.M. Consunji, Inc. and David M. Consunji reported their termination of services to the DOLE in accordance with the requirements of law.

Respondents appealed the Labor Arbiter's Decision to the NLRC.

In a Resolution[9] dated July 31, 2001, the NLRC affirmed the decision of the Labor Arbiter, and dismissed the appeal for lack of merit.

Respondents' motion for reconsideration was denied by the NLRC for lack of merit in its Order[10] dated February 21, 2002.

Respondents filed a petition for *certiorari* with the Court of Appeals, seeking the annulment of the NLRC Resolution dated July 31, 2001 and Order dated February 21, 2002. Respondents

---

[6] Respondents' Position Paper, CA *rollo*, p. 40.

[7] Reply & Rejoinder to Respondents' Position Paper, CA *rollo*, p. 46.

[8] *Rollo*, pp. 263-265.

[9] *Id.* at 283-285.

[10] *Id.* at 371-372.

prayed that their dismissal be declared as illegal, and that they be ordered reinstated to their former position with full backwages until actual reinstatement, and awarded moral, exemplary and nominal damages.

On March 9, 2005, the Court of Appeals rendered a Decision, the dispositive portion of which reads:

> WHEREFORE, the Decision and Resolution of the NLRC in finding petitioners' dismissal as valid are AFFIRMED with MODIFICATION that private respondents are ordered to pay each of the petitioners the sum of ₱20,000.00 as nominal damages for non-compliance with the statutory due process. Costs against petitioners.[11]

The Court of Appeals sustained the findings of the NLRC that respondents are project employees. It held:

> The Labor Arbiter and [the] NLRC correctly applied Article 280 of the Labor Code when it ruled that petitioners' employment, which is fixed for [a] specific project and the completion of which has been determined at the time that their services were engaged, makes them project employees. As could be gleaned from the last portion of Article 280 of the Labor Code, the nature of employment of petitioners, which is fixed for a specific project and the completion of which has been determined when they were hired, is excepted therefrom.
>
> This is the reason why under Policy Instruction No. 20 and Department Order No. 19, series of 1993, employers of project employees are required to report their termination to DOLE upon completion of the project for which they were engaged.[12]

The CA stated that although respondents were project employees, they were entitled to know the reason for their dismissal and to be heard on whatever claims they might have. It held that respondents' right to statutory due process was violated for lack of advance notice of their termination, even if they were validly terminated for having completed the phases of work

---

[11] *Id.* at 37.

[12] *Id.* at 33.

for which they were hired. The appellate court stated that had respondents been given prior notice, they would not have reported for work on October 14, 1998. It cited *Agabon v. NLRC*,[13] which held that where the dismissal is for a just cause, the lack of statutory due process should not nullify the dismissal, or render it illegal, or ineffectual, but the employer should indemnify the employee for the violation of his statutory rights by paying nominal damages. Hence, the Court of Appeals ordered petitioner and David M. Consunji to pay respondents ₱20,000.00 each as nominal damages for lack of advance notice of their termination.

Petitioner and David M. Consunji filed a partial motion for reconsideration and prayed that the Decision of the Court of Appeals be partially reconsidered by deleting the award of nominal damages to each respondent. It pointed out that under Department Order No. 19, series of 1993, which is the construction industry's governing law, there is no provision requiring administrative hearing/investigation before a project employee may be terminated on account of completion of phase of work or the project itself. Petitioner also argued that prior notice of termination is not required in this case, and that *Agabon* is not applicable here, because the termination in *Agabon* was for cause, while herein respondents were terminated due to the completion of the phases of work for which their services were engaged.

In a Resolution[14] dated August 2, 2005, the Court of Appeals denied the partial motion for reconsideration. It held that the case of *Agabon v. NLRC* is the one controlling and in point. The appellate court stated that in *Agabon,* the Court ruled that even if the dismissal is legal, the employer should still indemnify the employee for the violation of his statutory rights. It added that no distinction was made in *Agabon* whether the employee is engaged in a construction project or not.

Petitioner D.M. Consunji, Inc. filed this petition raising this question of law:

---

[13] 485 Phil. 248 (2004).

[14] *Rollo,* pp. 47-49.

WHETHER OR NOT THERE IS BASIS FOR THE COURT OF APPEALS IN ORDERING HEREIN PETITIONER TO PAY RESPONDENTS EACH THE SUM OF ₱20,000.00 AS NOMINAL DAMAGES FOR "ALLEGED" NON-COMPLIANCE WITH THE STATUTORY DUE PROCESS.[15]

Petitioner contends that the award of nominal damages in the amount of ₱20,000.00 to each respondent is unwarranted under Section 2 (III), Rule XXIII, Book V of the Omnibus Rules Implementing the Labor Code, which states, "If the termination is brought about by the completion of the contract or phase thereof, **no prior notice is required**."[16]

Petitioner also contends that *Agabon v. NLRC* is not applicable to this case. The termination therein was for just cause due to abandonment of work, while in this case, respondents were terminated due to the completion of the phases of work.

In support of its argument, petitioner cited *Cioco, Jr. v. C.E. Construction Corporation*,[17] which held:

> x x x More importantly, Section 2 (III), Rule XXIII, Book V of the ***Omnibus Rules Implementing the Labor Code*** provides that no prior notice of termination is required if the termination is brought about by completion of the contract or phase thereof for which the worker has been engaged. This is because completion of the work or project automatically terminates the employment, in which case, the employer is, under the law, only obliged to render a report to the DOLE on the termination of the employment.[18]

The petition is meritorious.

Respondents were found to be project employees by the Labor Arbiter, the NLRC and the Court of Appeals. Their unanimous finding that respondents are project employees is binding on the Court. It must also be pointed out that respondents have not appealed from such finding by the Court of Appeals. It is

---

[15] *Id.* at 18.

[16] Emphasis supplied.

[17] 481 Phil. 270 (2004). (Emphasis and underscoring supplied.)

[18] *Id.* at 277-278.

only the petitioner that appealed from the decision of the Court of Appeals.

The main issue is whether or not respondents, as project employees, are entitled to nominal damages for lack of advance notice of their dismissal.

A project employee is defined under Article 280 of the Labor Code as one whose "employment has been fixed for a specific project or undertaking the completion or termination of which has been determined at the time of the engagement of the employee or where the work or services to be performed is seasonal in nature and the employment is for the duration of the season."[19]

In this case, the Labor Arbiter, the NLRC and the Court of Appeals all found that respondents, as project employees, were validly terminated due to the completion of the phases of work for which their services were engaged. However, the Court of Appeals held that respondents were entitled to nominal damages, because petitioner failed to give them advance notice of their termination. The appellate court cited the case of *Agabon v. NLRC* as basis for the award of nominal damages.

The Court holds that *Agabon v. NLRC* is not applicable to this case, because it involved the dismissal of regular employees for abandonment of work, which is a just cause for dismissal under Article 282 of the Labor Code.[20] Although the dismissal

---

[19] See *Saberola v. Suarez*, G.R. No. 151227, July 14, 2008, 558 SCRA 135, 142.

[20] Art. 282. *Termination by employer* — An employer may terminate an employment for any of the following causes:

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

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

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

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

e. Other causes analogous to the foregoing.

was for a cause, the employer therein was required to observe the standard of due process for termination of employment based on just causes under Article 282 of the Labor Code, which procedural due process requirements are enumerated in Section 2, Rule 1, Book VI[21] of the Omnibus Rules Implementing the Labor Code.[22] Since the employer therein failed to comply with the twin requirements of notice and hearing, the Court ordered the employer to pay the employees involved nominal damages in the amount of ₱30,000.00 for failure to observe procedural due process.

Unlike in *Agabon*, respondents, in this case, were not terminated for just cause under Article 282 of the Labor Code. Dismissal based on just causes contemplate acts or omissions attributable to the employee.[23] Instead, respondents were terminated due to the completion of the phases of work for which their services were engaged.

As project employees, respondents' termination is governed by Section 1 (c) and Section 2 (III), Rule XXIII (Termination of Employment), Book V of the Omnibus Rules Implementing the Labor Code.

---

[21] Section 2. *Security of Tenure*. x x x (d) In all cases of termination of employment, the following standards of due process shall be substantially observed: For termination of employment based on just causes as defined in Article 282 of the Code:

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

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

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

[22] *Agabon v. National Labor Relations Commission*, *supra* note 13, at 284.

[23] *Id.*

Section 1 (c), Rule XXIII, Book V of the Omnibus Rules Implementing the Labor Code states:

> Section 1. *Security of tenure*. — (a) In cases of regular employment, the employer shall not terminate the services of an employee except for just or authorized causes as provided by law, and subject to the requirements of due process.
>
> x x x x x x x x x
>
> (c) In cases of project employment or employment covered by legitimate contracting or sub-contracting arrangements, no employee shall be dismissed ***prior*** to the completion of the project or phase thereof for which the employee was engaged, or prior to the expiration of the contract between the principal and contractor, unless the dismissal is for just or authorized cause subject to the requirements of due process or prior notice, or is brought about by the completion of the phase of the project or contract for which the employee was engaged.[24]

Records show that respondents were dismissed after the expiration of their respective project employment contracts, and due to the completion of the phases of work respondents were engaged for. Hence, the cited provision's requirements of due process or prior notice when an employee is dismissed for just or authorized cause (under Articles 282 and 283 of the Labor Code) prior to the completion of the project or phase thereof for which the employee was engaged do not apply to this case.

Further, Section 2 (III), Rule XXIII, Book V of the Omnibus Rules Implementing the Labor Code provides:

> Section 2. *Standard of due process: requirements of notice*. — In all cases of termination of employment, the following standards of due process shall be substantially observed.
>
> 1. For termination of employment based on just causes as defined in Article 282 of the Code:
>
> (a) A written notice served on the employee specifying the ground or grounds for termination, and giving to said employee reasonable opportunity within which to explain his side;

[24] Emphasis and underscoring supplied.

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

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

In case of termination, the foregoing notices shall be served on the employee's last known address.

II. For termination of employment as based on authorized causes defined in Article 283 of the Code, the requirements of due process shall be deemed complied with upon service of a written notice to the employee and the appropriate Regional Office of the Department at least thirty (30) days before the effectivity of the termination, specifying the ground or grounds for termination.

III. **If the termination is brought about by the completion of the contract or phase thereof, no prior notice is required.** If the termination is brought about by the failure of an employee to meet the standards of the employer in the case of probationary employment, it shall be sufficient that a written notice is served the employee within a reasonable time from the effective date of termination.[25]

In this case, the Labor Arbiter, the NLRC and the Court of Appeals all found that respondents were validly terminated due to the completion of the phases of work for which respondents' services were engaged. The above rule clearly states, "**If the termination is brought about by the completion of the contract or phase thereof, no prior notice is required**." *Cioco, Jr. v. C.E. Construction Corporation*[26] explained that this is because completion of the work or project automatically terminates the employment, in which case, the employer is, under the law, only obliged to render a report to the DOLE on the termination of the employment.

---

[25] Emphasis and underscoring supplied.

[26] *Supra* note 17.

Hence, prior or advance notice of termination is not part of procedural due process if the termination is brought about by the completion of the contract or phase thereof for which the employee was engaged. Petitioner, therefore, did not violate any requirement of procedural due process by failing to give respondents advance notice of their termination; thus, there is no basis for the payment of nominal damages.

In sum, absent the requirement of prior notice of termination when the termination is brought about by the completion of the contract or phase thereof for which the worker was hired, respondents are not entitled to nominal damages for lack of advance notice of their termination.

WHEREFORE, the petition is *GRANTED*. The Decision of the Court of Appeals in CA-G.R. SP No. 70708, dated March 9, 2005, insofar as it upholds the validity of the dismissal of respondents is *AFFIRMED*, but the award of nominal damages to respondents is *DELETED*. The Resolution of the Court of Appeals, dated August 2, 2005, is *SET ASIDE*.

No costs.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 170693. August 9, 2010]

EMILIA MICKING *VDA. DE* CORONEL and BENJAMIN CORONEL, *petitioners, vs.* **MIGUEL TANJANGCO, JR.,** *respondent.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; AGRARIAN LAWS; REPUBLIC ACT NO. 3844; DISPOSSESSION OF AGRICULTURAL LESSEE; CONVERSION AS GROUND FOR DISPOSSESSION; REQUIRES PRIOR COURT PROCEEDINGS IN WHICH THE ISSUE OF CONVERSION HAS BEEN DETERMINED AND A FINAL ORDER ISSUED DIRECTING DISPOSSESSION UPON THAT GROUND. — Section 36 of R.A. No. 3844 governs the dispossession of an agricultural lessee and the termination of his rights to enjoy and possess the landholding, whereas Section 27 enumerates certain prohibited transactions involving the landholding. They provide as follows: "**Section 27.** *Prohibitions to Agricultural Lessee* — It shall be unlawful for the agricultural lessee: **(2) To employ a sub-lessee on his landholding: Provided, however, That in case of illness or temporary incapacity he may employ laborers whose services on his landholding shall be on his account.** x x x **Section 36.** *Possession of Landholding; Exceptions* — **Notwithstanding any agreement as to the period or future surrender, of the land, an agricultural lessee shall continue in the enjoyment and possession of his landholding except when his dispossession has been authorized by the Court in a judgment that is final and executory if after due hearing it is shown that: (1) The agricultural lessor-owner or a member of his immediate family will personally cultivate the landholding or will convert the landholding, if suitably located, into residential, factory, hospital or school site or other useful non-agricultural purposes x x x. (7) The lessee employed a sub-lessee on his landholding in violation of the terms of paragraph 2 of Section twenty-seven**." [T]he conversion of the subject landholding under the 1980 *Kasunduan* is not the

conversion of landholding that is contemplated by Section 36 of the law. *Alarcon v. Court of Appeals* defined conversion as the act of changing the current use of a piece of agricultural land into some other use as approved by the DAR. More to the point is that for conversion to avail as a ground for dispossession, the opening paragraph of Section 36 implies the necessity of prior court proceedings in which the issue of conversion has been determined and a final order issued directing dispossession upon that ground. In the case at bar, however, respondent does not profess that at any time there had been such proceedings or that there was such court order. Neither does he assert that Lot No. 38—and Lot Nos. 37 and 39 for that matter—had undergone conversion with authority from the DAR.

2. ID.; ID.; ID.; ID.; DISPOSSESSION ON ACCOUNT OF HAVING EMPLOYED A SUBLESSEE; REQUIRES A FINAL JUDGMENT OF THE COURT IN THAT RESPECT. — [I]t is evident from the records that the lease agreement over Lot No. 38 in favor of Jess Santos was executed not by petitioners but rather by respondent himself. It was respondent's name that appears therein as the lessor, with Jess Santos acceding to operate a fishing pond on the land. With respect to the lease agreement with Daniel Toribio executed after the expiration of the first lease, we find that although it was Boy Coronel who signed in as lessor, still, this will not suffice as a ground to dispossess petitioners of the three lots and eject them from the property inasmuch as, to reiterate, dispossession on account of having employed a sublessee under Sections 36 and 27 of R.A. No. 3844 requires a final judgment of the court in that respect.

3. ID.; ID.; ID.; ID.; GROUNDS FOR DISPOSSESSION; ONE WHO PROCLAIMS HIMSELF TO BE THE LANDOWNER HAS THE BURDEN TO PROVE THE EXISTENCE THEREOF. — [S]ince the inception of this case, respondent has been grasping at straws in his attempt to dispossess petitioners not only of Lot No. 38 but also of Lot Nos. 37 and 39. He has been insistent that there was an existing leasehold agreement covering Lot Nos. 37 and 39 which was violated by petitioners when they supposedly constituted leases on these lands. But we have to approve of the Court of Appeals' finding that aside from this bare and unassisted claim, respondent was not able to substantiate his thesis. Section 37

of R.A. No. 3844 clearly rests the burden on respondent, who proclaims himself to be the landowner, to prove the existence of the grounds for dispossession and ejectment, yet clearly was unable to discharge this burden as he has not at any time shown either a final order of conversion by the DAR or a court judgment authorizing the tenants' ejectment on the ground of conversion.

4. ID.; ID.; REPUBLIC ACT NO. 3844 AND PRESIDENTIAL DECREE NO. 27 (THE EMANCIPATION OF TENANTS DECREE); APPLIED IN CASE AT BAR. — With particular reference to Lot No. 38, it is useful to note that Emilia's certificate of land transfer has already been ordered cancelled in the 1986 decision of the MAR in connection with respondent's retention application. Indeed, the ruling in that case cannot be downplayed at this juncture inasmuch as it explicitly affirmed the viability of respondent's exercise of retention rights, under the auspices of P.D. No. 27, over the property. Thus, because this issue has already been settled, we are certainly not bound to litigate the same anew as petitioners would have us do. If at all, we must only emphasize that even with the confirmation of respondent's retention rights over Lot No. 38, petitioners' leasehold rights to the land have not been extinguished. In other words, while indeed petitioners are deemed owners of Lot Nos. 37 and 39 by operation of P.D. No. 27, the placing of Lot No. 38 under respondent's retention limits have made them lessees only on Lot No. 38. Their status as such is protected by Section 7 of R.A. 3844, which afford them security in their tenurial rights.

5. ID.; ID.; PRESIDENTIAL DECREE NO. 27 (THE EMANCIPATION OF TENANTS DECREE); PROHIBITS A TENANT-FARMER FROM TRANSFERRING HIS OWNERSHIP OR POSSESSION OF, OR HIS RIGHTS TO THE LANDHOLDING, EXCEPT ONLY IN FAVOR OF THE GOVERNMENT OR BY HEREDITARY SUCCESSION IN FAVOR OF HIS SUCCESSORS. — Our law on agrarian reform is a legislated promise to emancipate poor farm families from the bondage of the soil. P.D. No. 27 was promulgated in the exact same spirit, with mechanisms which hope to forestall a reversion to the antiquated and inequitable feudal system of land ownership. It aims to ensure the continued possession, cultivation and enjoyment by the beneficiary of the land that

he tills which would certainly not be possible where the former owner is allowed to reacquire the land at any time following the award — in contravention of the government's objective to emancipate tenant-farmers from the bondage of the soil. In order to ensure the tenant-farmer's continued enjoyment and possession of the property, the explicit terms of P.D. No. 27 prohibit the transfer by the tenant of the ownership, rights or possession of a landholding to other persons, or the surrender of the same to the former landowner. In other words, a tenant-farmer may not transfer his ownership or possession of, or his rights to the property, except only in favor of the government or by hereditary succession in favor of his successors. Any other transfer of the land grant is a violation of this proscription and is, therefore, null and void following Memorandum Circular No. 7, series of 1979, which materially states: "Despite the above prohibition, however, there are reports that many farmer-beneficiaries of P.D. 27 have transferred their ownership, rights and/or possession of their farms/homelots to other persons or have surrendered the same to their former landowners. All these transactions/surrenders are violative of P.D. 27 and therefore null and void."

APPEARANCES OF COUNSEL

Tagle-Chua & Aquino for petitioners.
Albino Achas for respondent.

D E C I S I O N

PERALTA, *J.*:

This petition for review under Rule 45 of the Rules of Court originated from a Complaint[1] for cancellation of certificate of land transfer and for ejectment filed by respondent Miguel Tanjangco, Jr. on June 24, 1997 before the Department of Agrarian Reform Adjudication Board (DARAB) in Malolos, Bulacan. The complaint stated that respondent was the owner of parcels of land found in Sta. Monica, Hagonoy, Bulacan,

[1] The complaint was docketed as DARAB Case No. R-03-02-5100 '97; records, pp. 9-12.

with an aggregate area of 26,428 square meters.[2] These pieces of land, identified as Lot Nos. 37, 38 and 39, were respectively covered by Tax Declaration Nos. 10547, 10572 and 8203 — all of which show that they were declared for taxation purposes in respondent's name.[3] Initially, these pieces of property were being cultivated by petitioner Emilia Micking Coronel and her husband as agricultural lessees, and when the latter died Emilia was given, by force of the government's *Operation Land Transfer,* a certificate of land transfer (CLT) covering the lots.[4]

Over time saltwater gradually saturated the property, making it unsuitable for rice cultivation.[5] Hence, in a 1980 agreement denominated as *Kasunduan sa Pagbabago ng Kaurian ng Lupang Sakahan (Palayan na Gagawing Palaisdaan),* Emilia and her son, petitioner Benjamin Coronel,[6] allegedly agreed with respondent to convert Lot No. 38 into a fish farm.[7] Respondent claimed that for a consideration of ₱6,000.00, petitioners had bound to relinquish their rights as tenants not only on Lot No. 38 but also on Lot Nos. 37 and 39, which were likewise converted into fish farms following the execution of the agreement. Petitioners then purportedly leased Lot No. 38 to a certain Jess Santos for a term of five years and then to one Dionisio Toribio, both of whom successively operated fishing ponds on the land. When respondent supposedly learned about these leases, he demanded that petitioners vacate not only Lot No. 38 but also Lot Nos. 37 and 39. The demand went unheeded. Respondent was, thus, urged to bring the matter before the *Barangay* Agrarian Reform Committee, yet the parties could not amicably settle their issues before the said body.[8]

---

[2] Records, pp. 6-8, 12.

[3] The Declaration of Real Property discloses that all three lots are covered by Transfer Certificate of Title No. T-177647; *id.* at 6-8.

[4] Records, pp. 11-12.

[5] *Id.*

[6] Alternatively referred to in the records as "Boy Coronel."

[7] Records, pp. 5, 11.

[8] *Id.* at 11, 13.

Petitioners suspected that respondent's claim of ownership was a ploy to circumvent agrarian law provisions on land retention. In their Answer[9] to the complaint, they disclosed that the subject lots were owned not by respondent but by the latter's father, Miguel Tanjangco, Sr., who had given them leasehold rights therein many years ago. They claimed that CLT No. 0-092761 was issued in favor of Emilia upon the death of her husband, and that she and her family had since been in possession of the property as beneficiaries of the government's agrarian reform program. As holders of a CLT, they asserted that they had every right to retain possession of the lots.[10] Furthermore, they denied having relinquished their rights as land reform beneficiaries, and assuming there was such relinquishment the same was nevertheless void for being contrary to existing agrarian laws and rules. They suggest that it was respondent who committed a breach against their rights when he himself actually constituted a lease on a portion of the property in favor of Jess Santos. Lastly, they posited that respondent had no cause of action and if he did have cause to bring suit, the same nevertheless had already prescribed.[11]

It is evident from the records that in 1976, respondent had filed before the then Ministry of Agrarian Reform (MAR) a petition, docketed as MARCO Adm. Case No. III-1474-86, for the retention of not more than seven hectares of inherited land acquired from his grandparents, Adriano and Juana Tanjangco — the parents of Miguel, Sr. Lot No. 38 was included in the area applied to be retained and it was then being tenanted by Emilia. This lot, together with others in possession of different individuals, could have redounded to Miguel, Sr. had it not been for the waiver of his share following an extrajudicial settlement of the inherited estate among the heirs. The MAR granted respondent's application in its July 27, 1986 Order, and accordingly, it declared exempt from *Operation Land*

---

[9] *Id.* at 30-32.

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

[11] *Id.* at 34.

Transfer the lots subject of the petition and directed that existing tenants in the covered area be maintained in their peaceful possession as agricultural lessees.[12]

That ruling in MARCO Adm. Case No. III-1474-86 was central to the provincial adjudicator's resolution of the present case. In its April 1, 1998 Decision,[13] the provincial adjudicator noted that the matter of cancelling petitioners' CLT covering Lot No. 38 was already water under the bridge in view of the MAR's directive to cancel it along with all the other existing CLTs. As to whether petitioners could be ejected not only from Lot No. 38 but also from Lot Nos. 37 and 39, the provincial adjudicator ruled in the affirmative. Citing the 1980 *Kasunduan,* in relation to Sections 36 and 27 of Republic Act (R.A.) No. 3844, it was found that petitioners' relinquishment of rights, coupled with the conversion of the lots into fishing ponds, as well as the voluntary surrender of possession to Jess Santos, had validly terminated existing tenurial rights.[14] The dispositive portion of the decision reads:

> WHEREFORE, premises considered, judgment is hereby rendered in favor of the plaintiff and against the defendants and order is hereby issued:
>
> 1. ORDERING the defendants to vacate peacefully the subject property;
>
> 2. ORDERING the defendants to restore possession of the subject property to the herein plaintiff;
>
> 3. ORDERING the defendants and all other persons acting in their behalves not to molest, interfere [with] or harass the herein plaintiff;
>
> 4. No pronouncement as to costs.
>
> SO ORDERED.[15]

---

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

[13] *Id.* at 137-146. The decision was signed by Gregorio D. Sapera.

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

[15] *Id.* at 137-138.

Aggrieved, petitioners appealed to the DAR-Central Adjudication Board (DAR-CAB).[16] On January 15, 2001, it reversed the decision of the provincial adjudicator, holding that petitioners were already deemed owners of the subject property on the effective date of Presidential Decree (P.D) No. 27 and that the provisions in the law on prohibited transfers and relinquishment of land awards should apply to the transactions entered into by the parties.[17] The decision states:

> WHEREFORE, premises considered, the assailed decision dated April 1, 1998 is hereby REVERSED and SET ASIDE. A new judgment is rendered:
>
> 1. Ordering Plaintiff-Appellee to maintain Defendants-Appellants in peaceful possession and cultivation of Lot 38 as tenants thereof;
>
> 2. Ordering the cancellation of CLT No. 0-09276 generated in favor of Defendant-Appellant Emilia Micking *Vda. de* Coronel covering Lot Nos. 37, 38 and 39. An Emancipation Patent (EP) CLT be issued in favor of Defendant-Appellant Emilia Micking *Vda. de* Coronel with respect to Lot Nos. 37 and 39, subject matter of this case; and
>
> 3. Ordering the parties to execute a leasehold contract over Lot No. 38.
>
> SO ORDERED.[18]

Following the denial of his motion for reconsideration,[19] respondent elevated the matter to the Court of Appeals via a petition for review in CA-G.R. SP No. 75112.[20] On October 28, 2003, the appellate court rendered the assailed Decision[21] granting the petition in part.

---

[16] *Id.* at 154.

[17] *Id.* at 184-185.

[18] *Id.* at 183-184. The decision was signed by Assistant Secretary Lorenzo R. Reyes.

[19] *Id.* at 196-197.

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

[21] Penned by Associate Justice Elvi John S. Asuncion, with Associate Justices Lucas P. Bersamin (now a member of this Court) and Renato C. Dacudao, concurring; *id.* at 115-119.

The Court of Appeals pointed out that inasmuch as Miguel, Sr. had failed to exercise his right of retention during his lifetime, respondent, as successor-in-interest acquired such right which he could therefore exercise as he in fact did. Thus, it noted, when the MAR ordered the cancellation of Emilia's CLT affecting Lot No. 38 and affirmed respondent's retention rights, petitioners became leaseholders on the property but their rights as such would terminate on the execution of the 1980 *Kasunduan* whereby they relinquished their rights for a consideration in accordance with Sections 8[22] and 28[23] of R.A. No. 3844. As to Lot Nos. 37 and 39, the appellate court held that petitioners remained to be

---

[22] Section 8, Republic Act No. 3844 provides:

Section 8. *Extinguishment of Agricultural Leasehold Relation* — The agricultural leasehold relation established under this Code shall be extinguished by:

(1) Abandonment of the landholding without the knowledge of the agricultural lessor;

(2) Voluntary surrender of the landholding by the agricultural lessee, written notice of which shall be served three months in advance; or

(3) Absence of the persons under Section nine to succeed to the lessee, in the event of death or permanent incapacity of the lessee.

[23] Section 28, Republic Act No. 3844 provides:

Section 28. *Termination of Leasehold by Agricultural Lessee During Agricultural Year* — The agricultural lessee may terminate the leasehold during the agricultural year for any of the following causes:

(1) Cruel, inhuman or offensive, treatment of the agricultural lessee or any member of his immediate farm household by the agricultural lessor or his representative with the knowledge and consent of the lessor;

(2) Non-compliance on the part of the agricultural lessor with any of the obligations imposed upon him by the provisions of this Code or by his contact with the agricultural lessee;

(3) Compulsion of the agricultural lessee or any member of his immediate farm household by the agricultural lessor to do any work or render any service not in any way connected with farm work or even without compulsion if no compensation is paid;

(4) Commission of a crime by the agricultural lessor or his representative against the agricultural lessee or any member of his immediate farm household; or

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

the owners thereof and saw no reason to cancel petitioners' title thereto since proof was lacking to the effect that petitioners had surrendered these lots to respondent.[24] Modifying the DARAB's decision, the appeal was disposed of as follows:

> WHEREFORE, based on the foregoing, the petition is hereby PARTLY GRANTED. The January 15, 2001 Decision of the Central Office of the Department of Agrarian Reform Adjudication Board (DARAB) is MODIFIED, in that the CORONELs are hereby ordered to vacate and restore possession of Lot No. 38 to TANJANGCO. The CLT No. 0-092761 shall be cancelled insofar as it covers Lot No. 38. Lot Nos. 37 and 39 shall remain in the ownership of the CORONELs.
>
> SO ORDERED.[25]

Both parties moved for reconsideration[26] which the Court of Appeals denied.[27] Hence, this petition.

Before the Court, petitioners assail the validity of the exercise by respondent of the right of retention over Lot No. 38. That right, they claim, is purely personal to the real owner of the property, Miguel, Sr., who however had not entered into the exercise thereof at any time since P.D. No. 27 came into force. They note that under the law, before any of the heirs may exercise the right of retention belonging to the deceased landowner, it must be shown that the latter had manifested in his lifetime the intention to exercise the right. This, they believe, has not been proven by respondent.[28]

Petitioners also aver that the 1980 *Kasunduan* is against the law and public policy, because the stipulated consideration of ₱6,000.00 is shockingly low and clearly unconscionable, and that they were not fully apprised of the consequences of the

---

[24] CA *rollo*, pp. 118-119.

[25] *Id.* at 119.

[26] *Id.* at 120-129.

[27] *Id.* at 141-143.

[28] *Rollo*, p. 9. See also Reply, *rollo*, p. 80.

agreement when they acceded to be bound by it. They disown the alleged act of relinquishment of tenurial rights relative to Lot No. 38, arguing that had there been such relinquishment, it would have been void nonetheless.[29] Finally, they deny having entered into any leasehold contract with respondent over Lot No. 38; they advance instead that it was respondent who constituted a lease on Lot No. 38 in favor of Jess Santos in violation of their rights as agrarian reform beneficiaries.[30]

To this, respondent counters that he, as the son of Miguel, Sr., has validly exercised the right of retention over Lot No. 38. He is banking on the July 27, 1986 Order in MARCO Adm. Case No. III-1474 which had already affirmed his retention right to the mass of property that included Lot No. 38.[31] He asserts the validity of the 1980 *Kasunduan* and the resulting relinquishment of rights made by petitioners thereunder, as these were supposedly executed in accordance with Sections 8 and 28 of R.A. No. 3844. Lastly, he attributes to petitioners a violation of Section 36, in relation to Section 27, of R.A. No. 3844 and a breach of the leasehold contract covering all three lots when portions of the property were subleased by respondents to Jess Santos and Daniel Toribio.[32]

The Court gave due course to the petition, and on the submission of the parties' memoranda, the case was deemed submitted for decision.

To begin with, it is conceded that Lot Nos. 37, 38 and 39 have all come under the land redistribution system of R.A. No. 3844[33]

---

[29] *Id.* at 10-11, 81-82.

[30] *Id.* at 12-13. Ses also Reply, *rollo*, pp. 83-84.

[31] *Id.* at 64.

[32] *Id.* at 66-67.

[33] The law is entitled *An Act to Ordain the Agricultural Land Reform Code and to Institute Land Reforms in the Philippines, Including the Abolition of Tenancy and the Chanelling of Capital into Industry, Provide for the Necessary Implementing Agencies, Appropriate Funds Therefor and for Other Purposes.* Approved on August 8, 1963.

and the government's *Operation Land Transfer* under P.D. No. 27.[34] It is likewise conceded, as the parties themselves do, that a certificate of land transfer has previously been issued in favor of petitioners. However, petitioners' ejectment from the landholding is sought on account of the alleged relinquishment of tenurial rights which they had executed in accordance with the provisions of Sections 27 and 36 of R.A. No. 3844. Petitioners argue that the agreement was not intended to effect a termination of their tenurial rights on Lot No. 38. In this regard, respondent submits as proof the 1980 *Kasunduan* which, for easy reference, is materially reproduced as follows:

x x x Na ang Maylupa na si Miguel Tanjangco, Jr. ang siyang tunay at ganap na may-ari ng isang lupang sakahan o palayan na may laki at sukat na humigit-kumulang sa apat na hektarya na matatagpuan sa San Jose at Sta. Monica, Hagonoy, Bulacan;

Na ang naturang lupang palayan ay binubuwisan ng 40 kaban sa kasalukuyan ng mag-inang Emilia Micking at Benjamin Coronel na nagsasaka rito;

Na iminungkahi noong mga nakaraang araw ng Namumuwisan sa Maylupa na ang bahaging binubuwisang palayan na saklaw at napapailalim sa Transfer Certificate of Title No. T-177647 *ng Tanggapan ng Kasulatan ng Lupa para sa Lalawigan ng Bulacan, na mapagkikilala Bilang 10 na natatala sa titulo at may parisukat at kalakhan na 18,844 metrong parisukat at ito ang Lote Blg. 38, plano Psu-64699, SWO-14929, ay gawing palaisdaan sa dahilang ayaw nang mag-ani rito ng palay sapagkat inaabot at nadaramay sa alat na tubig ng karatig na palaisdaan, at ang mungkahing ito ay tinanggap at sinang-ayunan ng Maylupa sa kasunduang sumusunod;*

Na alang-alang sa halagang ₱6,000.00, perang Pilipino, na tinanggap ng Namumuwisan bilang kabayaran sa anumang kalalabasan ng pagbabago ng kaurian ng lupang palayan (Blg. Lote 38, TCT T-177647) *ay pumapayag ang Namumuwisan at*

---

[34] Decreeing the Emancipation of Tenants from the Bondage of the Soil, Transferring to Them the Ownership of the Land They Till and Providing the Instruments and Mechanism Therefor. The law was promulgated on October 21, 1972.

ipinauubaya sa Maylupa na gawing palaisdaan ang naturang bahaging lupang hindi na pinag-aanihan; x x x[35]

Indeed, petitioners are not mistaken. A mere fleeting glance at the 1980 *Kasunduan* suggests not a hint that petitioners, for a monetary consideration, agreed to relinquish their rights as agricultural lessees and thereby surrender possession of the land to respondent. In this connection, we take notice that the Court of Appeals, applying Sections 8 and 28 of R.A. No. 3844 on voluntary surrender of landholding, as well as Section 6 of R.A. No. 6657,[36] has been misguided when it ruled that petitioners became leaseholders on account of the MAR's Order affirming respondent's retention rights over Lot No. 38 but that said status terminated with the execution of the 1980 *Kasunduan*. This, because while the petition for retention was filed in 1976, it was only in 1986 that respondent's retention rights were upheld by the MAR — six years since the execution of the *Kasunduan* in 1980. Be that as it may,

What comes clear from the foregoing is that respondent and petitioners merely agreed, as the latter had previously suggested to the former, to operate fishing ponds on Lot No. 38 and instead of cultivating rice, conduct fish farming thereon. Contrary to respondent's own interpretation, as well as to the Court of Appeals' assessment of the agreement, the consideration of ₱6,000.00 was never meant to operate as compensation to petitioners for abandoning their rights to the property. At best, the unmistakable import of the consideration in the *Kasunduan* is merely to indemnify petitioners for the consequences of the conversion of the farm lot from rice land to fish farm.

Respondent is bent on defeating the rights of petitioners and to that end, he cites Sections 27 and 36 of R.A. No. 3844.

Section 36 of R.A. No. 3844 governs the dispossession of an agricultural lessee and the termination of his rights to enjoy and possess the landholding, whereas Section 27 enumerates

---

[35] Records, p. 17.

[36] The Comprehensive Agrarian Reform Law of 1988.

certain prohibited transactions involving the landholding. They provide as follows:

Section 27. *Prohibitions to Agricultural Lessee* — It shall be unlawful for the agricultural lessee:

(1) To contract to work additional landholdings belonging to a different agricultural lessor or to acquire and personally cultivate an economic family-size farm, without the knowledge and consent of the agricultural lessor with whom he had entered first into household, if the first landholding is of sufficient size to make him and the members of his immediate farm household fully occupied in its cultivation; or

(2) To employ a sub-lessee on his landholding: Provided, however, That in case of illness or temporary incapacity he may employ laborers whose services on his landholding shall be on his account.

x x x x x x x x x

Section 36. *Possession of Landholding; Exceptions* — **Notwithstanding any agreement as to the period or future surrender, of the land, an agricultural lessee shall continue in the enjoyment and possession of his landholding except when his dispossession has been authorized by the Court in a judgment that is final and executory if after due hearing it is shown that:**

(1) The agricultural lessor-owner or a member of his immediate family will personally cultivate the landholding or will convert the landholding, if suitably located, into residential, factory, hospital or school site or other useful non-agricultural purposes: Provided; That the agricultural lessee shall be entitled to disturbance compensation equivalent to five years rental on his landholding in addition to his rights under Sections twenty-five and thirty-four, except when the land owned and leased by the agricultural lessor, is not more than five hectares, in which case instead of disturbance compensation the lessee may be entitled to an advanced notice of at least one agricultural year before ejectment proceedings are filed against him: Provided, further, That should the landholder not cultivate the land himself for three years or fail to substantially carry out such conversion within one year after the dispossession of the tenant, it

> shall be presumed that he acted in bad faith and the tenant shall have the right to demand possession of the land and recover damages for any loss incurred by him because of said dispossessions.
>
> x x x x x x x x x
>
> **(7) The lessee employed a sub-lessee on his landholding in violation of the terms of paragraph 2 of Section twenty-seven.**[37]

From these two provisions, as well as from his effusive arguments in the earlier and present proceedings, we derive that the cause of respondent's grievance are the alleged conversion of Lot No. 38 into a fish farm and the alleged subleasing of the landholding by petitioners. But even as we assume merit in respondent's arguments in this regard, we still find that his reliance on those provisions is mislaid.

First, the conversion of the subject landholding under the 1980 *Kasunduan* is not the conversion of landholding that is contemplated by Section 36 of the law. *Alarcon v. Court of Appeals*[38] defined conversion as the act of changing the current use of a piece of agricultural land into some other use as approved by the DAR.[39] More to the point is that for conversion to avail as a ground for dispossession, the opening paragraph of Section 36 implies the necessity of prior court proceedings in which the issue of conversion has been determined and a final order issued directing dispossession upon that ground.[40] In the case at bar, however, respondent does not profess that at any time there had been such proceedings or that there was such court order. Neither does he assert that Lot No. 38 — and Lot Nos. 37 and 39 for that matter — had undergone conversion with authority from the DAR.

---

[37] Emphasis supplied.

[38] 453 Phil. 373 (2003).

[39] *Id.* at 382.

[40] *Id.* at 381

Second, it is evident from the records that the lease agreement[41] over Lot No. 38 in favor of Jess Santos was executed not by petitioners but rather by respondent himself. It was respondent's name that appears therein as the lessor, with Jess Santos acceding to operate a fishing pond on the land. With respect to the lease agreement with Daniel Toribio executed after the expiration of the first lease, we find that although it was Boy Coronel who signed in as lessor, still, this will not suffice as a ground to dispossess petitioners of the three lots and eject them from the property inasmuch as, to reiterate, dispossession on account of having employed a sublessee under Sections 36 and 27 of R.A. No. 3844 requires a final judgment of the court in that respect.

Furthermore, since the inception of this case, respondent has been grasping at straws in his attempt to dispossess petitioners not only of Lot No. 38 but also of Lot Nos. 37 and 39. He has been insistent that there was an existing leasehold agreement covering Lot Nos. 37 and 39 which was violated by petitioners when they supposedly constituted leases on these lands. But we have to approve of the Court of Appeals' finding that aside from this bare and unassisted claim, respondent was not able to substantiate his thesis. Section 37 of R.A. No. 3844 clearly rests the burden on respondent, who proclaims himself to be the landowner, to prove the existence of the grounds for dispossession and ejectment, yet clearly was unable to discharge this burden as he has not at any time shown either a final order of conversion by the DAR or a court judgment authorizing the tenants' ejectment on the ground of conversion.

With particular reference to Lot No. 38, it is useful to note that Emilia's certificate of land transfer has already been ordered cancelled in the 1986 decision of the MAR in connection with respondent's retention application. Indeed, the ruling in that case cannot be downplayed at this juncture inasmuch as it explicitly affirmed the viability of respondent's exercise of retention rights, under the auspices of P.D. No. 27, over the property.

---

[41] Records, pp. 14-15.

Thus, because this issue has already been settled, we are certainly not bound to litigate the same anew as petitioners would have us do. If at all, we must only emphasize that even with the confirmation of respondent's retention rights over Lot No. 38, petitioners' leasehold rights to the land have not been extinguished. In other words, while indeed petitioners are deemed owners of Lot Nos. 37 and 39 by operation of P.D. No. 27, the placing of Lot No. 38 under respondent's retention limits have made them lessees only on Lot No. 38. Their status as such is protected by Section 7[42] of R.A. 3844, which afford them security in their tenurial rights. *Sarne v. Maquiling*,[43]citing *Hidalgo v. Hidalgo*,[44] *Endaya v. Court of Appeals*[45] and *Bernardo v. Court of Appeals*,[46] is instructive on this point, to wit:

> x x x [T]he Land Reform Code forges by operation of law, between the landowner and the farmer — be a leasehold tenant or temporarily a share tenant — a *vinculum juris* with certain vital consequences, such as security of tenure of the tenant and the tenant's right to continue in possession of the land he works despite the expiration of the contract or the sale or transfer of the land to third persons, and now, more basically, the farmer's pre-emptive right to buy the land he cultivates under section 11 of the Code, as well as the right to redeem the land, if sold to a third person without his knowledge, under section 12 of this Code.

To strengthen the security of tenure of tenants, Section 10 of R.A. No. 3844 provides that the agricultural leasehold relation shall not be extinguished by the sale, alienation or transfer of the legal possession of the landholding. With unyielding consistency, we have held that transactions involving the agricultural land over which

---

[42] **Section 7.** *Tenure of Agricultural Leasehold Relation* — The agricultural leasehold relation once established shall confer upon the agricultural lessee the right to continue working on the landholding until such leasehold relation is extinguished. The agricultural lessee shall be entitled to security of tenure on his landholding and cannot be ejected therefrom unless authorized by the Court for causes herein provided.

[43] G.R. No. 138839, May 9, 2002.

[44] 33 SCRA 105 (1970).

[45] 215 SCRA 109 (1992).

[46] 168 SCRA 439 (1988).

an agricultural leasehold subsists resulting in change of ownership, such as the sale or transfer of legal possession, will not terminate the rights of the agricultural lessee who is given protection by the law by making such rights enforceable against the transferee or the landowner's successor in interest. x x x

In addition, Section 7 of the law enunciates the principle of security of tenure of the tenant, such that it prescribes that the relationship of landholder and tenant can only be terminated for causes provided by law. x x x [S]ecurity of tenure is a legal concession to agricultural lessees which they value as life itself and deprivation of their land holdings is tantamount to deprivation of their only means of livelihood. Perforce, the termination of the leasehold relationship can take place only for causes provided by law. The causes are specified in Sections 8, 28 and 36 of R.A. No. 3844.

Finally, even on the hypothesis that petitioners, as alleged, voluntarily relinquished their rights over Lot Nos. 37, 38 and 39 and surrendered the same to respondent, the transaction would still be void because it is by all means prohibited by law.

Our law on agrarian reform is a legislated promise to emancipate poor farm families from the bondage of the soil. P.D. No. 27 was promulgated in the exact same spirit, with mechanisms which hope to forestall a reversion to the antiquated and inequitable feudal system of land ownership. It aims to ensure the continued possession, cultivation and enjoyment by the beneficiary of the land that he tills which would certainly not be possible where the former owner is allowed to reacquire the land at any time following the award — in contravention of the government's objective to emancipate tenant-farmers from the bondage of the soil.[47]

In order to ensure the tenant-farmer's continued enjoyment and possession of the property, the explicit terms of P.D. No. 27 prohibit the transfer by the tenant of the ownership, rights or possession of a landholding to other persons, or the surrender of the same to the former landowner. In other words, a tenant-farmer may not transfer his ownership or possession of, or his rights to the property, except only in favor of the government

[47] *Toralba v. Mercado*, 478 Phil. 563, 571 (2004).

or by hereditary succession in favor of his successors.[48] Any other transfer of the land grant is a violation of this proscription and is, therefore, null and void[49] following Memorandum Circular No. 7, series of 1979, which materially states:

> Despite the above prohibition, however, there are reports that many farmer-beneficiaries of P.D. 27 have transferred their ownership, rights and/or possession of their farms/homelots to other persons or have surrendered the same to their former landowners. All these transactions/surrenders are violative of P.D. 27 and therefore null and void.[50]

All told, we find that the ruling of the Court of Appeals in this case must be modified. In view of the fact that there was no valid relinquishment of agricultural leasehold rights over Lot No. 38 which may be attributed to petitioners, they are entitled to possession of the same as agricultural lessees.

WHEREFORE, the petition is *GRANTED IN PART*. The October 28, 2003 Decision of the Court of Appeals in CA-G.R. SP No. 75112 is hereby *MODIFIED*. Petitioners' entitlement to the possession and cultivation of Lot No. 38 as agricultural lessee in accordance with the July 27, 1986 Order of the Ministry of Agrarian Reform in MARCO Adm. Case No. III-1474-86, is *AFFIRMED*.

SO ORDERED.

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

---

[48] Paragraph 13 of Presidential Decree No. 27 states: Title to land acquired pursuant to this Decree or the Land Reform Program of the Government shall not be transferable except by hereditary succession or to the Government in accordance with the provisions of this Decree, the Code of Agrarian Reforms and other existing laws and regulations. See also *Caliwag-Carmona v. Court of Appeals*, G.R. No. 148157, July 27, 2006, 496 SCRA 723, 734; *Torres v. Ventura*, G.R. No. 86044, July 2, 1990, 187 SCRA 97, 105; *Corpuz v. Grospe*, G.R. No. 135297, June 13, 2000, 333 SCRA 425, 436-437.

[49] *Caliwag-Carmona v. Court of Appeals, supra; Torres v. Ventura, supra*; *Corpuz v. Grospe, supra.*

[50] The Circular is dated April 23, 1979.

FIRST DIVISION

[G.R. No. 171115. August 9, 2010]

NAGKAKAISANG LAKAS NG MANGGAGAWA SA KEIHIN (NLMK-OLALIA-KMU) and HELEN VALENZUELA, *petitioners, vs.* **KEIHIN PHILIPPINES CORPORATION,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; PARTIES TO CIVIL ACTIONS; INDISPENSABLE PARTIES; SHALL BE JOINED AS PLAINTIFFS OR DEFENDANTS; RATIONALE. — Under Section 7, Rule 3 of the Rules of Court, "parties in interest without whom no final determination can be had of an action shall be joined as plaintiffs or defendants." If there is a failure to implead an indispensable party, any judgment rendered would have no effectiveness. It is "precisely 'when an indispensable party is not before the court (that) an action should be dismissed.' The absence of an indispensable party renders all subsequent actions of the court null and void for want of authority to act, not only as to the absent parties but even to those present." The purpose of the rules on joinder of indispensable parties is a complete determination of all issues not only between the parties themselves, but also as regards other persons who may be affected by the judgment. A decision valid on its face cannot attain real finality where there is want of indispensable parties.

2. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; TERMINATION OF EMPLOYMENT; JUST CAUSES; SERIOUS MISCONDUCT; REQUISITES. — Misconduct is defined as "the transgression of some established and definite rule of action, a forbidden act, a dereliction of duty, willful in character, and implies wrongful intent and not mere error in judgment." For serious misconduct to justify dismissal under the law, "(a) it must be serious, (b) must relate to the performance of the employee's duties; and (c) must show that the employee has become unfit to continue working for the employer."

3. ID.; ID.; ID.; ID.; ID.; ESTABLISHED IN CASE AT BAR. — In the case at bar, Helen took the packing tape with the thought that she could use it for her own personal purposes. When Helen was asked to explain in writing why she took the tape, she stated, "*Kumuha po ako ng isang packing tape na gagamitin ko sa paglilipat ng gamit ko sa bago kong lilipatang bahay*." In other words, by her own admission, there was intent on her part to benefit herself when she attempted to bring home the packing tape in question. It is noteworthy that prior to this incident, there had been several cases of theft and vandalism involving both respondent company's property and personal belongings of other employees. In order to address this issue of losses, respondent company issued two memoranda implementing an intensive inspection procedure and reminding all employees that those who will be caught stealing and performing acts of vandalism will be dealt with in accordance with the company's Code of Conduct. Despite these reminders, Helen took the packing tape and was caught during the routine inspection. All these circumstances point to the conclusion that it was not just an error of judgment on the part of Helen, but a deliberate act of theft of company property. x x x We hold that Helen is guilty of serious misconduct in her act of taking the packing tape.

4. ID.; ID.; ID.; ID.; ID.; PENALTY OF DISMISSAL; PROPER IN CASE AT BAR. — The petitioners also argue that the penalty of dismissal is too harsh and disproportionate to the offense committed since the value of the thing taken is very minimal. Petitioners cite the case of *Caltex Refinery Employees Association v. National Labor Relations Commission* where Arnelio M. Clarete (Clarete) was found to have willfully breached the trust and confidence reposed in him by taking a bottle of lighter fluid. In said case, we refrained from imposing the supreme penalty of dismissal since the employee had no violations "in his eight years of service and the value of the lighter fluid x x x is very minimal compared to his salary x x x." After a closer study of both cases, we are convinced that the case of *Caltex* is different from the case at hand. Although both Clarete and Helen had no prior violations, the former had a clean record of eight years with his employer. On the other hand, Helen was not even on her second year of service with Keihin when the incident of theft occurred. And what further distinguishes the instant case from *Caltex* is that

respondent company was dealing with several cases of theft, vandalism, and loss of company and employees' property when the incident involving Helen transpired.

5. ID.; ID.; ID.; TWIN REQUIREMENTS OF NOTICE AND HEARING; TWO WRITTEN NOTICES; REQUIRED BEFORE TERMINATION OF EMPLOYMENT CAN BE LEGALLY EFFECTED. — "In the dismissal of employees, it has been consistently held that the twin requirements of notice and hearing are essential elements of due process. The employer must furnish the employee with two written notices before termination of employment can be legally effected: (a) a notice apprising the employee of the particular acts or omissions for which his dismissal is sought, and (b) a subsequent notice informing the employee of the employer's decision to dismiss him."

6. ID.; ID.; ID.; ID.; REQUIREMENT OF HEARING; WITH REGARD TO THE REQUIREMENT OF HEARING, THE ESSENCE OF DUE PROCESS LIES IN AN OPPORTUNITY TO BE HEARD. — With regard to the requirement of a hearing, the essence of due process lies in an opportunity to be heard. Such opportunity was afforded the petitioner when she was asked to explain her side of the story. In *Metropolitan Bank and Trust Company v. Barrientos*, we held that, "the essence of due process lies simply in an opportunity to be heard, and not that an actual hearing should always and indispensably be held." Similarly in *Philippine Pasay Chung Hua Academy v. Edpan*, we held that, "[e]ven if no hearing or conference was conducted, the requirement of due process had been met since he was accorded a chance to explain his side of the controversy."

APPEARANCES OF COUNSEL

Banzuela & Associates for petitioners.
De La Rosa & Nograles for respondent.

D E C I S I O N

DEL CASTILLO, *J.*:

This Petition for Review on *Certiorari*[1] assails the November 2, 2005 Resolution[2] of the Court of Appeals (CA) in CA-G.R. SP No. 91718 dismissing outright the petition for *certiorari* filed by the petitioners, as well as its January 6, 2006 Resolution[3] denying petitioners' Motion for Reconsideration.

Factual Antecedents

Petitioner Helen Valenzuela (Helen) was a production associate in respondent Keihin Philippines Corporation (Keihin), a company engaged in the production of intake manifold and throttle body used in motor vehicles manufactured by Honda.

It is a standard operating procedure of Keihin to subject all its employees to reasonable search before they leave the company premises.[4] On September 5, 2003, while Helen was about to leave the company premises, she saw a packing tape near her work area and placed it inside her bag because it would be useful in her transfer of residence. When the lady guard on duty inspected Helen's bag, she found the packing tape inside her bag. The guard confiscated it and submitted an incident report[5] dated September 5, 2003 to the Guard-in-Charge, who, in turn, submitted a memorandum[6] regarding the incident to the Human Resources and Administration Department on the same date.

---

[1] *Rollo,* pp. 4-43.

[2] CA *rollo,* p. 191; penned by Associate Justice Vicente Q. Roxas and concurred in by Associate Justices Conrado M. Vasquez, Jr. and Juan Q. Enriquez, Jr.

[3] *Id.* at 236-237.

[4] *Id.* at 85.

[5] *Id.* at 86.

[6] *Id.* at 87.

The following day, or on September 6, 2003, respondent company issued a show cause notice[7] to Helen accusing her of violating F.2 of the company's Code of Conduct, which says, "Any act constituting theft or robbery, or any attempt to commit theft or robbery, of any company property or other associate's property. Penalty: D (dismissal)."[8] Paul Cupon, Helen's supervisor, called her to his office and directed her to explain in writing why no disciplinary action should be taken against her.

Helen, in her explanation,[9] admitted the offense and even manifested that she would accept whatever penalty would be imposed upon her. She, however, did not reckon that respondent company would terminate her services for her admitted offense.[10]

On September 26, 2003, Helen received a notice[11] of disciplinary action informing her that Keihin has decided to terminate her services.

On October 15, 2003, petitioners filed a complaint[12] against respondent for illegal dismissal, non-payment of 13th month pay, with a prayer for reinstatement and payment of full backwages, as well as moral and exemplary damages. Petitioners alleged that Helen's act of taking the packing tape did not constitute serious misconduct, because the same was done with no malicious intent.[13] They believed that the tape was not of great value and of no further use to respondent company since it was already half used. Although Helen admitted that she took the packing tape, petitioners claimed that her punishment was disproportionate to her infraction.

---

[7] *Id.* at 88.

[8] *Id.* at 91.

[9] *Id.* at 88.

[10] *Id.* at 43.

[11] *Id.* at 91.

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

[13] *Id.* at 88.

Keihin, on the other hand, maintained that Helen was guilty of serious misconduct because there was a deliberate act of stealing from the company. Respondent company also claimed that motive and value of the thing stolen are irrelevant in this case.

Ruling of the Labor Arbiter

On July 30, 2004, the Labor Arbiter[14] rendered his Decision[15] dismissing the complaint of illegal dismissal. He brushed aside petitioners' argument that the penalty imposed on Helen was disproportionate to the offense committed,[16] and held that she indeed committed a serious violation of the company's policies amounting to serious misconduct,[17] a just cause for terminating an employee under Article 282 of the Labor Code. The Labor Arbiter likewise upheld the right of the company to terminate Helen on the ground of loss of confidence or breach of trust.[18]

The Labor Arbiter further held that Keihin observed the requirements of procedural due process in implementing the dismissal of Helen.[19] He ruled that the following circumstances showed that the company observed the requirements of procedural due process: a) there was a show cause letter informing Helen of the charge of theft and requiring her to submit an explanation; b) there was an administrative hearing giving her an opportunity to be heard; and c) the respondent company furnished her with notice of termination stating the facts of her dismissal, the offense for which she was found guilty, and the grounds for her dismissal.[20]

---

[14] Enrico Angelo C. Portillo.

[15] CA *rollo*, 122-126.

[16] *Id.* at 124.

[17] *Id.*

[18] *Id.* at 124-125.

[19] *Id.* at 125.

[20] *Id.*

Ruling of the National Labor Relations Commission (NLRC)

On appeal, the NLRC dismissed the appeal of the petitioners and affirmed *in toto* the Decision of the Labor Arbiter. It held that petitioners admitted in their Position Paper that Helen took the packing tape strewn on the floor near her production line within the company premises.[21] By the strength of petitioners' admission, the NLRC held that theft is a valid reason for Helen's dismissal.[22]

As to the issue of due process, the pertinent portion of the Decision[23] of the NLRC reads:

> Complainant's dismissal too, was with due process. Procedural due process only requires employers to furnish their errant employees written notices stating the particular acts or omissions constituting the grounds for their dismissal and to hear their side of the story (*Mendoza vs. NLRC*, 310 SCRA 846 [1999]). Complainant's claim that the show-cause letter did not pass the stringent requirement of the law is belied by her admission in her position paper that Mr. Cupon furnished her a "form," simultaneously asking her why she did such an act and x x x that Mr. Cupon directed her to submit a written explanation on the matter, which she complied with. By Complainant's own admission then, it is clear that she was furnished a written notice informing her of the particular act constituting the ground for her dismissal and that x x x her side of the story [was heard]. Evidently then, Complainant was afforded due process prior to her dismissal.

The dispositive portion of the Decision of the NLRC reads:

> WHEREFORE, premises considered, Complainant's appeal is DISMISSED for lack of merit. The Labor Arbiter's assailed Decision in the above-entitled case is hereby AFFIRMED *in toto*.
>
> SO ORDERED.[24]

---

[21] *Id.* at 163.

[22] *Id.* at 164.

[23] *Id.* at 158-167; penned by Commissioner Victoriano R. Calaycay and concurred in by Presiding Commissioner Raul T. Aquino and Commissioner Angelita A. Gacutan.

[24] *Id.* at 167.

Ruling of the Court of Appeals

After having their Motion for Reconsideration[25] denied[26] by the NLRC, the petitioner union, the *Nagkakaisang Lakas ng Manggagawa sa* Keihin, filed a Petition for *Certiorari* with the CA praying that the Decision of the NLRC be set aside. However, in a Resolution[27] dated November 2, 2005, the CA dismissed the petition outright for not having been filed by an indispensable party in interest under Section 2, Rule 3 of the Rules of Court.

> SEC 2. *Parties in interest.* — A real party in interest is the party who stands to be benefited or injured by the judgment in the suit, or the party entitled to the avails of the suit. Unless otherwise authorized by law or these Rules, every action must be prosecuted or defended in the name of the real party in interest.

Petitioners filed a Motion for Reconsideration[28] but it was denied by the CA in its Resolution[29] of January 6, 2006.

Hence, petitioners filed the present petition for review on *certiorari* under Rule 45, asking the Court to reverse the Resolutions of the CA and enter a new one declaring Helen's dismissal unjustified. They anchor their petition on the following grounds:

I.

THE COURT OF APPEALS COMMITTED SERIOUS ERROR IN HOLDING THAT THE PETITION FOR *CERTIORARI* FILED BY THE UNION AND MS. HELEN VALENZUELA WAS NOT FILED BY AN INDISPENSABLE PARTY.

II.

THE COURT OF APPEALS COMMITTED SERIOUS ERROR IN FAILING TO DECIDE THE CASE ON THE MERITS DESPITE

---

[25] *Id.* at 168-186.

[26] *Id.* at 188-189.

[27] *Id.* at 191.

[28] *Id.* at 192-234.

[29] *Id.* at 236-237.

SHOWING THAT THE PETITION FOR *CERTIORARI* WAS VERIFIED BY THE UNION PRESIDENT AND MS. HELEN VALENZUELA.

III.

THE COURT OF APPEALS ERRED IN FAILING TO APPRECIATE THAT SERIOUS MISCONDUCT UNDER EXISTING LAW AND JURISPRUDENCE CANNOT BE ATTRIBUTED TO HEREIN PETITIONER HELEN VALENZUELA BECAUSE THE DECISION OF THE NLRC IS NOT SUPPORTED BY SUBSTANTIAL EVIDENCE.[30]

Our Ruling

We affirm the ruling of the CA.

It is clear that petitioners failed to include the name of the dismissed employee Helen Valenzuela in the caption of their petition for *certiorari* filed with the CA as well as in the body of the said petition. Instead, they only indicated the name of the labor union *Nagkakaisang Lakas ng Manggagawa sa Keihin* (NLMK-OLALIA) as the party acting on behalf of Helen. As a result, the CA rightly dismissed the petition based on a formal defect.

Under Section 7, Rule 3 of the Rules of Court, "parties in interest without whom no final determination can be had of an action shall be joined as plaintiffs or defendants." If there is a failure to implead an indispensable party, any judgment rendered would have no effectiveness.[31] It is "precisely 'when an indispensable party is not before the court (that) an action should be dismissed.' The absence of an indispensable party renders all subsequent actions of the court null and void for want of authority to act, not only as to the absent parties but even to those present."[32] The purpose of the rules on joinder of indispensable parties is a complete determination of all issues not only between the parties themselves, but also as regards

[30] *Rollo*, pp. 14-15.

[31] *Aracelona v. Court of Appeals*, 345 Phil. 250, 267 (1997).

[32] *Id.*

other persons who may be affected by the judgment. A decision valid on its face cannot attain real finality where there is want of indispensable parties.

At any rate, we are aware that it is the policy of courts to encourage full adjudication of the merits of an appeal. Dismissal of appeals purely on technical grounds, especially an appeal by a worker who was terminated and whose livelihood depends on the speedy disposition of her case, is frowned upon. Thus, while we affirm the CA's dismissal of the petition for *certiorari*, we shall still discuss the substantive aspect of the case and go into the merits.

The petitioners argue that serious misconduct under existing law and jurisprudence could not be attributed to Helen because she was not motivated by malicious intent. According to petitioners, during the routine inspection and even before the guard opened Helen's bag, she readily admitted that the bag contained a packing tape. Petitioners claim that the mental attitude of Helen negates depravity, willful or wrongful intent and, thus, she cannot be held guilty of serious misconduct. Rather, it was a mere error of judgment on the part of Helen. Furthermore, it was Helen's honest belief that the tape she took was of no use or value and that she did not hide the same.

Thus, the issue boils down to whether, in taking the packing tape for her own personal use, Helen committed serious misconduct, which is a just cause for her dismissal from service.

Article 282 of the Labor Code enumerates the just causes for termination. It provides:

ARTICLE 282. *Termination by employer*. — An employer may terminate an employment for any of the following causes:

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

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

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

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

(e) Other causes analogous to the foregoing.

Misconduct is defined as "the transgression of some established and definite rule of action, a forbidden act, a dereliction of duty, willful in character, and implies wrongful intent and not mere error in judgment."[33] For serious misconduct to justify dismissal under the law, "(a) it must be serious, (b) must relate to the performance of the employee's duties; and (c) must show that the employee has become unfit to continue working for the employer."[34]

In the case at bar, Helen took the packing tape with the thought that she could use it for her own personal purposes. When Helen was asked to explain in writing why she took the tape, she stated, "*Kumuha po ako ng isang packing tape na gagamitin ko sa paglilipat ng gamit ko sa bago kong lilipatang bahay*."[35] In other words, by her own admission, there was intent on her part to benefit herself when she attempted to bring home the packing tape in question.

It is noteworthy that prior to this incident, there had been several cases of theft and vandalism involving both respondent company's property and personal belongings of other employees. In order to address this issue of losses, respondent company issued two memoranda implementing an intensive inspection procedure and reminding all employees that those who will be caught stealing and performing acts of vandalism will be dealt with in accordance with the company's Code of Conduct. Despite these reminders, Helen took the packing tape and was caught during the routine inspection. All these circumstances point to

---

[33] *Austria v. National Labor Relations Commission*, 371 Phil. 340, 360 (1999).

[34] *Philippine Aeolus Automotive United Corporation v. National Labor Relations Commission*, 387 Phil. 250, 261 (2000).

[35] *Rollo*, p. 130.

the conclusion that it was not just an error of judgment on the part of Helen, but a deliberate act of theft of company property.

In the case of *Firestone Tire and Rubber Company of the Philippines v. Lariosa*[36] involving an employee who was caught by the security guards of the company during a routine inspection with possession of company property, we held that:

> There is no gainsaying that theft committed by an employee constitutes a valid reason for his dismissal by the employer. Although as a rule this Court leans over backwards to help workers and employees continue with their employment or to mitigate the penalties imposed on them, acts of dishonesty in the handling of company property are a different matter.[37]

We hold that Helen is guilty of serious misconduct in her act of taking the packing tape.

The petitioners also argue that the penalty of dismissal is too harsh and disproportionate to the offense committed since the value of the thing taken is very minimal. Petitioners cite the case of *Caltex Refinery Employees Association v. National Labor Relations Commission*[38] where Arnelio M. Clarete (Clarete) was found to have willfully breached the trust and confidence reposed in him by taking a bottle of lighter fluid. In said case, we refrained from imposing the supreme penalty of dismissal since the employee had no violations "in his eight years of service and the value of the lighter fluid x x x is very minimal compared to his salary x x x."[39]

After a closer study of both cases, we are convinced that the case of *Caltex* is different from the case at hand. Although both Clarete and Helen had no prior violations, the former had a clean record of eight years with his employer. On the other hand, Helen was not even on her second year of service with

---

[36] 232 Phil. 201 (1987).

[37] *Id.* at 206.

[38] 316 Phil. 335 (1995).

[39] *Id.* at 344.

Keihin when the incident of theft occurred. And what further distinguishes the instant case from *Caltex* is that respondent company was dealing with several cases of theft, vandalism, and loss of company and employees' property when the incident involving Helen transpired.

Regarding the requirement of procedural due process in dismissal of employees, petitioners argue that the first notice failed to explain the charge being leveled against Helen. According to the petitioners, the notice was vague and lacked sufficient definitiveness.

The show-cause notice states:

> Please explain in writing within 48 hours upon receipt hereof, why you have committed an offense against company property specifically F.2 of the company's Code of Conduct: "Any act constituting theft or robbery, or any attempt to commit theft or robbery, of any company property or other associate's property."[40]

We reject petitioners' claim that respondent company failed to observe the requirements of procedural due process. "In the dismissal of employees, it has been consistently held that the twin requirements of notice and hearing are essential elements of due process. The employer must furnish the employee with two written notices before termination of employment can be legally effected: (a) a notice apprising the employee of the particular acts or omissions for which his dismissal is sought, and (b) a subsequent notice informing the employee of the employer's decision to dismiss him."[41]

In this case, respondent company furnished Helen a show-cause notice dated September 6, 2003 accusing her of violating F.2 of the company's Code of Conduct which says, "Any act constituting theft or robbery, or any attempt to commit theft or

---

[40] CA *rollo*, p. 88.

[41] *Metropolitan Bank and Trust Company v. Barrientos*, G.R. No. 157028, January 31, 2006, 481 SCRA 311, 321-322.

robbery, of any company property or other associate's property."[42] We find that such notice sufficiently informed Helen of the charge of theft of company property against her. We are convinced that such notice satisfies the due process requirement to apprise the employee of the particular acts or omissions for which dismissal is sought.

With regard to the requirement of a hearing, the essence of due process lies in an opportunity to be heard. Such opportunity was afforded the petitioner when she was asked to explain her side of the story. In *Metropolitan Bank and Trust Company v. Barrientos*[43] we held that, "the essence of due process lies simply in an opportunity to be heard, and not that an actual hearing should always and indispensably be held." Similarly in *Philippine Pasay Chung Hua Academy v. Edpan*,[44] we held that, "[e]ven if no hearing or conference was conducted, the requirement of due process had been met since he was accorded a chance to explain his side of the controversy."

WHEREFORE, the Petition is *DENIED*. The Resolutions dated November 2, 2005 and January 6, 2006 of the Court of Appeals in CA-G.R. SP No. 91718 are *AFFIRMED*.

SO ORDERED.

Corona, C.J. (Chairperson), Leonardo-de Castro, Bersamin,[*] and *Perez, JJ.,* concur.

---

[42] CA *rollo,* p. 88.

[43] *Supra* note 41 at 322.

[44] G.R. No. 168876, February 10, 2009, 578 SCRA 262, 271.

[*] In lieu of Associate Justice Presbitero J. Velasco, Jr. per Special Order No. 876 dated August 2, 2010.

SECOND DIVISION

[G.R. No. 171630. August 9, 2010]

CENTURY CANNING CORPORATION, RICARDO T. PO, JR. and AMANCIO C. RONQUILLO, *petitioners, vs.* **VICENTE RANDY R. RAMIL,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; FACTUAL FINDINGS OF QUASI-JUDICIAL AGENCIES ARE ACCORDED HIGH RESPECT; EXCEPTION. — The rule is that high respect is accorded to the findings of fact of quasi-judicial agencies, more so in the case at bar where both the LA and the NLRC share the same findings. The rule is not, however, without exceptions one of which is when the findings of fact of the labor officials on which the conclusion was based are not supported by substantial evidence. The same holds true when it is perceived that far too much is concluded, inferred or deduced from bare facts adduced in evidence. x x x [F]or want of substantial basis, in fact or in law, factual findings of an administrative agency, such as the NLRC, cannot be given the stamp of finality and conclusiveness normally accorded to it, as even decisions of administrative agencies which are declared "final" by law are not exempt from judicial review when so warranted.

2. ID.; ID.; ID.; POINTS OF LAW, THEORIES, ISSUES AND ARGUMENTS NOT BROUGHT TO THE ATTENTION OF THE LOWER COURT, ADMINISTRATIVE AGENCY OR QUASI-JUDICIAL BODY CANNOT BE CONSIDERED ON APPEAL. — Points of law, theories, issues and arguments not brought to the attention of the lower court, administrative agency or quasi-judicial body need not be considered by a reviewing court, as they cannot be raised for the first time at that late stage. When a party deliberately adopts a certain theory and the case is decided upon that theory in the court below, he will not be permitted to change the same on appeal, because to permit him to do so would be unfair to the adverse party.

3. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; TERMINATION OF EMPLOYMENT; THE BURDEN OF PROVING THE VALIDITY OF THE TERMINATION OF EMPLOYMENT RESTS WITH THE EMPLOYER. — [T]he law mandates that the burden of proving the validity of the termination of employment rests with the employer. Failure to discharge this evidentiary burden would necessarily mean that the dismissal was not justified and, therefore, illegal. Unsubstantiated suspicions, accusations, and conclusions of employers do not provide for legal justification for dismissing employees. In case of doubt, such cases should be resolved in favor of labor, pursuant to the social justice policy of labor laws and the Constitution.

4. ID.; ID.; ID.; JUST CAUSES; LOSS OF TRUST AND CONFIDENCE; MUST BE BASED ON A WILLFUL BREACH OF TRUST AND FOUNDED ON CLEARLY ESTABLISHED FACTS. — [W]hile We have previously held that employers are allowed a wider latitude of discretion in terminating the services of employees who perform functions which by their nature require the employers' full trust and confidence and the *mere existence of basis* for believing that the employee has breached the trust of the employer is sufficient, this does not mean that the said basis may be arbitrary and unfounded. The right of an employer to dismiss an employee on the ground that it has lost its trust and confidence in him must not be exercised arbitrarily and without just cause. Loss of trust and confidence, to be a valid cause for dismissal, must be based on a willful breach of trust and founded on clearly established facts. The basis for the dismissal must be clearly and convincingly established, but proof beyond reasonable doubt is not necessary. It must rest on substantial grounds and not on the employer's arbitrariness, whim, caprice or suspicion; otherwise, the employee would eternally remain at the mercy of the employer.

5. ID.; ID.; ID.; PREVIOUS OFFENSE MAY BE USED AS VALID JUSTIFICATION FOR DISMISSAL FROM WORK ONLY IF THE INFRACTION IS RELATED TO THE SUBSEQUENT OFFENSE UPON WHICH THE BASIS OF TERMINATION IS DECREED. — [P]etitioner's reliance on respondent's previous tardiness in reporting for work as a ground for his dismissal is likewise not meritorious. The correct

rule has always been that such previous offense may be used as valid justification for dismissal from work only if the infractions are related to the subsequent offense upon which the basis of termination is decreed. His previous offenses were entirely separate and distinct from his latest alleged infraction of forgery. Hence, the same could no longer be utilized as an added justification for his dismissal.

6. ID.; ID.; ID.; REINSTATEMENT AND PAYMENT OF BACKWAGES; TWIN RELIEFS IN ILLEGAL DISMISSAL CASES. — Respondent's illegal dismissal carries the legal consequences defined under Article 279 of the Labor Code, that is, an employee who is unjustly dismissed from work shall be entitled to reinstatement without loss of seniority rights and other privileges, and to the payment of his full backwages, inclusive of allowances, and to his other benefits or their monetary equivalent, computed from the time his compensation was withheld from him up to the time of his actual reinstatement.

7. ID.; ID.; ID.; ID.; AWARD OF SEPARATION PAY IN LIEU OF REINSTATEMENT IS JUSTIFIED IN VIEW OF THE STRAINED RELATIONS BETWEEN THE EMPLOYER AND THE DISMISSED EMPLOYEE IN CASE AT BAR. — [T]he Court finds that it would be best to award separation pay instead of reinstatement, in view of the strained relations between petitioner and respondent. Respondent was dismissed due to loss of trust and confidence and it would be impractical to reinstate an employee whom the employer does not trust, and whose task is to handle and prepare delicate documents. x x x In view of the foregoing, respondent is entitled to the payment of full backwages, inclusive of allowances, and other benefits or their monetary equivalent, computed from the date of his dismissal on May 20, 1999 up to the finality of this decision, and separation pay in lieu of reinstatement equivalent to one month salary for every year of service, computed from the time of his engagement by petitioner on August 1993 up to the finality of the decision.

8. ID.; ID.; ID.; ID.; DOCTRINE OF STRAINED RELATIONS; THE PAYMENT OF SEPARATION PAY HAS BEEN CONSIDERED AN ACCEPTABLE ALTERNATIVE TO REINSTATEMENT WHEN THE LATTER OPTION IS NO LONGER DESIRABLE OR VIABLE. — Under the doctrine

of strained relations, the payment of separation pay has been considered an acceptable alternative to reinstatement when the latter option is no longer desirable or viable. On the one hand, such payment liberates the employee from what could be a highly oppressive work environment. On the other hand, the payment releases the employer from the grossly unpalatable obligation of maintaining in its employ a worker it could no longer trust.

9. ID.; ID.; ID.; ID.; NOT MUTUALLY EXCLUSIVE AND BOTH MAY BE GIVEN TO THE DISMISSED EMPLOYEE; EXPLAINED. — The awards of separation pay and backwages are not mutually exclusive and both may be given to the respondent. In *Nissan North Edsa Balintawak, Quezon City v. Serrano, Jr.*, the Court held that: "The normal consequences of a finding that an employee has been illegally dismissed are, firstly, that the employee becomes entitled to reinstatement to his former position without loss of seniority rights and, secondly, the payment of backwages corresponding to the period from his illegal dismissal up to actual reinstatement. The statutory intent on this matter is clearly discernible. Reinstatement restores the employee who was unjustly dismissed to the position from which he was removed, that is, to his *status quo ante* dismissal, while the grant of backwages allows the same employee to recover from the employer that which he had lost by way of wages as a result of his dismissal. These twin remedies — reinstatement and payment of backwages — make the dismissed employee whole who can then look forward to continued employment. Thus, do these two remedies give meaning and substance to the constitutional right of labor to security of tenure. The two forms of relief are distinct and separate, one from the other. Though the grant of reinstatement commonly carries with it an award of backwages, the inappropriateness or non-availability of one does not carry with it the inappropriateness or non-availability of the other. x x x As the term suggests, separation pay is the amount that an employee receives at the time of his severance from the service and x x x is designed to provide the employee with 'the wherewithal during the period that he is looking for another employment.' In the instant case, the grant of separation pay was a substitute for immediate and continued re-employment with the private respondent Bank. The grant of separation pay did not redress the injury that is intended to be relieved by the

second remedy of backwages, that is, the loss of earnings that would have accrued to the dismissed employee during the period between dismissal and reinstatement. Put a little differently, **"payment of backwages is a form of relief that restores the income that was lost by reason of unlawful dismissal; separation pay, in contrast, is oriented towards the immediate future, the transitional period the dismissed employee must undergo before locating a replacement job.** x x x **The grant of separation pay was a proper substitute only for reinstatement; it could not be an adequate substitute both for reinstatement and for backwages."**

APPEARANCES OF COUNSEL

Antonio A. Geronimo for petitioners.
Gary A. Sancio for respondent.

D E C I S I O N

PERALTA, *J.*:

Before this Court is a petition for review on *certiorari* under Rule 45 of the Rules of Court seeking to set aside the Decision[1] and Resolution[2] of the Court of Appeals (CA) in CA-G.R. SP. No. 86939, dated December 1, 2005 and February 17, 2006, respectively.

The antecedents are as follows:

Petitioner Century Canning Corporation, a company engaged in canned food manufacturing, employed respondent Vicente Randy Ramil in August 1993 as technical specialist. Prior to his dismissal on May 20, 1999, his job included, among others, the preparation of the purchase requisition (PR) forms and capital expenditure (CAPEX) forms, as well as the coordination with

---

[1] Penned by Associate Justice Santiago Javier Ranada (now retired), with Associate Justice Roberto A. Barrios (now deceased) and Associate Justice Mario L. Guariña III, concurring; *rollo*, pp. 34-40.

[2] *Id.* at 41.

the purchasing department regarding technical inquiries on needed products and services of petitioner's different departments.

On March 3, 1999, respondent prepared a CAPEX form for external fax modems and terminal server, per order of Technical Operations Manager Jaime Garcia, Jr. and endorsed it to Marivic Villanueva, Secretary of Executive Vice-President Ricardo T. Po, for the latter's signature. The CAPEX form, however, did not have the complete details[3] and some required signatures.[4] The following day, March 4, 1999, with the form apparently signed by Po, respondent transmitted it to Purchasing Officer Lorena Paz in Taguig Main Office. Paz processed the paper and found that some details in the CAPEX form were left blank. She also doubted the genuineness of the signature of Po, as appearing in the form. Paz then transmitted the CAPEX form to Purchasing Manager Virgie Garcia and informed her of the questionable signature of Po. Consequently, the request for the equipment was put on hold due to Po's forged signature. However, due to the urgency of purchasing badly needed equipment, respondent was ordered to make another CAPEX form, which was immediately transmitted to the Purchasing Department.

Suspecting him to have committed forgery, respondent was asked to explain in writing the events surrounding the incident. He vehemently denied any participation in the alleged forgery. Respondent was, thereafter, suspended on April 21, 1999. Subsequently, he received a Notice of Termination from Armando C. Ronquillo, on May 20, 1999, for loss of trust and confidence.

Due to the foregoing, respondent, on May 24, 1999, filed a Complaint for illegal dismissal, non-payment of overtime pay, separation pay, moral and exemplary damages and attorney's fees against petitioner and its officers before the Labor Arbiter (LA), and was docketed as NLRC-NCR Case No. 00-05-05894-99.[5]

---

[3] Starting Date, Estimated Completion Date, Budgeted CAPEX amount, Managers/Functional Unit Head's Comment and Justification Summary.

[4] Cost and Budget Manager/Functional Unit Head, Management Information Service Manager and Recommending Approving Officer.

[5] Records, p. 2.

LA Potenciano S. Canizares rendered a Decision[6] dated December 6, 1999 dismissing the complaint for lack of merit. Aggrieved by the LA's finding, respondent appealed to the National Labor Relations Commission (NLRC). Upon recommendation of LA Cristeta D. Tamayo, who reviewed the case, the NLRC First Division, in its Decision[7] dated August 26, 2002, set aside the ruling of LA Canizares. The NLRC declared respondent's dismissal to be illegal and directed petitioner to reinstate respondent with full backwages and seniority rights and privileges. It found that petitioner failed to show clear and convincing evidence that respondent was responsible for the forgery of the signature of Po in the CAPEX form.

Petitioner filed a motion for reconsideration. To respondent's surprise and dismay, the NLRC reversed itself and rendered a new Decision[8] dated October 20, 2003, upholding LA Canizares' dismissal of his complaint. Respondent filed a motion for reconsideration, which was denied by the NLRC.

Frustrated by this turn of events, respondent filed a petition for *certiorari* with the CA. The CA, in its Decision dated December 1, 2005, rendered judgment in favor of respondent and reinstated the earlier decision of the NLRC, dated August 26, 2002. It ordered petitioner to reinstate respondent, without loss of seniority rights and privileges, and to pay respondent full backwages from the time his employment was terminated on May 20, 1999 up to the time of the finality of its decision. The CA, likewise, remanded the case to the LA for the computation of backwages of the respondent.

Petitioner filed a motion for reconsideration, which the CA denied in a Resolution dated February 17, 2006. Hence, the instant petition assigning the following errors:

I

THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN DISREGARDING THE UNANIMOUS FINDINGS OF THE LABOR

---

[6] *Id.* at 64-68.

[7] *Id.* at 78-89.

[8] *Id.* at 96-105.

ARBITER AND THE NATIONAL LABOR RELATIONS COMMISSION SUSTAINING THE LEGALITY OF PRIVATE RESPONDENT'S TERMINATION FROM HIS EMPLOYMENT.

II

THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN NOT HOLDING THAT PETITIONER CORPORATION FAILED TO SATISFY THE BURDEN OF PROVING THAT THE DISMISSAL OF PRIVATE RESPONDENT WAS FOR A VALID OR AUTHORIZED CAUSE.

III

THE HONORABLE COURT OF APPEALS SERIOUSLY ERRED IN HOLDING THAT FOR LOSS OF TRUST AND CONFIDENCE TO BE A VALID GROUND FOR AN EMPLOYEE'S DISMISSAL, IT MUST BE SUBSTANTIAL AND NOT ARBITRARY, AND MUST BE FOUNDED ON CLEARLY ESTABLISHED FACTS, OVERLOOKING THE RULE THAT THE MERE EXISTENCE OF A BASIS FOR BELIEVING THAT SUCH EMPLOYEE HAS BREACHED THE TRUST AND CONFIDENCE OF HIS EMPLOYER SUFFICES FOR HIS DISMISSAL.

IV

THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN NOT HOLDING THAT ASIDE FROM HIS INVOLVEMENT IN THE FORGERY OF THE CAPITAL EXPENDITURE (CAPEX) FORMS, PRIVATE RESPONDENT'S PAST VIOLATIONS OR ADMITTED INFRACTIONS OF COMPANY RULES AND REGULATIONS ARE MORE THAN SUFFICIENT GROUNDS TO JUSTIFY THE TERMINATION OF HIS EMPLOYMENT WITH PETITIONER CORPORATION.

Petitioner's main allegation is that there are factual and legal grounds constituting substantial proof that respondent was clearly involved in the forgery of the CAPEX form, *i.e.*, respondent is the forger of the signature of Po, as he is the custodian and the one who prepared the CAPEX form; the forged signature was already existing when he submitted the same for processing; he has the motive to forge the signature; respondent has the propensity to deviate from the Standard Operating Procedure as shown by the fact that the CAPEX form, with the forged signature of Po,

is not complete in details and lacks the required signatures; also, in February 1999, respondent ordered 8 units of External Fax Modem without the required CAPEX form and a PR form.

Petitioner insists that the mere existence of a basis for believing that respondent employee has breached the trust and confidence of his employer suffices for his dismissal. Finally, petitioner maintains that aside from respondent's involvement in the forgery of the CAPEX form, his past violations of company rules and regulations are more than sufficient grounds to justify his termination from employment.

In his Comment, respondent alleged that petitioner failed to present clear and convincing evidence to prove his participation in the charge of forgery nor any damage to the petitioner.

Anent the first issue raised, petitioner faults the CA in disregarding the unanimous findings of the LA and the NLRC sustaining the legality of respondent's termination from his employment. The rule is that high respect is accorded to the findings of fact of quasi-judicial agencies, more so in the case at bar where both the LA and the NLRC share the same findings. The rule is not, however, without exceptions one of which is when the findings of fact of the labor officials on which the conclusion was based are not supported by substantial evidence. The same holds true when it is perceived that far too much is concluded, inferred or deduced from bare facts adduced in evidence.[9]

In the case at bar, the NLRC's findings of fact upon which its conclusion was based are not supported by substantial evidence, that is, the amount of relevant evidence, which a reasonable mind might accept as adequate to justify a conclusion.[10]

As correctly found by the CA:

x x x The record of the case is bereft of evidence that would clearly establish Ramil's involvement in the forgery. They did not even

---

[9] *Felix v. National Labor Relations Commission*, 485 Phil. 140, 153 (2004).

[10] Revised Rules on Evidence, Rule 133, Sec. 5.

submit any affidavit of witness[11] or present any during the hearing to substantiate their claim against Ramil.[12]

Respondent alleged in his position paper that after preparing the CAPEX form on March 3, 1999, he endorsed it to Marivic Villanueva for the signature of the Executive Vice-President Ricardo T. Po. The next day, March 4, 1999, respondent received the CAPEX form containing the signature of Po. Petitioner never controverted these allegations in the proceedings before the NLRC and the CA despite its opportunity to do so. Petitioner's belated allegations in its reply filed before this Court that Marivic Villanueva denied having seen the CAPEX form cannot be given credit. Points of law, theories, issues and arguments not brought to the attention of the lower court, administrative agency or quasi-judicial body need not be considered by a reviewing court, as they cannot be raised for the first time at that late stage.[13] When a party deliberately adopts a certain theory and the case is decided upon that theory in the court below, he will not be permitted to change the same on appeal, because to permit him to do so would be unfair to the adverse party.[14]

Thus, if respondent retrieved the form on March 4, 1999 with the signature of Po, it can be correctly inferred that he is not the forger. Had the CAPEX form been returned to respondent without Po's signature, Villanueva or any officer of the petitioner's company could have readily noticed the lack of signature, and could have easily attested that the form was unsigned when it was released to respondent.

---

[11] Like Purchasing Officer Lorena Paz, Exec. VP Mr. Ricardo T. Po, his secretary Marivic Villanueva, and a certain technician named "Boyet" mentioned in the private respondents pleadings (the petitioner in this case).

[12] *Rollo*, p. 38.

[13] *Jacot v. Dal*, G.R. No.179848, November 27, 2008, 572 SCRA 295, 311.

[14] *Commissioner of Internal Revenue v. Mirant Pagbilao Corporation (formerly Southern Energy Quezon, Inc.)*, G.R. No. 159593, October 12, 2006, 504 SCRA 484, 495, citing *Carantes v. Court of Appeals*, 76 SCRA 514, 521 (1977).

Further, as correctly found by the NLRC in its original decision dated August 26, 2002, if respondent was the one who forged the signature of Po in the CAPEX form, there was no need for him to endorse the same to Villanueva and transmit it the next day. He could have easily forged the signature of Po on the same day that he prepared the CAPEX form and submitted it on the very same day to petitioner's main office without passing through any officer of petitioner.

Accordingly, for want of substantial basis, in fact or in law, factual findings of an administrative agency, such as the NLRC, cannot be given the stamp of finality and conclusiveness normally accorded to it, as even decisions of administrative agencies which are declared "final" by law are not exempt from judicial review when so warranted.[15] Contrary to petitioner's assertion, therefore, this Court sees no error on the part of the CA when it made a new determination of the case and, upon this, reversed the ruling of the NLRC.

As to the second issue, the law mandates that the burden of proving the validity of the termination of employment rests with the employer. Failure to discharge this evidentiary burden would necessarily mean that the dismissal was not justified and, therefore, illegal. Unsubstantiated suspicions, accusations, and conclusions of employers do not provide for legal justification for dismissing employees. In case of doubt, such cases should be resolved in favor of labor, pursuant to the social justice policy of labor laws and the Constitution.[16]

The termination letter[17] addressed to respondent, dated May 20, 1999, provides that:

> We also conducted inquiries from persons concerned to get more information in (sic) this forgery. Some of your statements do not jibe with theirs. x x x

---

[15] *Vicente v. Court of Appeals*, G.R. No. 175988, August 24, 2007, 531 SCRA 240, 247-248.

[16] *Times Transportation Co., Inc. v. National Labor Relations Commission*, G.R. Nos. 148500-01, November 29, 2006, 508 SCRA 435, 443.

[17] Records, pp. 29-30.

However, this information which petitioner allegedly obtained from the "persons concerned" was not backed-up by any affidavit or proof. Petitioner did not even bother to name these resource persons.

Petitioner based respondent's dismissal on its unsubstantiated suspicions and conclusion that since respondent was the custodian and the one who prepared the CAPEX forms, he had the motive to commit the forgery. However, as correctly found by the NLRC in its original Decision, respondent would not be benefited by the purchase of the subject equipment. The equipment would be for the use of petitioner company.

With respect to the third issue, while We have previously held that employers are allowed a wider latitude of discretion in terminating the services of employees who perform functions which by their nature require the employers' full trust and confidence and the *mere existence of basis* for believing that the employee has breached the trust of the employer is sufficient,[18] this does not mean that the said basis may be arbitrary and unfounded.

The right of an employer to dismiss an employee on the ground that it has lost its trust and confidence in him must not be exercised arbitrarily and without just cause.[19] Loss of trust and confidence, to be a valid cause for dismissal, must be based on a willful breach of trust[20] and founded on clearly established facts. The basis for the dismissal must be clearly and convincingly established, but proof beyond reasonable doubt is not necessary.[21]

---

[18] *Atlas Fertilizer Corporation v. National Labor Relations Commission,* G.R. No. 120030, June 17, 1997, 273 SCRA 549, 558.

[19] *Pepsi-Cola Products Phils., Inc. v. NLRC,* 374 Phil. 196, 205 (1999).

[20] Labor Code, Article 282. *Termination by employer*. — An employer may terminate an employment for any of the following causes:

x x x x x x x x x

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

[21] *Abel v. Philex Mining Corporation,* G.R. No. 178976, July 31, 2009, 594 SCRA 683, 684.

It must rest on substantial grounds and not on the employer's arbitrariness, whim, caprice or suspicion; otherwise, the employee would eternally remain at the mercy of the employer.[22]

The case of *Philippine Airlines, Inc. v. Tongson*,[23] cited by the petitioner, is not applicable to the present case. In that case, PAL dismissed Tongson from service on the ground of corruption, extortion and bribery in the processing of PAL's passengers' travel documents. We upheld the validity of Tongson's dismissal because PAL's overwhelming documentary evidence reflects an unbroken chain which naturally leads to one fair and reasonable conclusion, that at the very least, respondent was involved in extorting money from PAL's passengers. We further said that even if there is no direct evidence to prove that the employees actually committed the offense, substantial proof based on documentary evidence is sufficient to warrant their dismissal from employment.

In the case at bar, there is neither direct evidence nor substantial documentary evidence pointing to respondent as the one liable for the forgery of the signature of Po.

The cited case of *Deles Jr. v. National Labor Relations Commission*[24] is also inapplicable. Therein dismissed employee, Deles Jr., himself admitted during the company investigation that he tampered with the company's sensitive equipment (the JTF Gravitometer No. 5). Thus, there existed sufficient basis for the finding that therein employee breached the trust and confidence of his employer.

As for the final issue raised, petitioner's reliance on respondent's previous tardiness in reporting for work as a ground for his dismissal is likewise not meritorious. The correct rule has always been that such previous offense may be used as valid justification for dismissal from work only if the infractions are related to the subsequent offense upon which the basis of

---

[22] *Felix v. National Labor Relations Commission*, *supra* note 9, at 160.

[23] 459 Phil. 742. (2003).

[24] 384 Phil. 271 (2000).

termination is decreed.[25] His previous offenses were entirely separate and distinct from his latest alleged infraction of forgery. Hence, the same could no longer be utilized as an added justification for his dismissal.

Besides, respondent had already been sanctioned for his prior infractions. To consider these offenses as justification for his dismissal would be penalizing respondent twice for the same offense.[26]

Respondent's illegal dismissal carries the legal consequences defined under Article 279 of the Labor Code, that is, an employee who is unjustly dismissed from work shall be entitled to reinstatement without loss of seniority rights and other privileges, and to the payment of his full backwages, inclusive of allowances, and to his other benefits or their monetary equivalent, computed from the time his compensation was withheld from him up to the time of his actual reinstatement.[27]

However, the Court finds that it would be best to award separation pay instead of reinstatement, in view of the strained relations between petitioner and respondent. Respondent was dismissed due to loss of trust and confidence and it would be impractical to reinstate an employee whom the employer does not trust, and whose task is to handle and prepare delicate documents.

Under the doctrine of strained relations, the payment of separation pay has been considered an acceptable alternative to reinstatement when the latter option is no longer desirable or viable. On the one hand, such payment liberates the employee from what could be a highly oppressive work environment. On the other hand, the payment releases the employer from the grossly unpalatable obligation of maintaining in its employ a worker it could no longer trust.[28]

---

[25] *Salas v. Aboitiz One, Inc.*, G.R. No. 178236, June 27, 2008, 556 SCRA 374, 390.

[26] *Id.*

[27] *Coca-Cola Bottlers Phils. Inc. v. Agito,* G.R. No. 179546, February 13, 2009, 579 SCRA 445, 471.

[28] *Coca-Cola Bottlers Phils. Inc. v. Daniel,* G.R. No. 156893, June 21, 2005, 460 SCRA 494, 512.

In view of the foregoing, respondent is entitled to the payment of full backwages, inclusive of allowances, and other benefits or their monetary equivalent, computed from the date of his dismissal on May 20, 1999 up to the finality of this decision, and separation pay in lieu of reinstatement equivalent to one month salary for every year of service, computed from the time of his engagement by petitioner on August 1993 up to the finality of the decision.[29]

The awards of separation pay and backwages are not mutually exclusive and both may be given to the respondent. In *Nissan North Edsa Balintawak, Quezon City v. Serrano, Jr.*,[30] the Court held that:

> The normal consequences of a finding that an employee has been illegally dismissed are, firstly, that the employee becomes entitled to reinstatement to his former position without loss of seniority rights and, secondly, the payment of backwages corresponding to the period from his illegal dismissal up to actual reinstatement. The statutory intent on this matter is clearly discernible. Reinstatement restores the employee who was unjustly dismissed to the position from which he was removed, that is, to his *status quo ante* dismissal, while the grant of backwages allows the same employee to recover from the employer that which he had lost by way of wages as a result of his dismissal. These twin remedies — reinstatement and payment of backwages — make the dismissed employee whole who can then look forward to continued employment. Thus, do these two remedies give meaning and substance to the constitutional right of labor to security of tenure. The two forms of relief are distinct and separate, one from the other. Though the grant of reinstatement commonly carries with it an award of backwages, the inappropriateness or non-availability of one does not carry with it the inappropriateness or non-availability of the other. x x x As the term suggests, separation pay is the amount that an employee receives at the time of his severance from the service and x x x is designed to provide the employee with "the wherewithal during the period that he is looking for another employment." In the instant case, the grant of separation pay was

---

[29] *Eastern Telecommunications Phils., Inc. v. Diamse*, G.R. No. 169299, June 16, 2006, 491 SCRA 239, 251.

[30] G.R. No. 162538, June 4, 2009, 588 SCRA 238, 247-248.

a substitute for immediate and continued re-employment with the private respondent Bank. The grant of separation pay did not redress the injury that is intended to be relieved by the second remedy of backwages, that is, the loss of earnings that would have accrued to the dismissed employee during the period between dismissal and reinstatement. Put a little differently, **payment of backwages is a form of relief that restores the income that was lost by reason of unlawful dismissal; separation pay, in contrast, is oriented towards the immediate future, the transitional period the dismissed employee must undergo before locating a replacement job.** x x x **The grant of separation pay was a proper substitute only for reinstatement; it could not be an adequate substitute both for reinstatement and for backwages.** (Emphasis supplied.)[31]

The case is, therefore, remanded to the Labor Arbiter for the purpose of computing the proper monetary award due to the respondent.

WHEREFORE, the petition is *DENIED*. The Decision and Resolution of the Court of Appeals in CA-G.R. SP No. 86939, dated December 1, 2005 and February 17, 2006, respectively, are *AFFIRMED* with *MODIFICATION* that the order of reinstatement is deleted, and in lieu thereof, Petitioner Century Canning Corporation is *DIRECTED* to pay respondent separation pay.

The case is *REMANDED* to the Labor Arbiter for the purpose of computing respondent's full backwages, inclusive of allowances, and other benefits or their monetary equivalent, computed from the date of his dismissal on May 20, 1999 up to the finality of the decision, and separation pay in lieu of reinstatement equivalent to one month salary for every year of service, computed from the time of his engagement by petitioner on August 1993 up to the finality of this decision.

SO ORDERED.

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

---

[31] *Id.* at 247-248, citing *Santos v. NLRC,* 154 SCRA 166, 171-173.

SECOND DIVISION

[G.R. No. 171643. August 9, 2010]

FILEMON A. VERZANO, JR., *petitioner, vs.* **FRANCIS VICTOR D. PARO, JANET A. FLORENCIO, HON. REGIONAL STATE PROSECUTOR, and HON. CITY PROSECUTOR OF BACOLOD,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; PROSECUTION OF OFFENSES; COMPLAINT OR INFORMATION; ONCE A COMPLAINT OR INFORMATION IS FILED IN COURT ANY DISPOSITION OF THE CASE RESTS IN THE SOUND DISCRETION OF THE COURT. — [T]he doctrine laid down in *Crespo v. Mogul* (*Crespo*) [provides] x x x "The rule therefore in this jurisdiction is that once a complaint or information is filed in Court any disposition of the case as its dismissal or the conviction or acquittal of the accused rests in the sound discretion of the Court. Although the fiscal retains the direction and control of the prosecution of criminal cases even while the case is already in Court he cannot impose his opinion on the trial court. The Court is the best and sole judge on what to do with the case before it. The determination of the case is within its exclusive jurisdiction and competence. A motion to dismiss the case filed by the fiscal should be addressed to the Court who has the option to grant or deny the same. It does not matter if this is done before or after the arraignment of the accused or that the motion was filed after a reinvestigation or upon instructions of the Secretary of Justice who reviewed the records of the investigation."

2. ID.; ID.; PRELIMINARY INVESTIGATION; THE RESOLUTION OF A PROSECUTOR IN THE DETERMINATION OF PROBABLE CAUSE MAY BE APPEALED DESPITE THE FILING OF AN INFORMATION IN COURT; EFFECT. — As discussed in *Ledesma v. Court of Appeals (Ledesma), Crespo* does not foreclose an appeal made to the resolution of a prosecutor in the determination of probable cause notwithstanding that informations had already been filed in court, to wit: "In *Marcelo vs. Court of Appeals*, the Court clarified that *Crespo* did not

foreclose the power or authority of the secretary of justice to review resolutions of his subordinates in criminal cases. The Court recognized in *Crespo* that the action of the investigating fiscal or prosecutor in the preliminary investigation is subject to the approval of the provincial or city fiscal or chief state prosecutor. Thereafter, it may be appealed to the secretary of justice. **The justice secretary's power of review may still be availed of despite the filing of an information in court**. x x x" In the case at bar, while it is generally the Secretary of Justice who has the authority to review the decisions of the prosecutors, this Court agrees with the CA that the same precedential principles apply in full force and effect to the authority of the CA to correct the acts tainted with grave abuse of discretion by the prosecutorial officers notwithstanding the filing of the informations before the MTCC. The authority of the CA is bolstered by the fact that the petition filed before it was one under Rule 65, therefore it has the jurisdiction to determine whether or not the Regional State Prosecutor acted with grave abuse of discretion amounting to lack or excess of jurisdiction. *Ledesma* adds that where the secretary of justice exercises his power of review only after an Information has been filed, trial courts should defer or suspend arraignment and further proceedings until the appeal is resolved. On this note, the MTCC was thus correct when it suspended the proceedings in view of the appeal taken by respondents to the resolution of the Regional State Prosecutor.

3. ID.; SPECIAL CIVIL ACTIONS; *CERTIORARI*; GRAVE ABUSE OF DISCRETION; ESTABLISHED IN CASE AT BAR. — In finding grave abuse of discretion, the CA opined that the Regional State Prosecutor reversed the finding of the City Prosecutor on the simple reason that respondents failed to submit counter-affidavits. The CA ruled that it would have been different had the Regional State Prosecutor reversed the resolutions of his subordinate upon a positive finding of probable cause. x x x Contrary to the claim of petitioner that the Regional State Prosecutor found probable cause, the July 30, 2004 Resolution does not show that the latter actually made an independent assessment of the evidence presented in the investigation. As a matter of fact, the clear import of the July 30, 2004 Resolution is that the mere failure of respondents to submit counter-affidavits automatically warrants a finding of probable cause against them. x x x It is not disputed that the Regional

State Prosecutor has the authority to reverse the findings of the existence of probable cause on review. However, a perusal of the July 30, 2004 Resolution would show that little attempt was made by the Regional State Prosecutor to discuss the existence or non-existence of probable cause and that much reliance was made on a flawed interpretation of Section 3, paragraph (d) of the Revised Rules of Procedure. What makes matters worse is that in his August 25, 2004 Resolution which dealt with respondents' Motion for Reconsideration, the Regional State Prosecutor stuck with his theory and even relied on another flawed interpretation of Section 3, paragraph (b) of Rule 112 x x x. [T]he conclusion reached by the Regional State Prosecutor is manifestly wrong as the CA was correct when it observed that the issuance of a subpoena would become unceremoniously clothed with the untoward implication that probable cause is necessarily extant. Based on the foregoing, because of the manner by which the Regional State Prosecutor resolved the case, this Court finds that the same constitutes grave abuse of discretion, as his interpretation and appreciation of the Rules of Court have no legal bases.

4. ID.; CRIMINAL PROCEDURE; PRELIMINARY INVESTIGATION; THE CONTINUANCE OF THE INVESTIGATION DOES NOT NECESSARILY MEAN THAT THE RESULT WILL BE AN AUTOMATIC CONCLUSION OF A FINDING OF PROBABLE CAUSE. — The clear import of Section 3, paragraph (b), of Rule 112 is that the Investigating Prosecutor may issue subpoenas if he finds grounds to continue with the investigation. However, the continuance of the investigation does not necessarily mean that the result will be an automatic conclusion of a finding of probable cause. To subscribe to such a theory would defeat the very purpose of a counter-affidavit which is to honor due process and to provide respondents an opportunity to refute the allegations made against them.

5. POLITICAL LAW; ADMINISTRATIVE LAW; PRINCIPLE OF EXHAUSTION OF ADMINISTRATIVE REMEDIES; EXCEPTION. — [T]his Court has held that the principle of exhaustion of administrative remedies is not without exception. x x x [T]he actions of the Regional State Prosecutor, being patently illegal amounting to lack or excess of jurisdiction, the same constitutes an exception to the rule on administrative remedies.

6. REMEDIAL LAW; CRIMINAL PROCEDURE; PRELIMINARY INVESTIGATION; THE RESOLUTION OF THE SECRETARY OF JUSTICE DOES NOT BIND THE TRIAL COURT ONCE THE INFORMATION IS FILED THEREIN. — In *Ledesma*, this Court stated that such deferment or suspension, however, does not signify that the trial court is *ipso facto* bound by the resolution of the secretary of justice. Jurisdiction, once acquired by the trial court, is not lost despite a resolution by the secretary of justice to withdraw the information or to dismiss the case. Since the Informations for perjury had already been filed in the MTCC, any subsequent action must be addressed to the said court's discretion. x x x The court is the best and sole judge of what to do with the case before it. The determination of the case is within its exclusive jurisdiction and competence. Thus, the court may deny or grant a motion to withdraw an information, not out of subservience to the (Special) Prosecutor, but in faithful exercise of judicial discretion and prerogative. The dismissal of the two informations against respondents were subject to the MTCC's jurisdiction and discretion in view of the circumstances of the case at bar. Such dismissal ultimately renders the case moot and academic.

APPEARANCES OF COUNSEL

Edmundo Manlapao for petitioner.
Alonzo & Associates Law Offices for respondents.

D E C I S I O N

PERALTA, *J.*:

Before this Court is a petition for review on *certiorari*,[1] under Rule 45 of the Rules of Court, seeking to set aside the July 28, 2005 Decision[2] and the February 7, 2006 Resolution[3] of the Court of Appeals (CA) in CA-G.R. SP No. 86521.

---

[1] *Rollo*, pp. 10-23.

[2] Penned by Associate Justice Arsenio J. Magpale, with Associate Justices Sesinando E. Villon and Enrico A. Lanzanas, concurring; *id.* at 24-35.

[3] *Rollo*, p. 36.

The facts of the case are as follows:

On March 14, 2002, petitioner Filemon A. Verzano, Jr., former District Manager of Wyeth Philippines, Inc. (Wyeth) for the islands of Panay and Negros, was dismissed from service upon an administrative complaint filed against him. Among the individuals who filed the complaint against petitioner were respondents Francis Victor D. Paro (Paro) and Janet A. Florencio (Florencio) who were territory managers under the supervision of petitioner.

The complaint was founded on petitioner's alleged violation of company policy on prohibited sale of drug samples given for free to doctors and for the unauthorized act of "channeling," or the transfer of stocks within the same area falsely creating an impression that there was a sale. After conducting its own investigation and giving petitioner an opportunity to explain his side, Wyeth resolved to dismiss petitioner tendering him a Notice of Termination.[4]

Aggrieved by his termination, petitioner filed a Complaint[5] for illegal dismissal with the Regional Labor Arbitration Board, National Labor Relations Commission (NLRC), Bacolod City against Wyeth. For its part, Wyeth filed its Position Paper to rebut the charges of petitioner. Attached to the position paper of Wyeth were the affidavits[6] of respondents Paro and Florencio.

It was on account of the said affidavits that petitioner filed a criminal complaint[7] against respondents for perjury, false testimony and incriminatory machination. In said complaint, petitioner argued that the affidavits of respondents contained falsehoods against him, particularly on the material date of the alleged sale and the fact that he sold products which are to be

---

[4] *Id.* at 545-546.

[5] Entitled *Filemon Verzano, Jr. v. Wyeth Philippines, Inc.*, docketed as RAB Case No. 06-04-10236-2.

[6] Records (Criminal Case No. 04-9-8480), pp. 17-21; records (Criminal Case No. 04-9-8479), pp. 39-40.

[7] Records (Criminal Case No. 04-9-8480), p. 6.

given free to doctors. He also argued that the alleged acts of "channeling" by him are false and unfounded.

Subpoenas were issued by the City Prosecutor against respondents for the submission of their respective counter-affidavits; however, the return of the subpoenas showed that respondents could not be located at their given addresses.

In a Resolution[8] dated March 3, 2004, notwithstanding that no counter-affidavits were submitted by respondents, the City Prosecutor resolved to dismiss petitioner's complaint, the dispositive portion of which reads:

> WHEREFORE, finding no probable cause, all the charges are hereby recommended dismissed for insufficiency of evidence.[9]

Petitioner then filed a motion for reconsideration,[10] which was, however, denied by the City Prosecutor in a Resolution[11] dated June 11, 2004.

Petitioner appealed the Resolution of the City Prosecutor to the Office of Regional State Prosecutor via a petition for review.[12] On July 30, 2004, the Regional State Prosecutor issued a Resolution[13] finding merit in petitioner's appeal, the dispositive portion of which reads:

> WHEREFORE, your Resolution dated March 3, 2004 is hereby reversed and you are hereby directed to file the appropriate information for Perjury against Francis Victor D. [Paro] and Janet A. Florencio within (5) days from receipt hereof, furnishing this Office with proof of compliance within the same period.[14]

---

[8] CA *rollo*, pp. 48-57.

[9] *Id.* at 57.

[10] *Id.* at 58-61.

[11] *Id.* at 62.

[12] *Id.* at 65-75.

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

[14] *Id.* at 198.

Aggrieved, respondents filed a motion for reconsideration.[15] In a Resolution[16] dated August 25, 2004, the Regional State Prosecutor denied respondents' motion.

On September 20, 2004 two Informations for perjury were filed against respondents in the Municipal Trial Court in the Cities (MTCC), Bacolod City. The Information against respondent Florencio was docketed as Criminal Case No. 049-8479, whereas, the Information against respondent Paro was docketed as Criminal Case No. 049-8480.

On the same day, September 20, 2004, respondents filed a petition for *certiorari* before the CA assailing the Resolutions of the Regional State Prosecutor which reversed the earlier Resolution of the City Prosecutor. Respondents likewise prayed for the issuance of a temporary restraining order (TRO) from the CA.

On October 7, 2004, the MTCC issued Warrants of Arrest against respondents. On the same day, respondent Florencio posted bail. Respondent Paro followed suit on October 8, 2004.

In a Resolution dated October 14, 2004, a TRO was issued by the CA, the pertinent portion of which reads:

x x x x x x x x x

In order not to render moot and academic the instant petition, a temporary restraining order (TRO) is hereby issued temporarily enjoining the public respondent Chief Prosecutor from acting on the assailed Order issued by the public respondent Regional State Prosecutor for a period of sixty (60) days from receipt hereof.[17]

In light of the issuance of a TRO by the CA, respondents filed with the MTCC a Manifestation and Urgent Motion to Suspend Proceedings[18] on November 2, 2004.

---

[15] *Id.* at 199-208.

[16] *Id.* at 40-42.

[17] Records (Criminal Case No. 04-9-8480), p. 92.

[18] *Id.* at 85-88.

On November 10, 2004, the MTCC issued an Order,[19] granting respondent's motion to suspend the proceedings.

On July 28, 2005, the CA rendered a Decision,[20] ruling in favor of respondents, the dispositive portion of which reads:

> WHEREFORE, premises considered, the Petition is hereby GRANTED. Accordingly, the assailed Resolutions dated July 30, 2004 and August 25, 2004 are REVERSED and SET ASIDE.
>
> SO ORDERED.[21]

In ruling against petitioner, the CA ruled, among others, that the Regional State Prosecutor committed grave abuse of discretion when he directed the filing of the Informations for perjury on the simple reason that no counter-affidavits were submitted by respondents. In addition, the CA held that even though the Informations had already been filed in the MTCC, the same did not bar the CA from reviewing and correcting acts tainted with grave abuse of discretion.

Aggrieved, petitioner filed a motion for reconsideration, which was, however, denied by the CA in a Resolution[22] dated February 7, 2006.

Hence, herein petition, with petitioner raising the following issues for this Court's consideration, to wit:

I.

THE PETITION FILED BY PRIVATE RESPONDENTS WITH THE COURT OF APPEALS HAD BEEN RENDERED MOOT AND ACADEMIC BY THE FILING OF THE CASES IN COURT.

II.

THE REGIONAL STATE PROSECUTOR DID NOT COMMIT GRAVE ABUSE OF DISCRETION IN REVERSING THE RESOLUTION OF THE CITY PROSECUTOR.

---

[19] *Id.* at 95.

[20] *Rollo*, pp. 24-35.

[21] *Id.* at 35.

[22] *Id.* at 36.

III.

THE PETITION FOR *CERTIORARI* FILED BY HEREIN PRIVATE RESPONDENTS WITH THE HONORABLE COURT OF APPEALS IS NOT THE PROPER REMEDY.[23]

The petition has no merit.

Anent the first issue, petitioner argues that the filing of the informations in the MTCC had already removed the cases from the power and authority of the prosecution to dismiss the same in accordance with the doctrine laid down in *Crespo v. Mogul*[24] (*Crespo*), to wit:

> The rule therefore in this jurisdiction is that once a complaint or information is filed in Court any disposition of the case as its dismissal or the conviction or acquittal of the accused rests in the sound discretion of the Court. Although the fiscal retains the direction and control of the prosecution of criminal cases even while the case is already in Court he cannot impose his opinion on the trial court. The Court is the best and sole judge on what to do with the case before it. The determination of the case is within its exclusive jurisdiction and competence. A motion to dismiss the case filed by the fiscal should be addressed to the Court who has the option to grant or deny the same. It does not matter if this is done before or after the arraignment of the accused or that the motion was filed after a reinvestigation or upon instructions of the Secretary of Justice who reviewed the records of the investigation.[25]

In addition, petitioner points out that warrants of arrest were already issued by the MTCC and that respondents had already individually posted bail. Petitioner thus concludes, that the issue of whether or not the Regional State Prosecutor committed grave abuse of discretion when he directed the filing of Informations for perjury against respondents had already become moot and academic.

---

[23] *Id.* at 18-21.

[24] G.R. No. 53373, June 30, 1987, 151 SCRA 462, 467.

[25] *Id.* at 471.

Petitioner is not entirely correct. As discussed in *Ledesma v. Court of Appeals*[26] *(Ledesma), Crespo* does not foreclose an appeal made to the resolution of a prosecutor in the determination of probable cause notwithstanding that informations had already been filed in court, to wit:

> In *Marcelo vs. Court of Appeals*, the Court clarified that *Crespo* did not foreclose the power or authority of the secretary of justice to review resolutions of his subordinates in criminal cases. The Court recognized in *Crespo* that the action of the investigating fiscal or prosecutor in the preliminary investigation is subject to the approval of the provincial or city fiscal or chief state prosecutor. Thereafter, it may be appealed to the secretary of justice.
>
> **The justice secretary's power of review may still be availed of despite the filing of an information in court**. x x x[27]

In the case at bar, while it is generally the Secretary of Justice who has the authority to review the decisions of the prosecutors, this Court agrees with the CA that the same precedential principles apply in full force and effect to the authority of the CA to correct the acts tainted with grave abuse of discretion by the prosecutorial officers notwithstanding the filing of the informations before the MTCC.[28] The authority of the CA is bolstered by the fact that the petition filed before it was one under Rule 65, therefore it has the jurisdiction to determine whether or not the Regional State Prosecutor acted with grave abuse of discretion amounting to lack or excess of jurisdiction.

Ledesma[29] adds that where the secretary of justice exercises his power of review only after an Information has been filed, trial courts should defer or suspend arraignment and further proceedings until the appeal is resolved. On this note, the MTCC was thus correct when it suspended the proceedings in view of

---

[26] G.R. No. 113216, September 5, 1997, 278 SCRA 656. See also *Marcelo v. Court of Appeals*, G.R. No. 106695, August 4, 1994, 235 SCRA 39, 48-49.

[27] *Ledesma v. Court of Appeals, supra,* at 678.

[28] *Rollo,* p. 34.

[29] *Supra* note 26, at 680.

the appeal taken by respondents to the resolution of the Regional State Prosecutor. As observed by the CA, the suspension of the proceedings by the MTCC was done in the exercise of its jurisdiction, to wit:

> To a certain extent, the respondents' asseverations are correct when they say by the operative act of filing of the informations before it, the MTCC has acquired jurisdiction over the criminal proceedings against petitioners. Indeed, the suspension of said proceedings is one such exercise of jurisdiction, and therefore, respondents' worries of the MTCC being divested of jurisdiction or competence over the proceedings are at best, speculative and illusory.[30]

Anent the second issue raised by petitioner, the same is without merit. Petitioner argues that the Regional State Prosecutor did not commit grave abuse of discretion when it reversed the finding of the city prosecutor that no probable cause existed to warrant the filing of the Informations against respondents.

In finding grave abuse of discretion, the CA opined that the Regional State Prosecutor reversed the finding of the City Prosecutor on the simple reason that respondents failed to submit counter-affidavits. The CA ruled that it would have been different had the Regional State Prosecutor reversed the resolutions of his subordinate upon a positive finding of probable cause.

The pertinent portions of the July 30, 2004 Resolution of the Regional State Prosecutor is hereunder reproduced, to wit:

> Perusal of the affidavits executed by Francis Victor D. [Paro] and Janet A. Florencio reveals the following:
>
> a) The material matter contained in these affidavits refer to the act of selling by Filemon Verzano, Jr. of Tazocin products intended to be distributed as free samples in violation of company policy. The date when the sale was made is not a material issue.
>
> b) The affidavits of the respondent were executed before a Labor Arbiter and a Notary Public who are persons authorized to administer oaths.

---

[30] *Rollo*, p. 35.

c) There is also no question that these affidavits are required by law as they were attached as part of the position paper submitted with the Labor Arbiter handling the labor case.

d) Although there is yet no clear evidence that there was an apparent willful and deliberate assertion of falsehood on their part, the respondents by their failure to file or submit their respective counter-affidavit for their defense, are deemed to have waived the same and in effect, the allegations in the complaint remain uncontroverted.

The case record will show that your Office, in the determination of probable cause *vis-à-vis* the attending set of facts and circumstances, failed to consider the application of the procedure laid down under Section 3 paragraph (d) of Rule 112 of the Revised Rules of Procedure which provides:

> If the respondent cannot be subpoenaed, or if subpoenaed, does not submit counter-affidavits within the ten (10)-day period, the investigating officer shall resolve the complaint based on the evidence presented by the complainant.

Only a counter-affidavit subscribed and sworn to by the respondent before the Public Prosecutor can dispute or put at issue the allegations in the complaint thus, a respondent who fails to submit his counter-affidavit within the required period is deemed not to have controverted the complainant's evidence.[31]

Contrary to the claim of petitioner that the Regional State Prosecutor found probable cause, the July 30, 2004 Resolution does not show that the latter actually made an independent assessment of the evidence presented in the investigation. As a matter of fact, the clear import of the July 30, 2004 Resolution is that the mere failure of respondents to submit counter-affidavits automatically warrants a finding of probable cause against them. The fallacy in such theory is very apparent and the CA is thus correct when it observed that:

To follow the public respondent Regional State Prosecutor's skewed premise that only counter-affidavits can dispute or controvert allegations in the Complaint, would be to perpetuate an absurdity

---

[31] CA *rollo*, pp. 197-198. (Underscoring in the Original).

wherein a criminal complaint should automatically be resolved in favor of the complainant in the absence of counter-affidavits. x x x[32]

It is not disputed that the Regional State Prosecutor has the authority to reverse the findings of the existence of probable cause on review. However, a perusal of the July 30, 2004 Resolution would show that little attempt was made by the Regional State Prosecutor to discuss the existence or non-existence of probable cause and that much reliance was made on a flawed interpretation of Section 3, paragraph (d) of the Revised Rules of Procedure.

What makes matters worse is that in his August 25, 2004 Resolution which dealt with respondents' Motion for Reconsideration, the Regional State Prosecutor stuck with his theory and even relied on another flawed interpretation of Section 3, paragraph (b) of Rule 112, to wit:

> x x x It would have been a different scenario if it falls within the scope of Rule 112, Section 3, paragraph (b) which provides:
>
> b) Within ten (10) days after the filing of the complaint, the investigating officer shall either dismiss it if he finds no ground to continue with the investigation, or issue a subpoena to the respondent attaching to it a copy of the complaint and its supporting affidavits and documents.
>
> **In the instant case, the Investigating Prosecutor found ground to continue with the inquiry which is why he issued subpoenas to the respondents to submit their counter affidavit within the 10-day period, since he could have dismissed it initially if indeed there was really no evidence to serve as a ground for continuing with the inquiry**. For failure of the respondents to file their respective counter-affidavits, they are deemed to have forfeited their right to preliminary investigation as due process only requires that the respondent be given the opportunity to submit counter-affidavit, if he is so minded. x x x[33]

The clear import of Section 3, paragraph (b), of Rule 112 is that the Investigating Prosecutor may issue subpoenas if he finds

---

[32] *Rollo*, p. 31.

[33] *Id.* at 179-180. (Emphasis supplied).

grounds to continue with the investigation. However, the continuance of the investigation does not necessarily mean that the result will be an automatic conclusion of a finding of probable cause. To subscribe to such a theory would defeat the very purpose of a counter-affidavit which is to honor due process and to provide respondents an opportunity to refute the allegations made against them. Again, the conclusion reached by the Regional State Prosecutor is manifestly wrong as the CA was correct when it observed that the issuance of a subpoena would become unceremoniously clothed with the untoward implication that probable cause is necessarily extant.[34]

Based on the foregoing, because of the manner by which the Regional State Prosecutor resolved the case, this Court finds that the same constitutes grave abuse of discretion, as his interpretation and appreciation of the Rules of Court have no legal bases.

Lastly, petitioner argues that the petition for *certiorari* filed by respondents with the CA was the wrong remedy, considering that the proper procedure was to appeal to the Secretary of Justice under Department Circular No. 70,[35] otherwise known as the "2000 NPS Rule on Appeal."

The same deserves scant consideration.

Time and again, this Court has held that the principle of exhaustion of administrative remedies is not without exception. Based on the previous discussion, the actions of the Regional State Prosecutor, being patently illegal amounting to lack or excess of jurisdiction, the same constitutes an exception to the rule on administrative remedies.[36]

Finally, what is damning to petitioner's cause is the fact that the MTCC had already withdrawn the two Informations filed

---

[34] *Id.* at 31.

[35] The foregoing delegation of authority notwithstanding, the Secretary of Justice may, pursuant to his power of supervision and control over the entire National Prosecution Service and in the interest of justice, review the resolutions of the Regional State Prosecutors in appealed cases.

[36] *Buston-Arendain v. Gil*, G.R. No. 172585, June 26, 2008, 555 SCRA 561, 573.

against respondents. As previously stated, the MTCC suspended the proceedings before it in view of the petition filed by the respondents with the CA. In *Ledesma*,[37] this Court stated that such deferment or suspension, however, does not signify that the trial court is *ipso facto* bound by the resolution of the secretary of justice. Jurisdiction, once acquired by the trial court, is not lost despite a resolution by the secretary of justice to withdraw the information or to dismiss the case.[38] Since the Informations for perjury had already been filed in the MTCC, any subsequent action must be addressed to the said court's discretion.

In the case at bar, the CA found that the Regional State Prosecutor acted with grave abuse of discretion when he ordered the City Prosecutor to file the Informations for perjury against respondents. It was because of the CA Decision that the City Prosecutor eventually filed two Motions for Leave to Withdraw Informations[39] with the MTCC. On August 30, 2005, the MTCC issued an Order[40] granting the motion, to wit:

> Acting on the Motion for Leave to Withdraw Informations filed by the prosecution, through 2nd Asst. City Prosecutor Arlene Catherine A. Dato, and finding it to be impressed with merit, the same is hereby Granted.
>
> Accordingly, the information against accused Janet Florencio in the above-entitled case is hereby Withdrawn.
>
> SO ORDERED.[41]

The court is the best and sole judge of what to do with the case before it. The determination of the case is within its exclusive jurisdiction and competence. Thus, the court may deny or grant a motion to withdraw an information, not out of subservience to the (Special) Prosecutor, but in faithful exercise of judicial

---

[37] *Supra* note 26, at 680.

[38] *Id.*

[39] Records (Criminal Case No. 04-9-8480), pp. 95-97. See also records (Criminal Case No. 04-9-8479), pp. 95-97.

[40] *Id.* at 98; *id.* at 98.

[41] *Id.*

discretion and prerogative.[42] The dismissal of the two informations against respondents were subject to the MTCC's jurisdiction and discretion in view of the circumstances of the case at bar. Such dismissal ultimately renders the case moot and academic.

WHEREFORE, premises considered, the petition is *DENIED*. The July 28, 2005 Decision and the February 7, 2006 Resolution of the Court of Appeals, in CA-G.R. SP No. 86521, are *AFFIRMED*.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 172276. August 9, 2010]

SOCIETE DES PRODUITS NESTLE, S.A., *petitioner, vs.* **MARTIN T. DY, JR.,** *respondent.*

SYLLABUS

1. MERCANTILE LAW; INTELLECTUAL PROPERTY LAWS; TRADEMARKS; TRADEMARK INFRINGEMENT; ELEMENTS. — In *Prosource International, Inc. v. Horphag Research Management SA*, the Court laid down the elements of infringement under R.A. Nos. 166 and 8293: "In accordance with Section 22 of R.A. No. 166, as well as Sections 2, 2-A, 9-A, and 20 thereof, the following constitute the elements of trademark infringement: '(a) A trademark actually used in commerce in the Philippines and registered in the principal register of the Philippine Patent Office[;] (b) [It] is used by

[42] *People v. Court of Appeals*, 361 Phil. 401, 410-411 (1999)

another person in connection with the sale, offering for sale, or advertising of any goods, business or services or in connection with which such use is likely to cause confusion or mistake or to deceive purchasers or others as to the source or origin of such goods or services, or identity of such business; or such trademark is reproduced, counterfeited, copied or colorably imitated by another person and such reproduction, counterfeit, copy or colorable imitation is applied to labels, signs, prints, packages, wrappers, receptacles or advertisements intended to be used upon or in connection with such goods, business or services as to likely cause confusion or mistake or to deceive purchasers[;] (c) [T]he trademark is used for identical or similar goods[;] and (d) [S]uch act is done without the consent of the trademark registrant or assignee.' On the other hand, the elements of infringement under R.A. No. 8293 are as follows: (1) The trademark being infringed is registered in the Intellectual Property Office; however, in infringement of trade name, the same need not be registered; (2) The trademark or trade name is reproduced, counterfeited, copied, or colorably imitated by the infringer; (3) The infringing mark or trade name is used in connection with the sale, offering for sale, or advertising of any goods, business or services; or the infringing mark or trade name is applied to labels, signs, prints, packages, wrappers, receptacles or advertisements intended to be used upon or in connection with such goods, business or services; (4) The use or application of the infringing mark or trade name is likely to cause confusion or mistake or to deceive purchasers or others as to the goods or services themselves or as to the source or origin of such goods or services or the idenity of such business; and (5) It is without the consent of the trademark or trade name owner or the assignee thereof."

2. ID.; ID.; ID.; ID.; THE ELEMENT OF LIKELIHOOD OF CONFUSION IS THE GRAVAMEN OF TRADEMARK INFRINGEMENT; CONFUSION OF GOODS AND CONFUSION OF BUSINESS, DISTINGUISHED. — Among the elements, the element of likelihood of confusion is the gravamen of trademark infringement. There are two types of confusion in trademark infringement: confusion of goods and confusion of business. In *Sterling Products International, Inc. v. Farbenfabriken Bayer Aktiengesellschaft*, the Court distinguished the two types of confusion: "Callman notes two types of confusion. The first is the *confusion of goods* 'in which

event the ordinarily prudent purchaser would be induced to purchase one product in the belief that he was purchasing the other.' In which case, 'defendant's goods are then bought as the plaintiff's, and the poorer quality of the former reflects adversely on the plaintiff's reputation.' The other is the *confusion of business*: 'Here though the goods of the parties are different, the defendant's product is such as might reasonably be assumed to originate with the plaintiff, and the public would then be deceived either into that belief or into the belief that there is some connection between the plaintiff and defendant which, in fact, does not exist.'"

3. ID.; ID.; ID.; ID.; ID.; TESTS TO DETERMINE THE LIKELIHOOD OF CONFUSION; DOMINANCY TEST AND HOLISTIC TEST, DISTINGUISHED. — There are two tests to determine likelihood of confusion: the dominancy test and holistic test. The dominancy test focuses on the similarity of the main, prevalent or essential features of the competing trademarks that might cause confusion. Infringement takes place when the competing trademark contains the essential features of another. Imitation or an effort to imitate is unnecessary. The question is whether the use of the marks is likely to cause confusion or deceive purchasers. The holistic test considers the entirety of the marks, including labels and packaging, in determining confusing similarity. The focus is not only on the predominant words but also on the other features appearing on the labels.

4. ID.; ID.; ID.; ID.; A CASE INVOLVING TRADEMARK INFRINGEMENT MUST BE DECIDED ON ITS MERITS AND JURISPRUDENTIAL PRECEDENTS MUST BE STUDIED IN THE LIGHT OF THE FACTS OF EACH PARTICULAR CASE. — In cases involving trademark infringement, no set of rules can be deduced. Each case must be decided on its own merits. Jurisprudential precedents must be studied in the light of the facts of each particular case. In *McDonald's Corporation v. MacJoy Fastfood Corporation*, the Court held: "In trademark cases, particularly in ascertaining whether one trademark is confusingly similar to another, no set rules can be deduced because each case must be decided on its merits. In such cases, even more than in any other litigation, precedent must be studied in the light of the facts of the particular case. That is the reason why in trademark

cases, jurisprudential precedents should be applied only to a case if they are specifically in point."

5. ID.; ID.; ID.; ID.; TESTS TO DETERMINE THE LIKELIHOOD OF CONFUSION; DOMINANCY TEST; APPLICABLE IN CASE AT BAR. — In the light of the facts of the present case, the Court holds that the dominancy test is applicable. In recent cases with similar factual milieus, the Court has consistently applied the dominancy test. x x x Applying the dominancy test in the present case, the Court finds that "NANNY" is confusingly similar to "NAN." "NAN" is the prevalent feature of Nestle's line of infant powdered milk products. It is written in bold letters and used in all products. The line consists of PRE-**NAN**, **NAN**-H.A., **NAN**-1, and **NAN**-2. Clearly, "NANNY" contains the prevalent feature "NAN." The first three letters of "NANNY" are exactly the same as the letters of "NAN." When "NAN" and "NANNY" are pronounced, the aural effect is confusingly similar. In determining the issue of confusing similarity, the Court takes into account the aural effect of the letters contained in the marks.

6. ID.; REPUBLIC ACT. 8293 (THE INTELLECTUAL PROPERTY CODE); TRADEMARKS; THE SCOPE OF PROTECTION AFFORDED TO REGISTERED TRADEMARK OWNERS EXTENDS TO MARKET AREAS THAT ARE THE NORMAL EXPANSION OF BUSINESS. — The scope of protection afforded to registered trademark owners is not limited to protection from infringers with identical goods. The scope of protection extends to protection from infringers with related goods, and to market areas that are the normal expansion of business of the registered trademark owners. Section 138 of R.A. No. 8293 states: "*Certificates of Registration*. — A certificate of registration of a mark shall be *prima facie* evidence of validity of the registration, the registrant's ownership of the mark, and of the registrant's exclusive right to use the same in connection with the goods or services **and those that are related thereto** specified in the certificate." x x x NANNY and NAN have the same classification, descriptive properties and physical attributes. Both are classified under Class 6, both are milk products, and both are in powder form. Also, NANNY and NAN are displayed in the same section of stores — the milk section. The Court agrees with the lower courts that there are differences between NAN and NANNY: (1) NAN is intended

for infants while NANNY is intended for children past their infancy and for adults; and (2) NAN is more expensive than NANNY. However, as the registered owner of the "NAN" mark, Nestle should be free to use its mark on similar products, in different segments of the market, and at different price levels. In *McDonald's Corporation v. L.C. Big Mak Burger, Inc.*, the Court held that the scope of protection afforded to registered trademark owners extends to market areas that are the normal expansion of business x x x.

7. ID.; INTELLECTUAL PROPERTY LAWS; TRADEMARKS; TRADEMARK INFRINGEMENT; CONFUSION OF BUSINESS; FACTORS IN DETERMINING WHETHER THE GOODS ARE RELATED. — In *Mighty Corporation v. E. & J. Gallo Winery*, the Court held that, "Non-competing goods may be those which, though they are not in actual competition, are so related to each other that it can reasonably be assumed that they originate from one manufacturer, in which case, confusion of business can arise out of the use of similar marks." In that case, the Court enumerated factors in determining whether goods are related: (1) classification of the goods; (2) nature of the goods; (3) descriptive properties, physical attributes or essential characteristics of the goods, with reference to their form, composition, texture or quality; and (4) style of distribution and marketing of the goods, including how the goods are displayed and sold.

APPEARANCES OF COUNSEL

Sapalo Velez Bundang and Bulilan Law Offices for petitioner.
Frederick Bustamante for respondent.

D E C I S I O N

CARPIO, *J.*:

The Case

This is a petition[1] for review on *certiorari* under Rule 45 of the Rules of Court. The petition challenges the 1 September

[1] *Rollo*, pp. 9-40.

2005 Decision[2] and 4 April 2006 Resolution[3] of the Court of Appeals in CA-G.R. CV No. 62730, finding respondent Martin T. Dy, Jr. (Dy, Jr.) not liable for trademark infringement. The Court of Appeals reversed the 18 September 1998 Decision[4] of the Regional Trial Court (RTC), Judicial Region 7, Branch 9, Cebu City, in Civil Case No. CEB-19345.

The Facts

Petitioner Societe Des Produits Nestle, S.A. (Nestle) is a foreign corporation organized under the laws of Switzerland. It manufactures food products and beverages. As evidenced by Certificate of Registration No. R-14621[5] issued on 7 April 1969 by the then Bureau of Patents, Trademarks and Technology Transfer, Nestle owns the "NAN" trademark for its line of infant powdered milk products, consisting of PRE-NAN, NAN-H.A., NAN-1, and NAN-2. NAN is classified under Class 6 — "diatetic preparations for infant feeding."

Nestle distributes and sells its NAN milk products all over the Philippines. It has been investing tremendous amounts of resources to train its sales force and to promote the NAN milk products through advertisements and press releases.

Dy, Jr. owns 5M Enterprises. He imports Sunny Boy powdered milk from Australia and repacks the powdered milk into three sizes of plastic packs bearing the name "NANNY." The packs weigh 80, 180 and 450 grams and are sold for ₱8.90, ₱17.50 and ₱39.90, respectively. NANNY is is also classified under Class 6 — "full cream milk for adults in [sic] all ages." Dy, Jr. distributes and sells the powdered milk in Dumaguete, Negros Oriental, Cagayan de Oro, and parts of Mindanao.

In a letter dated 1 August 1985, Nestle requested Dy, Jr. to refrain from using "NANNY" and to undertake that he would

---

[2] *Id.* at 44-51. Penned by Associate Justice Ramon M. Bato, Jr., with Associate Justices Arsenio J. Magpale and Pampio A. Abarintos concurring.

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

[4] *Id.* at 55-62. Penned by Judge Benigno G. Gaviola.

[5] *Id.* at 96-99.

stop infringing the "NAN" trademark. Dy, Jr. did not act on Nestle's request. On 1 March 1990, Nestle filed before the RTC, Judicial Region 7, Branch 31, Dumaguete City, a complaint[6] against Dy, Jr. for infringement. Dy, Jr. filed a motion[7] to dismiss alleging that the complaint did not state a cause of action. In its 4 June 1990 order,[8] the trial court dismissed the complaint. Nestle appealed the 4 June 1990 order to the Court of Appeals. In its 16 February 1993 Resolution, the Court of Appeals set aside the 4 June 1990 order and remanded the case to the trial court for further proceedings.

Pursuant to Supreme Court Administrative Order No. 113-95, Nestle filed with the trial court a motion[9] to transfer the case to the RTC, Judicial Region 7, Branch 9, Cebu City, which was designated as a special court for intellectual property rights.

The RTC's Ruling

In its 18 September 1998 Decision, the trial court found Dy, Jr. liable for infringement. The trial court held:

> If determination of infringement shall only be limited on whether or not the mark used would likely cause confusion or mistake in the minds of the buying public or deceive customers, such in [sic] the most considered view of this forum would be highly unlikely to happen in the instant case. This is because upon comparison of the plaintiff's NAN and defendant's NANNY, the following features would reveal the absence of any deceptive tendency in defendant's NANNY: (1) all NAN products are contained tin cans [sic], while NANNY are contained in plastic packs; (2) the predominant colors used in the labels of NAN products are blue and white, while the predominant colors in the plastic packings of NANNY are blue and green; (3) the labels of NAN products have at the bottom portion an elliptical shaped figure containing inside it a drawing of nestling birds, which is overlapped by the trade-name "Nestle", while the plastic packs of NANNY have a drawing of milking cows lazing on

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

[7] *Id.* at 66-73.

[8] *Id.* at 74-78.

[9] *Id.* at 130-133.

a vast green field, back-dropped with snow covered mountains; (4) the word NAN are [sic] all in large, formal and conservative-like block letters, while the word NANNY are [sic] all in small and irregular style of letters with curved ends; and (5) all NAN products are milk formulas intended for use of [sic] infants, while NANNY is an instant full cream powdered milk intended for use of [sic] adults.

The foregoing has clearly shown that infringement in the instant case cannot be proven with the use of the "test of dominancy" because the deceptive tendency of the unregistered trademark NANNY is not apparent from the essential features of the registered trademark NAN.

However, in *Esso Standard Eastern, Inc. vs. Court of Appeals, et al.*, L-29971, Aug. 31, 1982, the Supreme Court took the occasion of discussing what is implied in the definition of "infringement" when it stated: "Implicit in this definition is the concept that the goods must be so related that there is likelihood either of confusion of goods or business. x x x But as to whether trademark infringement exists depends for the most part upon whether or not the goods are so related that the public may be, or is actually, deceived and misled that they came from the same maker or manufacturer. For non-competing goods may be those which, though they are not in actual competition, are so related to each other that it might reasonably be assumed that they originate from one manufacturer. Non-competing goods may also be those which, being entirely unrelated, could not reasonably be assumed to have a common source. In the former case of related goods, confusion of business could arise out of the use of similar marks; in the latter case of non-related goods, it could not."

Furthermore, in said case the Supreme Court as well discussed on when goods may become so related for purposes of infringement when it stated: "Goods are related when they belong to the same class or have same descriptive properties; when they possess the same physical attributes or essential characteristics with reference to their form, composition, texture or quality. They may also be related because they serve the same purpose or are sold in grocery stores. x x x

Considering that defendant's NANNY belongs to the same class as that of plaintiff's NAN because both are food products, the defendant's unregistered trade mark NANNY should be held an infringement to plaintiff's registered trademark NAN because

defendant's use of NANNY would imply that it came from the manufacturer of NAN. Furthermore, since the word "nanny" means a "child's nurse," there might result the not so remote probability that defendant's NANNY may be confused with infant formula NAN despite the aparent [sic] disparity between the features of the two products.[10]

Dy, Jr. appealed the 18 September 1998 Decision to the Court of Appeals.

The Court of Appeals' Ruling

In its 1 September 2005 Decision, the Court of Appeals reversed the trial court's 18 September 1998 Decision and found Dy, Jr. not liable for infringement. The Court of Appeals held:

> [T]he trial court appeared to have made a finding that there is no colorable imitation of the registered mark "NAN" in Dy's use of "NANNY" for his own milk packs. Yet it did not stop there. It continued on applying the "concept of related goods."
>
> The Supreme Court utlilized the "concept of related goods" in the said case of *Esso Standard Easter, Inc. versus Court of Appeals, et al.* wherein two contending parties used the same trademark "ESSO" for two different goods, *i.e*. petroleum products and cigarettes. It rules that there is infringement of trademark involving two goods bearing the same mark or label, even if the said goods are non-competing, if and only if they are so related that the public may be, or is actually, deceived that they originate from the one maker or manufacturer. Since petroleum products and cigarettes, in kind and nature, flow through different trade channels, and since the possibility of confusion is unlikely in the general appearances of each mark as a whole, the Court held in this case that they cannot be so related in the context of infringement.
>
> In applying the concept of related goods in the present case, the trial court haphazardly concluded that since plaintiff-appellee's NAN and defendant-appellant's NANNY belong to the same class being food products, the unregistered NANNY should be held an infringement of Nestle's NAN because "the use of NANNY would imply that it came from the manufacturer of NAN." Said court went on to elaborate further: "since the word "NANNY" means a "child's

[10] *Id.* at 60-61.

nurse," there might result the not so remote probability that defendant's NANNY may be confused with infant formula NAN despite the aparent (*sic*) disparity between the features of the two products as discussed above."

The trial court's application of the doctrine laid down by the Supreme Court in the Esso Standard case aforementioned and the cases cited therein is quite misplaced. The goods of the two contending parties in those cases bear similar marks or labels: "Esso" for petroleum products and cigarettes, "Selecta" for biscuits and milk, "X-7" for soap and perfume, lipstick and nail polish. In the instant case, two dissimilar marks are involved — plaintiff-appellee's "NAN" and defendant-appellant's "NANNY." Obviously, the concept of related goods cannot be utilized in the instant case in the same way that it was used in the Esso Standard case.

In the Esso Standard case, the Supreme Court even cautioned judges that in resolving infringement or trademark cases in the Philippines, particularly in ascertaining whether one trademark is confusingly similar to or is a colorable imitation of another, precedent must be studied in the light of the facts of the particular case. Each case must be decided on its own merits. In the more recent case of *Societe Des Produits Nestle S.A. Versus Court of Appeals*, the High Court further stressed that due to the peculiarity of the facts of each infringement case, a judicial forum should not readily apply a certain test or standard just because of seeming similarities. The entire panoply of elements constituting the relevant factual landscape should be comprehensively examined.

While it is true that both NAN and NANNY are milk products and that the word "NAN" is contained in the word "NANNY," there are more glaring dissimilarities in the entirety of their trademarks as they appear in their respective labels and also in relation to the goods to which they are attached. The discerning eye of the observer must focus not only on the predominant words but also on the other features appearing in both labels in order that he may draw his conclusion whether one is confusingly similar to the other. Even the trial court found these glaring dissimilarities as above-quoted. We need not add more of these factual dissimilarities.

NAN products, which consist of Pre-NAN, NAN-H-A, NAN-1 and NAN-2, are all infant preparations, while NANNY is a full cream milk for adults in [sic] all ages. NAN milk products are sold in tin cans and hence, far expensive than the full cream milk NANNY

sold in three (3) plastic packs containing 80, 180 and 450 grams and worth ₱8.90, ₱17.50 and ₱39.90 per milk pack. The labels of NAN products are of the colors blue and white and have at the bottom portion an elliptical shaped figure containing inside it a drawing of nestling birds, which is overlapped by the trade-name "Nestle." On the other hand, the plastic packs NANNY have a drawing of milking cows lazing on a vast green field, back-dropped with snow-capped mountains and using the predominant colors of blue and green. The word NAN are [sic] all in large, formal and conservative-like block letters, while the word NANNY are [sic] all in small and irregular style of letters with curved ends. With these material differences apparent in the packaging of both milk products, NANNY full cream milk cannot possibly be an infringement of NAN infant milk.

Moreover, NAN infant milk preparation is more expensive than NANNY instant full cream milk. The cheaper price of NANNY would give, at the very first instance, a considerable warning to the ordinary purchaser on whether he is buying an infant milk or a full cream milk for adults. A cursory examination of the packaging would confirm the striking differences between the products in question.

In view of the foregoing, we find that the mark NANNY is not confusingly similar to NAN. Dy therefore cannot be held liable for infringement.[11]

Nestle filed a motion[12] for reconsideration. In its 4 April 2006 Resolution, the Court of Appeals denied the motion for lack of merit. Hence, the present petition.

Issue

The issue is whether Dy, Jr. is liable for infringement.

The Court's Ruling

The petition is meritorious.

Section 22 of Republic Act (R.A.) No. 166, as amended, states:

---

[11] *Id.* at 48-50.

[12] *Id.* at 277-291.

Infringement, what constitutes. — Any person who shall use, without the consent of the registrant, any reproduction, counterfeit, copy or colorable imitation of any registered mark or trade-name in connection with the sale, offering for sale, or advertising of any goods, business or services on or in connection with which such use is likely to cause confusion or mistake or to deceive purchasers or others as to the source or origin of such goods or services, or identity of such business; or reproduce, counterfeit, copy or colorably imitate any such mark or trade-name and apply such reproduction, counterfeit, copy, or colorable imitation to labels, signs, prints, packages, wrappers, receptacles or advertisements intended to be used upon or in connection with such goods, business or services, shall be liable to a civil action by the registrant for any or all of the remedies herein provided.

Section 155 of R.A. No. 8293 states:

Remedies; Infringement. — Any person who shall, without the consent of the owner of the registered mark:

155.1. Use in commerce any reproduction, counterfeit, copy, or colorable imitation of a registered mark or the same container or a dominant feature thereof in connection with the sale, offering for sale, distribution, advertising of any goods or services including other preparatory steps necessary to carry out the sale of any goods or services on or in connection with which such use is likely to cause confusion, or to cause mistake, or to deceive; or

155.2. Reproduce, counterfeit, copy or colorably imitate a registered mark or a dominant feature thereof and apply such reproduction, counterfeit, copy or colorable imitation to labels, signs, prints, packages, wrappers, receptacles or advertisements intended to be used in commerce upon or in connection with the sale, offering for sale, distribution, or advertising of goods or services on or in connection with which such use is likely to cause confusion, or to cause mistake, or to deceive, shall be liable in a civil action for infringement by the registrant for the remedies hereinafter set forth: Provided, That the infringement takes place at the moment any of the acts stated in Subsection 155.1 or this subsection are committed regardless of whether there is actual sale of goods or services using the infringing material.

In *Prosource International, Inc. v. Horphag Research Management SA*,[13] the Court laid down the elements of infringement under R.A. Nos. 166 and 8293:

> In accordance with Section 22 of R.A. No. 166, as well as Sections 2, 2-A, 9-A, and 20 thereof, the following constitute the elements of trademark infringement:
>
> "(a) A trademark actually used in commerce in the Philippines and registered in the principal register of the Philippine Patent Office[;]
>
> (b) [It] is used by another person in connection with the sale, offering for sale, or advertising of any goods, business or services or in connection with which such use is likely to cause confusion or mistake or to deceive purchasers or others as to the source or origin of such goods or services, or identity of such business; or such trademark is reproduced, counterfeited, copied or colorably imitated by another person and such reproduction, counterfeit, copy or colorable imitation is applied to labels, signs, prints, packages, wrappers, receptacles or advertisements intended to be used upon or in connection with such goods, business or services as to likely cause confusion or mistake or to deceive purchasers[;]
>
> (c) [T]he trademark is used for identical or similar goods[;] and
>
> (d) [S]uch act is done without the consent of the trademark registrant or assignee."
>
> On the other hand, the elements of infringement under R.A. No. 8293 are as follows:
>
> (1) The trademark being infringed is registered in the Intellectual Property Office; however, in infringement of trade name, the same need not be registered;
>
> (2) The trademark or trade name is reproduced, counterfeited, copied, or colorably imitated by the infringer;
>
> (3) The infringing mark or trade name is used in connection with the sale, offering for sale, or advertising of any goods,

---

[13] G.R. No. 180073, 25 November 2009, 605 SCRA 523.

business or services; or the infringing mark or trade name is applied to labels, signs, prints, packages, wrappers, receptacles or advertisements intended to be used upon or in connection with such goods, business or services;

(4) The use or application of the infringing mark or trade name is likely to cause confusion or mistake or to deceive purchasers or others as to the goods or services themselves or as to the source or origin of such goods or services or the identity of such business; and

(5) It is without the consent of the trademark or trade name owner or the assignee thereof.[14]

Among the elements, the element of likelihood of confusion is the gravamen of trademark infringement.[15] There are two types of confusion in trademark infringement: confusion of goods and confusion of business.[16] In *Sterling Products International, Inc. v. Farbenfabriken Bayer Aktiengesellschaft*,[17] the Court distinguished the two types of confusion:

Callman notes two types of confusion. The first is the *confusion of goods* "in which event the ordinarily prudent purchaser would be induced to purchase one product in the belief that he was purchasing the other." In which case, "defendant's goods are then bought as the plaintiff's, and the poorer quality of the former reflects adversely on the plaintiff's reputation." The other is the *confusion of business*: "Here though the goods of the parties are different, the defendant's product is such as might reasonably be assumed to originate with the plaintiff, and the public would then be deceived either into that belief or into the belief that there is some connection between the plaintiff and defendant which, in fact, does not exist."[18]

There are two tests to determine likelihood of confusion: the dominancy test and holistic test. The dominancy test focuses

---

[14] *Id.* at 529-530.

[15] *Id.* at 531.

[16] *McDonald's Corporation v. L.C. Big Mak Burger, Inc.*, 480 Phil. 402, 428 (2004).

[17] 137 Phil. 838 (1969).

[18] *Id.* at 852.

on the similarity of the main, prevalent or essential features of the competing trademarks that might cause confusion. Infringement takes place when the competing trademark contains the essential features of another. Imitation or an effort to imitate is unnecessary. The question is whether the use of the marks is likely to cause confusion or deceive purchasers.[19]

The holistic test considers the entirety of the marks, including labels and packaging, in determining confusing similarity. The focus is not only on the predominant words but also on the other features appearing on the labels.[20]

In cases involving trademark infringement, no set of rules can be deduced. Each case must be decided on its own merits. Jurisprudential precedents must be studied in the light of the facts of each particular case. In *McDonald's Corporation v. MacJoy Fastfood Corporation*,[21] the Court held:

> In trademark cases, particularly in ascertaining whether one trademark is confusingly similar to another, no set rules can be deduced because each case must be decided on its merits. In such cases, even more than in any other litigation, precedent must be studied in the light of the facts of the particular case. That is the reason why in trademark cases, jurisprudential precedents should be applied only to a case if they are specifically in point.[22]

In the light of the facts of the present case, the Court holds that the dominancy test is applicable. In recent cases with similar factual milieus, the Court has consistently applied the dominancy test. In *Prosource International, Inc.*, the Court applied the dominancy test in holding that "PCO-GENOLS" is confusingly similar to "PYCNOGENOL." The Court held:

> The trial and appellate courts applied the Dominancy Test in determining whether there was a confusing similarity between the

---

[19] *Prosource International, Inc. v. Horphag Research Management SA, supra* note 13 at 531.

[20] *Id.* at 531-532.

[21] G.R. No. 166115, 2 February 2007, 514 SCRA 95.

[22] *Id.* at 107.

marks PYCNOGENOL and PCO-GENOL. Applying the test, the trial court found, and the CA affirmed, that:

> "Both the word[s] PYCNOGENOL and PCO-GENOLS have the same suffix "GENOL" which on evidence, appears to be merely descriptive and furnish no indication of the origin of the article and hence, open for trademark registration by the plaintiff through combination with another word or phrase such as PYCNOGENOL, Exhibits "A" to "A-3." Furthermore, although the letters "Y" between P and C, "N" between O and C and "S" after L are missing in the [petitioner's] mark PCO-GENOLS, nevertheless, when the two words are pronounced, the sound effects are confusingly similar not to mention that they are both described by their manufacturers as a food supplement and thus, identified as such by their public consumers. And although there were dissimilarities in the trademark due to the type of letters used as well as the size, color and design employed on their individual packages/bottles, still the close relationship of the competing product's name is sounds as they were pronounced, clearly indicates that purchasers could be misled into believing that they are the same and/or originates from a common source and manufacturer."

We find no cogent reason to depart from such conclusion.

This is not the first time the Court takes into account the aural effects of the words and letters contained in the marks in determining the issue of confusing similarity. In *Marvex Commercial Co., Inc. v. Petra Hawpia & Co., et al.*, cited in *McDonald's Corporation v. L.C. Big Mak Burger, Inc.*, the Court held:

> "The following random list of confusingly similar sounds in the matter of trademarks, culled from Nims, Unfair Competition and Trade Marks, 1947, Vol. 1, will reinforce our view that "SALONPAS" and "LIONPAS" are confusingly similar in sound: "Gold Dust" and "Gold Drop"; "Jantzen" and "Jass-Sea"; "Silver Flash" and Supper Flash"; "Cascarete" and "Celborite"; "Celluloid" and "Cellonite"; "Chartreuse" and "Charseurs"; "Cutex" and "Cuticlean"; "Hebe" and "Meje"; "Kotex" and "Femetex"; "Zuso" and "Hoo Hoo." Leon Amdur, in his book "Trade-Mark Law and Practice," pp. 419-421, cities [sic], as coming *within* the purview of the *idem sonans* rule, "Yusea" and "U-C-A," "Steinway Pianos" and "Steinberg Pianos," and "Seven-Up" and "Lemon-Up." In *Co Tiong vs.*

> *Director of Patents*, this Court unequivocally said that "Celdura" and "Condura" are confusingly similar in sound; this Court held in *Sapolin Co. vs. Balmaceda*, 67 Phil. 795 that the name "Lusolin" is an infringement of the trademark "Sapolin," as the sound of the two names is almost the same."[23]

In *McDonald's Corporation v. MacJoy Fastfood Corporation*, the Court applied the dominancy test in holding that "MACJOY" is confusingly similar to "MCDONALD'S." The Court held:

> While we agree with the CA's detailed enumeration of differences between the two (2) competing trademarks herein involved, we believe that the holistic test is not the one applicable in this case, the dominancy test being the one more suitable. In recent cases with a similar factual milieu as here, the Court has consistently used and applied the dominancy test in determining confusing similarity or likelihood of confusion between competing trademarks.
>
> x x x x x x x x x
>
> Applying the dominancy test to the instant case, the Court finds that herein petitioner's "MCDONALD'S" and respondent's "MACJOY" marks are are confusingly similar with each other that an ordinary purchaser can conclude an association or relation between the marks.
>
> To begin with, both marks use the corporate "M" design logo and the prefixes "Mc" and/or "Mac" as dominant features. x x x
>
> For sure, it is the prefix "Mc," and abbreviation of "Mac," which visually and aurally catches the attention of the consuming public. Verily, the word "MACJOY" attracts attention the same way as did "McDonalds," "MacFries," "McSpaghetti," "McDo," "Big Mac" and the rest of the MCDONALD'S marks which all use the prefixes Mc and/or Mac.
>
> Besides and most importantly, both trademarks are used in the sale of fastfood products. Indisputably, the respondent's trademark application for the "MACJOY & DEVICE" trademark covers goods under Classes 29 and 30 of the International Classification of Goods, namely, fried chicken, chicken barbeque, burgers, fries, spaghetti, *etc*. Likewise, the petitioner's trademark registration for the MCDONALD'S marks in the Philippines covers goods which are

---

[23] *Supra* note 13 at 532-533.

similar if not identical to those covered by the respondent's application.[24]

In *McDonald's Corporation v. L.C. Big Mak Burger, Inc.*, the Court applied the dominancy test in holding that "BIG MAK" is confusingly similar to "BIG MAC." The Court held:

> This Court x x x has relied on the dominancy test rather than the holistic test. The dominancy test considers the dominant features in the competing marks in determining whether they are confusingly similar. Under the dominancy test, courts give greater weight to the similarity of the appearance of the product arising from the adoption of the dominant features of the registered mark, disregarding minor differences. Courts will consider more the aural and visual impressions created by the marks in the public mind, giving little weight to factors like prices, quality, sales outlets and market segments.

Thus, in the 1954 case of *Co Tiong Sa v. Director of Patents*, the Court ruled:

> x x x It has been consistently held that the question of infringement of a trademark is to be determined by the test of dominancy. Similarity in size, form and color, while relevant, is not conclusive. If the competing trademark contains the main or essential or dominant features of another, and confusion and deception is likely to result, infringement takes place. Duplication or imitation is not necessary; nor is it necessary that the infringing label should suggest an effort to imitate. (*G. Heilman Brewing Co. vs. Independent Brewing Co.*, 191 F., 489, 495, citing *Eagle White Lead Co. vs. Pflugh (CC)* 180 Fed. 579). The question at issue in cases of infringement of trademarks is whether the use of the marks involved would be likely to cause confusion or mistakes in the mind of the public or deceive purchasers. (*Auburn Rubber Corporation vs. Honover Rubber Co.*, 107 F. 2d 588; x x x)
>
> x x x x x x x x x

The test of dominancy is now explicitly incorporated into law in Section 155.1 of the Intellectual Property Code which defines infringement as the "colorable imitation of a registered mark x x x or a *dominant feature* thereof."

---

[24] *Supra* note 21 at 107-109.

Applying the dominancy test, the Court finds that respondents' use of the "Big Mak" mark results in likelihood of confusion. First, "Big Mak" sounds exactly the same as "Big Mac." Second, the first word in "Big Mak" is exactly the same as the first word in "Big Mac." Third, the first two letters in "Mak" are the same as the first two letters in "Mac." Fourth, the last letter "Mak" while a "k" sounds the same as "c" when the word "Mak" is pronounced. Fifth, in Filipino, the letter "k" replaces "c" in spelling, thus "Caloocan" is spelled "Kalookan."[25]

In *Societe Des Produits Nestle, S.A v. Court of Appeals*,[26] the Court applied the dominancy test in holding that "FLAVOR MASTER" is confusingly similar to "MASTER ROAST" and "MASTER BLEND." The Court held:

> While this Court agrees with the Court of Appeals' detailed enumeration of differences between the respective trademarks of the two coffee products, this Court cannot agree that totality test is the one applicable in this case. Rather, this Court believes that the dominancy test is more suitable to this case in light of its peculiar factual milieu.
>
> Moreover, the totality or holistic test is contrary to the elementary postulate of the law on trademarks and unfair competition that confusing similarity is to be determined on the basis of visual, aural, connotative comparisons and overall impressions engendered by the marks in controversy as they are encountered in the realities of the marketplace. The totality or holistic test only relies on visual comparison between two trademarks whereas the dominancy test relies not only on the visual but also on the aural and connotative comparisons and overall impressions between the two trademarks.
>
> For this reason, this Court agrees with the BPTTT when it applied the test of dominancy and held that:
>
> > From the evidence at hand, it is sufficiently established that the word MASTER is the dominant feature of opposer's mark. The word MASTER is printed across the middle portion of the label in bold letters almost twice the size of the printed word ROAST. Further, the word MASTER has always been

---

[25] *Supra* note 16 at 433-435.

[26] 408 Phil. 307 (2001).

> given emphasis in the TV and radio commercials and other advertisements made in promoting the product. x x x In due time, because of these advertising schemes the mind of the buying public had come to learn to associate the word MASTER with the opposer's goods.
>
> x x x. It is the observation of this Office that much of the dominance which the word MASTER has acquired through Opposer's advertising schemes is carried over when the same is incorporated into respondent-applicant's trademark FLAVOR MASTER. Thus, when one looks at the label bearing the trademark FLAVOR MASTER (exh. 4) one's attention is easily attracted to the word MASTER, rather than to the dissimilarities that exist. Therefore, the possibility of confusion as to the goods which bear the competing marks or as to the origins thereof is not farfetched.[27]

Applying the dominancy test in the present case, the Court finds that "NANNY" is confusingly similar to "NAN." "NAN" is the prevalent feature of Nestle's line of infant powdered milk products. It is written in bold letters and used in all products. The line consists of PRE-**NAN**, **NAN**-H.A., **NAN**-1, and **NAN**-2. Clearly, "NANNY" contains the prevalent feature "NAN." The first three letters of "NANNY" are exactly the same as the letters of "NAN." When "NAN" and "NANNY" are pronounced, the aural effect is confusingly similar.

In determining the issue of confusing similarity, the Court takes into account the aural effect of the letters contained in the marks.[28] In *Marvex Commercial Company, Inc. v. Petra Hawpia & Company*,[29] the Court held:

> It is our considered view that the trademarks "SALONPAS" and "LIONPAS" are confusingly similar in sound.

---

[27] *Id.* at 324-325.

[28] *Prosource International, Inc. v. Horphag Research Management SA*, *supra* note 13 at 532; *McDonald's Corporation v. L.C. Big Mak Burger, Inc.*, *supra* note 16 at 435.

[29] 125 Phil. 295 (1966).

Both these words have the same suffix, "PAS", which is used to denote a plaster that adheres to the body with curative powers. "PAS," being merely descriptive, furnishes no indication of the origin of the article and therefore is open for appropriation by anyone (*Ethepa vs. Director of Patents*, L-20635, March 31, 1966) and may properly become the subject of a trademark by combination with another word or phrase.

x x x x x x x x x

The following random list of confusingly similar sounds in the matter of trademarks, culled from Nims, Unfair Competition and Trade Marks, 1947, Vol. 1, will reinforce our view that "SALONPAS" and "LIONPAS" are confusingly similar in sound: "Gold Dust" and "Gold Drop"; "Jantzen" and "Jass-Sea"; "Silver Flash" and Supper Flash"; "Cascarete" and "Celborite"; "Celluloid" and "Cellonite"; "Chartreuse" and "Charseurs"; "Cutex" and "Cuticlean"; "Hebe" and "Meje"; "Kotex" and "Femetex"; "Zuso" and "Hoo Hoo." Leon Amdur, in his book "Trade-Mark Law and Practice," pp. 419-421, cities [sic], as coming *within* the purview of the *idem sonans* rule, "Yusea" and "U-C-A," "Steinway Pianos" and "Steinberg Pianos," and "Seven-Up" and "Lemon-Up." In *Co Tiong vs. Director of Patents*, this Court unequivocally said that "Celdura" and "Condura" are confusingly similar in sound; this Court held in *Sapolin Co. vs. Balmaceda*, 67 Phil. 795 that the name "Lusolin" is an infringement of the trademark "Sapolin," as the sound of the two names is almost the same.[30]

The scope of protection afforded to registered trademark owners is not limited to protection from infringers with identical goods. The scope of protection extends to protection from infringers with related goods, and to market areas that are the normal expansion of business of the registered trademark owners. Section 138 of R.A. No. 8293 states:

Certificates of Registration. — A certificate of registration of a mark shall be *prima facie* evidence of validity of the registration, the registrant's ownership of the mark, and of the registrant's exclusive right to use the same in connection with the goods or services **and those that are related thereto** specified in the certificate. (Emphasis supplied)

---

[30] *Id.* at 301-303.

In *Mighty Corporation v. E. & J. Gallo Winery*,[31] the Court held that, "Non-competing goods may be those which, though they are not in actual competition, are so related to each other that it can reasonably be assumed that they originate from one manufacturer, in which case, confusion of business can arise out of the use of similar marks."[32] In that case, the Court enumerated factors in determining whether goods are related: (1) classification of the goods; (2) nature of the goods; (3) descriptive properties, physical attributes or essential characteristics of the goods, with reference to their form, composition, texture or quality; and (4) style of distribution and marketing of the goods, including how the goods are displayed and sold.[33]

NANNY and NAN have the same classification, descriptive properties and physical attributes. Both are classified under Class 6, both are milk products, and both are in powder form. Also, NANNY and NAN are displayed in the same section of stores — the milk section.

The Court agrees with the lower courts that there are differences between NAN and NANNY: (1) NAN is intended for infants while NANNY is intended for children past their infancy and for adults; and (2) NAN is more expensive than NANNY. However, as the registered owner of the "NAN" mark, Nestle should be free to use its mark on similar products, in different segments of the market, and at different price levels. In *McDonald's Corporation v. L.C. Big Mak Burger, Inc.*, the Court held that the scope of protection afforded to registered trademark owners extends to market areas that are the normal expansion of business:

x x x x x x x x x

Even respondent's use of the "Big Mak" mark on non-hamburger food products cannot excuse their infringement of petitioners'

---

[31] 478 Phil. 615 (2204).

[32] *Id.* at 661.

[33] *Id.* at 662-663.

registered mark, otherwise registered marks will lose their protection under the law.

The registered trademark owner may use his mark on the same or similar products, in different segments of the market, and at different price levels depending on variations of the products for specific segments of the market. The Court has recognized that the registered trademark owner enjoys protection in product and market areas that are the *normal potential expansion of his business*. Thus, the Court has declared:

> Modern law recognizes that the protection to which the owner of a trademark is entitled is not limited to guarding his goods or business from actual market competition with identical or similar products of the parties, but extends to all cases in which the use by a junior appropriator of a trade-mark or trade-name is likely to lead to a confusion of source, as where prospective purchasers would be misled into thinking that the complaining party has extended his business into the field (see 148 ALR 56 *et sq*; 53 Am. Jur. 576) or is in any way connected with the activities of the infringer; or when it forestalls the normal potential expansion of his business (*v*. 148 ALR, 77, 84; 52 Am. Jur. 576, 577).[34] (Emphasis supplied)

WHEREFORE, we *GRANT* the petition. We *SET ASIDE* the 1 September 2005 Decision and 4 April 2006 Resolution of the Court of Appeals in CA-G.R. CV No. 62730 and *REINSTATE* the 18 September 1998 Decision of the Regional Trial Court, Judicial Region 7, Branch 9, Cebu City, in Civil Case No. CEB-19345.

SO ORDERED.

Nachura, Peralta, Abad, and *Mendoza, JJ.,* concur.

---

[34] *Supra* note 16 at 432.

SECOND DIVISION

[G.R. No. 172541. August 9, 2010]

JAY HIDALGO UY, represented by his father, ANTONIO J. UY, *petitioner, vs.* **Spouses FRANCISCO MEDINA and NATIVIDAD MEDINA, ANTONIO MANAGUELOD and SWIFT FOODS, INC.,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; PETITION FOR REVIEW ON *CERTIORARI*; DOES NOT INVOLVE THE RE-EXAMINATION OF THE FACTUAL FINDINGS OF THE APPELLATE COURT; EXCEPTIONS. — We have consistently ruled that in petitions for review on *certiorari*, this Court will not re-examine the findings of fact of the appellate court except (a) when the latter's findings are grounded entirely on speculations, surmises or conjectures; (b) when its inference is manifestly mistaken, absurd or impossible; (c) when there is a grave abuse of discretion; (d) when its findings of fact are conflicting; and (e) when it goes beyond the issues of the case.

2. ID.; ID.; JUDGMENTS; MUST CONFORM TO, AND BE SUPPORTED BY, BOTH THE PLEADINGS AND THE EVIDENCE, AND MUST BE IN ACCORDANCE WITH THE THEORY OF THE ACTION ON WHICH THE PLEADINGS WERE FRAMED AND THE CASE WAS TRIED; RATIONALE. — The rule is that a judgment must conform to, and be supported by, both the pleadings and the evidence, and must be in accordance with the theory of the action on which the pleadings were framed and the case was tried. The reason for this was discussed in the case of *Development Bank of the Philippines v. Teston*: x x x "Due process considerations justify this requirement. **It is improper to enter an order which exceeds the scope of relief sought by the pleadings, absent notice which affords the opposing party an opportunity to be heard with respect to the proposed relief.** The fundamental purpose of the requirement that allegations of a complaint must provide the measure of recovery is to prevent surprise to the defendant."

3. CIVIL LAW; LAND REGISTRATION; PRESIDENTIAL DECREE NO. 1529 (THE PROPERTY REGISTRATION DECREE); TORRENS SYSTEM; REGISTRATION SHALL BE THE OPERATIVE ACT TO CONVEY OR AFFECT THE LAND INSOFAR AS THIRD PERSONS ARE CONCERNED. — Even though the sale of the land to petitioner took place before the judgment of the trial court in favor of Swift and the issuance of the writ of execution over the property in question, failure to register it with the Register of Deeds negated any priority which he may have acquired by virtue of the earlier sale. Elementary is the rule that it is the act of registration which gives validity to transfer or liens created upon land registered under the Torrens System. This is clear in Section 51 and Section 52 of Presidential Decree No. 1529, also known as the Property Registration Decree, which read: "Section 51. Conveyance and other dealings by registered owner. An owner of registered land may convey, mortgage, lease, charge or otherwise deal with the same in accordance with existing laws. He may use such forms of deeds, mortgages, leases or other voluntary instruments as are sufficient in law. But no deed, mortgage, lease, or other voluntary instrument, except a will purporting to convey or affect registered land shall take effect as a conveyance or bind the land, but shall operate only as a contract between the parties and as evidence of authority to the Register of Deeds to make registration. **The act of registration shall be the operative act to convey or affect the land insofar as third persons are concerned**, and in all cases under this Decree, the registration shall be made in the office of the Register of Deeds for the province or city where the land lies. Section 52. Constructive notice upon registration. Every conveyance, mortgage, lease, lien, attachment, order, judgment, instrument or entry affecting registered land shall, if registered, filed or entered in the office of the Register of Deeds for the province or city where the land to which it relates lies, be constructive notice to all persons from the time of such registering, filing or entering."

4. ID.; ID.; ID.; ID.; ID.; A LEVY ON EXECUTION, DULY REGISTERED, TAKES PREFERENCE OVER A PRIOR UNREGISTERED SALE. — Considering that the sale was not registered earlier, the right of petitioner over the land became subordinate and subject to the preference created over the earlier annotated levy in favor of Swift. The levy of execution registered and annotated on September 1, 1998 takes precedence over

the sale of the land to petitioner on February 16, 1997, despite the subsequent registration on September 14, 1998 of the prior sale. Such preference in favor of the levy on execution retroacts to the date of levy for to hold otherwise will render the preference nugatory and meaningless. In *Valdevieso v. Damalerio*, We held that: "**The settled rule is that levy on attachment, duly registered, takes preference over a prior unregistered sale.** This result is a necessary consequence of the fact that the property involved was duly covered by the Torrens system which works under the fundamental principle that registration is the operative act which gives validity to the transfer or creates a lien upon the land. **The preference created by the levy on attachment is not diminished even by the subsequent registration of the prior sale.** This is so because an attachment is a proceeding *in rem*. It is against the particular property, enforceable against the whole world. The attaching creditor acquires a specific lien on the attached property which nothing can subsequently destroy except the very dissolution of the attachment or levy itself. Such a proceeding, in effect, means that the property attached is an indebted thing and a virtual condemnation of it to pay the owner's debt. The lien continues until the debt is paid, or sale is had under execution issued on the judgment, or until the judgment is satisfied, or the attachment discharged or vacated in some manner provided by law."

APPEARANCES OF COUNSEL

Antonio B. Aguirigan for petitioner.
Vicente D. Lasam & Associates for Swift Foods, Inc.

D E C I S I O N

MENDOZA, *J.*:

Before the Court is a petition for review on *certiorari* under Rule 45 of the Rules of Court assailing the October 13, 2005 Decision[1] and the April 6, 2006 Resolution[2] of the Court of Appeals *(CA)*

[1] Penned by Associate Justice Roberto A. Barrios with Associate Justice Mario L. Guariña III and Associate Justice Arturo G. Tayag, concurring; *Rollo*, pp. 24-30.

[2] *Id.* at 18-20.

in CA-G.R. CV No. 82703 entitled "*Jay Hidalgo Uy v. Spouses Francisco Medina and Natividad Medina, Antonio Managuelod and Swift Foods, Inc.*" The CA Decision reversed the February 26, 2004 Judgment[3] of the Regional Trial Court, Branch 18, Ilagan, Isabela *(RTC)* in Civil Case No. 1058 favoring the petitioner.

From the records, it appears that on February 16, 1996, respondent spouses Francisco and Natividad Medina *(the Medinas)* executed in favor of petitioner Jay Hidalgo Uy a Deed of Conditional Sale over a parcel of land with an area of 2,158 square meters covered by Transfer Certificate of Title *(TCT)* No. T-252042 of the Register of Deeds of Ilagan, Isabela. Subsequently, on February 16, 1997, the Medinas executed a deed of absolute sale over the same parcel of land in favor of the petitioner in view of the full payment of the agreed selling price.

Meanwhile, respondent Swift Foods, Inc. *(Swift)* filed an action for sum of money against the Medinas before the Regional Trial Court of Ilagan, Isabela, Branch 17 which rendered a judgment on May 20, 1998 in its favor. Eventually, a writ of execution was issued on August 13, 1998.[4]

On August 28, 1998, respondent Sheriff Antonio Managuelod came out with the corresponding Amended Sheriff's Notice of Levy and Auction Sale. The notice was inscribed at the back of TCT No. T-252042 on September 1, 1998.[5]

After the annotation, petitioner presented the deed of absolute sale earlier executed by the Medinas in his favor, with the Register of Deeds. Consequently, on September 14, 1998, TCT No. T-252042 in the name of the Medinas was cancelled and TCT No. T-286432 was issued in the name of Jay Hidalgo Uy. Per regulation, the annotation of the levy of execution was carried over in the new title as an encumbrance.[6]

---

[3] Penned by Judge Juan A. Bigornia, Jr.; *id.* at 85-87.

[4] *Id.* at 25.

[5] *Id.* at 85.

[6] *Id.* at 25.

On September 28, 1998, respondent Sheriff Managuelod proceeded with the auction sale and awarded the property to respondent Swift as the lone bidder.[7] Thus, petitioner filed a Complaint for Annulment of Sale with Damages against the Medinas, Sheriff Managuelod and Swift,[8] with RTC Branch 18, docketed as Civil Case No. 1058.

On February 26, 2004, the trial court ruled in favor of petitioner finding that the Amended Sheriff's Notice of Levy and Auction Sale failed to comply with the basic requirements of notice to the judgment obligor of the exact time and place of the sale pursuant to Section 15, Rule 39 of the Rules on Civil Procedure.[9] The dispositive portion of the Judgment reads:

> WHEREFORE, and in view of the foregoing and for failure of the Amended Sheriff's Notice of Levy and Auction Sale to meet the requirements of Section 15, Rule 39 of the Rules on Civil Procedure, judgment is hereby rendered, as follows:
>
> 1. Declaring the Auction Sale held on September 28, 1998 null and void;
>
> 2. Directing the Register of Deeds of Isabela to cancel Entry No. 2974 at the back of TCT No. T-286432.[10]

Aggrieved, Swift appealed the foregoing judgment before the CA and assigned the following errors: (1) the lower court erred in deciding the case on a matter that was not pleaded and not the subject of the proceeding; and (2) the lower court erred in not ruling that the levy on execution was superior to the subsequent registration of the deed of sale.[11]

The CA found the appeal meritorious holding that nowhere in the pleadings submitted and proof presented by the parties was the validity of the Amended Sheriff's Notice of Levy and

---

[7] *Id.*

[8] *Id.* at 86.

[9] *Id.* at 87.

[10] *Id.*

[11] *Id.* at 26.

Auction Sale assailed or placed in issue.[12] The appellate court observed that the main basis for petitioner's cause of action for the nullity of the execution of the judgment was the existence of other properties of the Medinas that could be levied upon.[13] Petitioner never raised any issue on the infirmity of the sheriff's notice. Thus, the CA ruled that a judgment going outside the parameters of issues and adjudicating something which the parties were not heard would be invalid.[14] In addition, it stated that a prior registration of a lien create a preference such that even the subsequent registration of prior sale would not diminish this preference which retroacts to the date of the levy.[15]

Aggrieved, petitioner elevated the CA decision to the Court anchoring his prayer for a reversal thereof on the following assigned errors:

I.

THE APPELLATE COURT ERRED IN REVERSING THE TRIAL COURT'S FINDINGS IN DECIDING THE CASE ON A MATTER THAT WAS NOT PLEADED NOR SUBJECT OF THE PROCEEDING.

II.

THE APPELLATE COURT ERRED IN RULING THAT THE LEVY ON EXECUTION IS SUPERIOR TO THE SUBSEQUENT REGISTRATION OF A DEED OF SALE.[16]

Petitioner insists that contrary to the factual conclusions of the appellate court, the validity of the notice of levy and auction sale was raised by him as an issue before the trial court. This contention obviously involves a question of fact as the resolution of which would entail another review of the evidence on record.

---

[12] *Id.* at 27.

[13] *Id.*

[14] *Id.* at 28.

[15] *Id.* at 29.

[16] *Id.* at 9.

We have consistently ruled that in petitions for review on *certiorari*, this Court will not re-examine the findings of fact of the appellate court[17] except (a) when the latter's findings are grounded entirely on speculations, surmises or conjectures; (b) when its inference is manifestly mistaken, absurd or impossible; (c) when there is a grave abuse of discretion; (d) when its findings of fact are conflicting; and (e) when it goes beyond the issues of the case.[18] The review which is sought in the case at bar does not fall under any of the foregoing exceptions warranting the exercise of this Court's discretionary power.

Be that as it may, the Court has no basis to deviate from the factual findings of the CA on this score because petitioner did not attach to the petition a copy of the Complaint. It would have helped petitioner's case had he attached a copy thereof to demonstrate that the issue on the infirmity of the sheriff's notice was properly pleaded. Unfortunately, petitioner failed to do so and, for said reason, the Court can only rely on the findings of the CA.

The rule is that a judgment must conform to, and be supported by, both the pleadings and the evidence, and must be in accordance with the theory of the action on which the pleadings were framed and the case was tried.[19] The reason for this was discussed in the case of *Development Bank of the Philippines v. Teston*:[20]

x x x x x x x x x

Due process considerations justify this requirement. **It is improper to enter an order which exceeds the scope of relief sought by the pleadings, absent notice which affords the opposing party an opportunity to be heard with respect to the proposed relief.** The fundamental purpose of the requirement that allegations of a complaint

---

[17] *Spouses Espiridion and Macaria Teruñez v. Intermediate Appellate Court*, 219 Phil. 379, 382 (1985).

[18] *Tiburcio Guita v. Court of Appeals*, 224 Phil. 123, 126 (1985).

[19] *Jose Clavano, Inc. v. Housing and Land Use Regulatory Board*, 428 Phil. 212, 225 (2002), citing *Ramirez v. Orientalist Company*, 38 Phil. 634, 647 (1918).

[20] G.R. No. 174966, February 14, 2008, 545 SCRA 422.

must provide the measure of recovery is to prevent surprise to the defendant.[21] (emphasis supplied)

We now go to the second issue of whether or not a levy on execution is superior to the subsequent registration of a deed of sale. The CA properly ruled that a prior registration of a lien creates a preference.

Even though the sale of the land to petitioner took place before the judgment of the trial court in favor of Swift and the issuance of the writ of execution over the property in question, failure to register it with the Register of Deeds negated any priority which he may have acquired by virtue of the earlier sale. Elementary is the rule that it is the act of registration which gives validity to transfer or liens created upon land registered under the Torrens System.[22] This is clear in Section 51 and Section 52 of Presidential Decree No. 1529, also known as the Property Registration Decree, which read:

Section 51. Conveyance and other dealings by registered owner. An owner of registered land may convey, mortgage, lease, charge or otherwise deal with the same in accordance with existing laws. He may use such forms of deeds, mortgages, leases or other voluntary instruments as are sufficient in law. But no deed, mortgage, lease, or other voluntary instrument, except a will purporting to convey or affect registered land shall take effect as a conveyance or bind the land, but shall operate only as a contract between the parties and as evidence of authority to the Register of Deeds to make registration.

The act of registration shall be the operative act to convey or affect the land insofar as third persons are concerned, and in all cases under this Decree, the registration shall be made in the office of the Register of Deeds for the province or city where the land lies. (emphasis supplied)

Section 52. Constructive notice upon registration. Every conveyance, mortgage, lease, lien, attachment, order, judgment, instrument or entry affecting registered land shall, if registered, filed or entered in the office of the Register of Deeds for the province

---

[21] *Id.* at 429.

[22] *Lavides v. Pre*, 419 Phil. 665, 671 (2001).

or city where the land to which it relates lies, be constructive notice to all persons from the time of such registering, filing or entering.

Considering that the sale was not registered earlier, the right of petitioner over the land became subordinate and subject to the preference created over the earlier annotated levy in favor of Swift. The levy of execution registered and annotated on September 1, 1998 takes precedence over the sale of the land to petitioner on February 16, 1997, despite the subsequent registration on September 14, 1998 of the prior sale. Such preference in favor of the levy on execution retroacts to the date of levy for to hold otherwise will render the preference nugatory and meaningless.[23] In *Valdevieso v. Damalerio*,[24] We held that:

The settled rule is that levy on attachment, duly registered, takes preference over a prior unregistered sale. This result is a necessary consequence of the fact that the property involved was duly covered by the Torrens system which works under the fundamental principle that registration is the operative act which gives validity to the transfer or creates a lien upon the land.

The preference created by the levy on attachment is not diminished even by the subsequent registration of the prior sale. This is so because an attachment is a proceeding *in rem*. It is against the particular property, enforceable against the whole world. The attaching creditor acquires a specific lien on the attached property which nothing can subsequently destroy except the very dissolution of the attachment or levy itself. Such a proceeding, in effect, means that the property attached is an indebted thing and a virtual condemnation of it to pay the owner's debt. The lien continues until

---

[23] *Defensor v. Brillo*, 98 Phil. 427 (1956).

[24] 494 Phil. 51 (2005), citing *Luz Du v. Stronghold Insurance Co., Inc.*, G.R. No. 156580, June 14, 2004, 432 SCRA 43; *Lavides v. Pre*, 419 Phil. 665 (2001); *Caviles, Jr. v. Bautista*, G.R. No. 102648, November 24, 1999, 319 SCRA 24; *First Integrated Bonding & Insurance Co., Inc. v. Court of Appeals*, G.R. No. 119577, August 28, 1996, 261 SCRA 203; *Calalang v. Register of Deeds of Quezon* City, G.R. Nos. 76265 and 83280, March 11, 1994, 231 SCRA 88; *Tay Chun Suy v. Court of Appeals*, G.R. Nos. 91004-05, August 20, 1992, 212 SCRA 713; *BF Homes v. Court of Appeals*, G.R. Nos. 76879 and 77143, October 3, 1990, 190 SCRA 262; *Capistrano v. PNB*, 101 Phil. 1117 (1957); *Defensor v. Brillo*, 98 Phil. 427 (1956); *Villasor v. Camon*, 89 Phil. 404 (1951); *Gomez v. Levy Hermanos*, 67 Phil. 134 (1939).

the debt is paid, or sale is had under execution issued on the judgment, or until the judgment is satisfied, or the attachment discharged or vacated in some manner provided by law. (emphases supplied)

WHEREFORE, the October 13, 2005 Decision and the April 6, 2006 Resolution of the Court of Appeals in CA-G.R. CV No. 82703 are *AFFIRMED*.

SO ORDERED.

Carpio (Chairperson), Nachura, Peralta, and Abad.

SECOND DIVISION

[G.R. No. 172589. August 9, 2010]

JEFFREY NACAGUE, *petitioner, vs.* **SULPICIO LINES, INC.,** *respondent.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; TERMINATION OF EMPLOYMENT; VALID DISMISSAL FROM EMPLOYMENT; REQUISITES. — Under Article 279 of the Labor Code, an employer may terminate the services of an employee for just causes or for authorized causes. Furthermore, under Article 277(b) of the Labor Code, the employer must send the employee who is about to be terminated, a written notice stating the causes for termination and must give the employee the opportunity to be heard and to defend himself. Thus, to constitute valid dismissal from employment, two requisites must concur: (1) the dismissal must be for a just or authorized cause; and (2) the employee must be afforded an opportunity to be heard and to defend himself.

2. CRIMINAL LAW; REPUBLIC ACT NO. 9165 (THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002); AUTHORIZED DRUG TESTING; DRUG TESTS SHALL

BE PERFORMED ONLY BY AUTHORIZED DRUG TESTING CENTERS AND THE DRUG TESTING SHALL CONSIST OF BOTH THE SCREENING TEST AND THE CONFIRMATORY TEST. — Section 36 of R.A. No. 9165 provides that drug tests shall be performed only by authorized drug testing centers. Moreover, Section 36 also prescribes that drug testing shall consist of both the screening test and the confirmatory test. Section 36 of R.A. No. 9165 reads: "SEC. 36. *Authorized Drug Testing*. Authorized drug testing shall be done by any government forensic laboratories or **by any of the drug testing laboratories accredited and monitored by the DOH to safeguard the quality of test results**."

3. LABOR AND SOCIAL LEGISLATION; LABOR CODE; DEPARTMENT OF LABOR AND EMPLOYMENT; DEPARTMENT ORDER NO. 53-03; DRUG TESTING PROGRAM FOR OFFICERS AND EMPLOYEES; ONLY DRUG TESTING CENTERS ACCREDITED BY THE DEPARTMENT OF HEALTH SHALL BE UTILIZED AND TWO TESTING METHODS SHALL BE EMPLOYED. — Department Order No. 53-03 further provides: "Drug Testing Program for Officers and Employees iii. Drug testing shall conform with the procedures as prescribed by the Department of Health (DOH) (www.doh.gov.ph). **Only drug testing centers accredited by the DOH shall be utilized**. A list of accredited centers may be accessed through the OSHC website (www.oshc.dole.gov.ph). iv. **Drug testing shall consist of both the screening test and the confirmatory test; the latter to be carried out should the screening test turn positive**. The employee concerned must be informed of the test results whether positive or negative." In *Social Justice Society v. Dangerous Drugs Board*, we explained: "As to the mechanics of the test, the law specifies that the procedure shall employ two testing methods, *i.e.*, the screening test and the confirmatory test, doubtless to ensure as much as possible the trustworthiness of the results. But the more important consideration lies in the fact that the tests shall be conducted by trained professionals in access-controlled laboratories monitored by the Department of Health (DOH) to safeguard against results tampering and to ensure an accurate chain of custody."

4. ID.; LABOR RELATIONS; TERMINATION OF EMPLOYMENT; ILLEGAL DISMISSAL; PRESENT WHEN THE ALLEGED VALID CAUSE FOR THE TERMINATION OF EMPLOYMENT

IS NOT CLEARLY PROVEN; CASE AT BAR. — The law is clear that drug tests shall be performed only by authorized drug testing centers. In this case, Sulpicio Lines failed to prove that S.M. Lazo Clinic is an accredited drug testing center. Sulpicio Lines did not even deny Nacague's allegation that S.M. Lazo Clinic was not accredited. Also, only a screening test was conducted to determine if Nacague was guilty of using illegal drugs. Sulpicio Lines did not confirm the positive result of the screening test with a confirmatory test. Sulpicio Lines failed to indubitably prove that Nacague was guilty of using illegal drugs amounting to serious misconduct and loss of trust and confidence. Sulpicio Lines failed to clearly show that it had a valid and legal cause for terminating Nacague's employment. When the alleged valid cause for the termination of employment is not clearly proven, as in this case, the law considers the matter a case of illegal dismissal.

5. ID.; ID.; ID.; ID.; SEPARATION PAY; GRANTED IN LIEU OF REINSTATEMENT DUE TO THE STRAINED RELATIONS BETWEEN THE EMPLOYER AND THE DISMISSED EMPLOYEE; CASE AT BAR. — We agree with the Labor Arbiter that Nacague's reinstatement is no longer feasible due to strained relations between Nacague and Sulpicio Lines and that Nacague should instead be granted separation pay.

APPEARANCES OF COUNSEL

Wendellon A. Buenviaje for petitioner.
Baduel Espina and Associates for respondent.

D E C I S I O N

CARPIO, *J.*:

The Case

This is a petition for review[1] of the 23 January 2006 Decision[2] and 19 April 2006 Resolution[3] of the Court of Appeals in CA-

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

[2] *Rollo*, pp. 23-31. Penned by Associate Justice Isaias P. Dicdican, with Associate Justices Ramon M. Bato, Jr. and Apolinario D. Bruselas, Jr., concurring.

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

G.R. CEB SP No. 01065. In its 23 January 2006 Decision, the Court of Appeals dismissed the petition for *certiorari* filed by petitioner Jeffrey Nacague (Nacague) and affirmed the 21 March 2005 Decision[4] and 31 May 2005 Resolution[5] of the National Labor Relations Commission (NLRC) in NLRC Case No. V-000481-04. In its 19 April 2006 Resolution, the Court of Appeals denied Nacague's motion for reconsideration.

The Facts

On 15 June 1995, respondent Sulpicio Lines, Inc. (Sulpicio Lines) hired Nacague as "*hepe de viaje*" or the representative of Sulpicio Lines on board its vessel M/V Princess of the World (the ship).

On 25 January 2003, Sulpicio Lines received an anonymous letter reporting the use of illegal drugs on board the ship.[6] On 14 February 2003, Ceasar T. Chico, a housekeeper on the ship, submitted a report regarding the drug paraphernalia found inside the Mopalla[7] Suite Room and the threat on his life made by Nacague and Chief Mate Reynaldo Doroon after he found the drug paraphernalia.[8]

On 15 February 2003, Sulpicio Lines sent a notice of investigation to Nacague informing him of the charges against him for use of illegal drugs and threatening a co-employee.[9]

When the ship docked in the port of Manila on 18 February 2003, some crew members of the ship, together with Nacague, were subjected to a random drug test. They were taken to S.M. Lazo Medical Clinic (S.M. Lazo Clinic) and were required to submit urine samples. The result of the random drug test revealed that Nacague was positive for methamphetamine hydrochloride or *shabu*.[10]

---

[4] CA *rollo*, pp. 83-87. Penned by Commissioner Aurelio D. Menzon, with Presiding Commissioner Gerardo C. Nograles and Commissioner Oscar S. Uy, concurring.

[5] *Id.* at 94-98.

[6] *Id.* at 41.

[7] Sometimes appears as "Mapalla Room".

[8] *Rollo*, pp. 88-89.

[9] CA *rollo*, p. 46.

[10] *Rollo*, p. 90.

On 20 February 2003, Sulpicio Lines subjected Nacague to a formal investigation. Nacague denied using illegal drugs.[11]

On 23 February 2003, Nacague went to Chong Hua Hospital in Cebu City to undergo a voluntary drug test. The drug test with Chong Hua Hospital yielded a negative result.[12] Nacague submitted this test result to Sulpicio Lines.

However, on 7 March 2003, Sulpicio Lines sent a memorandum to Nacague terminating him from the service. The memorandum reads:

> After a careful consideration of your case with the evidence available, including your explanation, and with the positive drug test result, management finds you culpable of grave misconduct and loss of trust and confidence.
>
> In view thereof, the company is constrained to terminate your employment effective today, March 7, 2003.[13]

Feeling aggrieved, Nacague filed a complaint for illegal suspension, illegal dismissal and for reinstatement with backwages.

On 12 November 2003, Labor Arbiter Ernesto F. Carreon rendered a decision in favor of Nacague and declared that Sulpicio Lines illegally dismissed Nacague.[14] The dispositive portion of the Labor Arbiter's 12 November 2003 Decision reads:

> WHEREFORE, premises considered, judgment is hereby rendered ordering the respondent Sulpicio Lines, Inc. to pay complainant Jeffrey Nacague the following:
>
> | | | |
> |---|---|---|
> | 1. | Separation pay | ₱75,600.00 |
> | 2. | Backwages | ₱77,415.00 |
> | | Total | ₱153,015.00 |
>
> The other claims are dismissed for lack of merit.
>
> SO ORDERED.[15]

---

[11] CA *rollo*, p. 22.

[12] *Id.* at 23.

[13] *Id.* at 50.

[14] *Id.* at 59-63.

[15] *Id.* at 63.

According to the Labor Arbiter, the termination of employment of employees found positive for using illegal drugs should not be exercised indiscriminately and thoughtlessly. The Labor Arbiter agreed with Nacague that the drug test result from S.M. Lazo Clinic was questionable because the clinic is not accredited by the Dangerous Drugs Board and not under its supervision. The Labor Arbiter gave more weight to the drug test performed by Chong Hua Hospital because it was accredited by the Dangerous Drugs Board. The Labor Arbiter said that doubts must be resolved in favor of the employee. The Labor Arbiter also ruled that reinstatement is no longer viable due to the strained relations between Nacague and Sulpicio Lines and, thus, awarded separation pay to Nacague.

Dissatisfied with the Labor Arbiter's Decision, Sulpicio Lines appealed to the NLRC. In its 21 March 2005 Decision, the NLRC reversed the Labor Arbiter's decision and dismissed Nacague's complaint for lack of merit.

According to the NLRC, since Nacague, who was performing a task involving trust and confidence, was found positive for using illegal drugs, he was guilty of serious misconduct and loss of trust and confidence. The NLRC added that Sulpicio Lines' Code of Conduct[16] specified that the penalty for the use and illegal possession of prohibited drugs is dismissal. The NLRC also said that there is a presumption that S.M. Lazo Clinic is an accredited drug testing center and that it was incumbent upon Nacague to show otherwise.

Nacague filed a motion for reconsideration. In its 31 May 2005 Resolution, the NLRC denied Nacague's motion.

Nacague filed a petition for *certiorari* with the Court of Appeals. Nacague alleged that the NLRC gravely abused its discretion when it declared that Sulpicio Lines validly terminated his employment.

The Ruling of the Court of Appeals

According to the Court of Appeals, Sulpicio Lines complied with both the procedural and substantive requirements of the law when it terminated the employment of Nacague. The Court

[16] *Rollo*, p. 85.

of Appeals said that the positive result of the S.M. Lazo Clinic drug test was the main basis of Sulpicio Lines in terminating Nacague's employment. The Court of Appeals declared that the evidence presented by Sulpicio Lines was sufficient to justify the conclusion that Nacague committed serious misconduct and a breach of trust and confidence warranting his dismissal from employment. The Court of Appeals agreed with the NLRC that Nacague failed to prove his allegation that S.M. Lazo Clinic lacks accreditation. On the procedural requirements, the Court of Appeals found that Sulpicio Lines complied with the twin-notice requirements and conducted a formal hearing.

Nacague filed a motion for reconsideration. In its 19 April 2006 Resolution, the Court of Appeals denied the motion.

Hence, this petition.

The Issue

Nacague raises the sole issue of whether the Court of Appeals erred in ruling that his termination from employment was valid.

The Ruling of the Court

The petition is meritorious.

Nacague maintains that the S.M. Lazo Clinic drug test was not credible because Sulpicio Lines failed to show that S.M. Lazo Clinic is an authorized drug testing center. Nacague also alleges that the urine samples were gathered carelessly without proper labels to identify their owners and that S.M. Lazo Clinic did not ask Nacague if he was taking any medication that might alter the results of the drug test.[17] Nacague adds that Republic Act No. 9165[18] (R.A. No. 9165) and the Department of Labor and

---

[17] Nacague was under medication for high blood pressure, a spot on the lungs and heart enlargement.

[18] Entitled "An Act Instituting The Comprehensive Dangerous Drugs Act of 2002, Repealing Republic Act No. 6425, Otherwise Known as the Dangerous Drugs Act of 1972, as Amended, Providing Funds Therefor, and for Other Purposes." Also known as the "Comprehensive Dangerous Drugs Act of 2002." Effective 7 June 2002.

Employment Order No. 53-03[19] (Department Order No. 53-03) require two drug tests — a screening test and a confirmatory test. Nacague maintains that, since only a screening test was conducted, he was illegally dismissed based on an incomplete drug test. Nacague argues that Sulpicio Lines failed to discharge its burden of proving that the termination of his employment was legal.

On the other hand, Sulpicio Lines questions the belated attempt of Nacague to question the credibility of S.M. Lazo Clinic. Sulpicio Lines also argues that since Nacague knew that the residue of the drug would no longer be detectable in his body after five days, Nacague underwent another drug test with the Chong Hua Hospital. Sulpicio Lines insists that the most accurate drug test is the random drug test conducted by S.M. Lazo Clinic and that the test with Chong Hua Hospital was a "planned" test.

Under Article 279[20] of the Labor Code, an employer may terminate the services of an employee for just causes[21] or for

---

[19] Entitled "Guidelines for the Implementation of a Drug Free Workplace Policies and Programs for the Private Sector."

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

[21] ART. 282. *Termination by employer*. — An employer may terminate an employment for any of the following causes:

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

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

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

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

e. Other causes analogous to the foregoing.

authorized causes.[22] Furthermore, under Article 277(b)[23] of the Labor Code, the employer must send the employee who is about to be terminated, a written notice stating the causes for termination and must give the employee the opportunity to be heard and to defend himself. Thus, to constitute valid dismissal from employment, two requisites must concur: (1) the dismissal must be for a just or authorized cause; and (2) the employee must be afforded an opportunity to be heard and to defend himself.[24]

Contrary to Sulpicio Lines' allegation, Nacague was already questioning the credibility of S.M. Lazo Clinic as early as the proceedings before the Labor Arbiter. In fact, the Labor Arbiter declared that the S.M. Lazo Clinic drug test result was doubtful since it is not under the supervision of the Dangerous Drugs Board.[25]

---

[22] ART. 283. *Closure of establishment and reduction of personnel.* — The employer may also terminate the employment of any employee due to the installation of labor saving devices, redundancy, retrenchment to prevent losses or the closing or cessation of operation of the establishment or undertaking unless the closing is for the purpose of circumventing the provisions of this Title x x x.

[23] ART. 277. Miscellaneous provisions. — x x x

(b) Subject to the constitutional right of workers to security of tenure and their right to be protected against dismissal except for a just and authorized cause and without prejudice to the requirement of notice under Article 283 of this Code, the employer shall furnish the worker whose employment is sought to be terminated a written notice containing a statement of the causes for termination and shall afford the latter ample opportunity to be heard and to defend himself with the assistance of his representative if he so desires in accordance with company rules and regulations promulgated pursuant to guidelines set by the Department of Labor and Employment. Any decision taken by the employer shall be without prejudice to the right of the worker to contest the validity or legality of his dismissal by filing a complaint with the regional branch of the National Labor Relations Commission. The burden of proving that the termination was for a valid or authorized cause shall rest on the employer. x x x

[24] *Century Canning Corporation v. Court of Appeals*, G.R. No. 152894, 17 August 2007, 530 SCRA 501.

[25] CA *rollo*, p. 61.

The NLRC and the Court of Appeals ruled that Sulpicio Lines validly terminated Nacague's employment because he was found guilty of using illegal drugs which constitutes serious misconduct and loss of trust and confidence. However, we find that Sulpicio Lines failed to clearly show that Nacague was guilty of using illegal drugs. We agree with the Labor Arbiter that the lack of accreditation of S.M. Lazo Clinic made its drug test results doubtful.

Section 36 of R.A. No. 9165 provides that drug tests shall be performed only by authorized drug testing centers. Moreover, Section 36 also prescribes that drug testing shall consist of both the screening test and the confirmatory test. Section 36 of R.A. No. 9165 reads:

> SEC. 36. *Authorized Drug Testing*. Authorized drug testing shall be done by any government forensic laboratories or **by any of the drug testing laboratories accredited and monitored by the DOH to safeguard the quality of test results**. The DOH shall take steps in setting the price of the drug test with DOH accredited drug testing centers to further reduce the cost of such drug test. The drug testing shall employ, among others, two (2) testing methods, the screening test which will determine the positive result as well as the type of drug used and the confirmatory test which will confirm a positive screening test. x x x (Emphasis supplied)

Department Order No. 53-03 further provides:

> Drug Testing Program for Officers and Employees
>
> iii. Drug testing shall conform with the procedures as prescribed by the Department of Health (DOH) (www.doh.gov.ph). **Only drug testing centers accredited by the DOH shall be utilized**. A list of accredited centers may be accessed through the OSHC website (www.oshc.dole.gov.ph).
>
> iv. **Drug testing shall consist of both the screening test and the confirmatory test; the latter to be carried out should the screening test turn positive**. The employee concerned must be informed of the test results whether positive or negative. (Emphasis supplied)

In *Social Justice Society v. Dangerous Drugs Board*,[26] we explained:

> As to the mechanics of the test, the law specifies that the procedure shall employ two testing methods, *i.e.*, the screening test and the confirmatory test, doubtless to ensure as much as possible the trustworthiness of the results. But the more important consideration lies in the fact that the tests shall be conducted by trained professionals in access-controlled laboratories monitored by the Department of Health (DOH) to safeguard against results tampering and to ensure an accurate chain of custody.[27]

The law is clear that drug tests shall be performed only by authorized drug testing centers. In this case, Sulpicio Lines failed to prove that S.M. Lazo Clinic is an accredited drug testing center. Sulpicio Lines did not even deny Nacague's allegation that S.M. Lazo Clinic was not accredited. Also, only a screening test was conducted to determine if Nacague was guilty of using illegal drugs. Sulpicio Lines did not confirm the positive result of the screening test with a confirmatory test. Sulpicio Lines failed to indubitably prove that Nacague was guilty of using illegal drugs amounting to serious misconduct and loss of trust and confidence. Sulpicio Lines failed to clearly show that it had a valid and legal cause for terminating Nacague's employment. When the alleged valid cause for the termination of employment is not clearly proven, as in this case, the law considers the matter a case of illegal dismissal.[28]

We agree with the Labor Arbiter that Nacague's reinstatement is no longer feasible due to strained relations between Nacague and Sulpicio Lines and that Nacague should instead be granted separation pay.

---

[26] G.R. No. 157870, 3 November 2008, 570 SCRA 410.

[27] *Id.* at 433-434.

[28] *Plantation Bay Resort and Spa v. Dubrico*, G.R. No. 182216, 4 December 2009, 607 SCRA 726; *Century Canning Corporation v. Court of Appeals, supra* note 24; *Mayon Hotel and Restaurant v. Adana*, 497 Phil. 892 (2005).

WHEREFORE, we *GRANT* the petition. We *SET ASIDE* the 23 January 2006 Decision and the 19 April 2006 Resolution of the Court of Appeals in CA-G.R. CEB SP No. 01065. We *REINSTATE* the 12 November 2003 Decision of the Labor Arbiter.

SO ORDERED.

Nachura, Peralta, Abad, and *Mendoza, JJ.,* concur.

SECOND DIVISION

[G.R. No. 173900. August 9, 2010]

GAUDENCIO LABRADOR, represented by LULU LABRADOR USON, as Attorney-in-Fact, *petitioner, vs.* **SPS. ILDEFONSO PERLAS and PACENCIA PERLAS and SPS. ROGELIO POBRE and MELINDA FOGATA POBRE,** *respondents.*

SYLLABUS

1. CIVIL LAW; LAND REGISTRATION; TORRENS SYSTEM OF REGISTRATION; CERTIFICATE OF TITLE; SERVES AS EVIDENCE OF AN INDEFEASIBLE AND INCONTROVERTIBLE TITLE TO A PROPERTY IN FAVOR OF THE PERSON WHOSE NAME APPEARS THEREIN. — [P]etitioner has a valid claim over the property covered by OCT No. P-3030 issued in his name. OCT No. P-3030 was declared valid by the trial court, and respondents do not question the title's validity. Also, under the Torrens System of registration, an OCT becomes indefeasible and incontrovertible one year after its final decree. It is a fundamental principle in land registration that the certificate of title serves as evidence of an indefeasible and incontrovertible title to a property in favor of the person whose name appears therein.

2. ID.; PROPERTY, OWNERSHIP AND ITS MODIFICATIONS; OWNERSHIP; TESTIMONIES OF WITNESSES ON A PERSON'S OCCUPATION OF A LAND DO NOT PROVE OWNERSHIP OR ADVERSE POSSESSION IN THE LIGHT OF THE REGISTERED OWNER'S CLAIM THAT THE OCCUPATION IS MERELY BY TOLERANCE; CASE AT BAR. — [C]ontrary to the ruling of the trial court, the testimonies of petitioner's witnesses, Lulu Uson and Engineer Sobrevinas, to the effect that Spouses Perlas were occupying the subject land since 1957, do not prove ownership or adverse possession by the spouses, especially in the light of petitioner's claim that occupation of the subject land by Spouses Perlas was merely tolerated by petitioner and his predecessor-in-interest, Melecio Labrador. The trial court also failed to consider the portion of Engineer Sobrevinas' testimony stating that the subject land was "segregated" since it was "originally planned to be donated to [Spouses] Perlas." If petitioner recognized the adverse possession and ownership of the subject land by Spouses Perlas, why would petitioner plan to donate the same to the latter?

3. ID.; LAND REGISTRATION; TORRENS SYSTEM OF REGISTRATION; THE RIGHT OF A REGISTERED OWNER TO EJECT ANY PERSON ILLEGALLY OCCUPYING HIS PROPERTY IS IMPRESCRIPTIBLE AND CAN NEVER BE BARRED BY LACHES. — Petitioner has a valid title over his property (*i.e.*, the land covered by OCT P-3030). As a registered owner, petitioner has a right to eject any person illegally occupying his property. This right is imprescriptible and can never be barred by laches. In *Bishop v. Court of Appeals*, we held, thus: "As registered owners of the lots in question, the private respondents have a right to eject any person illegally occupying their property. This right is imprescriptible. Even if it be supposed that they were aware of the petitioners' occupation of the property, and regardless of the length of that possession, the lawful owners have a right to demand the return of their property at any time as long as the possession was unauthorized or merely tolerated, if at all. This right is never barred by laches."

4. REMEDIAL LAW; ACTIONS; JUDGMENTS; PRINCIPLES OF SOCIAL JUSTICE AND EQUITY; CANNOT BE USED TO JUSTIFY THE COURT'S GRANT OF PROPERTY

TO ONE AT THE EXPENSE OF ANOTHER WHO MAY HAVE A BETTER RIGHT THERETO UNDER THE LAW. — [T]he trial court cannot hold "social justice and equity" as bases for granting the subject land to respondents Spouses Perlas. Social justice and equity cannot be used to justify the court's grant of property to one at the expense of another who may have a better right thereto under the law. These principles are not intended to favor the underprivileged while purposely denying another of his rights under the law. In the words of Justice Perfecto, "The magic words social justice' are not a shibboleth which courts may readily avail of as a shield for shirking their responsibility in the application of law."

5. ID.; ID.; REMAND OF CASE; PROPER IN CASE AT BAR AS IT IS NOT THE FUNCTION OF THE SUPREME COURT TO TRY FACTS, OR TO REVIEW, EXAMINE, EVALUATE AND WEIGH THE PROBATIVE VALUE OF THE EVIDENCE PRESENTED. — Spouses Perlas alleged that the subject land covered by Tax Declaration No. 001-1390, which they claim to have occupied since 1957, is **separate and distinct** from the land covered by OCT No. P-3030 issued in the name of petitioner. Unfortunately, the trial court neglected to determine whether there is truth to this allegation. Such determination is crucial in this case since if the subject land covered by Tax Declaration No. 001-1390 is separate and distinct from petitioner's land covered by OCT No. P-3030, then petitioner may have no basis for his claim on the subject land. The trial court merely ordered in the dispositive portion of its Decision: "That in the event the lot covered by Tax Declaration No. 001-1390 is within Original Certificate of Title No. P-3030, ordering the plaintiff to reconvey said portion to the defendants." x x x We are not convinced that the x x x evidences are sufficient to prove that the subject property claimed and sold by Spouses Perlas is separate and distinct from the land covered by OCT No. P-3030 issued in the name of petitioner. In view of the foregoing, and considering that it is not a function of this Court to try facts, or to review, examine, evaluate and weigh the probative value of the evidence presented, we deem it necessary to remand this case to the trial court for further proceedings to determine whether the subject land occupied by Spouses Perlas since 1957 and covered by Tax Declaration No. 001-1390 is included in the land covered by OCT No. P-3030 issued in the name of petitioner.

APPEARANCES OF COUNSEL

Nicolas Eliazo, Jr. for petitioner.
Public Attorney's Office for respondents.

D E C I S I O N

CARPIO, *J.*:

The Case

This is a petition for review[1] of the Court of Appeals' Decision[2] dated 22 November 2005 and Resolution dated 26 July 2006 in CA-G.R. CV No. 64537. The Court of Appeals affirmed the Decision[3] dated 23 June 1998 of the Regional Trial Court of Iba, Zambales, Branch 70 (RTC).

The Facts

Petitioner and respondents presented two different versions of the facts of this case.

Petitioner Gaudencio Labrador, represented by Lulu Labrador Uson as attorney-in-fact, alleges that he is the registered owner of a parcel of land situated in Bangan-Alalang, Barrio Amungan, Iba, Zambales, consisting of 53,358 square meters, and covered by Original Certificate of Title (OCT) No. P-3030 issued on 16 January 1973. Sometime between 1957 and 1958, Melecio Labrador (Melecio), petitioner's father and predecessor-in-interest, was requested by respondent spouses Ildefonso Perlas and Pacencia Perlas (Spouses Perlas) to be allowed to live temporarily in a portion of the said parcel of land. Ildefonso Perlas was a relative of Casiana Aquino, the wife of Melecio. Melecio acceded to the request, on the condition that Spouses

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

[2] Penned by Associate Justice Aurora Santiago-Lagman, with Associate Justices Ruben T. Reyes (a retired member of the Supreme Court) and Rebecca De Guia-Salvador, concurring.

[3] Penned by RTC Judge Felix Mamenta, Jr.

Perlas would vacate the occupied portion of land upon demand by Melecio or by any of his heirs or representatives. Later, Spouses Perlas requested Melecio to allow them to occupy another portion of the land to be used as vegetable plantation. Again, Melecio acceded to their request.

In 1979, without the knowledge and consent of petitioner, Spouses Perlas sold the portions of land they were occupying to respondent spouses Rogelio Pobre and Melinda Fogata Pobre (Spouses Pobre). Upon knowledge of the sale sometime in 1992, petitioner instructed his representative to demand that Spouses Perlas vacate the occupied portions of land, but the latter refused to do so.

On 20 October 1994, petitioner filed with the RTC of Iba, Zambales, a Petition for Annulment of Deed of Absolute Sale, Recovery of Possession and/or Ownership, with Application for Issuance of Preliminary Mandatory Injunction and Temporary Restraining Order and Damages, docketed as Civil Case No. RTC-1081-I.

Respondents, on the other hand, allege that since 1957, Ildefonso Perlas and his family had been living in a parcel of land situated in Sitio Bolintabog, Barangay Amungan, Iba, Zambales. Ildefonso improved and developed said land without the intervention of Melecio Labrador whose land is separate and distinct from that occupied by Ildefonso and his family. The subject land occupied by Ildefonso and his family was declared as alienable and disposable public land in a Certification dated 20 January 1983 issued by the Provincial Officer of the Bureau of Lands in Iba, Zambales. Respondents now claim that Spouses Perlas are the absolute owners of the subject land measuring 2,903.6 square meters and covered by Tax Declaration No. 001-1390 issued in 1994.

The Trial Court's Ruling

On 23 June 1998, the RTC rendered a Decision, the dispositive portion of which reads:

WHEREFORE, judgment is hereby rendered :

1. Declaring Spouses Ildefonso Perlas and Pacencia Perlas to be the lawful owners of lot covered by Tax Declaration No. 001-1390;

2. Declaring Spouses Rogelio Pobre and Melinda Fogata Pobre the lawful owners of lot covered by Exhibit F (Deed of Absolute Sale executed by defendant Ildefonso Perlas in favor of defendant Spouses Pobre on 6 March 1979);

3. That in the event the lot covered by Tax Declaration No. 001-1390 is within Original Certificate of Title No. P-3030, ordering the plaintiff to reconvey said portion to the defendants.

4. No pronouncement as to damages and costs.

SO ORDERED.[4]

Petitioner filed a Motion for Reconsideration, but this was denied by the RTC in its Order dated 28 June 1999.

The Court of Appeals' Ruling

On appeal, the Court of Appeals rendered judgment,[5] affirming the decision of the RTC, thus:

WHEREFORE, the instant appeal is **DENIED** for lack of merit and the assailed decision dated June 23, 1998 of the Regional Trial Court of Iba, Zambales, Branch 70, is **AFFIRMED**.

SO ORDERED.[6]

Petitioner's Motion for Reconsideration was denied by the Court of Appeals in its Resolution dated 26 July 2006.[7]

Hence, this appeal.

The Issue

The issue for resolution is whether the Court of Appeals erred in affirming the RTC Decision.

---

[4] *Rollo*, p. 85.

[5] Promulgated on 22 November 2005.

[6] *Rollo*, p. 44.

[7] *Id.* at 59.

The Court's Ruling

We find the appeal meritorious.

In its Decision dated 23 June 1998,[8] the trial court recognized the validity of the issuance of OCT No. P-3030 dated 16 January 1973 in the name of petitioner. We quote the pronouncement of the trial court:

> There is no doubt that the land owned by plaintiff is titled in his name and this consists of 53,358 square meters. This cannot be just ignored and the Court believes that when the Registry of Deed (sic) issued Original Certificate of Title No. P-3030, all the requirements of the law were followed. Section 3 of Rule 131 of the Rules of Court provides:
>
> "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;
>
> x x x x x x x x x
>
> (ff) that the law had been obeyed."[9]

Nonetheless, the trial court ruled that the lot occupied by respondents Ildefonso and Pacencia Perlas, which petitioner claimed to be covered by OCT No. P-3030, was lawfully owned by said respondents and hence, validly sold to their co-respondents Rogelio Pobre and Melinda Fogata Pobre. The trial court ratiocinated that the testimony of petitioner's representative and attorney-in-fact, Lulu Uson, stating that Spouses Perlas had been residing on the subject land since Uson was eight years old, or sometime in 1957, corroborated by the testimony of petitioner's witness, Engineer Regino L. Sobrevinas that the subject land was already occupied and possessed by Spouses Perlas "even before he [Sobrevinas] surveyed it since these are planned to be donated to the defendants [Spouses Perlas]," showed that petitioner "recognized the possession and the ownership"

---

[8] *Id.* at 77-85.

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

by Spouses Perlas of the subject land. The trial court ruled further that petitioner's inaction and delay in asserting his rights over the subject land constituted laches which barred him from recovering said land. Meanwhile, Spouses Perlas were in possession of the subject land, introduced valuable and permanent improvements thereon, and were issued a tax declaration and several certifications by government surveyors. These, according to the trial court, proved Spouses Perlas' possession and occupation of the subject land in the concept of an owner. Finally, the trial court ruled that "the area of 2,903.6 square meters being occupied by the defendants [Spouses Perlas] is a very meager portion of the 53,358 square meters covered by Original Certificate of Title No. P-3030. Social justice and equity will be well served if this meager portion be awarded to the defendants."[10]

We do not agree.

First, petitioner has a valid claim over the property covered by OCT No. P-3030 issued in his name. OCT No. P-3030 was declared valid by the trial court, and respondents do not question the title's validity.[11] Also, under the Torrens System of registration, an OCT becomes indefeasible and incontrovertible one year after its final decree. It is a fundamental principle in land registration that the certificate of title serves as evidence of an indefeasible and incontrovertible title to a property in favor of the person whose name appears therein.[12]

Second, contrary to the ruling of the trial court, the testimonies of petitioner's witnesses, Lulu Uson and Engineer Sobrevinas, to the effect that Spouses Perlas were occupying the subject land since 1957, do not prove ownership or adverse possession by the spouses, especially in the light of petitioner's claim that occupation of the subject land by Spouses Perlas was merely tolerated by petitioner and his predecessor-in-interest, Melecio

---

[10] *Id.* at 84.

[11] See Comment and Memorandum of the Respondents, *id.* at 91-99 and 132-142, respectively.

[12] *Heirs of Brusas v. Court of Appeals*, 372 Phil. 47, 55 (1999).

Labrador. The trial court also failed to consider the portion of Engineer Sobrevinas' testimony stating that the subject land was "segregated" since it was "originally planned to be donated to [Spouses] Perlas." If petitioner recognized the adverse possession and ownership of the subject land by Spouses Perlas, why would petitioner plan to donate the same to the latter?

Third, the trial court's ruling that petitioner had a long and unexplained inaction in asserting his claim over the subject property, and hence, is barred by laches from recovering his property, is without basis. Petitioner has a valid title over his property (*i.e.*, the land covered by OCT P-3030). As a registered owner, petitioner has a right to eject any person illegally occupying his property. This right is imprescriptible and can never be barred by laches. In *Bishop v. Court of Appeals*,[13] we held, thus:

> As registered owners of the lots in question, the private respondents have a right to eject any person illegally occupying their property. This right is imprescriptible. Even if it be supposed that they were aware of the petitioners' occupation of the property, and regardless of the length of that possession, the lawful owners have a right to demand the return of their property at any time as long as the possession was unauthorized or merely tolerated, if at all. This right is never barred by laches.[14]

Finally, the trial court cannot hold "social justice and equity" as bases for granting the subject land to respondents Spouses Perlas. Social justice and equity cannot be used to justify the court's grant of property to one at the expense of another who may have a better right thereto under the law. These principles are not intended to favor the underprivileged while purposely denying another of his rights under the law. In the words of Justice Perfecto, "The magic words social justice' are not a shibboleth which courts may readily avail of as a shield for shirking their responsibility in the application of law."[15]

---

[13] G.R. No. 86787, 8 May 1992, 208 SCRA 636.

[14] *Id.* at 641.

[15] *Philippine Sugar Estates Development Co., Inc. v. Prudencio*, 76 Phil. 111, 113 (1946).

We note, however, that Spouses Perlas alleged that the subject land covered by Tax Declaration No. 001-1390, which they claim to have occupied since 1957, is **separate and distinct** from the land covered by OCT No. P-3030 issued in the name of petitioner.[16] Unfortunately, the trial court neglected to determine whether there is truth to this allegation. Such determination is crucial in this case since if the subject land covered by Tax Declaration No. 001-1390 is separate and distinct from petitioner's land covered by OCT No. P-3030, then petitioner may have no basis for his claim on the subject land. The trial court merely ordered in the dispositive portion of its Decision: "That in the event the lot covered by Tax Declaration No. 001-1390 is within Original Certificate of Title No. P-3030, ordering the plaintiff to reconvey said portion to the defendants."[17]

On appeal by petitioner, the Court of Appeals held:

The records reveal the following undisputed facts:

a) that defendants-appellees Spouses Perlas have been in actual possession of the subject property since 1957;

b) that OCT No. P-3030 in the name of the plaintiff-appellant covering an agricultural land with an area of 53,358 square meters located at Bangan-Alalang, Amungan, Iba, Zambales was issued on January 18, 1973 by virtue of Free Patent No. 528213;

c) that a Certification dated January 12, 1983 was signed and issued by district Forester Jose Acain, Bureau of Forest Development, stating that the subject parcel of land was alienable and disposable; and

d) that a Certification dated January 20, 1983 signed by Teofilo T. Murcia, Officer-in-Charge, Sub-Office No. III-4 (1), Bureau of Lands and Ambrocio D. Pangilinan, Jr., Land Investigator of the same office, was issued stating that the subject parcel of land being claimed by Ildefonso Perlas is within the alienable and disposable area.

---

[16] Comment and Memorandum of the Respondents, *rollo*, pp. 92 and 134, respectively.

[17] RTC Decision dated 23 June 1998, p. 9; *id.* at 85.

The foregoing facts clearly show that the subject property being occupied by defendants-appellees was previously part of the public land declared as alienable and disposable, and they have been in possession of the same long before the issuance of OCT No. P-3030 in the name of the plaintiff-appellant. **These bolster defendants-appellees' assertion that the said property is separate and distinct from that of the plaintiff-appellant registered under the said title**.[18] (Emphasis supplied)

We are not convinced that the above-enumerated evidences are sufficient to prove that the subject property claimed and sold by Spouses Perlas is separate and distinct from the land covered by OCT No. P-3030 issued in the name of petitioner.

In view of the foregoing, and considering that it is not a function of this Court to try facts, or to review, examine, evaluate and weigh the probative value of the evidence presented,[19] we deem it necessary to remand this case to the trial court for further proceedings to determine whether the subject land occupied by Spouses Perlas since 1957 and covered by Tax Declaration No. 001-1390 is included in the land covered by OCT No. P-3030 issued in the name of petitioner.

WHEREFORE, we *GRANT* the petition. We *SET ASIDE* the Court of Appeals' Decision dated 22 November 2005 and Resolution dated 26 July 2006 in CA-G.R. CV. No. 64537. We *REMAND* this case to the Regional Trial Court of Iba, Zambales, Branch 70, for further proceedings to determine whether the land covered by Tax Declaration No. 001-1390 issued in the name of respondent Ildefonso Perlas is included in the land covered by OCT No. P-3030 issued in the name of petitioner Gaudencio Labrador.

SO ORDERED.

Nachura, Peralta, Abad, and *Mendoza, JJ.,* concur.

---

[18] *Rollo,* pp. 41-42.

[19] *Buenaventura v. Pascual,* G.R. No. 168819, 27 November 2008, 572 SCRA 143, 157.

FIRST DIVISION

[G.R. No. 175315. August 9, 2010]

THE PEOPLE OF THE PHILIPPINES, *appellee, vs.* **ELIZER BEDUYA and RIC BEDUYA,** *appellants.*

SYLLABUS

1. CRIMINAL LAW; QUALIFYING CIRCUMSTANCES; ABUSE OF SUPERIOR STRENGTH; MEANS TO PURPOSELY USE EXCESSIVE FORCE OUT OF PROPORTION TO THE MEANS OF DEFENSE AVAILABLE TO THE PERSON ATTACKED. — "Abuse of superior strength is present whenever there is a notorious inequality of forces between the victim and the aggressor, assuming a situation of superiority of strength notoriously advantageous for the aggressor selected or taken advantage of by him in the commission of the crime." "The fact that there were two persons who attacked the victim does not per se establish that the crime was committed with abuse of superior strength, there being no proof of the relative strength of the aggressors and the victim." The evidence must establish that the assailants purposely sought the advantage, or that they had the deliberate intent to use this advantage. "To take advantage of superior strength means to purposely use excessive force out of proportion to the means of defense available to the person attacked." The appreciation of this aggravating circumstance depends on the age, size, and strength of the parties.

2. ID.; ID.; ID.; MERE SUPERIORITY IN NUMBER IS NOT INDICATIVE OF THE PRESENCE THEREOF. — The prosecution in this case failed to adduce evidence of a relative disparity in age, size and strength, or force, except for the showing that two assailants, one of them (Elizer) armed with a knife, assaulted the victim. The presence of two assailants, one of them armed with a knife, does not *ipso facto* indicate an abuse of superior strength. Mere superiority in numbers is not indicative of the presence of this circumstance. Neither did the prosecution present proof to show that the victim suffered from an inferior physical condition from which the circumstance can be inferred. In fact, there is evidence that the victim was

able to get hold of a piece of wood and deliver retaliatory blows against the knife-wielder, Elizer.

3. ID.; ID.; ID.; NOT PRESENT IN CASE AT BAR. — The events leading to the stabbing further disprove any finding of deliberate intent on the part of the assailants to abuse their superior strength over that of the victim. The testimonies of the prosecution's witnesses, on the whole, show that the incident between the victim and his assailants was unplanned and unpremeditated. The assailants were in pursuit of Bughao when the victim advised them to go home since it was already late at night. There was indeed no conscious attempt on the part of the assailants to use or take advantage of any superior strength that they then enjoyed. Particularly, it has not been clearly established that the appellants, with an advantage in number, purposely resorted to punching the victim and delivering a fatal stab wound. Neither has it been shown that the victim was simply overwhelmed by the fist blows delivered by Ric and Elizer's act of stabbing him. The evidence on this matter is too insufficient for a definitive conclusion. What has been shown with certainty and clarity is the appellants' intent to kill, as shown by the stab wound in the left side of the victim's body which resulted in his death two days later. As the knife wielder, Elizer is guilty of assaulting and killing the victim. In view of the foregoing, we are compelled to rule out the presence of abuse of superior strength as a qualifying circumstance. Hence, appellants' guilt must be limited to the crime of homicide.

4. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; FINDINGS THEREON BY THE TRIAL COURT WILL NOT BE DISTURBED BY APPELLATE COURTS. — It has been "consistently held that appellate courts, as a rule, will not disturb the findings of the trial court on the credibility of witnesses. We have sustained trial courts in this respect, considering their vantage point in their evaluation of testimonial evidence, absent x x x any showing of serious error or irregularity that otherwise would alter the result of the case."

5. ID.; ID.; ID.; NOT ADVERSELY AFFECTED BY INCONSISTENCIES IN THE TESTIMONIES OF PROSECUTION WITNESSES INVOLVING MINOR DETAILS. — [T]he inconsistencies ascribed to the prosecution witnesses involve minor details, too trivial to adversely affect their credibility. Said inconsistencies do not depart from the

fact that these witnesses saw the fatal stabbing of the victim by Elizer. To the extent that inconsistencies were in fact shown, they appear to us "to relate to details of peripheral significance which do not negate or dissolve the positive identification [by said eyewitnesses of Elizer] as the perpetrator of the crime."

6. ID.; ID.; ID.; NOT IMPAIRED BY THE DELAY IN REPORTING THE INCIDENT TO THE POLICE AUTHORITIES. — [T]he failure of Bughao to immediately report the incident to the police authorities and to extend help to the victim cannot destroy his credibility as a witness. There is no standard of behavior when a person becomes a witness to a shocking or gruesome event. "The workings of a human mind placed under severe emotional stress are unpredictable and people react differently x x x." The determining factor to consider is that Bughao testified in candid and straightforward manner and implicated Elizer and Ric as the perpetrators of the crime.

7. ID.; ID.; WEIGHT AND SUFFICIENCY OF EVIDENCE; PROOF BEYOND REASONABLE DOUBT; THE EYEWITNESS TESTIMONIES OF THE PROSECUTION WITNESSES, THE DYING DECLARATION AND SWORN STATEMENT OF THE VICTIM ESTABLISHED THE GUILT OF THE ACCUSED BEYOND REASONABLE DOUBT IN CASE AT BAR. — Aside from the eyewitness testimonies of the prosecution witnesses, the dying declaration of the victim also established the guilt of the appellants beyond reasonable doubt. He was well aware of his imminent death and his declaration that Elizer was responsible for his stab wound was made in the belief that he would not survive his injury. The declarations by the victim certainly relate to circumstances pertaining to his impending death and he would have been competent to testify had he survived in view of the general presumption that a witness is competent to testify. The victim also executed a Sworn Statement on May 7, 2002, while in serious condition in the hospital, declaring that the appellants assaulted him and it was Elizer who delivered his fatal stab wound. His dying declaration and sworn statement, taken together with the findings and conclusions of the trial court, establish the guilt of the appellants beyond reasonable doubt.

8. CRIMINAL LAW; HOMICIDE; PENALTY. — Having established Elizer's guilt beyond reasonable doubt for the crime

of homicide, he must suffer the penalty imposed by law. The crime of homicide is punishable by *reclusion temporal*. Since there are no mitigating or aggravating circumstances, the penalty should be fixed in its medium period. Applying the Indeterminate Sentence Law, he should be sentenced to an indeterminate term, the minimum of which is within the range of the penalty next lower in degree, *i.e.*, *prision mayor*, and the maximum of which is that properly imposable under the Revised Penal Code, *i.e.*, *reclusion temporal* in its medium period. Thus, the proper and precise prison sentence that should be imposed must be within the indeterminate term of six (6) years and one (1) day to twelve (12) years of *prision mayor* as minimum to fourteen (14) years, eight (8) months and one (1) day to seventeen (17) years and four (4) months of *reclusion temporal* as maximum.

9. CIVIL LAW; DAMAGES; ACTUAL DAMAGES; CANNOT BE AWARDED IN THE ABSENCE OF COMPETENT PROOF ON THE EXACT SUM OF ACTUAL DAMAGES; CASE AT BAR. — The trial court awarded, and the appellate court affirmed, actual damages to the heirs of the victim in the amounts of ₱6,000.00 as funeral expenses and ₱9,411.85 as medical expenses incurred as a result of the incident. However, our review of the records revealed that the award was not substantiated by any evidence. There was no competent proof on the specific amounts of actual damages allegedly incurred and this omission cannot be supplied by a broad and general stipulation during trial that the victim's wife would testify on the damages brought about by the commission of the crime. In the absence of proof on the exact sum of actual damages, there was no basis for granting the same. "Credence can be given only to claims which are duly supported by receipts." The award of actual damages should consequently be deleted as there were no receipts presented evidencing the expenses allegedly incurred.

10. ID.; ID.; TEMPERATE DAMAGES; AWARDED SO THAT THE RIGHT WHICH HAS BEEN VIOLATED MAY BE RECOGNIZED OR VINDICATED, AND NOT FOR THE PURPOSE OF INDEMNIFICATION. — [A]s the heirs of the victim clearly incurred medical and funeral expenses, ₱25,000.00 by way of temperate damages should be awarded. "This award is adjudicated so that a right which has been violated

may be recognized or vindicated, and not for the purpose of indemnification."

11. ID.; ID.; INDEMNITY FOR THE DEATH OF VICTIM; AWARDED WHEN DEATH RESULTS AS A CONSEQUENCE OF THE CRIME AND WITHOUT NEED OF ANY EVIDENCE OR PROOF OF DAMAGES. — When death results as a consequence of the crime, the heirs of the deceased are entitled to the amount of ₱50,000.00 as indemnity for the death of the victim without need of any evidence or proof of damages. Accordingly, we award said sum to the heirs of the victim, Acope, Sr.

12. ID.; ID.; MORAL DAMAGES; MANDATORY IN CASES OF MURDER AND HOMICIDE WITHOUT NEED OF ALLEGATION AND PROOF OTHER THAN THE DEATH OF THE VICTIM. — "Moral damages are mandatory in cases of murder and homicide without need of allegation and proof other than the death of the victim. Consistent with this rule, we award the amount of ₱50,000.00 as moral damages in accordance with prevailing jurisprudence."

13. ID.; ID.; INDEMNITY FOR LOSS OF EARNING CAPACITY; FORMULA FOR THE COMPUTATION. — The trial court was correct in awarding indemnity for the loss of earning capacity of the victim. However, the computation for this award should be more accurate. Acope, Sr., was 46 years old on the day he died. He earned an average of ₱3,000.00 a month as a farmer and *barangay tanod*. This is equivalent to the sum of ₱36,000.00 *per annum*. Pursuant to the American Expectancy Table of Mortality, which has been adopted in this jurisdiction, the formula for the computation of loss of earning capacity is provided as follows: "Net Earning Capacity (X) = Life Expectancy x (Gross Annual Income – Living Expenses, *e.g.*, 50% of Gross Annual Income) Life expectancy is determined in accordance with the following formula: Life Expectancy = 2/3 x (80 – age of deceased) Accordingly, the unearned income of Acope, Sr., is:

$$X = \frac{2(80-46)}{3} \times (₱36{,}000.00 - ₱18{,}000.00)$$
$$= 22.667 \times ₱18{,}000.00$$
$$= ₱408{,}006.00"$$

In applying the formula and computation for net income stated above, the amount of loss of earning capacity is the exact sum of ₱408,006.00.

APPEARANCES OF COUNSEL

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

D E C I S I O N

DEL CASTILLO, *J.*:

In this appeal, we are tasked to determine whether the appellants killed the victim with abuse of superior strength for which they were convicted of murder.

Factual Antecedents

For our review is the Decision[1] of the Court of Appeals (CA) in CA-G.R. CR HC No. 00161 which affirmed with modification the Decision[2] of the Regional Trial Court (RTC), Branch 12, Oroquieta City, Misamis Occidental, finding appellants Elizer Beduya (Elizer) and Ric Beduya (Ric) guilty beyond reasonable doubt for the crime of murder. The Information against the appellants contained the following accusatory allegations:

That on or about the 6th day of May 2002, at about 12:15 o'clock midnight, more or less, in barangay Baga, Municipality of Panaon, province of Misamis Occidental and within the jurisdiction of this Honorable Court, the above named accused, conspiring, confederating and mutually helping one another, with intent to kill, with abuse and taking advantage of their superior strength, did then and there willfully, unlawfully and feloniously attack, box and then stab one DOMINADOR S. ACOPE[,] SR. with the use of a knife hitting him on the left hypochondriac area which caused his death.

---

[1] CA *rollo*, pp. 101-117, penned by Associate Justice Ricardo R. Rosario and concurred in by Associate Justices Teresita Dy-Llacco Flores and Mario V. Lopez.

[2] Records, pp. 106-110; penned by Acting Presiding Judge Ma. Nimfa Penaco-Sitaca.

CONTRARY TO LAW, with the qualifying circumstance of taking advantage of superior strength[.][3]

Both appellants were arrested. They entered separate pleas of "not guilty" during their arraignment.[4] After the termination of the mandatory pre-trial conference,[5] trial ensued.

The Prosecution's Evidence

Culled from the evidence presented by the prosecution, the following case against the appellants emerged:

On May 6, 2002, at around 11:45 p.m., Roy Bughao (Bughao) was carrying a torch on his way home from the birthday celebration of his cousin when Elizer and Ric suddenly appeared. Ric went around him while his brother Elizer pointed a knife. He drew back and swung the torch at them and shouted, "Why do you hurt me, what is my fault?"[6] The Beduya brothers did not reply and continued their assault. Bughao then scrambled for safety and ran towards the yard of victim Dominador S. Acope, Sr. (Acope, Sr.) and hid in a dark area.

At around 12:30 a.m. of May 7, 2002, the victim and his son, Dominador Acope, Jr. (Acope, Jr.), were roused from their sleep by a voice coming from the road in front of their house. The victim went outside while his son peeped through the window. The victim saw Bughao who readily identified himself and said that Elizer pointed a knife at him. As the Beduya brothers entered the yard of the victim's house, Bughao hid himself. While in hiding, he saw the Beduya brothers approach the victim after they were advised to go home since it was already late. The Beduya brothers did not heed the advice and instead Ric slapped the victim while Elizer stabbed him. The victim retaliated by striking them with a piece of wood he got hold of. Elizer and Ric ran away but one of them stumbled on the pile of firewood

---

[3] *Id.* at 2.

[4] *Id.* at 35.

[5] *Id.* at 43.

[6] TSN, September 20, 2002, p. 6.

and the clothesline in the yard before they succeeded in departing from the premises.

Acope, Jr. immediately proceeded to his uncle's house which was 40 meters away and sought his help. The incident was also reported to their *Barangay* Captain, who responded by going to the residence of the victim. Upon arrival, he saw the victim lying on the ground and bleeding from a stab wound. The victim told him that, "I will die because of this. x x x I was boxed by Ric and I was stabbed by Elizer."[7] He also told the *Barangay* Captain that he had no previous quarrel with the Beduya brothers.

The *Barangay* Captain took the victim to the Jimenez Medicare Hospital but was later advised to proceed to the MHARS General Hospital in Ozamis City, where the police officer took the statement of the victim and Acope, Jr. On the next day, May 8, 2002, the victim died due to "septic and hypovolemic shock secondary to stabbed wound."[8]

The Appellants' Version

Elizer maintained that he did not commit any crime. On May 6, 2002, he went to Baybay, Punta, Panaon, to buy fish. He usually carried a knife to slice and eat the fish while it is still raw. While on his way home at 10:30 p.m., he was suddenly attacked and struck by the victim and Bughao. He got hit several times with a piece of wood and Bughao smashed his right foot. To defend himself, he pulled out his knife and struck randomly. He had no knowledge if he hit someone but his assailants fled. Eduardo Eltagon (Eduardo) testified that he witnessed the event but he did not interfere since he did not want to get involved.

Elizer continued to walk, and arrived home at 12:15 a.m. At 1:30 a.m., policemen came to his house and took him to a hospital. They passed by the house of his brother Ric before proceeding to their destination.

For his part, Ric testified that he was asleep at the time of the incident. He stated that he went to sleep at eight o'clock in

---

[7] TSN, March 12, 2003, p. 6.

[8] Records, p. 12.

the evening on May 5, 2002 and woke up at four o'clock in the morning of the following day, May 6, 2002, when the *Barangay* Captain and policemen came to his house with his brother and asked him to come with them to the hospital.

The Trial Court's Decision

The trial court rendered judgment in favor of the prosecution, whose witnesses testified candidly on the events that resulted in the death of the victim. On the other hand, the trial court found as unreliable the witnesses presented by the defense. It held that Eduardo, at 86 years of age, could not have seen the victim and Bughao attacking Elizer 30 meters away with a flashlight as his only source of illumination in the dead of night since a test on his vision showed that he could not "see at a distance little more than beyond his nose."[9] Moreover, it ruled that the injuries suffered by Elizer were more consistent with the defensive blows from a piece of wood the victim used to defend himself, rather than the alleged assault on him by the victim and Bughao.[10]

The trial court also held that the circumstance of abuse of superior strength that qualifies the killing of the victim to murder is present in this case. According to the trial court, the appellants' combined assault gave them the advantage over the victim who must have been taken by surprise. The retaliation of the victim with a piece of wood was done only after he had already been stabbed.[11]

In disposing of the case, the trial court ruled as follows:

WHEREFORE, finding accused Elizer Beduya and Ric Beduya guilty beyond reasonable doubt of murder qualified by abuse of superior strength without other modifying circumstances, the court sentences them to ***reclusion perpetua*** and orders them to pay *in solidum* the heirs of Dominador Acope ₱50,000.00 as death indemnity, ₱6,000.00

---

[9] *Id.* at 109.

[10] *Id.*

[11] *Id.*

as funeral expenses, ₱9,411.85 as medical expenses, and ₱264,000.00 as lost earnings. With costs.

Accused are credited with the full time spent under preventive detention since May 7, 2002.

SO ORDERED.[12]

The Decision of the Court of Appeals

The case was forwarded to this Court on automatic review and docketed as G.R. No. 158473. However, we referred it to the CA in accordance with our ruling in *People v. Mateo*.[13] The appellate court affirmed with modification the trial court's decision and disposed as follows:

WHEREFORE, the appeal is hereby DENIED. The assailed decision is hereby AFFIRMED with the MODIFICATION of increasing the award of the victim's heirs for the loss of earning capacity of the victim [to] ₱408,000.00.

SO ORDERED.[14]

The Assignment of Errors

Still aggrieved, the appellants sought a final review of their case raising the following as errors:

I

THE TRIAL COURT GRAVELY ERRED IN GIVING CREDENCE TO THE INCREDIBLE AND INCONSISTENT TESTIMONIES OF THE PROSECUTION WITNESSES.

II

THE TRIAL COURT GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANTS GUILTY OF THE CRIME CHARGED DESPITE FAILURE [OF] THE PROSECUTION TO PROVE THEIR GUILT BEYOND REASONABLE DOUBT.

---

[12] *Id.* at 110.

[13] G.R. Nos. 147678-87, July 7, 2004, 433 SCRA 640.

[14] CA *rollo*, pp. 116-117.

III

THE TRIAL COURT GRAVELY ERRED IN CONSIDERING THE QUALIFYING CIRCUMSTANCE OF ABUSE OF SUPERIOR STRENGTH.[15]

During the pendency of the appeal, appellant Ric died of cardio pulmonary arrest secondary to bleeding peptic ulcer as shown by his certificate of death.[16] Accordingly, we dismissed[17] the appeal insofar as said appellant is concerned. However, judgment shall be rendered as to Elizer.

Our Ruling

There is partial merit in the appeal.

Abuse of Superior Strength as a Qualifying Circumstance in the Crime of Murder

Murder is the unlawful killing by the accused of a person, which is not parricide or infanticide, provided that any of the attendant circumstances enumerated in Article 248[18] of the

---

[15] *Id.* at 46.

[16] *Rollo*, p. 40.

[17] *Id.* at 45.

[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;

2. In consideration of a price, reward, or promise;

3. By means of inundation, fire, poison, explosion, shipwreck, stranding of a vessel, derailment or assault upon a railroad, fall of an airship, by means of motor vehicles, or with the use of any other means involving great waste and ruin;

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;

Revised Penal Code is present. Abuse of superior strength is one of the qualifying circumstances mentioned therein that qualifies the killing of the victim to murder.

In this case, the trial and appellate courts commonly concluded that there was intent to kill on the part of the appellants and that they employed abuse of superior strength to ensure the execution and success of the crime. The appellate court even adopted the trial court's finding and conclusion that as Ric punched the victim in the shoulder and appellant Elizer delivered the fatal stab wound, this combined assault "gave them the advantage over the victim who must have been taken by surprise. Although the victim struck at accused with a piece of wood, he did so only after he had been stabbed, causing the two accused to run away."[19]

This reasoning is erroneous.

"Abuse of superior strength is present whenever there is a notorious inequality of forces between the victim and the aggressor, assuming a situation of superiority of strength notoriously advantageous for the aggressor selected or taken advantage of by him in the commission of the crime."[20] "The fact that there were two persons who attacked the victim does not per se establish that the crime was committed with abuse of superior strength, there being no proof of the relative strength of the aggressors and the victim."[21] The evidence must establish that the assailants purposely sought the advantage, or that they had the deliberate intent to use this advantage.[22] "To take advantage of superior strength means to purposely use excessive force out of proportion to the means of defense available to the person attacked."[23] The

---

6. With cruelty, by deliberately and inhumanly augmenting the suffering of the victim, or outraging or scoffing at his person or corpse.

[19] Records, p. 110.

[20] *People v. Daquipil*, 310 Phil. 327, 348 (1995).

[21] *People v. Casingal*, 312 Phil. 945, 956 (1995).

[22] *People v. Escoto*, 313 Phil. 785, 800-801 (1995).

[23] *People v. Ventura*, G.R. Nos. 148145-46, July 5, 2004, 433 SCRA 389, 410.

appreciation of this aggravating circumstance depends on the age, size, and strength of the parties.[24]

The prosecution in this case failed to adduce evidence of a relative disparity in age, size and strength, or force, except for the showing that two assailants, one of them (Elizer) armed with a knife, assaulted the victim. The presence of two assailants, one of them armed with a knife, does not *ipso facto* indicate an abuse of superior strength.[25] Mere superiority in numbers is not indicative of the presence of this circumstance.[26] Neither did the prosecution present proof to show that the victim suffered from an inferior physical condition from which the circumstance can be inferred. In fact, there is evidence that the victim was able to get hold of a piece of wood and deliver retaliatory blows against the knife-wielder, Elizer.[27]

The events leading to the stabbing further disprove any finding of deliberate intent on the part of the assailants to abuse their superior strength over that of the victim. The testimonies of the prosecution's witnesses, on the whole, show that the incident between the victim and his assailants was unplanned and unpremeditated. The assailants were in pursuit of Bughao when the victim advised them to go home since it was already late at night. There was indeed no conscious attempt on the part of the assailants to use or take advantage of any superior strength that they then enjoyed. Particularly, it has not been clearly established that the appellants, with an advantage in number, purposely resorted to punching the victim and delivering a fatal stab wound. Neither has it been shown that the victim was simply overwhelmed by the fist blows delivered by Ric and Elizer's act of stabbing him. The evidence on this matter is too insufficient for a definitive conclusion. What has been shown with certainty and clarity is the appellants' intent to kill, as shown by the stab wound in the left side of the victim's body which resulted in his

---

[24] *People v. Moka*, G.R. No. 88838, April 26, 1991, 196 SCRA 378, 386.

[25] *People v. Asis*, 349 Phil. 736, 747 (1998).

[26] *People v. Escoto*, *supra* at 800.

[27] TSN, September 25, 2002, pp. 7-8.

death two days later. As the knife wielder, Elizer is guilty of assaulting and killing the victim.

In view of the foregoing, we are compelled to rule out the presence of abuse of superior strength as a qualifying circumstance. Hence, appellants' guilt must be limited to the crime of homicide.

The Trial Court's Finding on the Credibility of the Prosecution Witnesses

Elizer maintains that his guilt was not established beyond reasonable doubt since the testimonies of the witnesses of the prosecution were incredible and materially inconsistent. He argues that Acope, Jr. testified that the victim immediately went out of his house and approached Bughao, but Bughao declared in the witness stand that the victim came out of his abode 20 minutes after hearing his shout. He also finds it incredible that Bughao did not bother to take the victim to the hospital and report the incident to the police after the assailants fled the scene of the crime.

We are not persuaded. It has been "consistently held that appellate courts, as a rule, will not disturb the findings of the trial court on the credibility of witnesses. We have sustained trial courts in this respect, considering their vantage point in their evaluation of testimonial evidence, absent x x x any showing of serious error or irregularity that otherwise would alter the result of the case."[28] Here, we find no serious irregularity.

Besides, the inconsistencies ascribed to the prosecution witnesses involve minor details, too trivial to adversely affect their credibility. Said inconsistencies do not depart from the fact that these witnesses saw the fatal stabbing of the victim by Elizer. To the extent that inconsistencies were in fact shown, they appear to us "to relate to details of peripheral significance which do not negate or dissolve the positive identification [by said eyewitnesses of Elizer] as the perpetrator of the crime."[29]

---

[28] *People v. Tadulan*, 337 Phil. 685, 694 (1997).

[29] *People v. Daen, Jr.*, 314 Phil. 280, 292 (1995).

Further, the failure of Bughao to immediately report the incident to the police authorities and to extend help to the victim cannot destroy his credibility as a witness. There is no standard of behavior when a person becomes a witness to a shocking or gruesome event.[30] "The workings of a human mind placed under severe emotional stress are unpredictable and people react differently x x x."[31] The determining factor to consider is that Bughao testified in candid and straightforward manner and implicated Elizer and Ric as the perpetrators of the crime.

Aside from the eyewitness testimonies of the prosecution witnesses, the dying declaration of the victim also established the guilt of the appellants beyond reasonable doubt. He was well aware of his imminent death and his declaration that Elizer was responsible for his stab wound was made in the belief that he would not survive his injury. The declarations by the victim certainly relate to circumstances pertaining to his impending death and he would have been competent to testify had he survived in view of the general presumption that a witness is competent to testify.

The victim also executed a Sworn Statement[32] on May 7, 2002, while in serious condition in the hospital, declaring that the appellants assaulted him and it was Elizer who delivered his fatal stab wound. His dying declaration and sworn statement, taken together with the findings and conclusions of the trial court, establish the guilt of the appellants beyond reasonable doubt.

The Penalty

Having established Elizer's guilt beyond reasonable doubt for the crime of homicide, he must suffer the penalty imposed by law. The crime of homicide is punishable by *reclusion temporal*.[33] Since there are no mitigating or aggravating

---

[30] *People v. Morial*, 415 Phil. 310, 339 (2001).

[31] *People v. Liwanag*, 415 Phil. 271, 297 (2001).

[32] Records, p. 8.

[33] Revised Penal Code, Article 249.

circumstances, the penalty should be fixed in its medium period.[34] Applying the Indeterminate Sentence Law,[35] he should be sentenced to an indeterminate term, the minimum of which is within the range of the penalty next lower in degree, *i.e.*, *prision mayor*, and the maximum of which is that properly imposable under the Revised Penal Code, *i.e.*, *reclusion temporal* in its medium period.

Thus, the proper and precise prison sentence that should be imposed must be within the indeterminate term of six (6) years and one (1) day to twelve (12) years of *prision mayor* as minimum to fourteen (14) years, eight (8) months and one (1) day to seventeen (17) years and four (4) months of *reclusion temporal* as maximum.

The Award of Damages

The trial court awarded, and the appellate court affirmed, actual damages to the heirs of the victim in the amounts of ₱6,000.00 as funeral expenses and ₱9,411.85 as medical expenses incurred as a result of the incident. However, our review of the records revealed that the award was not substantiated by any evidence. There was no competent proof on the specific amounts of actual damages allegedly incurred and this omission cannot be supplied by a broad and general stipulation during trial that the victim's wife would testify on the damages brought about by the commission of the crime. In the absence of proof on the exact sum of actual damages, there was no basis for granting the same. "Credence can be given only to claims which are

---

[34] See Revised Penal Code, Article 64(1).

[35] Section 1. Hereafter, in imposing a prison sentence for an offense punished by the Revised Penal Code, or its amendments, the court shall sentence the accused to an indeterminate sentence the maximum term of which shall be that which, in view of the attending circumstances, could be properly imposed under the rules of the said Code, and the minimum which shall be within the range of the penalty next lower to that prescribed by the Code for the offense; and if the offense is punished by any other law, the court shall sentence the accused to an indeterminate sentence, the maximum term of which shall not exceed the maximum fixed by said law and the minimum shall not be less than the minimum term prescribed by the same.

duly supported by receipts."[36] The award of actual damages should consequently be deleted as there were no receipts presented evidencing the expenses allegedly incurred.

However, as the heirs of the victim clearly incurred medical and funeral expenses, ₱25,000.00 by way of temperate damages should be awarded.[37] "This award is adjudicated so that a right which has been violated may be recognized or vindicated, and not for the purpose of indemnification."[38]

When death results as a consequence of the crime, the heirs of the deceased are entitled to the amount of ₱50,000.00 as indemnity for the death of the victim without need of any evidence or proof of damages.[39] Accordingly, we award said sum to the heirs of the victim, Acope, Sr.

"Moral damages are mandatory in cases of murder and homicide without need of allegation and proof other than the death of the victim. Consistent with this rule, we award the amount of ₱50,000.00 as moral damages in accordance with prevailing jurisprudence."[40]

The trial court was correct in awarding indemnity for the loss of earning capacity of the victim. However, the computation for this award should be more accurate.

Acope, Sr., was 46 years old on the day he died.[41] He earned an average of ₱3,000.00 a month as a farmer and *barangay tanod*.[42] This is equivalent to the sum of ₱36,000.00 *per annum*.

---

[36] *B.F. Metal [Corporation] v. Spouses Lomotan*, G.R. No. 170813, April 16, 2008, 551 SCRA 618, 627.

[37] *People v. Bascugin*, G.R. No. 184704, June 30, 2009, 591 SCRA 453, 465.

[38] *People v. Carillo*, 388 Phil. 1010, 1025 (2000).

[39] *People v. Algarme*, G.R. No. 175978, February 12, 2009, 578 SCRA 601, 628.

[40] *Id.* at 628-629.

[41] TSN, October 3, 2002, p. 3.

[42] *Id.*

Pursuant to the American Expectancy Table of Mortality, which has been adopted in this jurisdiction, the formula for the computation of loss of earning capacity is provided as follows:

Net Earning Capacity (X) = Life Expectancy x (Gross Annual Income – Living Expenses, *e.g.*, 50% of Gross Annual Income)

Life expectancy is determined in accordance with the following formula:

Life Expectancy = 2/3 x (80 – age of deceased)[43]

Accordingly, the unearned income of Acope, Sr., is:

$$X = \frac{2(80-46)}{3} \times (₱36{,}000.00 - ₱18{,}000.00)$$
$$= 22.667 \times ₱18{,}000.00$$
$$= ₱408{,}006.00$$

In applying the formula and computation for net income stated above, the amount of loss of earning capacity is the exact sum of ₱408,006.00.

WHEREFORE, the appealed Decision is *MODIFIED* as follows:

1. Elizer Beduya is held guilty beyond reasonable doubt of the crime of homicide and shall accordingly suffer an indeterminate prison term of eight (8) years and one (1) day of *prision mayor* as minimum to fourteen (14) years, eight (8) months and one (1) day of *reclusion temporal* as maximum;

2. Elizer Beduya is ordered to pay the victim's heirs the amounts of ₱50,000.00 as civil indemnity, ₱50,000.00 as moral damages, ₱25,000.00 as temperate damages in lieu of actual damages, and ₱408,006.00 as indemnity for loss of earning capacity.

SO ORDERED.

Corona, C.J. (Chairperson), Leonardo-de Castro, Bersamin,[*] and *Perez, JJ.*, concur.

---

[43] *People v. Matignas*, 428 Phil. 834, 875 (2002).

[*] In lieu of Associate Justice Presbitero J. Velasco, Jr., per Special Order No. 876 dated August 2, 2010.

SECOND DIVISION

[G.R. No. 175837. August 9, 2010]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **LEONITO AMATORIO,** *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 where 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.

2. ID.; ID.; ACCUSED MAY BE CONVICTED OF RAPE BASED ON THE VICTIM'S CREDIBLE TESTIMONY. — In the determination of guilt for the crime of rape, primordial is the credibility of complainant's testimony, because, 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. Moreover, when the offended party is a young and immature girl, as in this case, where the victim was barely 9 years old at the time the rape was committed, courts are inclined to lend credence to their version of what transpired, not only because of their relative vulnerability, but also because of the shame and embarrassment to which they would be exposed by court trial, if the matter about which they testified were not true.

3. REMEDIAL LAW; EVIDENCE; ALIBI; WILL NOT PREVAIL AGAINST POSITIVE IDENTIFICATION OF ACCUSED. — Jurisprudence teaches that between categorical testimonies that ring of truth, on one hand, and a bare denial, on the other, the Court has strongly ruled that the former must prevail. Indeed, positive identification of the accused, when categorical and consistent, and without any ill motive on the part of the

eyewitnesses testifying on the matter, prevails over alibi and denial. x x x All told, this Court has no reason to reverse the findings of the RTC finding the testimony of AAA and the other witnesses credible as it was in the position to hear the witnesses themselves and observe their behavior and manner of testifying. As this Court had held in previous cases, time and again, we have consistently held that when a woman, more so if a minor, states that she has been raped, she says in effect all that is necessary to show that rape was committed. For no woman, least of all a child, would weave a tale of sexual assaults to her person, open herself to examination of her private parts and later be subjected to public trial or ridicule if she was not, in truth, a victim of rape and impelled to seek justice for the wrong done to her.

4. CRIMINAL LAW; QUALIFIED RAPE; KINSHIP; FAILURE TO ALLEGE THE SAME IN THE INFORMATION WILL RENDER THE CRIME A SIMPLE RAPE. — It is basic that the filiation or kinship with the accused must be alleged in the information as part of the constitutional right of the accused to be informed of the nature and cause of the accusation against him. The failure to accurately allege the relationship between appellant and his victim in the information bars his conviction of rape in its qualified form. Thus, since Amatorio's relationship to AAA was not alleged in the Information, he is thus auspiciously spared from being convicted of qualified rape. Based on the foregoing, the RTC erred when it convicted Amatorio of qualified rape in Criminal Case No. 2844-C, as he can only be held liable for simple rape as correctly ruled by the CA.

5. ID.; RAPE; PENALTIES AND CIVIL DAMAGES. — Articles 266-A and 266-B of the Revised Penal Code, as amended by Republic Act No. 8353, otherwise known as *The Anti-Rape Law of 1997*, reads: 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 ART. 266-B. *Penalties*. — Rape under paragraph 1 of the next preceding article shall be punished by *reclusion perpetua*. With respect to damages, the Court affirms the RTC and the CA's awards of ₱50,000.00 as civil indemnity and ₱50,000.00 as moral damages for each count of rape committed. Civil indemnity is automatically awarded upon proof of the commission of the

crime by the offender. In accordance with prevailing jurisprudence, the civil indemnity awarded to victims of qualified rape shall not be less than ₱75,000.00, and ₱50,000.00 for simple rape. Moral damages in the amount of ₱50,000.00 for each count is also automatically granted in a rape case without need of further proof other than the fact of its commission. This Court also awards exemplary damages in view of the minority of the victim. In line with prevailing jurisprudence, an award of ₱30,000.00 for each count of rape is thus warranted.

APPEARANCES OF COUNSEL

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

D E C I S I O N

PERALTA, *J.*:

This is an appeal from the August 29, 2006 Decision[1] of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 00964, which held appellant Leonito Amatorio (Amatorio) guilty of five counts of rape. The CA Decision affirmed with modification the January 28, 2005 Decision[2] of the Regional Trial Court (RTC) of Calauag, Quezon, Branch 63, in Criminal Cases Nos. 2840-C up to 2844-C.

The accusatory portions of the separate Informations filed against Amatorio read:

Criminal Case No. 2840-C

That on or about the 27th day of July 1991, at Barangay XXX, in the Municipality of Guinayangan, Province of Quezon, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, armed with a knife, with lewd design, by means of force, violence and intimidation, did then and there willfully, unlawfully

---

[1] Penned by Associate Justice Elvi John S. Asuncion with Associate Justices Jose Catral Mendoza (now a Member of this Court) and Sesinando E. Villon, concurring; *rollo*, pp. 2-9.

[2] Penned by Presiding Judge Mariano A. Morales, Jr.; CA *rollo*, pp. 33-42.

and feloniously have carnal knowledge of one AAA[3], a minor, 9 years of age, against her will.

Contrary to law.[4]

Criminal Case No. 2841-C

That on or about the 30th day of July 1991, at Barangay XXX, in the Municipality of Guinayangan, Province of Quezon, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with lewd design, by means of force, violence and intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge of one AAA, a minor, 9 years of age, against her will.

Contrary to law.[5]

Criminal Case No. 2842-C

That on or about the month of June 1992, at Barangay XXX, in the Municipality of Guinayangan, Province of Quezon, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, armed with a knife, with lewd design, by means of force, violence and intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge of one AAA, a minor, 10 years of age, against her will.

Contrary to law.[6]

Criminal Case No. 2843-C

That on or about the 15th day of November 1993, at Barangay XXX, in the Municipality of Guinayangan, Province of Quezon, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, armed with a knife, with lewd design, by

---

[3] The real name of the victim is withheld to protect her privacy; instead, fictitious initials are used to represent her, pursuant to Section 44 of Republic Act No. 9262 (the Anti-Violence against Women and Their Children Act of 2004). Likewise, the personal circumstances or any other information tending to establish or compromise her identity, as well as those of her family members shall not be disclosed.

[4] Records (Criminal Case No. 2840-C), p. 1.

[5] Records (Criminal Case No. 2841-C), p. 2.

[6] Records (Criminal Case No. 2842-C), p. 1.

means of force, violence and intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge of one AAA, a minor, 11 years of age, against her will.

Contrary to law.[7]

Criminal Case No. 2844-C

That on or about the 29th day of September 1994, at Barangay XXX, in the Municipality of Guinayangan, Province of Quezon, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, armed with a knife, with lewd design, by means of force, violence and intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge of one AAA, a minor, 12 years of age, against her will.

Contrary to law.[8]

When arraigned on May 27, 1997, appellant pleaded not guilty.[9] Thereafter, upon agreement of both parties during pre-trial, all five cases were heard jointly.

The prosecution offered three witnesses, namely: private complainant AAA, who was a nine-year-old girl at the time of the commission of the first act of rape; BBB,[10] the victim's mother; Dr. Florencia Agno-Vergara, Municipal Health Officer of Guinayangan, Quezon.

The prosecution first presented BBB, the mother of AAA.

Under oath, BBB testified that Amatorio is her common-law husband. She narrated that she received a letter from AAA when the latter was working in Lipa City. Through the said letter, BBB came to know that AAA had hard feelings towards Amatorio. BBB said that she spoke to Amatorio about it, but that the latter

---

[7] Records (Criminal Case No. 2843-C), p. 1.

[8] Records (Criminal Case No. 2844-C), p. 2.

[9] Records (Criminal Case No. 2840-C), p. 35.

[10] The real name of the victim's mother is withheld per Republic Act No. 7610, Republic Act No. 9262. (*People v. Cabalquinto*, G.R. No. 167693, September 19, 2006, 502 SCRA 419, 421.)

got mad at her and said that AAA was hard- headed. BBB then went to Lipa City to talk to her daughter. It was on that occasion that AAA told BBB that she was raped by Amatorio five times. The first was on July 27, 1991, which was incidentally the birthday of AAA; the second time was on July 30, 1991, the third time was in June 1992, the fourth time was on November 15, 1993, and the last time was on September 29, 1994. After learning what Amatorio had done to her daughter, BBB went to the municipal building in Guinayangan, Quezon, where she executed an Affidavit[11] and filed a complaint against Amatorio. BBB testified that AAA was only nine years old when the first act of rape was committed. BBB also presented the birth certificate[12] of AAA to prove such fact.

On cross-examination, BBB testified that Amatorio was living in her house at Guinayangan, Quezon, along with her daughter AAA.

The next witness presented by the prosecution was the victim, AAA, who testified that she knew Amatorio one month before she was raped by him and that he was the common-law husband of BBB. At around 7:00 p.m. and 8:00 p.m. on July 27, 1991, AAA testified that Amatorio called her in their backyard telling her that he would give her a gift. AAA said that she was celebrating her 9th birthday on the said day. Once there, Amatorio held AAA in her arms and pressed a knife at the side of her body and dragged her to the grassy portion of the backyard. Amatorio removed the shorts and panty of AAA and pulled out the button of her shirt. Amatorio then removed his shorts and brief. During this time, Amatorio was still holding the knife and had it poked at the side of AAA. Amatorio then placed himself on top of AAA and opened her thighs placing himself at the center. AAA testified that her private part became painful and bloodied, because the penis of Amatorio entered her vagina. AAA said that she fought back, but she was not able to stop Amatorio since he was very strong. Amatorio then boxed the

---

[11] Exhibit "A", folder of exhibits.

[12] Exhibit "C", *id*.

thigh of AAA which caused her to feel weak. After Amatorio had ravaged her, AAA testified that Amatorio told her "*na ingatan kong makahalata ang Nanay ko*" or else he will kill them.

Three days after the first incident, Amatorio repeated the same bestial act on AAA on July 30, 1991 at about 4:30 a.m. AAA testified that she was sleeping when her mother left the house in order to fetch water. She was surprised when Amatorio covered her mouth and undressed her. She said that she was raped by Amatorio and that she could not do anything but cry. AAA begged for Amatorio's mercy, but he did not hear her and, instead, told her that he would do the same thing to her sister if she will tell anybody what had happened to her.

Sometime in June 1992, AAA was residing in the house of Roberto Olar. It was on that occasion that AAA was raped a third time by Amatorio. AAA testified that Amatorio ordered her to go with him fishing in a fishpond near the seashore and that she was raped on the way there. She said that she again begged for mercy, but that Amatorio did not stop. She also said that she believed Amatorio would kill her mother and sister which is why Amatorio was able to rape her again.

AAA then testified that she was raped a fourth time on November 15, 1993 at around 12:30 p.m. and a fifth time on September 29, 1994.

AAA left their home and went to Lipa City to live with her grandmother. It was only on October 20, 1996 that AAA finally told BBB, her mother, that she had been raped. AAA said that she told her mother what had happened to her, because she heard that Amatorio was also bringing her younger sister to fish and that she was afraid that he would do the same thing he did to her to her sister. It was because of this that she wrote a letter[13] to BBB asking BBB not to allow her sister to go with Amatorio. AAA likewise, wrote another letter[14] to her sister, asking her not to go with Amatorio as he might do something wrong to

---

[13] Exhibit "D", *id.*

[14] Exhibit "E", *id.*

her. BBB then went to Lipa City to talk to AAA about the letter. It was on this occasion that AAA finally told her mother that she was raped by Amatorio five times. AAA executed an Affidavit[15] in connection with the case.

The prosecution next presented Dr. Florencia Agno Vergara, the doctor who examined AAA. Dr. Vergara issued a Medical Certificate[16] wherein her findings were "hymen showed irregular borders" which meant that the vaginal borders were irregular and with latches.

The defense presented Amatorio who denied having raped AAA. He said that he does not know anything about the claim of AAA that he raped her on July 27, 1991. He also claimed that although he was at their house in Guinayangan, Quezon on the said date, AAA was not there because she was living with her father Jun in Manila. He then added that on the dates which according to AAA she was raped by him, AAA was not with him but in Manila with her father.

On January 28, 2005, the RTC rendered a Decision[17] finding Amatorio guilty beyond reasonable doubt of rape, the dispositive portion of which reads:

> WHEREFORE, in view of all the foregoing considerations, this Court finds accused Leonito Amatorio GUILTY beyond reasonable doubt of the crime of rape in Criminal Cases Nos. 2840-C, 2841-C, 2842-C, 2843-C and 2844-C and hereby sentences him to suffer the penalty of *RECLUSION PERPETUA* and to pay the victim AAA the amount of Fifty Thousand Pesos (₱50,000.00) as civil indemnity and Fifty Thousand Pesos (₱50,000.00) as moral damages in Criminal Cases Nos. 2840-C, 2841-C, 2842-C, 2843-C; and the penalty of DEATH in Criminal Case No. 2844-C and payment of Fifty Thousand Pesos (₱50,000.00) as civil indemnity and Fifty Thousand Pesos (₱50,000.00) as moral damages.

---

[15] Exhibit "F".

[16] Exhibit "H".

[17] CA *rollo*, pp. 33-42.

The accused is to be credited of his preventive imprisonment if proper and any, pursuant to Article 29 of the Revised Penal Code as amended by R.A. 6127 and E.O. No. 214.

SO ORDERED.[18]

On appeal, the CA rendered a Decision modifying the RTC decision, the dispositive portion of which reads:

WHEREFORE, except for the penalty in Criminal Case No. 2844-C which shall be modified to *reclusion perpetua*, the assailed January 28, 2005 Decision of the Regional Trial Court of Calauag, Quezon, Branch 63, is AFFIRMED in all other respects.

SO ORDERED.[19]

The CA modified the RTC Decision in view of the fact that the aggravating circumstance of relationship was not alleged in the Information and that Republic Act No. 9346[20] already abolished the penalty of death.

Hence, this instant appeal.

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 where 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.[21]

In giving more credence to the version of the prosecution, the RTC observed that the testimony of AAA was clear,

---

[18] *Id.* at 41-42.

[19] *Rollo*, p. 9.

[20] An Act Prohibiting the Imposition of Death Penalty in the Philippines, promulgated on June 24, 2006.

[21] *People v. Glivano*, G.R. No. 177565, January 28, 2008, 542 SCRA 656, 662, citing *People v. Malones*, 469 Phil. 301, 318 (2004).

straightforward and has the ring of truth.[22] Indeed, the records disclose that AAA was categorical and straightforward when she narrated the sordid details of the first time she was ravished by Amatorio on her birthday:

Q. Now on the said date and year July 27, 1991 at around, between 7:00 and 8:00 o'clock in the evening, do you recall any unusual incident that happened?
A. Yes sir, there was.

Q. What was the unusual incident that you can recall?
A. He called me in our backyard telling me that he will give me a gift, sir.

Q. Why, what is the special occasion on that day?
A. It was my birthday, sir.

Q. Your birthday, and how old are you at the time?
A. I was 9 years old, sir.

Q. And when your Uncle Leonito Amatorio called you at the backyard of your house, what did you do if you did anything?
A. I went to where he was, sir.

Q. And he gave you a gift because on that day it was your birthday?
A. He did not, sir.

Q. Why?
A. Because when I came near him, he held me in my arm and he poked his knife in my side, sir.

PROS. FLORIDO:

Again we want to make it on record that the victim is crying, Your Honor.

PROS. FLORIDO:

Q. And when the accused poked his knife to you, what part of your body did his knife poke to you?
A. At the right side of my body, sir.

Q. When the accused poked his knife to you, did (sic) you able to recognize the same, what kind of knife is it?

---

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

A. Yes sir. I often see that weapon, that was 29.

Q. And what did you do if you did anything?
A. I fought back but I cannot do anything because he was strong, sir.

Q. And because he was strong, what happened else if there is any?
A. He dragged me to a grassy place that was at the backyard of our house, sir.

Q. When he dragged you at the backyard of your house, what did the accused do if he did anything?
A. He undressed me, sir.

Q. Which did the accused first take off and undressed you?
A. My short and my panty, sir.

Q. When the accused take off and undressed your shorts and panty and according to you he pulled out your dress, what dress are you referring to?
A. He pulled out the button of my shirt, sir.

Q. When the accused pulled out your button in your shirt, what happened to the buttons of your dress?
A. It was detached, sir.

Q. And what did you do, if you did anything when the accused pulled out your button dress?
A. He removed his shorts and brief, he was not wearing any t-shirt, sir.

Q. While he was undressing you, where is the knife poked you (*sic*) at the time?
A. He was holding and it was poked at my side, sir.

Q. And after that, what happened next, if there is any?
A. When he was undressed already, he pushed me in a grassy place and he placed himself on topped (*sic*) of me, sir.

Q. When he placed himself on topped (sic) of you, what happened?
A. He opened my thigh and he placed himself at the center, sir.

Q. And when he opened your thigh and placed himself at the center, did you feel any strong or hard object?
A. Yes, sir.

Q. What hard object did you feel, if you feel (*sic*) anything?
A. It was painful and my private part became blooded (*sic*), sir.

Q. You said you felt pain because of the penis of the accused entered your vagina?
A. Yes, sir.

PROS. FLORIDO:

We want to make it on record that the witness is crying and her tears rolling down to her face down to her chin.

Q. And when you felt that there was something came (*sic*) out to your vagina which according to you was blooded (*sic*), what did you do if you did anything?
A. I fought back but I cannot do anything, sir.

Q. According to you, he was very strong, what did you do if you did anything in spite of your effort to fought (*sic*) back?
A. I was fighting but he boxed my thigh, sir.

Q. When he boxed your thigh, what happened next?
A. I became weak, sir.

Q. After you felt the blood in your vagina, did the accused successfully insert his penis?
A. Yes, sir.

Q. And that was the reason why the blood came (*sic*) to your vagina?
A. Yes, sir.

Q. After that, what did the accused do after he was able to insert his penis and successfully insert his penis to your vagina?
A. He told me "*na ingatan kong makahalata ang Nanay ko*" or else will kill us, sir.

Q. Do you believe with that threatening words uttered by your Uncle?
A. Yes sir, because I was afraid.[23]

In the determination of guilt for the crime of rape, primordial is the credibility of complainant's testimony, because, in rape

[23] TSN, January 28, 1998, pp. 9-16.

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.[24] Moreover, when the offended party is a young and immature girl, as in this case, where the victim was barely 9 years old at the time the rape was committed, courts are inclined to lend credence to their version of what transpired, not only because of their relative vulnerability, but also because of the shame and embarrassment to which they would be exposed by court trial, if the matter about which they testified were not true.[25]

The truthfulness of AAA is more manifest in her comportment during the trial. As observed by the RTC, AAA broke down and cried during her narration of her sexual ordeals or abuse by Amatorio.[26]

For his part, Amatorio only offers the defense of plain denial. He denied knowledge about AAA's allegation of rape on July 27, 1991, since he claimed that AAA was in Manila during that time. He also denied having committed the other four allegations of rape, because he claims that AAA was again in Manila and not in Quezon.

Jurisprudence teaches that between categorical testimonies that ring of truth, on one hand, and a bare denial, on the other, the Court has strongly ruled that the former must prevail. Indeed, positive identification of the accused, when categorical and consistent, and without any ill motive on the part of the eyewitnesses testifying on the matter, prevails over alibi and denial.[27] As observed by the RTC, Amatorio miserably failed to adduce evidence showing that AAA or her mother was actuated by any ill-motive in charging him with five counts of rape.

---

[24] *People v. Pascua*, G.R. No. 151858, November 27, 2003, 416 SCRA 548, 552.

[25] *People v. Gragasin*, G.R. No. 186496, August 25, 2009, 597 SCRA 214, 228.

[26] CA *rollo*, p. 40.

[27] *People v. Dela Paz*, G.R. No. 177294, February 19, 2008, 546 SCRA 363, 378, citing *People v. Tagana*, 468 Phil. 784, 807 (2004).

All told, this Court has no reason to reverse the findings of the RTC finding the testimony of AAA and the other witnesses credible as it was in the position to hear the witnesses themselves and observe their behavior and manner of testifying. As this Court had held in previous cases, time and again, we have consistently held that when a woman, more so if a minor, states that she has been raped, she says in effect all that is necessary to show that rape was committed. For no woman, least of all a child, would weave a tale of sexual assaults to her person, open herself to examination of her private parts and later be subjected to public trial or ridicule if she was not, in truth, a victim of rape and impelled to seek justice for the wrong done to her.[28]

In *People v. Fraga*,[29] this Court held that "although the rape of a person under eighteen (18) years of age by the common-law spouse of the victim's mother is punishable by death, this penalty cannot be imposed on accused-appellant x x x because his relationship was not what was alleged in the informations."

Contrary to the findings of the RTC, that the "*qualifying circumstance of minority and relationship were clearly established by the prosecution in Criminal Case No. 2844-C and it was also properly alleged in the Information,*"[30] this Court finds that the same is bereft of basis as the relationship of Amatorio to AAA was, in fact, not alleged in all the five Informations. It is basic that the filiation or kinship with the accused must be alleged in the information as part of the constitutional right of the accused to be informed of the nature and cause of the accusation against him.[31] The failure to accurately allege the relationship between appellant and his victim in the information bars his conviction of rape in its qualified form.[32]

---

[28] *People v. Sarazan*, 443 Phil. 737, 750 (2003).

[29] 386 Phil. 884, 910 (2000).

[30] *Rollo*, p. 41.

[31] *People v. Awing*, 404 Phil. 815, 834 (2001); *People v. Dela Cuesta*, 396 Phil. 330, 343 (2000).

[32] *People v. Villaraza*, 394 Phil. 175, 196 (2000); *People v. Balleno*, 455 Phil. 979, 990 (2003).

Thus, since Amatorio's relationship to AAA was not alleged in the Information, he is thus auspiciously spared from being convicted of qualified rape.

Based on the foregoing, the RTC erred when it convicted Amatorio of qualified rape in Criminal Case No. 2844-C, as he can only be held liable for simple rape as correctly ruled by the CA. Articles 266-A and 266-B of the Revised Penal Code, as amended by Republic Act No. 8353, otherwise known as *The Anti-Rape Law of 1997*, reads:

> 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 x x x x x x
>
> ART. 266-B. *Penalties.* — Rape under paragraph 1 of the next preceding article shall be punished by *reclusion perpetua*.

Finally, with respect to damages, the Court affirms the RTC and the CA's awards of ₱50,000.00 as civil indemnity and ₱50,000.00 as moral damages for each count of rape committed.

Civil indemnity is automatically awarded upon proof of the commission of the crime by the offender.[33] In accordance with prevailing jurisprudence, the civil indemnity awarded to victims of qualified rape shall not be less than ₱75,000.00, and ₱50,000.00 for simple rape.[34]

Moral damages in the amount of ₱50,000.00 for each count is also automatically granted in a rape case without need of further proof other than the fact of its commission.[35]

---

[33] *People v. Baun*, G.R. No. 167503, August 20, 2008, 562 SCRA 584, 602.

[34] *People v. Cacayan*, G.R. No. 180499, July 9, 2008, 557 SCRA 550, 567.

[35] *People v. Codilan*, G.R. No. 177144, July 23, 2008, 559 SCRA 623, 636.

This Court, however, also awards exemplary damages in view of the minority of the victim. In line with prevailing jurisprudence,[36] an award of ₱30,000.00 for each count of rape is thus warranted.

WHEREFORE, the challenged Decision of the Court of Appeals, dated August 29, 2006, in CA-G.R. CR-H.C. No. 00964, is *AFFIRMED* with *MODIFICATION* in that appellant, LEONITO AMATORIO, is *ORDERED* to pay the private complainant, AAA, ₱30,000.00 as exemplary damages for each count of rape committed. In all other respects, the Court of Appeals Decision is *AFFIRMED*.

SO ORDERED.

Carpio (Chairperson), Nachura, Del Castillo,[*] and *Abad, JJ.,* concur.

THIRD DIVISION

[G.R. No. 179029. August 9, 2010]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **FELIMON PAGADUAN *y* TAMAYO,** *appellant.*

SYLLABUS

1. CRIMINAL LAW; DANGEROUS DRUGS LAW; ILLEGAL SALE OF PROHIBITED DRUG; ELEMENTS. — In a prosecution for illegal sale of a prohibited drug under Section 5 of R.A. No. 9165, the prosecution must prove the following

---

[36] *People v. Ofemiano,* G.R. No. 187155, February 1, 2010; *People vs. Layco,* G.R. No. 182191, May 8, 2009.

[*] Designated as an additional member in lieu of Associate Justice Jose C. Mendoza, per raffle dated July 28, 2010.

elements: (1) the identity of the buyer and the seller, the object, and the consideration; and (2) the delivery of the thing sold and the payment therefor. All these require evidence that the sale transaction transpired, coupled with the presentation in court of the *corpus delicti, i.e.*, the body or substance of the crime that establishes that a crime has actually been committed, as shown by presenting the object of the illegal transaction. To remove any doubt or uncertainty on the identity and integrity of the seized drug, evidence must definitely show that the illegal drug presented in court is the *same* illegal drug actually recovered from the appellant; otherwise, the prosecution for possession or for drug pushing under R.A. No. 9165 fails.

2. ID.; ID.; ID.; REQUIRED PROCEDURE ON THE SEIZURE AND CUSTODY OF DRUGS; THE SAME MUST BE STRICTLY COMPLIED WITH. — The required procedure on the seizure and custody of drugs is embodied in Section 21, paragraph 1, Article II of R.A. No. 9165, which states: (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[.] This is implemented by Section 21(a), Article II of the *Implementing Rules and Regulations* of R.A. No. 9165, which reads: (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[.] Strict compliance with the prescribed procedure is required because of the illegal drug's unique characteristic rendering it indistinct, not readily identifiable, and easily open to tampering, alteration or substitution either by accident or otherwise.

3. D.; ID.; ID.; ID.; LAPSES THEREIN MUST BE RECOGNIZED AND EXPLAINED IN TERMS OF THEIR JUSTIFIABLE GROUNDS, AND THE INTEGRITY AND EVIDENTIARY VALUE OF THE EVIDENCE SEIZED MUST BE SHOWN TO HAVE BEEN PRESERVED. — We recognize that the strict compliance with the requirements of Section 21 of R.A. No. 9165 may not always be possible under field conditions; the police operates under varied conditions, and cannot at all times attend to all the niceties of the procedures in the handling of confiscated evidence. For this reason, the last sentence of the implementing rules provides 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[.]" Thus, noncompliance with the strict directive of Section 21 of R.A. No. 9165 is not necessarily fatal to the prosecution's case; police procedures in the handling of confiscated evidence may still have some lapses, as in the present case. **These lapses, however, must be recognized and explained in terms of their justifiable grounds, and the integrity and evidentiary value of the evidence seized must be shown to have been preserved**. x x x **We emphasize that for the saving clause to apply, it is important that the prosecution explain the reasons behind the procedural lapses, and that the integrity and value of the seized evidence had been preserved. In other words, the justifiable ground for noncompliance must be proven as a fact. The court cannot presume what these grounds are or that they even exist**.

4. ID.; ID.; ID.; "CHAIN OF CUSTODY" REQUIREMENT; ELUCIDATED. — Proof beyond reasonable doubt demands that unwavering exactitude be observed in establishing the *corpus delicti* — the body of the crime whose core is the

confiscated illicit drug. Thus, every fact necessary to constitute the crime must be established. The chain of custody requirement performs this function in buy-bust operations as it ensures that doubts concerning the identity of the evidence are removed. Black's Law Dictionary explains chain of custody in this wise: In evidence, the one who offers real evidence, such as the narcotics in a trial of drug case, must account for the custody of the evidence from the moment in which it reaches his custody until the moment in which it is offered in evidence, and such evidence goes to weight not to admissibility of evidence. *Com. V. White, 353 Mass. 409, 232 N.E.2d 335.* Likewise, Section 1(b) of Dangerous Drugs Board Regulation No. 1, Series of 2002 which implements R.A. No. 9165 defines "chain of custody" as follows: "Chain of Custody" means the duly recorded authorized movements and custody of seized drugs or controlled chemicals or plant sources of dangerous drugs or laboratory equipment of each stage, from the time of seizure/confiscation to receipt in the forensic laboratory to safekeeping to presentation in court for destruction. Such record of movements and custody of seized item shall include the identity and signature of the person who held temporary custody of the seized item, the date and time when such transfer of custody were made in the course of safekeeping and use in court as evidence, and the final disposition[.] In *Malillin v. People*, the Court explained that the chain of custody rule requires that there be testimony about every link in the chain, from the moment the object seized was picked up to the time it is offered in evidence, in such a way that every person who touched it would describe how and from whom it was received, where it was and what happened to it while in the witness' possession, the condition in which it was received and the condition in which it was delivered to the next link in the chain.

5. REMEDIAL LAW; EVIDENCE; PRESUMPTIONS; THAT OFFICIAL DUTIES HAVE BEEN REGULARLY PERFORMED; EFFECTIVELY NEGATED WITH THE FAILURE TO COMPLY WITH THE RULES. — In sustaining the appellant's conviction, the CA relied on the evidentiary presumption that official duties have been regularly performed. This presumption, it must be emphasized, is not conclusive. It cannot, by itself, overcome the constitutional presumption of innocence. Any taint of irregularity affects the

whole performance and should make the presumption unavailable. In the present case, the failure of the apprehending team to comply with paragraph 1, Section 21, Article II of R.A. No. 9165, and with the chain of custody requirement of this Act effectively negates this presumption. As we explained in *Malillin v. People*: The presumption of regularity is merely just that — a mere presumption disputable by contrary proof and which when challenged by the evidence cannot be regarded as binding truth. Suffice it to say that this presumption cannot preponderate over the presumption of innocence that prevails if not overthrown by proof beyond reasonable doubt. In the present case the lack of conclusive identification of the illegal drugs allegedly seized from petitioner, coupled with the irregularity in the manner by which the same were placed under police custody before offered in court, strongly militates a finding of guilt.

APPEARANCES OF COUNSEL

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

D E C I S I O N

BRION, *J.*:

We review the decision[1] of the Court of Appeals (*CA*) in CA-G.R. CR-H.C. No. 01597 which affirmed *in toto* the decision[2] of the Regional Trial Court (*RTC*), Branch 27, Bayombong, Nueva Vizcaya, in Criminal Case No. 4600, finding appellant Felimon Pagaduan *y* Tamayo (*appellant*) guilty beyond reasonable doubt of illegal sale of *shabu*, under Section 5, Article II of Republic Act (*R.A.*) No. 9165 or the *Comprehensive Dangerous Drugs Act of 2002*.

---

[1] Penned by Associate Justice Mariano C. del Castillo (now a member of this Court), and concurred in by Associate Justice Arcangelita Romilla Lontok and Associate Justice Romeo F. Barza; *rollo*, pp. 2-15.

[2] Penned by Judge Jose B. Rosales; CA *rollo*, pp. 9-15.

BACKGROUND FACTS

The prosecution charged the appellant before the RTC with violation of Section 5, Article II of R.A. No. 9165 under an Information that states:

> That on or about December 27, 2003 at about 4:30 o'clock (*sic*) in the afternoon, in the Municipality of Solano, Province of Nueva Vizcaya, Philippines and within the jurisdiction of this Honorable Court, the above-named accused did then and there willfully, unlawfully and feloniously sell, trade, dispense, deliver and give away 0.01 gram, more or less, of methamphetamine hydrochloride (*shabu*), a dangerous drug, as contained in a heat-sealed transparent plastic sachet to PO3 Peter C. Almarez, a member of the Philippine Drug Enforcement Agency (PDEA) who posed as a buyer of shabu in the amount of ₱200.00, to the damage and prejudice of the Republic of the Philippines.
>
> CONTRARY TO LAW.[3]

The appellant pleaded not guilty on arraignment. Trial on the merits, thereafter, followed.

The evidence for the prosecution reveals the following facts.

After having received information that the appellant was selling illegal drugs in Nueva Vizcaya, Captain Jaime de Vera called, on his cellular phone, PO3 Peter Almarez and SPO1 Domingo Balido — who were both in Santiago City — and informed them of a planned buy-bust operation. They agreed to meet at the SSS Building near LMN Hotel in Bayombong, Nueva Vizcaya.[4] On their arrival there, Captain de Vera conducted a briefing and designated PO3 Almarez as the *poseur* buyer. Thereafter, Captain de Vera introduced PO3 Almarez to the police informant (*tipster*),[5] and gave him (PO3 Almarez) two ₱100 bills (Exhibits "D" and "E") which the latter marked with his initials.[6]

---

[3] *Id.* at 8.

[4] TSN, July 5, 2004, pp. 3-4; TSN, July 26, 2004, p. 3; see also Joint Affidavit, Records, p. 4.

[5] TSN, July 5, 2004, p. 4; Records, p. 4.

[6] TSN, July 19, 2004, pp. 7, 13-14; TSN, July 26, 2004, p. 11; Records, p. 4.

After this briefing, the buy-bust team went to Bintawan Road, Solano, Nueva Vizcaya to conduct the entrapment operation.[7] PO3 Almarez and the informant rode a tricycle, while Captain de Vera and SPO1 Balido followed on board a tinted van.[8] The buy-bust team arrived at the target area at around 4:30 p.m., and saw the appellant already waiting for the informant. The informant approached the appellant and introduced PO3 Almarez to him as a buyer. PO3 Almarez told the appellant that he needed *shabu* worth ₱200, and inquired from him (appellant) if he had a "stock." The appellant replied in the affirmative, and then handed one heat-sealed transparent plastic sachet containing white crystalline substance to PO3 Almarez. PO3 Almarez, in turn, gave the two pre-marked ₱100 bills to the appellant.[9] Immediately after, PO3 Almarez made the pre-arranged signal to his companions, who then approached the appellant. Captain de Vera took the marked money from the appellant's right pocket, and then arrested him.[10] PO3 Almarez, for his part, marked the sachet with his initials.[11] Thereafter, the buy-bust team brought the appellant to the Diadi Police Station for investigation.[12]

At the police station, Captain de Vera prepared a request for laboratory examination (Exh. "C").[13] The appellant was transferred to the Diadi Municipal Jail where he was detained.[14] Two days later, or on December 29, 2003, PO3 Almarez transmitted the letter-request, for laboratory examination, and the seized plastic sachet to the PNP Crime Laboratory, where they were received by PO2 Fernando Dulnuan.[15] Police Senior

---

[7] TSN, July 5, 2004, p. 4.

[8] TSN, July 19, 2004, pp. 4 and 6.

[9] TSN, July 5, 2004, pp. 6-8; TSN, July 19, 2004, pp. 5-6; Records, p. 4.

[10] TSN, July 5, 2004, p. 9; TSN, July 19, 2004, pp. 16-17.

[11] TSN, July 26, 2004, p. 5.

[12] TSN, July 5, 2004, p. 10.

[13] *Id.* at 10-11.

[14] *Id.* at 10; TSN, July 19, 2004, p. 11; Records, pp. 23-24.

[15] Records, p. 5.

Inspector (*PSI*) Alfredo Quintero, the Forensic Chemist of the PNP Crime Laboratory, conducted an examination on the specimen submitted, and found it to be positive for the presence of *shabu* (Exh. "B").[16]

On the hearing of August 13, 2004, the prosecution offered the following as exhibits:

Exhibit "A" – the *shabu* confiscated from the appellant

Exhibit "B" – the report by the PNP Crime Laboratory

Exhibit "C" – the request for laboratory examination

Exhibits "D" and "E" – the buy-bust money

Exhibit "F" – the request for laboratory examination received by Forensic Chemist Quintero

The defense presented a different version of the events, summarized as follows:

At around 4:30 p.m. of December 27, 2003, Jojo Jose came to the appellant's house and informed him that Captain de Vera was inviting him to be an "asset." The appellant and Jojo boarded a tricycle and proceeded to the SSS Building where Captain de Vera was waiting for them.[17] As the tricycle approached the Methodist Church along Bintawan Road, Jojo dropped his slippers and ordered the driver to stop. Immediately after, a van stopped in front of the tricycle; Captain de Vera alighted from the van and handcuffed the appellant. Captain de Vera brought the appellant inside the van, frisked him, and took ₱200 from his pocket.[18] Afterwards, Captain de Vera took the appellant to the SSS Building, where he (Captain de Vera) and the building manager drank coffee. Captain de Vera then brought the appellant to the Diadi Municipal Jail where he was detained for almost two days.[19]

---

[16] TSN, July 19, 2004, pp. 22-23; Records, p. 12.

[17] TSN, September 13, 2004, pp. 5-6.

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

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

On the morning of December 29, 2003, the appellant was transferred to the Provincial Jail. He signed a document without the assistance of a lawyer after being told that it would result in his immediate release.[20]

The RTC, in its decision[21] of August 16, 2005, convicted the appellant of the crime charged, and sentenced him to suffer the penalty of life imprisonment. The RTC likewise ordered the appellant to pay a ₱500,000.00 fine.

The appellant appealed to the CA, docketed as CA-G.R. CR-H.C. No. 01597. The CA, in its decision[22] dated May 22, 2007, affirmed the RTC decision.

The CA found unmeritorious the appellant's defense of instigation, and held that the appellant was apprehended as a result of a legitimate entrapment operation. It explained that in inducement or instigation, an innocent person is lured by a public officer or private detective to commit a crime. In the case at bar, the buy-bust operation was planned only after the police had received information that the appellant was selling *shabu*.

The CA also held that the failure of the police to conduct a prior surveillance on the appellant was not fatal to the prosecution's case. It reasoned out that the police are given wide discretion to select effective means to apprehend drug dealers. A prior surveillance is, therefore, not necessary, especially when the police are already accompanied by their informant.

The CA further ruled that the prosecution was able to sufficiently prove an unbroken chain of custody of the *shabu*. It explained that PO3 Almarez sealed the plastic sachet seized from the appellant, marked it with his initials, and transmitted it to the PNP Crime Laboratory for examination. PSI Quintero conducted a qualitative examination and found the specimen

---

[20] *Id.* at 10.

[21] *Supra* note 2.

[22] *Supra* note 1.

positive for the presence of *shabu*. According to the CA, the prosecution was able to prove that the substance seized was the same specimen submitted to the laboratory and presented in court, notwithstanding that this specimen was turned over to the crime laboratory only after two days.

In his brief,[23] the appellant claims that the lower courts erred in convicting him of the crime charged despite the prosecution's failure to prove his guilt beyond reasonable doubt. He harps on the fact that the police did not conduct a prior surveillance on him before conducting the buy-bust operation.

The appellant further contends that the prosecution failed to show an unbroken chain of custody in the handling of the seized drug. He claims that there was no evidence to show when the markings were done. Moreover, a period of two days had elapsed from the time the *shabu* was confiscated to the time it was forwarded to the crime laboratory for examination.

The Office of the Solicitor General (*OSG*) counters with the argument that the chain of custody of the *shabu* was sufficiently established. It explained that the *shabu* was turned over by the police officers to the PNP Crime Laboratory, where it was found by the forensic chemist to be positive for the presence of *shabu*. The OSG likewise claimed that the appellant failed to rebut the presumption of regularity in the performance of official duties by the police. The OSG further added that a prior surveillance is not indispensable to a prosecution for illegal sale of drugs.[24]

THE COURT'S RULING

After due consideration, we resolve to ***acquit*** the appellant for the prosecution's failure to prove his guilt beyond reasonable doubt. Specifically, the prosecution failed to show that the police complied with paragraph 1, Section 21, Article II of R.A. No. 9165, and with the chain of custody requirement of this Act.

---

[23] CA *rollo*, pp. 30-44.

[24] *Id.* at 57-70.

The Comprehensive Dangerous Drugs Act: A Brief Background

R.A. No. 9165 was enacted in 2002 to pursue the State's policy to "safeguard the integrity of its territory and the well-being of its citizenry particularly the youth, from the harmful effects of dangerous drugs on their physical and mental well-being, and to defend the same against acts or omissions detrimental to their development and preservation."

R.A. No. 9165 repealed and superseded R.A. No. 6425, known as the Dangerous Drugs Act of 1972. Realizing that dangerous drugs are one of the most serious social ills of the society at present, Congress saw the need to further enhance the efficacy of the law against dangerous drugs. The new law thus mandates the government to pursue an intensive and unrelenting campaign against the trafficking and use of dangerous drugs and other similar substances through an integrated system of planning, implementation and enforcement of anti-drug abuse policies, programs and projects.[25]

Illegal Sale of Drugs under Section 5 *vis-à-vis* the Inventory and Photograph Requirement under Section 21

In a prosecution for illegal sale of a prohibited drug under Section 5 of R.A. No. 9165, the prosecution must prove the following elements: (1) the identity of the buyer and the seller, the object, and the consideration; and (2) the delivery of the thing sold and the payment therefor. All these require evidence that the sale transaction transpired, coupled with the presentation in court of the *corpus delicti, i.e.*, the body or substance of the crime that establishes that a crime has actually been committed, as shown by presenting the object of the illegal transaction.[26] To remove any doubt or uncertainty on the identity and integrity

---

[25] Integrity of Evidence in Dangerous Drugs Cases by Justice (ret.) Josue N. Bellosillo, 596 SCRA 278 (2009).

[26] *People v. Garcia*, G.R. No. 173480, February 25, 2009, 580 SCRA 259, 266.

of the seized drug, evidence must definitely show that the illegal drug presented in court is the *same* illegal drug actually recovered from the appellant; otherwise, the prosecution for possession or for drug pushing under R.A. No. 9165 fails.[27]

The required procedure on the seizure and custody of drugs is embodied in Section 21, paragraph 1, Article II of R.A. No. 9165, which states:

(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[.]

This is implemented by Section 21(a), Article II of the *Implementing Rules and Regulations* of R.A. No. 9165, which reads:

(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[.]

---

[27] See *People v. Denoman*, G.R. No. 171732, August 14, 2009, 596 SCRA 257, 267.

Strict compliance with the prescribed procedure is required because of the illegal drug's unique characteristic rendering it indistinct, not readily identifiable, and easily open to tampering, alteration or substitution either by accident or otherwise.[28] The records of the present case are bereft of evidence showing that the buy-bust team followed the outlined procedure despite its mandatory terms. The deficiency is patent from the following exchanges at the trial:

PROSECUTOR [EMERSON TURINGAN]:

Q: After you handed this buy-bust money to the accused, what happened next?

[PO3 ALMAREZ:]

A: When the shabu was already with me and I gave him the money[,] I signaled the two, Captain Jaime de Vera and SPO1 Balido, sir.

x x x x x x x x x

Q: After you gave that signal, what happened?

A: Then they approached us and helped me in arresting Felimon Pagaduan, sir.

Q: After Pagaduan was arrested, what happened next?

A: After arresting Pagaduan[,] we brought him directly in Diadi Police Station, sir.

Q: What happened when you brought the accused to the Police Station in Diadi?

A: When we were already in Diadi Police Station, we first put him in jail in the Municipal Jail of Diadi, Nueva Vizcaya, sir.

Q: **What did you do with the shabu?**

A: **The request for laboratory examination was prepared and was brought to the Crime Lab. of Solano, Nueva Vizcaya, sir.**

---

[28] *People v. Kamad*, G.R. No. 174198, January 19, 2010.

x x x x x x x x x

Q: **After making the request, what did you do next[,] if any[,] Mr. Witness?**

A: **After submission of the request to the Crime Lab.[,] we prepared our joint affidavit for submission of the case to the Court, sir.**[29]

From the foregoing exchanges during trial, it is evident that the apprehending team, upon confiscation of the drug, immediately brought the appellant and the seized items to the police station, and, once there, made the request for laboratory examination. No physical inventory and photograph of the seized items were taken in the presence of the accused or his counsel, a representative from the media and the Department of Justice, and an elective official. PO3 Almarez, on cross-examination, was unsure and could not give a categorical answer when asked whether he issued a receipt for the *shabu* confiscated from the appellant.[30] At any rate, no such receipt or certificate of inventory appears in the records.

In several cases, we have emphasized the importance of compliance with the prescribed procedure in the custody and disposition of the seized drugs. We have repeatedly declared that the deviation from the standard procedure dismally compromises the integrity of the evidence. In *People v. Morales*,[31] we acquitted the accused for failure of the buy-bust team to photograph and inventory the seized items, without giving any justifiable ground for the non-observance of the required procedures. *People v. Garcia*[32] likewise resulted in an acquittal because no physical inventory was ever made, and no photograph of the seized items was taken under the circumstances required by R.A. No. 9165 and its implementing rules. In *Bondad, Jr. v. People*,[33] we also

---

[29] TSN, July 5, 2004, pp. 9-13.

[30] TSN, July 19, 2004, pp. 17-18.

[31] G.R. No. 172873, March 19, 2010.

[32] *Supra* note 26.

[33] G.R. No. 173804, December 10, 2008, 573 SCRA 497.

acquitted the accused for the failure of the police to conduct an inventory and to photograph the seized items, without justifiable grounds.

We had the same rulings in *People v. Gutierrez*,[34] *People v. Denoman*,[35] *People v. Partoza*,[36] *People v. Robles*,[37] and *People v. dela Cruz*,[38] where we emphasized the importance of complying with the required mandatory procedures under Section 21 of R.A. No. 9165.

We recognize that the strict compliance with the requirements of Section 21 of R.A. No. 9165 may not always be possible under field conditions; the police operates under varied conditions, and cannot at all times attend to all the niceties of the procedures in the handling of confiscated evidence. For this reason, the last sentence of the implementing rules provides 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[.]" Thus, noncompliance with the strict directive of Section 21 of R.A. No. 9165 is not necessarily fatal to the prosecution's case; police procedures in the handling of confiscated evidence may still have some lapses, as in the present case. **These lapses, however, must be recognized and explained in terms of their justifiable grounds, and the integrity and evidentiary value of the evidence seized must be shown to have been preserved**.[39]

In the present case, the prosecution did not bother to offer any explanation to justify the failure of the police to conduct

---

[34] G.R. No. 179213, September 3, 2009, 598 SCRA 92.

[35] *Supra* note 27.

[36] G.R. No. 182418, May 8, 2009, 587 SCRA 809.

[37] G.R. No. 177220, April 24, 2009, 586 SCRA 647.

[38] G.R. No. 181545, October 8, 2008, 568 SCRA 273.

[39] *People v. Sanchez*, G.R. No. 175832, October 15, 2008, 569 SCRA 194, 212.

the required physical inventory and photograph of the seized drugs. The apprehending team failed to show why an inventory and photograph of the seized evidence had not been made either in the place of seizure and arrest or at the nearest police station (as required by the Implementing Rules in case of warrantless arrests). **We emphasize that for the saving clause to apply, it is important that the prosecution explain the reasons behind the procedural lapses, and that the integrity and value of the seized evidence had been preserved.**[40] **In other words, the justifiable ground for noncompliance must be proven as a fact. The court cannot presume what these grounds are or that they even exist**.[41]

The "Chain of Custody" Requirement

Proof beyond reasonable doubt demands that unwavering exactitude be observed in establishing the *corpus delicti* — the body of the crime whose core is the confiscated illicit drug. Thus, every fact necessary to constitute the crime must be established. The chain of custody requirement performs this function in buy-bust operations as it ensures that doubts concerning the identity of the evidence are removed.[42]

Black's Law Dictionary explains chain of custody in this wise:

> In evidence, the one who offers real evidence, such as the narcotics in a trial of drug case, must account for the custody of the evidence from the moment in which it reaches his custody until the moment in which it is offered in evidence, and such evidence goes to weight not to admissibility of evidence. *Com. V. White, 353 Mass. 409, 232 N.E.2d 335.*

Likewise, Section 1(b) of Dangerous Drugs Board Regulation No. 1, Series of 2002 which implements R.A. No. 9165 defines "chain of custody" as follows:

---

[40] See *People v. Almorfe*, G.R. No. 181831, March 29, 2010.

[41] *People v. de Guzman*, G.R. No. 186498, March 26, 2010.

[42] *Supra* note 39, citing *People v. Kimura*, 428 SCRA 51 (2004) and *Lopez v. People*, 553 SCRA 619 (2008).

"Chain of Custody" means the duly recorded authorized movements and custody of seized drugs or controlled chemicals or plant sources of dangerous drugs or laboratory equipment of each stage, from the time of seizure/confiscation to receipt in the forensic laboratory to safekeeping to presentation in court for destruction. Such record of movements and custody of seized item shall include the identity and signature of the person who held temporary custody of the seized item, the date and time when such transfer of custody were made in the course of safekeeping and use in court as evidence, and the final disposition[.]

In *Malillin v. People*,[43] the Court explained that the chain of custody rule requires that there be testimony about every link in the chain, from the moment the object seized was picked up to the time it is offered in evidence, in such a way that every person who touched it would describe how and from whom it was received, where it was and what happened to it while in the witness' possession, the condition in which it was received and the condition in which it was delivered to the next link in the chain.

In the present case, the prosecution's evidence failed to establish the chain that would have shown that the *shabu* presented in court was the very same specimen seized from the appellant.

The *first link* in the chain of custody starts with the seizure of the heat-sealed plastic sachet from the appellant. PO3 Almarez mentioned on cross-examination that he placed his initials on the confiscated sachet "after apprehending" the appellant. Notably, this testimony constituted the totality of the prosecution's evidence on the marking of the seized evidence. PO3 Almarez's testimony, however, lacked specifics on how he marked the sachet and who witnessed the marking. In *People v. Sanchez*, we ruled that the "marking" of the seized items — to truly ensure that they are the same items that enter the chain and are eventually the ones offered in evidence — should be done (1) ***in the presence of the apprehended violator*** (2) immediately upon confiscation. In the present case, nothing in the records gives

---

[43] G.R. No. 172953, April 30, 2008, 553 SCRA 619, 632.

us an insight on the manner and circumstances that attended the marking of the confiscated sachet. Whether the marking had been done in the presence of the appellant is not at all clear from the evidence that merely mentioned that the evidence had been marked after the appellant's apprehension.

The *second link* in the chain of custody is its turnover from the apprehending team to the police station. PO3 Almarez testified that the appellant was brought to the Diadi Police Station after his arrest. However, he failed to identify the person who had control and possession of the seized drug at the time of its transportation to the police station. In the absence of clear evidence, we cannot presume that PO3 Almarez, as the *poseur* buyer, handled the seized sachet — to the exclusion of others — during its transfer from the place of arrest and confiscation to the police station. The prosecution likewise failed to present evidence pertaining to the identity of the duty desk officer who received the plastic sachet containing *shabu* from the buy-bust team. This is particularly significant since the seized specimen was turned over to the PNP Crime Laboratory *only after two days*. It was not, therefore, clear who had temporary custody of the seized items during this significant intervening period of time. Although the records show that the request for laboratory examination of the seized plastic sachet was prepared by Captain de Vera, the evidence does not show that he was the official who received the marked plastic sachet from the buy-bust team.

As for the *subsequent links* in the chain of custody, the records show that the seized specimen was forwarded by PO3 Almarez to the PNP Crime Laboratory on December 29, 2003, where it was received by PO2 Dulnuan, and later examined by PSI Quintero. However, the person from whom PO3 Almarez received the seized illegal drug for transfer to the crime laboratory was not identified. As earlier discussed, the identity of the duty desk officer who received the *shabu*, as well as the person who had temporary custody of the seized items for two days, had not been established.

The procedural lapses mentioned above show the glaring gaps in the chain of custody, creating a reasonable doubt whether

the drugs confiscated from the appellant were the same drugs that were brought to the crime laboratory for chemical analysis, and eventually offered in court as evidence. In the absence of concrete evidence on the illegal drugs bought and sold, the body of the crime — the *corpus delicti* — has not been adequately proven.[44] In effect, the prosecution failed to fully prove the elements of the crime charged, creating reasonable doubt on the appellant's criminal liability.

Presumption of Regularity in the Performance of Official Duties

In sustaining the appellant's conviction, the CA relied on the evidentiary presumption that official duties have been regularly performed. This presumption, it must be emphasized, is not conclusive.[45] It cannot, by itself, overcome the constitutional presumption of innocence. Any taint of irregularity affects the whole performance and should make the presumption unavailable. In the present case, the failure of the apprehending team to comply with paragraph 1, Section 21, Article II of R.A. No. 9165, and with the chain of custody requirement of this Act effectively negates this presumption. As we explained in *Malillin v. People*:[46]

> The presumption of regularity is merely just that — a mere presumption disputable by contrary proof and which when challenged by the evidence cannot be regarded as binding truth. Suffice it to say that this presumption cannot preponderate over the presumption of innocence that prevails if not overthrown by proof beyond reasonable doubt. In the present case the lack of conclusive identification of the illegal drugs allegedly seized from petitioner, coupled with the irregularity in the manner by which the same were placed under police custody before offered in court, strongly militates a finding of guilt.

We are not unmindful of the pernicious effects of drugs in our society; they are lingering maladies that destroy families

---

[44] *Supra* note 28.

[45] See *People v. Coreche*, G.R. No. 182528, August 14, 2009, 596 SCRA 350, 364.

[46] *Supra* note 43, at 623.

and relationships, and engender crimes. The Court is one with all the agencies concerned in pursuing an intensive and unrelenting campaign against this social dilemma. Regardless of how much we want to curb this menace, we cannot disregard the protection provided by the Constitution, most particularly the presumption of innocence bestowed on the appellant. Proof beyond reasonable doubt, or that quantum of proof sufficient to produce moral certainty that would convince and satisfy the conscience of those who act in judgment, is indispensable to overcome this constitutional presumption. If the prosecution has not proved, in the first place, all the elements of the crime charged, which in this case is the *corpus delicti*, then the appellant deserves no less than an acquittal.

WHEREFORE, premises considered, we hereby *REVERSE* and *SET ASIDE* the May 22, 2007 Decision of the Court of Appeals in CA-G.R. CR-H.C. No. 01597. Appellant Felimon Pagaduan *y* Tamayo is hereby *ACQUITTED* for failure of the prosecution to prove his guilt beyond reasonable doubt. He is ordered immediately *RELEASED* from detention unless he is confined for another lawful cause.

Let a copy of this Decision be furnished the Director, Bureau of Corrections, Muntinlupa City for immediate implementation. The Director of the Bureau of Corrections is directed to report the action he has taken to this Court within five days from receipt of this Decision.

SO ORDERED.

Carpio Morales, Bersamin, Abad,[*] and *Villarama, Jr., JJ.,* concur.

---

[*] Designated additional Member of the Third Division, in view of the retirement of Chief Justice Reynato S. Puno, per Special Order No. 843 dated May 17, 2010.

FIRST DIVISION

[G.R. No. 179441. August 9, 2010]

ST. JAMES COLLEGE OF PARAÑAQUE; JAIME T. TORRES, represented by his legal representative, JAMES KENLEY M. TORRES; and MYRNA M. TORRES, *petitioners, vs.* **EQUITABLE PCI BANK,** *respondent.*

SYLLABUS

1. CIVIL LAW; OBLIGATIONS AND CONTRACTS; EXTINGUISHMENT OF OBLIGATION; NOVATION; ELUCIDATED. — As a civil law concept, novation is the extinguishment of an obligation by the substitution or change of the obligation by a subsequent one which terminates it, either by changing its objects or principal conditions, or by substituting a new debtor in place of the old one, or by subrogating a third person to the rights of the creditor. Novation may be extinctive or modificatory. It is extinctive when an old obligation is terminated by the creation of a new one that takes the place of the former; it is merely modificatory when the old obligation subsists to the extent that it remains compatible with the amendatory agreement. Novation may either be express, when the new obligation declares in unequivocal terms that the old obligation is extinguished, or implied, when the new obligation is on every point incompatible with the old one. The test of incompatibility lies on whether the two obligations can stand together, each one with its own independent existence. x x x *Novatio non praesumitur*, or novation is never presumed, is a well-settled principle. Consequently, that which arises from a purported modification in the terms and conditions of the obligation must be clear and express. x x x It has often been said that the minds that agree to contract can agree to novate. And the agreement or consent to novate may well be inferred from the acts of a creditor, since volition may as well be expressed by deeds as by words.

2. ID.; ID.; ID.; ID.; REQUISITES. — For novation, as a mode of extinguishing or modifying an obligation, to apply, the following requisites must concur: 1) There must be a previous

valid obligation. 2) The parties concerned must agree to a new contract. 3) The old contract must be extinguished. 4) There must be a valid new contract.

3. REMEDIAL LAW; PROVISIONAL REMEDIES; PRELIMINARY INJUNCTION; WHEN PROPER. — A writ of preliminary injunction issues to: prevent threatened or continuous irremediable injury to some of the parties before their claims can be thoroughly studied and adjudicated. Its sole office is to preserve the *status quo* until the merits of the case can be heard fully. Thus, its issuance is conditioned **upon a showing of a clear and unmistakable right that is violated**. Moreover, an **urgent necessity for its issuance must be shown by the applicant**. Under Section 3, Rule 58 of the Rules of Court, an application for a writ of preliminary injunction may be granted if the following grounds are established, thus: (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; (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.

4. ID.; ID.; ID.; REQUISITES. — Following jurisprudence, these requisites must be proved before a writ of preliminary injunction, be it **mandatory** or **prohibitory**, will issue: (1) The applicant must have a clear and unmistakable right to be protected, that is a right *in esse*; (2) There is a material and substantial invasion of such right; (3) There is an urgent need for the writ to prevent irreparable injury to the applicant; and (4) No other ordinary, speedy, and adequate remedy exists to prevent the infliction of irreparable injury.

5. COMMERCIAL LAW; MORTGAGE; EXTRAJUDICIAL SALE; REDEMPTION PERIOD; ONLY UPON EXPIRATION OF ONE YEAR PERIOD WITHOUT USE OF THE RIGHT WILL OWNERSHIP BECOME CONSOLIDATED IN THE PURCHASER. — The one-year redemption period is another

grace period accorded petitioners to pay the outstanding debt, which would be converted to the proceeds of the forced sale pursuant to the requisites under Sec. 6 of Republic Act No. 3135, as amended, for the redemption of a property sold in an extrajudicial sale, also in accordance with Sec. 78 of the General Banking Act, as amended by Presidential Decree No. 1828. It is only upon the expiration of the redemption period, without the judgment debtors having made use of their right of redemption, does ownership of the land sold become consolidated in the purchaser or winning bidder.

6. REMEDIAL LAW; PROVISIONAL REMEDIES; PRELIMINARY INJUNCTION; CONSTRUED STRICTLY AGAINST THE PLEADER. — Trial courts are reminded to see to it that applications for preliminary injunction clearly allege facts and circumstances showing the existence of the requisites. We need not stress that an application for injunctive relief is construed strictly against the pleader.

APPEARANCES OF COUNSEL

Marasigan Dangazo Cajigal & Associates Law Offices for petitioners.

Tan Acut & Lopez for respondent.

D E C I S I O N

VELASCO, JR., *J.*:

Appealed via this petition for review under Rule 45 is the Decision[1] dated January 17, 2007 of the Court of Appeals (CA) in CA-G.R. SP No. 86587, as reiterated in its Resolution[2] of August 28, 2007, reversing the earlier orders in SCA No. 2569 of the Regional Trial Court (RTC), Branch 266 in Pasig City.

---

[1] *Rollo*, pp. 162-183. Penned by Associate Justice Mariflor P. Punzalan Castillo and concurred in by Associate Justices Martin S. Villarama, Jr. (now a member of the Court) and Rosmari D. Carandang.

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

The Facts

Petitioners-spouses Jaime (now deceased) and Myrna Torres owned and operated St. James College of Parañaque[3] (St. James College), a sole proprietorship educational institution. Sometime in 1995, the Philippine Commercial and International Bank (PCIB) granted the Torres spouses and/or St. James College a credit line facility of up to PhP 25,000,000. This accommodation or any of its extension or renewal was secured by a real estate mortgage[4] (REM) over a parcel of land situated in Parañaque covered by Transfer Certificate of Title (TCT) No. 74598[5] in the name of St. James College, particularly described as:

> A parcel of Land (lot 2 of the cons. and subd. plan Pcs.-13-0008777, being a portion of the cons. of Lots 4654-B and 5654-C Psd.-13-002266. L.R.C. Rec. No. N-21332), situated in the Bo. of San Dionisio, Mun. of Parañaque, Metro Manila. x x x containing an area of NINETEEN THOUSAND TWO HUNDRED TWENTY FIVE (19,225) SQ. METERS.
>
> St. James College used to occupy the above lot.

PCIB eventually merged with Equitable Bank with the surviving bank known as Equitable PCI Bank (EPCIB) (now Banco de Oro). The credit line underwent several annual renewals, the last being effected in 2001. As petitioners had defaulted in the payment of the loan obtained from the secured credit accommodation, their total unpaid loan obligation, as of September 2001, stood at PhP 18,300,000.

In a bid to settle its loan availment, petitioners first proposed to EPCIB that they be allowed to pay their account in equal quarterly installments for five years. This payment scheme was apparently not acceptable to EPCIB, as another written letter later followed, this time petitioners proposing that their outstanding credit be converted into a long term loan payable in 10 equal annual installments.

---

[3] Referred to in certain pleadings and documents as St. James School.

[4] *Rollo*, pp. 58-59, dated November 8, 1994.

[5] *Id*. at 60-61, dated September 16, 1993.

EPCIB responded via a letter of January 9, 2003.[6] In it, EPCIB informed petitioners that it is denying their request for the reinstatement of their credit line, but proposed a restructuring package with a soft payment scheme for the outstanding loan balance of PhP 18,300,000. Under the counter-proposal, the bank would book the accumulated past due loans to current status and charge interest at a fixed rate of 13.375% per annum, payable in either of the ensuing modes and level, at petitioners' options: payment of the PhP 18,300,000 principal either at a monthly rate of PhP 508,333.33; or equal annual amortizations of PhP 6,100,000 payable every May. Petitioner Jaime Torres chose and agreed to the second option, *i.e.*, the equal annual amortizations of PhP 6,100,000 payable every May, by affixing his *conforme* signature at the bottom portion of EPCIB's letter, writing the words "on annual amortization."[7]

May 2003 came, but petitioners failed to pay the stipulated annual amortization of PhP 6,100,000 agreed upon. Whereupon, EPCIB addressed to petitioners a demand letter dated June 6, 2003 requiring them to settle their obligation. On June 23, 2003, petitioners tendered, and EPCIB accepted, a partial payment of PhP 2,521,609.62, broken down to cover the following items: PhP 1,000,000 principal, PhP 1,360,881.62 interest due on June 15, 2003, and PhP 160,728.00 insurance premium for the mortgaged property. In the covering June 23, 2003 letter,[8] which came with the tender, petitioners promised to make another payment in October 2003 and that the account would be made current in June 2004. They manifested, however, that St. James College is not subject to the 10% value-added tax (VAT) which EPCIB assessed against the school in its June 15, 2003 statement of account. Petitioners accordingly requested the deletion of the VAT portion.

Vis-à-vis the PhP 2,521,609.62 payment to which it issued an official receipt (OR)[9] dated June 30, 2003, EPCIB made it

---

[6] *Id.* at 56-57.

[7] *Id.* at 57.

[8] *Id.* at 62.

[9] *Id.* at 63.

abundantly clear on the OR that: "THE RECEIPT OF PAYMENT IS WITHOUT PREJUDICE TO THE BANK'S RIGHT AND CLAIMS ARISING FROM THE FACT THE ACCOUNT IS OVERDUE. NOR SHALL IT RENDER THE BANK LIABLE FOR ANY DAMAGE BY ITS ACCEPTANCE OF PAYMENT." And in answer to petitioners' cover letter of June 23, 2003, EPCIB, through counsel, reminded and made it clear to petitioners that their first partial payment did not detract from the past due character of their outstanding loan for which reason it is demanding the remaining PhP 5,100,000 to complete the first PhP 6,100,000 principal payment. On August 27, 2003, EPCIB again sent another demand letter to petitioners, but to no avail.

On September 15, 2003, petitioners requested that the bank allow a partial payment of the May 2003 amortization balance of PhP 5,100,000. Two days later, EPCIB responded denying petitioners' request, but nonetheless proposed a new repayment scheme to which petitioners were not amenable.

Petitioners made a second check remittance, this time in the amount of PhP 921,535.42,[10] the PhP 500,000 portion of which represented payment of the principal and PhP 421,535.42 for interest due on October 15, 2003. By letter dated November 5, 2003, EPCIB again reminded petitioners that its receipt of the check payment for the amount of the PhP 921,535.42 is without prejudice to the bank's rights considering the overdue nature of petitioners' loan.[11]

On November 6, 2003, petitioners issued a Stop Payment Order[12] for their PhP 921,535.42 check. And in a November 8, 2003 letter, petitioner Jaime, adverting to EPCIB's November 5, 2003 letter, told the bank, "You cannot just unilaterally decide/announce that you did not approve our proposal/request for restructuring of our loan after receiving our payment, which was based on said proposal/request."[13]

---

[10] *Id.* at 64, Check Voucher No. 3946 dated October 30, 2003.

[11] *Id.* at 69.

[12] *Id.* at 67-68.

[13] *Id.* at 15.

On November 10, 2003, EPCIB, through counsel, demanded full settlement of petitioners' loan obligation in the total amount of PhP 24,719,461.48. Appended to the demand letter which went unheeded was a statement of account showing detailed principal obligation, interest, and penalties as well as payments petitioners made and how they were applied.

On November 27, 2003, EPCIB filed before the Office of the Clerk of Court and *Ex-Officio* Sheriff of the RTC in Parañaque City its Petition for Sale[14] to extra-judicially foreclose the mortgaged property covered by TCT No. 74598. After due publication, the foreclosure sale of the mortgaged property was set for January 9 and 16, 2004.

On December 8, 2003, in the RTC, Branch 266 in Pasig City, petitioners instituted against EPCIB a complaint for Declaratory Relief, Injunction and Damages, with application for a temporary restraining order (TRO) and/or writ of preliminary injunction,[15] docketed as SCA No. 2569.

On the very day of the scheduled foreclosure sale, January 9, 2004, the Pasig City RTC issued a TRO,[16] enjoining EPCIB from proceeding with the scheduled foreclosure sale, and set a date for the hearing on the application for a writ of preliminary injunction.

After the scheduled hearing on January 15, 2004, the trial court required the parties to file their respective memoranda. EPCIB filed a motion praying for an additional time to file its memorandum which the RTC eventually denied.

On March 10, 2004, the RTC issued an Order granting a writ of preliminary injunction in favor of petitioners, as plaintiffs *a quo*, thus effectively staying the rescheduled foreclosure sale of St. James College's mortgaged property. The dispositive portion of the RTC Order reads:

---

[14] *Id.* at 72-74.

[15] *Id.* at 77-85.

[16] *Id.* at 95-96.

WHEREFORE, premises considered, finding plaintiffs' application for writ of preliminary injunction to be well-taken and legally justified, the same is hereby GRANTED.

Accordingly, in the interest of substantial justice, let therefore a writ of preliminary injunction be issued enjoining the defendant EPCIB and/or any of its representative/s or any person acting in its behalf to foreclose the mortgaged property of the plaintiffs until final order of the Court. Plaintiffs are directed to post an injunction bond in the amount of ONE MILLION PESOS (PhP1,000,000.00) to answer for whatever damages that said defendant may suffer in the event that it is finally determined by the Court that plaintiffs are not entitled to the same.

SO ORDERED.[17]

By Order[18] of July 6, 2004, the RTC denied EPCIB's Extremely Urgent Motion for Reconsideration.[19]

Aggrieved, EPCIB went to the CA on *certiorari* to nullify the RTC Orders dated March 10, 2004 and July 6, 2004, and necessarily to assail the propriety of the writ of preliminary injunction thus granted.

Meanwhile, petitioner Jaime passed away and was substituted by petitioner James Kenley M. Torres.

The Ruling of the CA

On January 17, 2007, the appellate court—while making short shrift of the jurisdictional challenge raised by EPCIB, but finding that grave abuse of discretion attended the issuance of the assailed writ of preliminary injunction—rendered the assailed decision nullifying and setting aside the RTC orders, disposing as follows:

WHEREFORE, premises considered, the instant petition for *certiorari* is GRANTED. Accordingly, the March 10, 2004 and July 6, 2004 Orders of the Regional Trial Court of Pasig City, Branch 266, are hereby REVERSED and SET ASIDE.

---

[17] *Id.* at 114.

[18] *Id.* at 129-130.

[19] *Id.* at 115-128, dated March 19, 2004.

SO ORDERED.[20]

Their Motion for Reconsideration (Of the Decision dated 17 January 2007)[21] having been denied in the equally assailed resolution of August 28, 2007, petitioners interposed the instant recourse.

The Court, through its Resolution of December 12, 2007, issued a TRO,[22] enjoining the Office of the Clerk of Court and *Ex-Officio* Sheriff of the Parañaque City RTC, and EPCIB, their agents or representatives, from enforcing the appealed decision and resolution of the CA, conditioned upon the posting by petitioners of a PhP 1,000,000 surety bond. On January 29, 2008, petitioners submitted the necessary surety bond.

The Issues

Petitioners urge the setting aside of the appealed CA decision and resolution on the submission that the appellate court committed grave and reversible error:

I. x x x IN RULING THAT THE PETITIONERS (PRIVATE RESPONDENTS IN CA-G.R. SP NO. 86587) FAILED TO ESTABLISH THE ELEMENTS FOR THE ISSUANCE OF THE INJUNCTIVE WRIT CONTRARY TO THE FINDINGS OF THE COURT *A QUO* BY MISAPPLYING THE CASE OF *TOYOTA MOTOR PHILIPPINES CORPORATION WORKERS' ASSOCIATION VS COURT OF APPEALS*, 412 SCRA 69.

II. x x x IN MISINTERPRETING THE DOCTRINE ENUNCIATED IN *ESTARES VS. COURT OF APPEALS*, 459 SCRA, 619 UPON WHICH IT LIKEWISE BASED ITS ASSAILED DECISION PROMULGATED ON JANUARY 17, 2007.

III. x x x IN RULING THAT THERE WAS NO NOVATION AS PROVIDED FOR UNDER ARTICLE 1292 OF THE NEW CIVIL CODE OF THE PHILIPPINES.[23]

---

[20] *Id.* at 182.

[21] *Id.* at 184-195, dated February 2, 2007.

[22] *Id.* at 222-224.

[23] *Id.* at 26.

The key issues tendered may be summarized, as follows: *first*, whether there was indeed a novation of the contract between the parties; and *second*, whether the required ground or grounds for the issuance of a preliminary injunction is/are present.

The Court's Ruling

The petition is unmeritorious.

No Novation of Contract

Petitioners admit the existence of their unsettled loan obligation to EPCIB. They would insist, however, that the full amount is still not due owing to the implied novation of the terms of payment previously agreed upon. As petitioners assert in this regard that the acceptance by EPCIB, particularly of the June 23, 2003 PhP 2,521,609.62 payment, without any objection on the new terms set forth in their June 23, 2003 complementing covering letter, novated the terms of payment of the PhP 18,300,000 secured loan. To petitioners, EPCIB veritably acquiesced to the new terms of payment being incompatible with the terms of the January 9, 2003 counter-proposal of EPCIB affecting petitioners' obligation of PhP 18,300,000.

We are not persuaded.

As a civil law concept, novation is the extinguishment of an obligation by the substitution or change of the obligation by a subsequent one which terminates it, either by changing its objects or principal conditions, or by substituting a new debtor in place of the old one, or by subrogating a third person to the rights of the creditor.[24] Novation may be extinctive or modificatory. It is extinctive when an old obligation is terminated by the creation of a new one that takes the place of the former; it is merely modificatory when the old obligation subsists to the extent that

---

[24] *Idolor v. Court of Appeals*, G.R. No. 141853, February 7, 2001, 351 SCRA 399, 407; *Agro Conglomerates, Inc. v. Court of Appeals*, G.R. No. 117660, December 12, 2000, 348 SCRA 450, 458; *De Cortes v. Venturanza*, G.R. No. L-26058, October 28, 1977, 79 SCRA 709, 722-723; *Philippine National Bank v. Mallari and The First National Surety & Assurance Co., Inc.*, 104 Phil. 437, 441 (1958).

it remains compatible with the amendatory agreement.[25] Novation may either be express, when the new obligation declares in unequivocal terms that the old obligation is extinguished, or implied, when the new obligation is on every point incompatible with the old one.[26] The test of incompatibility lies on whether the two obligations can stand together, each one with its own independent existence.[27]

For novation, as a mode of extinguishing or modifying an obligation to apply, the following requisites must concur:

1) There must be a previous valid obligation.

2) The parties concerned must agree to a new contract.

3) The old contract must be extinguished.

4) There must be a valid new contract.[28]

As correctly determined by the appellate court, certain circumstances or their interplay militates against the application of novation.

First. The parties did not unequivocally declare, let alone agree, that the obligation had been modified as to the terms of payment by the partial payments of the obligation. Petitioners indeed made known their inability to pay in full the PhP 6,100,000 principal obligation due in May 2003 and tendered only partial payments of PhP 1,000,000 on June 23, 2003 and PhP 500,000

---

[25] *Babst v. Court of Appeals*, G.R. No. 99398, January 26, 2001, 350 SCRA 341, 355-356; citing *Quinto v. People*, G.R. No. 126712, April 14, 1999, 305 SCRA 708, 714.

[26] *Spouses Bautista v. Pilar Development Corporation*, G.R. No. 135046, August 17, 1999, 312 SCRA 611, 618.

[27] *Molino v. Security Diners International Corporation*, G.R. No. 136780, August 16, 2001, 363 SCRA 358, 366; citing *Fortune Motors v. Court of Appeals*, G.R. No. 112191, February 7, 1997, 267 SCRA 653.

[28] *Agro Conglomerates, Inc. v. Court of Appeals*, *supra* note 24, at 458-459; *Security Bank and Trust Company, Inc. v. Cuenca*, G.R. No. 138544, October 3, 2000, 341 SCRA 781, 796; *Reyes v. Court of Appeals*, G.R. No. 120817, November 4, 1996, 264 SCRA 35, 43.

on November 5, 2003. It should be stressed, however, that EPCIB lost no time in demanding payment for the full PhP 6,100,000 principal obligation due in May 2003. The following acts of EPCIB readily argue against the idea of its having agreed to a modification in the stipulated terms of payment: (a) its letter-reply to petitioners' June 23, 2003 letter; (b) the August 27, 2003 demand-letter of EPCIB for the full principal balance of PhP 5,100,000 from petitioners; (c) the September 17, 2003 letter of EPCIB denying petitioners' request for a partial payment; (d) the OR dated June 30, 2003 EPCIB issued where the following entries were written: "THE RECEIPT OF PAYMENT IS WITHOUT PREJUDICE TO THE BANK'S RIGHTS AND CLAIMS ARISING FROM THE FACT THE ACCOUNT IS OVERDUE. NOR SHALL IT RENDER THE BANK LIABLE FOR ANY DAMAGE BY ITS ACCEPTANCE OF PAYMENT"; and (e) the letter of November 5, 2003 EPCIB sent reiterating that the receipt of the second partial payment is without prejudice to the bank's rights on the overdue loan.

The underlying arrangement between petitioners and EPCIB, respecting the terms of payment of the loan drawn against the credit facility, was that set forth in the January 9, 2003 agreement, which, for reference, required petitioners to remit to the lending bank an annual amortization of PhP 6,100,000 payable every May until the entire loan obligation shall have been covered. Any suggestion that EPCIB is precluded from asserting its legal rights after petitioners reneged on their part of the bargain etched in said January 9, 2003 agreement owing alone to its acceptance of an amount less than PhP 6,100,000, is too presumptuous for acceptance. Viewed otherwise, the notion of novation foisted by petitioners on the Court cannot be plausibly deduced from EPCIB's acceptance of such lesser amount.

Contrary to what petitioners would want the Court to believe, there is clearly no incompatibility between EPCIB's receipt of the partial payments of the principal amounts and what was due in May 2003, *i.e.*, the PhP 1,000,000 and PhP 500,000 payments *vis-à-vis* the PhP 6,100,000 due. As it were, EPCIB accepted the partial payments remitted, but demanded, at the same time, the full payment of what was otherwise due in May 2003,

as the parties agreed upon. As the CA observed correctly, precisely EPCIB was demanding the full payment of the PhP 5,100,000 principal due in May 2003 which had not yet been settled.

Second. *Novatio non praesumitur*, or novation is never presumed,[29] is a well-settled principle. Consequently, that which arises from a purported modification in the terms and conditions of the obligation must be clear and express. On petitioners thus rests the onus of showing clearly and unequivocally that novation has indeed taken place. To us, petitioners have not discharged the burden. Moreover, we fail to see the presence of the concurring requisites for a novation of contract, as enumerated above. Indeed, petitioners have not shown an express modification of the terms of payment of the obligation.

It has often been said that the minds that agree to contract can agree to novate. And the agreement or consent to novate may well be inferred from the acts of a creditor, since volition may as well be expressed by deeds as by words.[30] In the instant case, however, the acts of EPCIB before, simultaneously to, and after its acceptance of payments from petitioners argue against the idea of its having acceded or acquiesced to petitioners' request for a change of the terms of payments of the secured loan. Far from it. Thus, a novation through an alleged implied consent by EPCIB, as proffered and argued by petitioners, cannot be given imprimatur by the Court.

Propriety of the Grant of Injunctive Writ

We now come to the main issue in this case—the propriety of the issuance of the preliminary injunctive writ.

Basically, petitioners fault the appellate court for citing and relying on *Toyota Motor Philippines Corporation Workers' Association v. Court of Appeals* (*Toyota*)[31] and *Estares v. Court*

---

[29] *Reyes v. Court of Appeals*, *supra* note 28, at 48; *Agro Conglomerates, Inc. v. Court of Appeals*, *supra* note 24, at 459; *Security Bank and Trust Company, Inc. v. Cuenca*, *supra* note 28.

[30] *Babst v. Court of Appeals*, *supra* note 25.

[31] G.R. No. 148924, September 24, 2003, 412 SCRA 69.

of Appeals[32] in support of its disposition on their non-entitlement to a preliminary injunctive writ. Pursuing this point, petitioners posit the inapplicability of *Toyota*, as that case involved the issuance of a writ of **preliminary mandatory injunction**, not a writ of **preliminary prohibitory injunction**, as here. And *Estares*, they argue, was cast against and revolved around a different factual issue, for the debtors Estares spouses in *Estares*, unlike petitioners, did not question the statement of account given them by the lending institution and failed to establish their entitlement to the injunctive writ.

Moreover, petitioners invite attention to the fact respecting the mortgaged lot being the site of St. James College. As such, petitioners add, public interest demands that said educational institution be protected from an undue operational disruption which would result in damages, in case of a foreclosure sale, that are not only incapable of pecuniary estimation, but also well-nigh irreparable, affecting the employment of the teaching staff and other school personnel and the displacement of thousands of students.

We are not persuaded.

Requisites for issuance of an injunctive writ

A writ of preliminary injunction issues to:

> prevent threatened or continuous irremediable injury to some of the parties before their claims can be thoroughly studied and adjudicated. Its sole office is to preserve the *status quo* until the merits of the case can be heard fully. Thus, its issuance is conditioned **upon a showing of a clear and unmistakable right that is violated**. Moreover, an **urgent necessity for its issuance must be shown by the applicant**.[33] (Emphasis supplied.)

---

[32] G.R. No. 144755, June 8, 2005, 459 SCRA 604, 619.

[33] *First Global Realty and Development Corporation v. San Agustin*, G.R. No. 144499, February 19, 2002, 377 SCRA 341; see also *Tayag v. Lacson*, G.R. No. 134971, March 25, 2004, 426 SCRA 282; *Mabayo Farms, Inc. v. Court of Appeals*, G.R. No. 140058, August 1, 2002, 386 SCRA 110.

Under Section 3, Rule 58 of the Rules of Court, an application for a writ of preliminary injunction may be granted if the following grounds are established, thus:

(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;

(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.

And following jurisprudence, these requisites must be proved before a writ of preliminary injunction, be it **mandatory** or **prohibitory**, will issue:

(1) The applicant must have a clear and unmistakable right to be protected, that is a right *in esse*;

(2) There is a material and substantial invasion of such right;

(3) There is an urgent need for the writ to prevent irreparable injury to the applicant; and

(4) No other ordinary, speedy, and adequate remedy exists to prevent the infliction of irreparable injury.[34]

Thus, the question of applicability of *Toyota* as regards the requisites of a preliminary injunction is of no moment, for there is no distinction in the requisites for either a mandatory or prohibitory injunctive writ.

---

[34] *Biñan Steel Corporation v. Court of Appeals*, G.R. Nos. 142013 & 148430, October 15, 2002, 391 SCRA 90; *Hutchison Ports Philippines Ltd. v. Subic Bay Metropolitan Authority*, G.R. No. 131367, August 31, 2000, 339 SCRA 434.

Requisites for injunctive writ not present

A circumspect review of the parties' pleadings and other records of the case readily yields the conclusion that the minimum legal requisites for the issuance of a preliminary prohibitory injunction have not been satisfied. Hence, the appellate court neither committed manifest error nor gravely abused its discretion in setting aside the grant by the trial court of a writ of preliminary injunction in favor of petitioners.

For sure, the Court is aware that the matter of the propriety of the issuance of a writ of preliminary injunction is addressed to the sound discretion of the trial court. It bears to stress, however, that the injunctive writ is **conditioned on the existence of a clear and positive right of the applicant which should be protected**, the writ being the strong arm of equity, an extraordinary peremptory remedy which can be availed of only upon the existence of well-defined circumstances. Be that as it may, the writ must be used with extreme caution, affecting as it does the respective rights of the parties.[35] In fine, the writ should be granted only when the court is fully satisfied that the law permits it and the emergency demands it,[36] for the very foundation of the jurisdiction to issue writ of injunction rests in the **existence of a cause of action**, **probability of irreparable injury**, **inadequacy of pecuniary compensation**, and the **prevention of the multiplicity of suits**. Where facts are not shown to bring the case within these conditions, the relief of injunction should be refused.[37]

Petitioners failed to show a right *in esse* to be protected

We join the CA in its findings that the petitioners have not shown a right *in esse* to be protected. Indeed, the Rules requires that the applicant's right must be clear or unmistakable, that is, a right that is actual, clear, and positive especially calling

---

[35] *Bataclan v. Court of Appeals*, G.R. No. 78148, July 31, 1989, 175 SCRA 764.

[36] *Olalia v. Hizon*, G.R. No. 87913, May 6, 1991, 196 SCRA 665, 672-673.

[37] *Id.*, citing *Golding v. Balatbat*, 36 Phil. 941 (1917).

for judicial protection.[38] An injunction 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.

An application for a preliminary injunction is a mere adjunct to the main action. While the instant proceeding is only for the purpose of determining whether grave abuse of discretion indeed attended the issuance by the RTC of the writ in question, as the CA has determined positively, it is inevitable that our pronouncements may have some unintended bearing on the main suit for declaratory relief. Nonetheless, it behooves the Court to resolve the matter in keeping with the requirements of justice and fair play.

A judicious review of the records shows petitioners applying for and EPCIB granting the former credit facilities and for which a *bona fide* REM over the St. James College lot had been constituted. EPCIB has shown documentary evidence of how petitioners agreed to the credit line accomodation with a limit of PhP 25,000,000. Moreover, the late petitioner Jaime indeed agreed to the January 9, 2003 counter-proposal of EPCIB for the payment of the PhP 18,300,000 outstanding loan, by signing his *conforme* on the counter-proposal and voluntarily opting to pay the loan on equal annual payments of PhP 6,100,000 every May for three years.

It bears stressing that the original renewable credit line was granted sometime in 1995, while the REM over the land covered by TCT No. 74598 was executed on November 8, 1994. The records show that the credit line was last renewed in 2001. There can be no quibbling that in September 2001, petitioners were already in default, their overdue loan having an unpaid balance of PhP 18,300,000. The fact of default was admitted by petitioners when they twice proposed ways of settling their account.

---

[38] See *Republic v. Villarama*, G.R. No. 117733, September 5, 1997, 278 SCRA 736; *Buayan Cattle Co., Inc. v. Quintillan*, G.R. No. L-26970, March 19, 1984, 128 SCRA 276.

Verily, the January 9, 2003 counter-proposal of EPCIB was a gesture of liberality on its part, inasmuch as, by that simple act, it deferred exercising its rights as REM-secured creditor, by affording petitioners the opportunity to restructure their loan by making the outstanding balance of PhP 18,300,000 current. As events turned out, however, petitioners still breached the terms of the counter-proposal by which they voluntarily agreed to abide.

We note that EPCIB did not immediately exercise its right to foreclose when the opportunity first presented itself. From September 27, 2001, when petitioners were already in arrears, until November 27, 2003, or for more than two years, EPCIB let that opportunity pass by. The new terms of payment pursuant to the January 9, 2003 agreement gave petitioners a fresh start to meet their obligation.

We further note that petitioners saw fit to commence SCA No. 2569 for declaratory relief only on December 8, 2003 or after EPCIB filed its petition for sale to extra-judicially foreclose the subject mortgaged property. With the view we take of things, petitioner instituted SCA No. 2569 as an afterthought and a measure to thwart and forestall the imminent extrajudicial foreclosure proceedings.

Given the foregoing perspective, EPCIB has clearly established its status as unpaid mortgagee-creditor entitled to foreclose the mortgage, a remedy provided by law[39] and the mortgage contract itself. On the other hand, petitioners can hardly claim a right, much less a clear and unmistakable one, which the intended foreclosure sale would violate if not enjoined. Surely, the foreclosure of mortgage does not by itself constitute a violation of the rights of a defaulting mortgagor.

The main purpose of the subsidiary contract of REM is to secure the principal obligation. Withal, when the mortgagors-debtors has defaulted in the amortization payments of their loans,

---

[39] *Caltex Philippines, Inc. v. Intermediate Appellate Court*, G.R. No. 74730, August 25, 1989, 176 SCRA 741.

the superior legal right of the secured unpaid creditors to exercise foreclosure proceedings on the mortgage property to answer for the principal obligation arises. So it must be in this case.

Contrary to what the RTC wrote, there was no urgent necessity to issue the writ to protect the rights and interest of petitioners as owners. *First*, they could participate in the foreclosure sale and get their property back unencumbered by the payment of the obligations that they acknowledged in the first place. *Second*, a foreclosure sale does not *ipso facto* pass title to the winning bidder over the mortgaged property. Petitioners continue to own the mortgaged property sold in an auction sale until the expiration of the redemption period. *Third*, petitioners have one year from the auction sale to redeem the mortgaged property. The one-year redemption period is another grace period accorded petitioners to pay the outstanding debt, which would be converted to the proceeds of the forced sale pursuant to the requisites under Sec. 6 of Republic Act No. 3135, as amended, for the redemption of a property sold in an extrajudicial sale, also in accordance with Sec. 78 of the General Banking Act, as amended by Presidential Decree No. 1828.[40] It is only upon the expiration of the redemption period, without the judgment debtors having made use of their right of redemption, does ownership of the land sold become consolidated in the purchaser or winning bidder.[41]

Petitioners contend that the proposed foreclosure sale would likely cause unemployment in, as well as the displacement of thousands of students of St. James College. Petitioners' thesis of unemployment and displacement provides a practical, not a legal reason, for the issuance of an injunctive writ. What they conveniently refrained from saying is that it is within their power and to their interest to prevent the occurrence of any of the two eventualities.

---

[40] *Tolentino v. Court of Appeals*, G.R. No. 171354, March 7, 2007, 517 SCRA 370.

[41] *Ley v. Union Bank of the Philippines*, G.R. No. 167961, April 4, 2007, 520 SCRA 369.

Finally, petitioners point to the fact that the mortgaged property has a value of over PhP 1 billion which is many times over their unpaid loan obligation.

The disparity between what the mortgaged lot is worth and petitioners' unpaid debt of PhP 24 million is not, standing alone, a ground to enjoin a foreclosure sale. Neither would petitioners, as mortgagors, be placed at a disadvantage by such state of things. The CA, citing decisional law, explains why:

> Second, the fact that the outstanding obligation is only ₱24 million while the value of the mortgaged property could be more than one billion pesos is not sufficient to enjoin the foreclosure sale of the said property. We agree with [EPCIB] that the value of the mortgaged property has no bearing on the propriety of the auction sale provided that the same is regularly and honestly conducted. This is because in a foreclosure sale where there is a right to redeem, inadequacy of the bid price is of no moment for the reason that the judgment debtor has always the chance to redeem and reacquire the property. In fact, the property may be sold for less than its fair market value precisely because the lesser the price, the easier for the owner to effect a redemption.[42]

Application for injunctive relief construed strictly

In all then, the preliminary evidence presented by petitioners and the allegations in their complaint did not clearly make out any entitlement to the injunctive relief prayed for. Consequently, the RTC gravely abused its discretion in granting the writ of preliminary injunction. Trial courts are reminded to see to it that applications for preliminary injunction clearly allege facts and circumstances showing the existence of the requisites.[43] We need not stress that an application for injunctive relief is construed strictly against the pleader.[44] Here, petitioners have not sufficiently

---

[42] *Rollo*, p. 177; citing *Valmonte v. Court of Appeals*, G.R. No. L-41621, February 18, 1999, 303 SCRA 278.

[43] *Sales v. Securities and Exchange Commission*, G.R. No. 54330, January 13, 1989, 169 SCRA 109.

[44] *Id.* See also 43 C.J.S. 867: "A complaint for injunctive relief should be strictly construed against the pleader."

shown the presence of the requisites for their entitlement to the writ. Perforce, the injunctive writ issued by the trial court must be recalled.

On the issue of petitioners' contention on the alleged VAT imposed on the principal obligation, such can be fully ventilated in the main action before the trial court.

One final word. The institution by petitioners of a suit for declaratory relief—after the petition for extrajudicial petition has already been filed; and hoping in the process to block the bank's legitimate effort to collect an overdue account and demandable debt—is but a crude attempt to evade complying with their just obligation. It cannot be countenanced. The antecedent facts in this case are quite simple: petitioners opened a credit line secured by a REM. After drawing much from that line, they failed to pay, even after the bank bent backwards in the matter of terms of payments. As a matter of justice and good conscience, the bank's right to a forced sale of the mortgaged property pursuant to the REM must be upheld absent other weightier reasons.

WHEREFORE, the instant petition is hereby *DENIED* for lack of merit, and the Court of Appeals Decision dated January 17, 2007 and Resolution dated August 28, 2007 in CA-G.R. SP No. 86587 are *AFFIRMED*. The temporary restraining order issued by the Court pursuant to its Resolution of December 12, 2007 is accordingly *LIFTED*.

Costs against petitioners.

SO ORDERED.

Corona, C.J. (Chairperson), Leonardo-de Castro, Del Castillo, and *Perez, JJ.,* concur.

THIRD DIVISION

[G.R. No. 179859. August 9, 2010]

***IN RE*: PETITION FOR PROBATE OF LAST WILL AND TESTAMENT OF BASILIO SANTIAGO,**

MA. PILAR SANTIAGO and CLEMENTE SANTIAGO, *petitioners, vs.* **ZOILO S. SANTIAGO, FELICIDAD SANTIAGO-RIVERA, HEIRS OF RICARDO SANTIAGO, HEIRS OF CIPRIANO SANTIAGO, HEIRS OF TOMAS SANTIAGO,** *respondents.*

FILEMON SOCO, LEONILA SOCO, ANANIAS SOCO, URBANO SOCO, GERTRUDES SOCO AND HEIRS OF CONSOLACION SOCO, *oppositors.*

SYLLABUS

REMEDIAL LAW; CIVIL PROCEDURE; JUDGMENTS; EFFECT OF JUDGMENTS AND FINAL ORDERS; *RES JUDICATA*; TWO ASPECTS. — *Res judicata* has two aspects, which are embodied in Sections 47 (b) and 47 (c) of Rule 39 of the Rules of Civil Procedure. The first, known as "bar by prior judgment," proscribes the prosecution of a second action upon the same claim, demand or cause of action already settled in a prior action. The second, known as "conclusiveness of judgment," ordains that issues actually and directly resolved in a former suit cannot again be raised in any future case between the same parties involving a different cause of action.

APPEARANCES OF COUNSEL

The Law Firm of Lapena Manzano Villanueva & Associates for petitioners.

Salinas Tan Libranda & Oneza Law Offices for respondents.

D E C I S I O N

CARPIO MORALES, *J.*:

Basilio Santiago (Basilio) contracted three marriages—the first to Bibiana Lopez, the second to Irene Santiago, and the third to Cecilia Lomotan. Basilio and his *first* wife bore two offsprings, Irene and Marta, the mother of herein oppositors Felimon, Leonila, Consolacion, Ananias, Urbano, and Gertrudes, all surnamed Soco.

Basilio and his *second* wife had six offsprings, Tomas, Cipriano, Ricardo, respondents Zoilo and Felicidad, and petitioner Ma. Pilar, all surnamed Santiago.

Basilio and his *third* wife bore three children, Eugenia herein petitioner Clemente, and Cleotilde, all surnamed Santiago.[1]

After Basilio died testate on September 16, 1973, his daughter by the second marriage petitioner Ma. Pilar filed before the Regional Trial Court (RTC) of Bulacan[2] a petition for the probate of Basilio's will, docketed as **SP No. 1549-M**. The will was admitted to probate by Branch 10 of the RTC and Ma. Pilar was appointed executrix.

The will contained the following provisions, among others:

4. *Ang mga ari-arian ko na nasasaysay sa itaas ay INIWAN, IPINAGKAKALOOB, IBINIBIGAY, at IPINAMAMANA ko sa aking mga nasabing tagapagmana sa ilalim ng gaya ng sumusunod:*

x x x x x x x x x

c) *ang aking anak na si Ma. Pilar ang magpapalakad at mamamahala ng balutan na nasa Santiago, Malolos, Bulacan, na nasasaysay sa itaas na 2(y);*

d) *Sa pamamahala ng bigasan, pagawaan ng pagkain ng hayop at lupa't bahay sa Maynila, ang lahat ng solar sa danay ng daang*

---

[1] As narrated in the Last Will and Testament of Basilio Santiago; *Vide*: Joint Record on Appeal, p. 12.

[2] Then the Court of First Instance of Bulacan.

Malolos-Paombong na nasa Malolos, Bulacan, kasali at kasama ang palaisdaan na nasa likuran niyon, ay ililipat sa pangalan nila Ma. Pilar at Clemente; nguni't ang kita ng palaisdaan ay siyang gagamitin nila sa lahat at anomang kailangang gugol, maging majora o roperacion [sic], sa lupa't bahay sa Lunsod ng Maynila na nasasaysay sa itaas na 2(c);

e) ***Ang lupa't bahay sa Lunsod ng Maynila na nasasaysay sa itaas na 2(c) ay ililipat at ilalagay sa pangalan nila Ma. Pilar at Clemente hindi bilang pamana ko sa kanila kundi upang pamahalaan at pangalagaan lamang nila at nang ang sinoman sa aking mga anak sampu ng apo at kaapuapuhan ko sa habang panahon ay may tutuluyan kung magnanais na mag-aral sa Maynila o kalapit na mga lunsod*** *x x x.*

f) *Ang bigasan, mga makina at pagawaan ng pagkain ng hayop ay ipinamamana ko sa aking asawa, Cecilia Lomotan, at mga anak na Zoilo, Ma. Pilar, Ricardo, Cipriano, Felicidad, Eugenia, Clemente, at Cleotilde nang pare-pareho.* ***Ngunit, sa loob ng dalawampong (20) taon mula sa araw ng aking kamatayan, hindi nila papartihin ito at pamamahalaan ito ni Clemente at ang maghahawak ng salaping kikitain ay si Ma. Pilar na siyang magpaparte.*** *Ang papartihin lamang ay ang kita ng mga iyon matapos na ang gugol na kakailanganin niyon, bilang reparacion, pagpapalit o pagpapalaki ay maawas na. Ninais ko ang ganito sa aking pagmamahal sa kanila at pagaaring ibinubuhay ko sa kanila lahat, bukod sa yaon ay sa kanila ding kapakinabangan at kabutihan.*

g) ***Ang lahat ng lupa, liban sa lupa't bahay sa Lunsod ng Maynila, ay ipinapamana ko sa aking nasabing asawa, Cecilia Lomotan, at mga anak na Tomas, Zoilo, Ma. Pilar, Ricardo, Cipriano, Felicidad, Eugenia, Clemente at Cleotilde nang pare-pareho. Datapwa't, gaya din ng mga bigasan, makina at gawaan ng pagkain ng hayop, ito ay hindi papartihin sa loob ng dalawampong (20) taon mula sa aking pagpanaw, at pamamahalaan din nila Ma. Pilar at Clemente****. Ang mapaparte lamang ay ang kita o ani ng nasabing mga pag-aari matapos bayaran ang buwis at/o patubig at iba pang mga gugol na kailangan. Si Ma. Pilar din ang hahawak ng ani o salaping manggagaling dito.* (emphasis and underscoring supplied)[3]

---

[3] Joint Record on Appeal, pp. 15-17.

The oppositors-children of Marta, a daughter of Basilio and his *first* wife, were, on their motion, allowed to intervene.[4]

After the executrix-petitioner Ma. Pilar filed a "Final Accounting, Partition and Distribution in Accordance with the Will,"[5] the probate court approved the will by **Order of August 14, 1978** and directed the registers of deeds of Bulacan and Manila to register the certificates of title indicated therein.[6] Accordingly, the titles to Lot Nos. 786, 837, 7922, 836 and 838 in Malolos, Bulacan and Lot No. 8-C in Manila were transferred in the name of petitioners Ma. Pilar and Clemente.[7]

The oppositors thereafter filed a Complaint-in-Intervention[8] with the probate court, alleging that Basilio's *second* wife was not Irene but a certain Maria Arellano with whom he had no child; and that Basilio's will violates Articles 979-981 of the Civil Code.[9]

The probate court dismissed the Complaint-in-Intervention, citing its previous approval of the "Final Accounting, Partition, and Distribution in Accordance with the Will."[10]

---

[4] Records, p. 89.

[5] *Id.* at 97-102.

[6] *Id.* at 108.

[7] CA *rollo*, p. 228.

[8] Records, pp. 271-275.

[9] Article 979: Legitimate children and their descendants succeed to the parents and other ascendants, without distinction as to sex or age, and even if they should come from different marriages.

An adopted child succeeds to the property of the adopting parents in the same manner as a legitimate child.

Article 980: The children of the deceased shall always inherit, from him in their own right, dividing the inheritance in equal shares.

Article 981: Should children of the deceased and descendants of other children who are dead, survive, the former shall inherit in their own right, and the latter by right of representation.

[10] Records, p. 380.

The oppositors-heirs of the first marriage thereupon filed a **complaint for completion of legitime before the Bulacan RTC, docketed as Civil Case No. 562-M-90**,[11] against the heirs of the second and third marriages.

In their complaint, oppositors-heirs of the first marriage essentially maintained that they were partially preterited by Basilio's will because their legitime was reduced.[12] They thus prayed, *inter alia*, that an inventory and appraisal of all the properties of Basilio be conducted and that Ma. Pilar and Clemente be required to submit a fresh accounting of all the incomes of the properties from the time of Basilio's death up to the time of the filing of Civil Case No. 562-M-90.[13]

RTC-Branch 17 decided Civil Case No. 562-M-90 (for completion of legitime) in favor of the oppositors-heirs of the *first* marriage.

On appeal (docketed as **CA G.R. No. 45801**), the Court of Appeals, by Decision of January 25, 2002,[14] **annulled** the decision of RTC-Branch 17, holding that the RTC Branch 17 dismissal of the Complaint-in-Intervention in SP No. 1549-M and its August 14, 1978 Order approving the probate of the will constitute *res judicata* with respect to Civil Case No. 562-M-90.[15] Thus the appellate court disposed:

> WHEREFORE, premises considered, the Appeal is hereby **GRANTED**. The Decision in Civil Case No. 562-M-90 is hereby **ANNULLED** on the ground of ***res judicata.*** Let the Decree of Distribution of the Estate of Basilio Santiago remain **UNDISTURBED**.
>
> SO ORDERED.[16] (emphasis in the original; underscoring supplied)

---

[11] *Rollo*, p. 302.

[12] Records, p. 421.

[13] *Id.* at 423.

[14] Penned by Justice Candido Rivera with the concurrence of Justices Delilah Vidallon-Magtolis and Juan Q. Enriquez.

[15] *Rollo*, pp. 304-305.

[16] *Id.* at 308.

Oppositors-heirs of the *first* marriage challenged the appellate court's decision in CA G.R. No. 45801 by petition for review, docketed as G.R. No. 155606, which this Court denied.[17] The denial became final and executory on April 9, 2003.[18]

In the interregnum, or on October 17, 2000, respondent-heirs of the *second* marriage filed before the probate court (RTC-Branch 10) a **Motion for Termination of Administration, for Accounting, and for Transfer of Titles in the Names of the Legatees**.[19] Citing the earlier quoted portions of Basilio's will, they alleged that:

> x x x **the twenty (20) year period** within which subject properties should be under administration of [Ma.] Pilar Santiago and Clemente Santiago **expired on September 16, 1993**.
>
> Consequently, [Ma.] Pilar Santiago and Clemente Santiago should have ceased as such administrator[s] way back on September 16, 1993 and they should have transferred the above said titles to the named legatees in the Last Will and Testament of the testator by then. Said named legatees in the Last Will and Testament are no[ne] other than the following:
>
> x x x x x x x x x
>
> Said [Ma.] Pilar Santiago and Clemente Santiago should have also rendered an accounting of their administration from such death of the testator up to the present or until transfer of said properties and its administration to the said legatees.
>
> x x x x x x x x x[20]

Respondents prayed that petitioners be ordered:

1) To surrender the above-enumerated titles presently in their names to [the] Honorable Court and to transfer the same in the names of the designated legatees in the Last Will and Testament, to wit:

---

[17] *Id.* at 309.

[18] *Id.* at 312.

[19] Records, pp. 390-396.

[20] *Id.* at 393-394.

1) asawa, Cecilia Lomotan, at mga anak na
2) Tomas
3) Zoilo
4) Ma. Pilar
5) Ricardo
6) Cipriano
7) Felicidad
8) Eugenia
9) Clemente at
10) Cleotilde
(all surnamed SANTIAGO)

2) To peacefully surrender possession and administration of subject properties, including any and all improvements thereon, to said legatees.

3) To render an accounting of their administration of said properties and other properties of the testator under their administration, from death of testator Basilio Santiago on September 16, 1973 up to the present and until possession and administration thereof is transferred to said legatees.[21]

Opposing the motion, petitioners argued that with the approval of the Final Accounting, Partition and Distribution in Accordance with the Will, and with the subsequent issuance of certificates of title covering the properties involved, the case had long since been closed and terminated.[22]

The probate court, finding that the properties in question would be transferred to petitioners Ma. Pilar and Clemente for purposes of administration only, granted the motion, by **Order of September 5, 2003**,[23] disposing as follows:

WHEREFORE, premises considered, the Motion for Termination of Administration, for Accounting, and for Transfer of Titles in the Names of the Legatees dated October 3, 2000 filed by some heirs of the testator Basilio Santiago x x x is hereby **GRANTED**. Accordingly, the administratrix [*sic*] Ma. Pilar Santiago and Mr. Clemente Santiago are hereby **DIRECTED**, as follows:

[21] *Id.* at 394.

[22] *Id.* at 409-415.

[23] *Id.* at 824-847.

a.) To surrender the above-enumerated titles presently in their names to this Honorable Court and to transfer the same in the names of the designated legatees in the Last Will and Testament, to wit: 1.) asawa, Cecilia Lomotan at mga anak na 2.) Tomas 3). Zoilo 4.) Ma. Pilar 5.) Ricardo 6.) Cipriano 7.) Felicidad 8.) Eugenia 9.) Clemente and 10.) Cleotilde all named SANTIAGO.

b.) To peacefully surrender possession and administration of subject properties including any and all improvements thereon, to said legatees; and

c.) To render an accounting of their administration of subject properties, including any and all improvements thereon, to said legatees; and

d.) To submit an accounting of their administration of the above-mentioned estate of the testator or all the above said lots including the rice mill, animal feeds factory, and all improvements thereon from August 14, 1978 up to the present.

e.) To submit a proposed Project of Partition, indicating how the parties may actually partition or adjudicate all the above said properties including the properties already in the name of all the said legatees xxx.

x x x x x x x x x.

Further, the Register of Deeds of Bulacan are hereby **DIRECTED** to cancel and consider as no force and effects Transfer Certificates of Title Nos. T-249177 (RT-46294) [Lot No. 786], T-249175 (RT-46295) [Lot No. 837], T-249174 (RT-46296) [Lot No. 7922], T-249173 (RT-46297) [Lot No. 836], and T-249176 (RT-46293) [Lot No. 838] in the names of Ma. Pilar Santiago and Clemente Santiago and to issue new ones in the lieu thereof in the names of Cecilia Lomotan-Santiago, Tomas Santiago, Zoilo Santiago, Ma. Pilar Santiago, Ricardo Santiago, Cipriano Santiago, Felicidad Santiago, Eugenia Santiago, Clemente Santiago, and Cleotilde Santiago.

Moreover, the Register of Deeds of Manila is hereby **DIRECTED** to cancel and consider as no force and effect Transfer Certificate of Title No. 131044 [Lot No. 8-C] in the names of Ma. Pilar Santiago and Clemente Santiago and to issue new ones in lieu thereof in the

names of the Heirs of Bibiana Lopez, the Heirs of Irene Santiago, and the Heirs of Cecilia Lomotan.

The Motion to Suspend Proceedings filed by Filemon, Leonila, Ma. Concepcion, Ananias, Urbano and Gertrudes, all surnamed Soco, dated December 3, 2002, is hereby **DENIED** for lack of merit.[24]

Respecting petitioners' argument that the case had long been closed and terminated, the trial court held:

x x x [I]t is clear from the Last Will and Testament that subject properties cannot actually be partitioned until after 20 years from the death of the testator Basilio Santiago x x x. It is, therefore, clear that something more has to be done after the approval of said Final Accounting, Partition, and Distribution. The testator Basilio Santiago died on September 16, 1973, hence, the present action can only be filed after September 16, 1993. Movant's cause of action accrues only from the said date and for which no prescription of action has set in.

The principle of *res judicata* does not apply in the present probate proceeding which is continuing in character, and terminates only after and until the final distribution or settlement of the whole estate of the deceased in accordance with the provision of the will of the testator. The Order dated August 14, 1978 refers only to the accounting, partition, and distribution of the estate of the deceased for the period covering from the date of the filing of the petition for probate on December 27, 1973 up to August 14, 1978. And in the said August 14, 1978 order it does not terminate the appointment of petitioner[s] Ma. Pilar Santiago and Clemente Santiago as executrix and administrator, respectively, of the estate of the deceased particularly of those properties which were prohibited by the testator to be partitioned within 20 years from his death. Since then up to the present, Ma. Pilar Santiago and Clemente Santiago remain the executor and administrator of the estate of the deceased and as such, they are required by law to render an accounting thereof from August 14, 1978 up to the present; there is also now a need to partition and distribute the aforesaid properties as the prohibition period to do so has elapsed. (emphasis and underscoring supplied)[25]

---

[24] *Id.* at 846-847.

[25] *Id.* at 623.

Petitioners, together with the oppositors, filed a motion for reconsideration,[26] which the probate court denied, drawing them to appeal to the Court of Appeals which docketed it as **CA G.R. No. 83094**.

The Court of Appeals **affirmed** the decision of the probate court,[27] hence, the petition[28] which raises the following grounds:

I.

"CAN THE HONORABLE COURT OF APPEALS REVERSE ITSELF"

***A*. THE COURT OF APPEALS ERRED IN NOT BINDING ITSELF WITH ITS PREVIOUS DECISION INVOLVING THE SAME PARTIES AND SAME PROPERTIES;**

***B*. THE COURT OF APPEALS ERRED IN AFFIRMING THE RTC AS IT AGREED WITH THE RTC THAT THIS CASE IS NOT BARRED BY *RES JUDICATA*;**

***C*. IN C.A.-G.R. NO. 45801, THE HONORABLE COURT OF APPEALS HELD THAT THERE WAS *RES JUDICATA*; IN C.A.-G.R. CV NO. 83094, THERE WAS NO *RES JUDICATA*.**

II.

"GRANTING THAT THE COURT OF APPEALS HAS ALL THE COMPETENCE AND JURISDICTION TO REVERSE ITSELF, STILL THE COURT OF APPEALS ERRED IN AFFIRMING THE RTC'S ORDER TO TRANSFER THE MANILA PROPERTY COVERED BY TCT NO. 131004 TO THE NAMES OF CECILIA LOMOTAN, TOMAS, ZOILO, MA. PILAR, RICARDO, CIPRIANO FELICIDAD, EUGENIA, CLEMENTE AND CLEOTILDE, ALL SURNAMED SANTIAGO."[29] (emphasis in the original)

---

[26] *Id.* at 629-647

[27] CA *rollo*, pp. 221-239, Decision of February 23, 2007, penned by Court of Appeals Associate Justice Hakim S. Abdulwahid, with the concurrence of Associate Justices Reynato C. Dacudao and Arturo G. Tayag.

[28] *Rollo*, pp. 34-60.

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

The petition lacks merit.

Petitioners' argument that the decision of the appellate court in the earlier CA-G.R. NO. 45801 (upheld by this Court in G.R. No. 155606) constitutes *res judicata* to the subsequent CA G.R. No. 83094 (the subject of the present petition for review) fails.

Res judicata has two aspects, which are embodied in Sections 47 (b) and 47 (c) of Rule 39 of the Rules of Civil Procedure.[30] The first, known as "bar by prior judgment," proscribes the prosecution of a second action upon the same claim, demand or cause of action already settled in a prior action.[31] The second, known as "conclusiveness of judgment," ordains that issues actually and directly resolved in a former suit cannot again be raised in any future case between the same parties involving a different cause of action.[32]

Both aspects of *res judicata*, however, do not find application in the present case. The final judgment regarding oppositors' complaint on the reduction of their legitime in CA-G.R. No.

---

[30] Sec. 47. *Effect of judgments or final orders.* — The effect of a judgment or final order rendered by a court of the Philippines, having jurisdiction to pronounce the judgment or final order, may be as follows:

(a) x x x

(b) In other cases, the judgment or final order is, with respect to the matter directly adjudged or as to any other matter that could have been raised in relation thereto, conclusive between the parties and their successors in interest by title subsequent to the commencement of the action or special proceeding, litigating for the same thing and under the same title and in the same capacity; and

(c) In any other litigation between the same parties or their successors in interest, that only is deemed to have been adjudged in a former judgment or final order which appears upon its face to have been so adjudged, or which was actually and necessarily included therein or necessary thereto.

[31] *Chris Garments Corp. v. Sto. Tomas*, G.R. No. 167426, January 12, 2009, 576 SCRA 13, 21 citing *Oropeza Marketing Corp. v. Allied Bank*, G.R. No. 129788, 393 SCRA 278, 287 (2002).

[32] *Id.* at 21-22 citing *Heirs of Rolando Abadilla v. Galarosa*, G.R. No. 149041, 494 SCRA 675, 686 (2006).

45801 does not dent the present petition, which solely tackles the propriety of the termination of administration, accounting and transfer of titles in the names of the legatees-heirs of the *second* and *third* marriages. There is clearly no similarity of claim, demand or cause of action between the present petition and G.R. No. 155606.

While as between the two cases there is identity of parties, "conclusiveness of judgment" cannot likewise be invoked. Again, the judgment in G.R. No. 155606 would only serve as an estoppel as regards the issue on oppositors' supposed preterition and reduction of legitime, which issue is not even a subject, or at the very least even invoked, in the present petition.

What is clear is that petitioners can invoke *res judicata* insofar as the judgment in G.R. No. 155606 is concerned **against the oppositors only**. The records reveal, however, that the oppositors did not appeal the decision of the appellate court in this case and were only impleaded *pro forma* parties.

Apparently, petitioners emphasize on the directive of the appellate court in CA G.R. No. 45801 that the decree of distribution of the estate of Basilio should remain undisturbed. But this directive goes only so far as to prohibit the interference of the oppositors in the distribution of Basilio's estate and does not pertain to respondents' *supervening* right to demand the termination of administration, accounting and transfer of titles in their names.

Thus, the Order of September 5, 2003 by the probate court granting respondents' Motion for Termination of Administration, for Accounting, and for Transfer of Titles in the Names of the Legatees is a proper and necessary continuation of the August 14, 1978 Order that approved the accounting, partition and distribution of Basilio's estate. As did the appellate court, the Court notes that the August 14, 1978 Order was yet to become final pending the whole settlement of the estate. And final settlement of the estate, in this case, would culminate after 20 years or on September 16, 1993, when the prohibition to partition the properties of the decedent would be lifted.

Finally, petitioners object to the inclusion of the house and lot in Manila, covered by TCT No. 131044, among those to be transferred to the legatees-heirs as it would contravene the testator's intent that no one is to own the same.

The Court is not persuaded. It is clear from Basilio's will that he intended the house and lot in Manila to be transferred in petitioners' names for administration purposes only, and that the property be owned by the heirs in common, thus:

> e) *Ang lupa't bahay sa Lunsod ng Maynila na nasasaysay sa itaas na 2(c) ay ililipat at ilalagay sa pangalan nila Ma. Pilar at Clemente* ***hindi bilang pamana ko sa kanila kundi upang pamahalaan at pangalagaan lamang nila*** *at nang ang sinoman sa aking mga anak sampu ng apo at kaapuapuhan ko sa habang panahon ay may tutuluyan kung magnanais na mag-aral sa Maynila o kalapit na mga lunsod sa medaling* (sic) *salita,* ***ang bahay at lupang ito'y walang magmamay-ari*** *bagkus ay gagamitin habang panahon ng sinomang magnanais sa aking kaapuapuhan na tumuklas ng karunungan sa paaralan sa Maynila at katabing mga lunsod* x x x[33] (emphasis and underscoring supplied)

But the condition set by the decedent on the property's indivisibility is subject to a statutory limitation. On this point, the Court agrees with the ruling of the appellate court, *viz*:

> For this Court to sustain without qualification, [petitioners]'s contention, is to go against the provisions of law, particularly Articles 494, 870, and 1083 of **the Civil Code, which provide that the prohibition to divide a property in a co-ownership can only last for twenty (20) years** x x x
>
> x x x x x x x x x
>
> x x x Although the Civil Code is silent as to the effect of the indivision of a property for more than twenty years, it would be contrary to public policy to sanction co-ownership beyond the period expressly mandated by the Civil Code x x x[34]

---

[33] Joint Record on Appeal, p. 16.

[34] CA *rollo*, pp. 234-235.

WHEREFORE, the petition is *DENIED.*

Costs against petitioners.

SO ORDERED.

Bersamin, Del Castillo,[*] *Abad,*[**] and *Villarama, Jr., JJ.,* concur.

THIRD DIVISION

[G.R. No. 180761. August 9, 2010]

ROMAN GARCES, *petitioner, vs.* **SIMPLICIO HERNANDEZ, JR., CANDIDO HERNANDEZ, ROSITA HERNANDEZ, and JEFFREY MANGUBAT,**[*] *respondents.*

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; INSTITUTION OF CRIMINAL AND CIVIL ACTIONS. — Rule 111, Section 1 of the Revised Rules of Court provides: SECTION 1. *Institution of criminal and civil actions.* — (a) When a criminal action is instituted, the civil action for the recovery of civil liability arising from the offense charged shall be deemed instituted with the criminal action unless the offended party

---

[*] Additional member per Special Order No. 875 dated August 2, 2010 in view of the sick leave of absence of Associate Justice Arturo D. Brion.

[**] Designated as Additional Member, per Special Order No. 843 (May 17, 2010), in view of the vacancy occasioned by the retirement of Chief Justice Reynato S. Puno.

[*] Hon. Conrado B. Antona, in his capacity as the Presiding Judge of the Regional Trial Court, Fourth Judicial Region, Batangas City (Branch IV) was originally impleaded but was dropped by the Court pursuant to Section 1 of Rule 45 of the Rules of Court.

waives the civil action, reserves the right to institute it separately or institutes the civil action prior to the criminal action. The reservation of the right to institute separately the civil action shall be made before the prosecution starts presenting its evidence under circumstances affording the offended party a reasonable opportunity to make such reservation.

2. ID.; ID.; JUDGMENTS; CONTENTS OF JUDGMENT; CONTENTS WHEN JUDGMENT IS ONE OF CONVICTION AND WHEN ONE OF ACQUITTAL. — Rule 120, Section 2 of the Rules of Court provides: SEC. 2. *Contents of the judgment.* — If the judgment is of conviction, it shall state (1) the legal qualification of the offense constituted by the acts committed by the accused and the aggravating or mitigating circumstances which attended its commission; (2) the participation of the accused in the offense, whether as principal, accomplice, or accessory after the fact; (3) the penalty imposed upon the accused; and (4) the civil liability or damages caused by his wrongful act or omission to be recovered from the accused by the offended party, if there is any, unless the enforcement of the civil liability by a separate civil action has been reserved or waived. In case the judgment is of **acquittal**, it shall state whether the evidence of the prosecution absolutely failed to prove the guilt of the accused or merely failed to prove his guilt beyond reasonable doubt. In either case, the judgment shall determine if the act or omission from which the civil liability might arise did not exist.

APPEARANCES OF COUNSEL

Florentino H. Garces for petitioner.
Public Attorney's Office for respondents.

D E C I S I O N

CARPIO MORALES, *J.*:

The present petition for review on *certiorari* bears, in the main, on the issue of whether respondents who were charged with but acquitted of murder are civilly liable to the heirs of Rustico Garces (the victim).

In its November 10, 2004 Decision[1] acquitting respondent of murder, Branch 4 of the Regional Trial Court (RTC) of Batangas City discoursed.

> It is stated that the guilt of an accused rests solely on the strength of the Prosecution's evidence and does not depend on the weakness of the evidence of the Defense. Moreover, such guilt must be proven beyond a reasonable doubt.
>
> In the case at bar, there is clearly **no moral certainty that can be arrived at** by the Court in convicting the accused. Physical and testimonial evidence presented by the Prosecution have failed to elicit in the mind of the Court the conclusion that the herein accused should and must be held criminally liable for the heinous death of Rustico Garces. As a matter of fact, **the physical evidence in his case instead of strengthening only weakened its case**.
>
> Moreover, it is noted that not one of the accused went into hiding even though they have acquired knowledge about the death of Rustico. Instead, Simplicio Sr., Candido and Simplicio Hernandez Jr. voluntarily went with the police investigators on the night of August 13, 2000. As the oft repeated dictum states ["]the guilty fleeth while the innocent is as brave as a lion." And, with respect to accused Rosita Hernandez, she appears to have been arrested in Cuta, Batangas City. She must have been visiting her husband and children at the Provincial Jail of Batangas located in Cuta, Batangas City on March 5, 2000 when it happened. These actuations of the accused eloquently **speak of their innocence in the face of unreliable evidence presented by the Prosecution**.[2] (emphasis and underscoring supplied)

After the promulgation of judgment, Atty. Florentino H. Garces entered his appearance as counsel for the father of the victim, Roman Garces (petitioner), and filed a Motion for Reconsideration of the trial court's decision respecting respondents' civil liability.[3] The trial court dismissed the motion in this wise:

> Acting on the motion for reconsideration dated December 9, 2004 filed by Atty. Florentino H. Garces, it is to be stated at the very

---

[1] Records, pp. 309-325.

[2] *Id*. at 324-325.

[3] *Id*. at 327-338.

outset that said Counsel appears to have no legal personality to file the motion. The records do not show that he was Counsel of record for the Private Prosecution and neither [was] the motion signed by the [Provincial] Prosecutor.

As regards the manifestation on the right of the private Prosecution to claim civil damages where the acquittal of the accused was based on grounds of reasonable doubt, suffice it to state that while such right subsists in favor of the Private Prosecution, the matter should be properly prosecuted in an appropriate separate civil action and not in the same criminal case which gave rise to such right.[4] (underscoring supplied)

Petitioner's Supplemental Motion for Reconsideration[5] was dismissed by the trial court for being moot and academic.[6]

Petitioner assailed the trial court's denial of his motions via *Certiorari*[7] before the Court of Appeals which dismissed it for lack of merit,[8] *viz*:

x x x [P]etitioner argues that the fact that the prosecutor did not sign the motion for reconsideration is of no moment since what is sought to be reconsidered involves only the civil liability of private respondents. We agree.

x x x x x x x x x

The foregoing notwithstanding, We cannot entertain the petition.

It is settled that a judgment of acquittal is immediately final and executory and the prosecution cannot appeal the acquittal because of the constitutional prohibition against double jeopardy. Nonetheless, insofar as the civil aspect of the case is concerned, the offended party, despite a judgment of acquittal, is afforded the remedy of appeal.

---

[4] *Id*. at 339.

[5] *Id*. at 340-356.

[6] *Id*. at 358.

[7] CA *rollo*, pp. 2-42.

[8] Decision of June 30, 2006, penned by Court of Appeals Associate Justice Portia Aliño-Hormachuelos, with the concurrence of Associate Justices Amelita G. Tolentino and Santiago Javier Ranada; *id* at 283-294.

In the present case, there is no dispute that the judgment of the trial court acquitting private respondents is already final. What petitioner is assailing is the failure of public respondent to rule on the civil liability of private respondents. However, while an appeal appears to have been open and available, petitioner, without any justifiable reason, did not resort to this remedy. This is a fatal procedural lapse. Section 1, Rule 65 of the Rules of Civil Procedure is plain and unambiguous in providing that the remedy of *certiorari* may be availed of only when "***there is no appeal, nor any plain, speedy, and adequate remedy in the ordinary course of law.***"[9] (emphasis and italics in the original; underscoring supplied)

At all events, the appellate court held that, even on the merits, petitioner's *certiorari* would not lie on the following ratiocination:

x x x x x x x x x

While **physical** evidence was submitted, primarily a gun, empty bullet shells recovered near the body of Rustico, the slug recovered from the body of Rustico, the traces of blood and the strands of hair recovered at the house of private respondents — these failed to point to private respondents as the perpetrators of the killing. The gun recovered was never established to have belonged to any of the private respondents. Furthermore, the ballistics examination failed to confirm that the slug recovered from the body of Rustico came from the same gun. As for the traces of blood and strands of hair, these were never established to have come from Rustico.

As for the **testimonial** evidence, We find no reason to disagree with the finding of public respondent giving no credence to the testimonies of Miguel Jovello and Jefferson Garcia. Both Jovello and Garcia testified that they saw Simplicio, Jr. and Candido at around eleven o'clock (11:00) in the morning of August 13, 2000 traversing the *barangay* road while carrying the dead body of Rustico with Simplicio, Sr. and Rosita walking with them. Indeed, as observed by public respondent, if such fact actually happened, there should have been many witnesses who could have testified to this event. Besides, settled is the rule that to be credible, testimonial evidence should not only come from the mouth of a credible witness but should also be credible. In this case, the said testimonies are inconsistent with human nature. It is unbelievable that private respondents would

[9] *Id*. at 287-288.

kill Rustico and then expose themselves to prosecution by parading the evidence of their crime in public and in broad daylight. While petitioner claims that "the events transpired in an insolated place within a desolate town", no evidence was offered to prove such claim.[10] (emphasis and underscoring supplied)

Thus, petitioner filed the present petition[11] which contends that

I

CONTRARY TO THE RULING OF THE COURT OF APPEALS, THE PETITION FOR *CERTIORARI* WAS THE PROPER REMEDY AVAILED OF BY PETITIONER GARCES IN ASSAILING THE ACTS OF PUBLIC RESPONDENT JUDGE ANTONA WHICH WERE COMMITTED IN GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION.

II

THE COURT OF APPEALS COMMITTED GRAVE AND REVERSIBLE ERROR WHEN IT DENIED THE PETITION FOR *CERTIORARI* CONSIDERING THAT THERE IS MORE THAN A PREPONDERANCE OF EVIDENCE ON RECORD SUPPORTING THE CLAIMS OF PETITIONER GARCES AGAINST THE PRIVATE RESPONDENTS.[12] (capitalization and emphasis in the original; underscoring supplied)

Rule 111, Section 1 of the Revised Rules of Court provides:

SECTION 1. *Institution of criminal and civil actions.* — (a) When a criminal action is instituted, the civil action for the recovery of civil liability arising from the offense charged shall be deemed instituted with the criminal action unless the offended party waives the civil action, reserves the right to institute it separately or institutes the civil action prior to the criminal action.

---

[10] *Id.* at 291-292.

[11] *Rollo*, pp. 11-43.

[12] *Id.* at 25.

The reservation of the right to institute separately the civil action shall be made before the prosecution starts presenting its evidence under circumstances affording the offended party a reasonable opportunity to make such reservation.

x x x (italics in the original; underscoring supplied)

In his Petition for *Certiorari*[13] before the appellate court, petitioner admitted that he "did not waive the civil action or reserve the right to institute it separately nor did he institute the civil action prior to the criminal action."[14] Petitioner's remedy then was, as correctly ruled by the appellate court, to appeal within the reglementary period the trial court's decision, which was silent on the civil aspect of the case.

Technicality aside, on the merits, the petition just the same fails. Rule 120, Section 2 of the Rules of Court provides:

SEC. 2. *Contents of the judgment.* — If the judgment is of conviction, it shall state (1) the legal qualification of the offense constituted by the acts committed by the accused and the aggravating or mitigating circumstances which attended its commission; (2) the participation of the accused in the offense, whether as principal, accomplice, or accessory after the fact; (3) the penalty imposed upon the accused; and (4) the civil liability or damages caused by his wrongful act or omission to be recovered from the accused by the offended party, if there is any, unless the enforcement of the civil liability by a separate civil action has been reserved or waived.

In case the judgment is of **acquittal**, it shall state whether the evidence of the prosecution absolutely failed to prove the guilt of the accused or merely failed to prove his guilt beyond reasonable doubt. In either case, the judgment shall determine if the act or omission from which the civil liability might arise did not exist.

x x x (emphasis and underscoring supplied)

Under the immediately-quoted rule, a trial court, in case of acquittal of an accused, is to state whether the prosecution

---

[13] CA *rollo*, pp. 2-42.

[14] *Id.* at 21.

absolutely failed to prove his guilt or merely failed to prove his guilt beyond reasonable doubt, and in either case, it shall determine if the act or omission from which the civil liability might arise did not exist. From the earlier-quoted portion of the decision of the trial court, however, particularly the following portions:

> In the case at bar, there is **clearly no moral certainty** that can be arrived at by the Court in convicting the accused. Physical and testimonial evidence presented by the Prosecution have failed to elicit in the mind of the Court the conclusion that the herein accused should and must be held criminally liable for the heinous death of Rustico Garces. As a matter of fact, **the physical evidence in his case instead of strengthening only weakened its case**.
>
> x x x These actuations of the accused **eloquently speak of their innocence in the face of unreliable evidence presented by the Prosecution**[15] (emphasis and underscoring supplied),

the Court finds that the acts or omissions from which the civil liability of respondents might arise did not exist.

WHEREFORE, the petition is *DISMISSED*.

Brion, Bersamin, Abad,[**] and *Villarama, Jr., JJ.,* concur.

---

[15] Records, pp. 324-325.

[**] Additional member per Special Order No. 838 dated May 17, 2010.

SECOND DIVISION

[G.R. No. 180836. August 9, 2010]

GILBERT URMA, TEOFILO URMA, DANTE URMA, and JERRY URMA, *petitioners, vs.* **HON. ORLANDO BELTRAN, in his capacity as Presiding Judge, RTC Branch 11, Tuao, Cagayan, LOLITA URMA, MELBA R. MAMUAD, MARCELA URMA CAINGAT, HIPOLITO MARTIN, EDMUND URMA, ALBINA URMA MAMUAD, CIANITA AGUSTIN FAUSTO MADAMBA, and LAUREANO ANTONIO,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; FACTUAL ISSUES, NOT PROPER. — It has always been held that it is not the function of this Court to re-examine or weigh the evidence submitted by the parties all over again. This Court is definitely not the proper venue to consider a factual issue as it is not a trier of facts.

2. ID.; ID.; JUDGMENTS; JUDGMENT RENDERED BASED ON STIPULATION OF FACTS, RESPECTED. — The parties entered into a stipulation of facts and agreed to abide by its terms and the results thereof. The trial court acted on the basis of their stipulations and rendered judgment accordingly. Considering that the stipulation of facts has not been set aside, the Court agrees that it would be pointless to hold a new trial. It would only prolong the litigation and unnecessarily delay the final disposition of the case.

3. ID.; ID.; PRE-TRIAL; PART OF THE PROCEEDINGS THAT WILL NOT BE SET ASIDE. — The Court has stated on several occasions that the pre-trial forms part of the proceedings, and matters dealt with therein may not be brushed aside in the process of decision-making. Otherwise, the real essence of compulsory pre-trial would be inconsequential and worthless.

4. LEGAL ETHICS; ATTORNEY-CLIENT RELATIONSHIP; MISTAKE OF COUNSEL BINDS THE CLIENT. — Granting that their counsel made a mistake in entering into

such stipulations, such procedural error unfortunately bound them. The Court has consistently held that the mistake or negligence of a counsel in the area of procedural technique binds the client unless such mistake or negligence of counsel is so gross or palpable that would require the courts to step in and accord relief to the client who suffered thereby. Without this doctrinal rule, there would never be an end to a suit so long as a new counsel could be employed to allege and show that the prior counsel had not been sufficiently diligent, experienced, or learned.

APPEARANCES OF COUNSEL

Villacete Baligod Law Offices for petitioners.
Pastor Ligas, Jr. for respondents.

D E C I S I O N

MENDOZA, *J.*:

This is a petition for review under Rule 45 of the Rules of Court assailing **1]** the September 18, 2007 Judgment[1] of the Regional Trial Court, Branch 11, Tuao, Cagayan *(RTC)*, in Civil Case No. 354-T, deciding the case in favor of the private respondents; and **2]** its December 10, 2007 Order[2] denying petitioners' Motion For New Trial.

The case stemmed from a complaint filed by the respondents against the petitioners for partition, quieting of title, recovery of ownership, and damages over two parcels of land covered by Original Certificate of Title (OCT) No. P-1812 and No. P-1630.

The petitioners and respondents are blood relatives being the nearest of kin of the deceased spouses Laureano Urma *(Laureano)* and Rosa Labrador-Urma *(Rosa)*. They are the children of Laureano's brother who predeceased him.

---

[1] *Rollo*, pp. 38-41. Penned by Judge Orlando Beltran, Regional Trial Court, Branch 11, Tuao, Cagayan.

[2] *Id.* at 49-50.

The petitioners claim ownership of the lot they are occupying by virtue of a deed of sale allegedly executed by Laureano on April 10, 1985 in favor of petitioner Teofilo Urma, and in agreement with respondent Marcela Urma-Caingat. On the other hand, six (6) of the respondents claim ownership over portions of the subject property by virtue of a deed of donation executed in their favor by Rosa in February 1996.

During the pre-trial proceedings of the case, both parties agreed that the only matter to be resolved was the validity of the absolute deed of sale, which as claimed by the petitioners was executed by Laureano in 1985 over one-half of the property covered by OCT No. P-1630. If the said deed of sale was valid, the subsequent deeds of donation executed by Rosa in favor of the respondents would be without force and effect.

The parties also agreed that the thumb mark of Laureano affixed on the notarized deed of sale be subjected to a dactylascopic examination by an expert from the National Bureau of Investigation (NBI). Said examination would entail comparison of the thumb mark on the questioned absolute deed of sale with the genuine specimen thumb mark of Laureano in his Voter's Registration Record on file with the Office of the Election Registrar.

Upon orders of the trial court, the NBI performed the examination and found that the questioned fingerprint was not identical with the genuine specimen thumbmark. Hence, the NBI concluded that the absolute deed of sale supposedly executed by Laureano was a spurious document.

In its decision dated September 18, 2007, the RTC ruled in favor of the respondents by declaring them the absolute owners of portions of the disputed land and ordering the petitioners to vacate said portions. In the same ruling, the RTC also ordered the partition of the remaining portions of the subject property among all the parties in equal shares. Specifically, the dispositive portion of the decision reads:

WHEREFORE, judgment is hereby rendered:

1. Declaring plaintiff Lolita Urma, Melba Mamuad, Marcela Urma-Caingat, Hipolito Martin, Edmund Urma and Albina Urma-Mamuad to be the absolute owners of one-eight (1/8) of each of the property covered by O.C.T. No. P-1630 equivalent to Ten Thousand Seven Hundred Seventy-seven (10, 777 sq. m.) square meters;

2. Ordering defendant Teofilo Urma to vacate the property which he is occupying equivalent to one-half (½) of the property covered by O.C.T. No. P-1630 and surrender possession thereof to the plaintiffs;

3. Ordering the other defendants, namely Gilbert Urma, Dante Urma and Jerry Urma to vacate the portions of the property covered by O.C.T. No. 1630 which they have occupied and are still occupying and surrender possession thereof to the plaintiffs;

4. Ordering the partition of the remaining 21,559 square meters covered by O.C.T. No. 1630 as well as the entire property covered by O.C.T. No. 1812 in favor of all the parties in equal shares.

Costs *de oficio*.

SO ORDERED.[3]

In the belief that their counsel committed gross negligence in handling their case, the defendants filed a *Motion For New Trial*.[4] They argued that their counsel should not have joined the motion for a judgment on the pleadings because their answer contained specific denials and defenses which tendered an issue. They likewise claimed that they were uneducated and "not too familiar with the niceties of the law and legal procedures." Hence, they should not be bound by the mistakes and omissions of their counsel.[5]

On December 10, 2007, the RTC issued the questioned Order[6] denying petitioners' *Motion For New Trial* on the ground that the same was without factual or legal basis and that there were no irregularities committed during the trial.

---

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

[4] *Id.* at 42.

[5] *Id.* at 42-45.

[6] *Supra* note 2.

The RTC reasoned out that the parties, through their respective counsels, agreed during the pre-trial that the only issue of fact around which the whole case revolved was the genuineness of the deed of absolute sale dated April 10, 1985 allegedly executed by Laureano in favor of Teofilo Urma; that said document be examined by the NBI; that both parties would accept the result of the dactyloscopic examination to be conducted; and that said result would be the basis of the judgment to be rendered. It was further stipulated that if the NBI report would state that Laureano indeed executed the deed of sale, the judgment would be in favor of the petitioners. Otherwise, the decision should favor the respondents.

Aggrieved, petitioners came straight to this Court, through a petition for review under Rule 45, anchored on the following

ARGUMENTS:

IT WAS CLEAR ERROR AND GRAVE ABUSE OF DISCRETION ON THE PART OF THE COURT *A QUO* TO HAVE RENDERED JUDGMENT ON THE PLEADINGS *MOTU PROPRIO*[7]

IN DENYING THEIR MOTION FOR NEW TRIAL, THE COURT *A QUO* HAS LIKEWISE ERRED AND COMMITTED GRAVE ABUSE OF DISCRETION[8]

PETITIONER TEOFILO URMA IS THE OWNER IN FEE SIMPLE OF ONE-HALF PORTION OF THE SUBJECT PROPERTY IN VIEW OF THE ISSUANCE OF A TCT FOR SAID PORTION.[9]

In the Resolution of April 13, 2009, the petition was given due course and the parties were required to submit their respective memoranda.[10]

In advocacy of their position, the petitioners in their memorandum argue that the Rules of Court provides that a

---

[7] *Rollo*, p. 27.

[8] *Id.* at 30.

[9] *Id.* at 33.

[10] *Id.* at 119.

judgment on the pleadings is proper only when the answer fails to tender an issue or admits the material allegations in the complaint. According to the petitioners, the answer filed by their former counsel raised specific denials/affirmative defenses thereby tendering an issue on litigable matters. Hence, judgment on the pleadings was not proper.

Petitioners further argue that the judgment of the RTC was merely based on the result of the dactylascopic examination conducted by the NBI forensic expert who was not even presented in open court. Thus, they were not accorded the opportunity to cross-examine him. Moreover, since the NBI handwriting examiner was not qualified as an expert witness, the NBI report is inadmissible in evidence and cannot be used against them.

The petitioners also lament that the RTC denied their Motion For New Trial without conducting any hearing on said motion. They claim that, in fact, with the execution of the deed of sale by Laureano in favor of Teofilo Urma, OCT No. P-1630 was cancelled and Transfer Certificate of Title (TCT) Nos. T-5950 and T-5951 were issued in the names of Laureano Urma and Teofilo Urma, respectively. The RTC, however, was not apprised of the cancellation of OCT No. P-1630 because their former counsel did not present any evidence.

RESPONDENTS' POSITION

The respondents counter that the petition should be dismissed since under Rule 45 of the Rules of Court, only questions of law may be raised. They claim that the petition on its face does not state any special or important reason that merits the discretionary jurisdiction of the Court to review this case. Petitioners' issues refer to 1) the actions of their former counsel, and 2) the reliance by the RTC in the result of the dactylascopic examination, which obviously are not questions of law.

Respondents also assert that during the pre-trial stage, the Rules of Court allows stipulation or admission of facts and documents to avoid unnecessary proof. Thus, the RTC has the discretion to put evidentiary value on the report of the NBI

expert who enjoys the presumption of regularity in the performance of his duties.

For the respondents, it would be pointless to go to trial or to conduct a new trial because it was already ascertained that the deed of sale was a product of forgery.

THE COURT'S RULING

The petition fails.

As correctly argued by the respondents, the petitioners are questioning the procedural decisions of their former counsel and the reliance by the RTC on the result of the dactylascopic examination. The petitioners claim that their substantive and procedural rights were violated due to their former counsel's mistake or negligence in handling their case.

Thus, the petitioners pray for the reopening of Civil Case No. 354-T so that the evidence pertaining to the authenticity of the subject deed of sale would be evaluated again. This is obviously a question of fact which was already ruled upon by the RTC with the holding that it was not executed by Laureano Urma. In other words, it would entail another review of the evidence.

It has always been held that it is not the function of this Court to re-examine or weigh the evidence submitted by the parties all over again. This Court is definitely not the proper venue to consider a factual issue as it is not a trier of facts.

At any rate, the parties entered into a stipulation of facts and agreed to abide by its terms and the results thereof. The trial court also acted on the basis of their stipulations and rendered judgment accordingly. Considering that the stipulation of facts has not been set aside, the Court agrees that it would be pointless to hold a new trial. It would only prolong the litigation and unnecessarily delay the final disposition of the case. The situation at hand is not substantially different from the case of *Jesus D. Morales & Carolina Nuqui v. Court of Appeals*,[11] where it was written:

---

[11] 499 Phil. 655, 671 (2005).

Ostensibly, the heart of the matter lies in whether or not the *Deed of Extrajudicial Settlement with Sale* is valid. And on this score, there is little doubt that its legitimacy had been duly established. The burden was on the private respondents to impugn the genuineness of their signatures on the document which having been notarized is imbued with the character of a public document; yet they were unable to present a single shred of countervailing evidence. Moreover, the validity of the *Deed of Extrajudicial Settlement with Sale* has been strengthened by the findings of the NBI that the signatures of the private respondents were genuine, findings with which the private respondents themselves agreed to abide pursuant to the *Stipulation of Facts*.

x x x x x x x x x

For another, since private respondents undertook in the *Stipulation of Facts* to recognize the ownership of the petitioners and immediately vacate the subject property, together with the tenants, should the genuineness of the signatures in the *Deed of Extrajudicial Settlement With Sale* be upheld, which has become the case, and since the *Stipulation of Facts* has not been set aside, it is perfectly appropriate for the Court to affirm the petitioners' ownership and to order the private respondents' eviction from the subject property. The appellate court's suggestion that the petitioners institute a new, separate action to recover possession of the subject property is inconsistent with the foregoing considerations and contravenes the avowed policy to achieve just, speedy and inexpensive resolution of cases.

The Court has stated on several occasions that the pre-trial forms part of the proceedings, and matters dealt with therein may not be brushed aside in the process of decision-making. Otherwise, the real essence of compulsory pre-trial would be inconsequential and worthless.[12]

With regard to the petitioners' argument that they should be excused from the procedural blunder committed by their former counsel, the Court finds it bereft of merit. The petitioners were not denied due process and their rights were not violated when their counsel, Atty. Raul Morales, agreed that the only issue that needed to be resolved was the authenticity of the deed of sale in favor of petitioner Teofilo Urma.

---

[12] *Antonio Lim Tanhu v. Ramolete,* 160 Phil. 1101, 1155 (1975).

There was nothing amiss in entering into such stipulations. The petitioners only cried foul when the examination result turned out to be unfavorable to them. It was clearly stipulated that the parties would abide by the results of the NBI dactylascopic examination. Both parties agreed to submit the questioned document to the NBI where one of its examiners would be assigned to conduct the examination. Thus, the parties did not reserve any right to question the expertise of the NBI examiner. Apparently, there was no stipulation either that he would be cross-examined on the result.

Granting that their counsel made a mistake in entering into such stipulations, such procedural error unfortunately bound them. The Court has consistently held that the mistake or negligence of a counsel in the area of procedural technique binds the client unless such mistake or negligence of counsel is so gross or palpable that would require the courts to step in and accord relief to the client who suffered thereby. Without this doctrinal rule, there would never be an end to a suit so long as a new counsel could be employed to allege and show that the prior counsel had not been sufficiently diligent, experienced, or learned.[13]

Finally, the Court finds the judgment of the RTC correct, fair and judicious considering that both parties, being the nearest of kin of the deceased spouses Laureano and Rosa, were given their rightful shares in the subject property. As mentioned earlier, the judgment declared each of the respondents the absolute owner of one-eight (1/8) of the property covered by OCT No. P-1630 equivalent to 10,777 square meters by virtue of the notarized deeds of donations[14] executed in their favor by Rosa on February 22 and 23, 1996. The remaining 21,559 square meters covered by OCT No. P-1630 as well as the entire property covered by OCT No. P-1812 was ordered partitioned in favor of all the parties in equal shares.

---

[13] *Jaime T. Torres v. China Banking Corporation,* G.R. No. 165408, January 15, 2010.

[14] *Rollo,* pp. 59-64.

WHEREFORE, the petition is *DENIED*. Accordingly, the September 18, 2007 Judgment of the Regional Trial Court, Branch 11, Tuao, Cagayan, is hereby *AFFIRMED*.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 180915. August 9, 2010]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **CHARLIE NAZARENO *Y* MELANIOS,** *accused-appellant.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; NOT AFFECTED BY MINOR INCONSISTENCIES. — The matters pointed out by appellant are minor and inconsequential and do not affect the substance of the eyewitness' declaration, nor the veracity or weight of his testimony. The issues raised by appellant do not pertain to the actual act constitutive of the offense charged, as on this point, the testimony of Jericho Capanas is clear and convincing.

2. ID.; ID.; ID.; UPHELD IN THE ABSENCE OF ILL-MOTIVE. — The records disclose nothing that would indicate any motive on the part of Jericho Capanas to testify falsely against appellant. Absent any showing that a witness for the prosecution was actuated by improper motive, his positive and categorical declarations on the witness stand, under the solemnity of an oath, deserve full faith and credence.

3. ID.; ID.; RULES OF ADMISSIBILITY; OFFER OF COMPROMISE; PLEAD FOR FORGIVENESS MADE ANALOGOUS THERETO. — While in detention, appellant wrote a letter to the victim's brother asking the latter's forgiveness for the killing of Romeo de Guzman. In a long line of cases, the Supreme Court held that appellant's act of pleading for forgiveness may be considered as analogous to an attempt to compromise, which in turn, can be received as an implied admission of guilt under Section 27, Rule 130 of the Rules of Court.

4. ID.; ID.; ADMISSION OF A PARTY; TESTIMONY OF CONFESSION WHILE ON RE-DIRECT EXAMINATION IS EVIDENCE AGAINST ONESELF. — While on re-direct examination on the witness stand, appellant admitted having killed Romeo de Guzman. x x x Appellant's testimony amounts to a judicial admission of guilt which may be given in evidence against himself under Section 26 Rule 130 of the Rules of Court.

5. CRIMINAL LAW; MURDER; QUALIFYING CIRCUMSTANCES; TREACHERY; PRESENT IN ATTACK ON A VICTIM WHO HAD JUST WAKENED. — Time and again, the Supreme Court has held that an attack on a victim who has just wakened or who was roused from sleep is one attended by treachery because in such situation, the victim is in no position to put up any form of defense. There is treachery where the attack was sudden and unexpected, rendering the victim defenseless and ensuring the accomplishment of the assailant's purpose without risk to himself. The essence of treachery is the swift and unexpected attack on an unsuspecting and unarmed victim who does not give the slightest provocation.

6. ID.; ID.; DAMAGES; CIVIL INDEMNITY AND MORAL DAMAGES. — The award for civil indemnity is mandatory and is granted to the heirs of the victim without need of proof other than the commission of the crime. To conform with recent jurisprudence, however, the amount awarded by the Court of Appeals is hereby increased to ₱75,000.00. As in the case of civil indemnity *ex delicto*, moral damages in murder cases require no further proof than death. The Regional Trial Court and the Court of Appeals correctly awarded moral damages in the amount of ₱50,000.00 in view of the violent death of the victim and the resultant grief to his family.

7. ID.; ID.; ID.; EXEMPLARY DAMAGES. — Exemplary damages shall be imposed as part of the civil liability arising from the crime where aggravating circumstances attended the commission thereof. Thus, the award of exemplary damages is also warranted because of the presence of the qualifying aggravating circumstance of treachery in the commission of the crime. The amount of ₱25,000.00 granted by the trial court and the Court of Appeals should, however, be increased to ₱30,000.00 in line with current jurisprudence on the matter.

8. ID.; ID.; ID.; TEMPERATE DAMAGES. — Temperate damages are awarded when it appears that the heirs of the victim suffered pecuniary loss but the amount thereof cannot be proved with certainty. While Beverly de Guzman, the brother of the victim, testified that he spent ₱50,000.00 as funeral expenses and ₱5,000.00 as hospital expenses he, however failed to present duly issued receipts therefore. Hence, he cannot recover actual damages as these require that the amount claimed be supported by receipts. Thus, the award of temperate damages in the amount of ₱25,000.00 is likewise proper.

APPEARANCES OF COUNSEL

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

D E C I S I O N

PEREZ, *J.*:

Appellant Charlie Nazareno *y* Melanios was charged with murder in the Regional Trial Court (RTC) of Manila, Branch 41, under the following information:

That on or about September 23, 2001, in the City of Manila, Philippines, the said accused, did then and there willfully and feloniously, with intent to kill and committed with treachery and evident premeditation, attack, assault and use personal violence upon one ROMEO DE GUZMAN *Y* CANAPIT, by then and there stabbing him on his chest with a *bolo*, hacking and cutting his ear, thereby

inflicting upon the said ROMEO DE GUZMAN *Y* CANAPIT mortal wound which was the direct and immediate cause of his death.[1]

Appellant pleaded not guilty upon arraignment.[2] Trial of the case thereafter ensued.

The facts, based on the eyewitness account of Jericho Capanas, are as follows:

At around 3:30 o'clock in the morning of 23 September 2001, Jericho Capanas was awakened from his sleep by a noise coming from outside his house located at V. Mapa St., Sta. Mesa, Manila.[3] When he peeped through his door, he saw appellant being unruly in front of their neighbor's house, breaking bottles and hacking the jalousie of their neighbor's window. Upon reaching the victim's house, appellant kicked the door and when the door flung open, Romeo de Guzman, the victim, who was sleeping behind the door, stood up. The victim was, however, unable to step out of the door as appellant suddenly grabbed him by the hair and delivered a thrust to his chest using a bladed weapon about 20 inches long.[4] Jericho Capanas was less than an arm's length from appellant and the victim when all these were happening.[5] The doors of their (the victim's and Jericho Capanas') houses are adjacent and only a wall separates the two houses.[6]

After stabbing the victim, appellant hurriedly left the scene. Jericho Capanas called the police, after which, he helped bring the victim to the University of the East Ramon Magsaysay Medical Center (UERMMC).[7]

Meanwhile, responding to what appeared to be a simple disturbance call at that time, the desk officer of Police Station 8

---

[1] Records, p. 1.

[2] *Id.* at 15.

[3] TSN, 4 March 2002, p. 3 and TSN, 3 April 2002, p. 16.

[4] TSN, 4 March 2002, pp. 8-10.

[5] TSN, 3 April 2002, p. 18.

[6] TSN, 4 March 2002, p. 11.

[7] TSN, 3 April 2002, pp. 9-10.

located at Old Sta. Mesa, Manila, dispatched Lawrence Hofer and Joseph Claderia to the scene. The latter are members of the Concerned Citizen's Anti-Crime Organization, Inc., a citizen's organization tasked to assist Police Station 8. Together with a *barangay tanod*, they proceeded to the scene of the crime. When they got there, they saw a man with blood all over his clothes holding a bladed weapon which was also covered with blood. This person turned out to be herein appellant. The *barangay tanod* then made the arrest and appellant was brought first to Police Station 8 for investigation and then to UERMMC where the victim was being treated. There, appellant was positively identified by the victim himself as the person who stabbed him.[8] The victim eventually succumbed to his wounds.

Dr. Romeo Salen, the medico-legal officer who conducted the post-mortem examination of the victim, testified for the prosecution. According to him, the victim sustained two stab wounds: one on the right ear and one on the chest. This latter wound caused the death of the victim.[9]

Appellant, as expected, presented a different version of the story. Testifying as the lone witness for the defense, he claimed that at around 10:00 o'clock in the evening of 22 September 2001, he started having a drinking spree with the victim and two others in front of the victim's house. Their drinking session continued until the early hours of the following day, at around 4:00 o'clock in the morning at which time, the victim suddenly asked him to take revenge at an enemy. When he refused, the victim, who was holding a bladed weapon, quarreled with him and pulled his hair. They started fighting and, as they grappled for the weapon, the victim suddenly fell. Appellant left and went home. He was still holding the bladed weapon when he was arrested.[10] Appellant admitted having written a letter to the victim's brother asking the latter's forgiveness.[11]

---

[8] TSN, 23 October 2002, pp. 3, 5-9 and 11-14.

[9] TSN, 7 August 2002, pp. 3, 8 and 11.

[10] TSN, 26 September 2005, pp. 6-10, 16 and 27.

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

The trial court, in its Decision[12] dated 21 June 2006, found the version of the prosecution credible and rendered judgment as follows:

> Wherefore, judgment is hereby rendered finding the accused, Charlie Nazareno *y* Melanios guilty beyond reasonable doubt of the crime of Murder and hereby sentence him to suffer the penalty of *RECLUSION PERPETUA*. He is likewise ordered to pay the heirs of the victim the amount of FIFTY THOUSAND (₱50,000.00) PESOS for the life of the victim and FIFTY THOUSAND (₱50,000.00) PESOS for moral damages with legal interest from the time this decision has become final until the same is fully paid.[13]

On intermediate appellate review,[14] the Court of Appeals affirmed the guilt of the appellant but modified the award on the civil aspect of the case. In addition to civil indemnity and moral damages, the Court of Appeals likewise ordered appellant to pay exemplary and temperate damages.

Hence, appellant appealed to this Court contending that:

I.

THE TRIAL COURT GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT, WHEN HIS GUILT HAS NOT BEEN PROVEN BEYOND REASONABLE DOUBT.

II.

THE TRIAL COURT GRAVELY ERRED IN GIVING WEIGHT AND CREDENCE TO THE TESTIMONY OF THE PROSECUTION'S EYEWITNESS AND EVIDENCE.

III.

THE TRIAL COURT GRAVELY ERRED WHEN IT RULED THAT TREACHERY ATTENDED THE COMMISSION OF THE CRIME.[15]

---

[12] Penned by Judge Vedasto B. Marco, Records, pp. 310-314.

[13] *Id.* at 313-314.

[14] Docketed as CA-G.R. CR No. 02350 .

[15] CA *rollo*, p. 54.

In challenging his conviction, appellant assails the credibility of Jericho Capanas, the eyewitness to the killing, by claiming that there were inconsistencies in his testimony. Appellant argues that, Capanas initially claimed that it was only appellant who was running amok; then later, he stated that there were several drunk men causing a disturbance. Also, Capanas declared that he was present when the victim pointed to the accused as the person who stabbed him; but when asked later on during trial where he was when the confrontation between the victim and the assailant happened, he answered that he was still at his house. Appellant likewise questions the act of Capanas of "waiting for the victim to be killed first" before calling the police when he was already aware that appellant was running amok.[16]

These contentions of appellant fail to persuade us.

The matters pointed out by appellant are minor and inconsequential and do not affect the substance of the eyewitness' declaration, nor the veracity or weight of his testimony. The issues raised by appellant do not pertain to the actual act constitutive of the offense charged,[17] as on this point, the testimony of Jericho Capanas is clear and convincing:

Q: Did you see the stabbing?
A: Yes, sir.

Atty. Latiph

Where did the accused stabbed (sic) the victim?

A: **On his chest and he was hacked on his ear, sir. (Witness pointing to his chest and right ear).**

Q: What part of the house?
A: Just in front of the door, sir.

Q: How far were you at that time?
A: Less than an arms length because I was standing there, sir.[18] (Emphasis supplied.)

---

[16] *Rollo*, pp. 60-61.

[17] *People v. Borbon*, G.R. No. 143085, 10 March 2004, 425 SCRA 178, 185.

[18] TSN, 3 April 2002, pp. 17-18.

This account of Jericho Capanas is corroborated by the testimony of the medico-legal officer who performed the autopsy on the body of the victim. Thus:

> Q: And what did you find out when you conducted the external examination on the cadaver of the late Romeo De Guzman?
>
> A: On the examination of the external aspect, I found two stab wounds. **One on the right ear and one on the chest, sir**.[19] (Emphasis supplied.)

The records disclose nothing that would indicate any motive on the part of Jericho Capanas to testify falsely against appellant. Absent any showing that a witness for the prosecution was actuated by improper motive, his positive and categorical declarations on the witness stand, under the solemnity of an oath, deserve full faith and credence.[20]

In the case at bar, the identity of the killer of Romeo de Guzman is not unknown. Not only was appellant positively identified by an eyewitness as the assailant, but no less than appellant himself, on two occasions, admitted authorship of the crime:

First, 14 October 2001, while in detention, appellant wrote a letter[21] to the victim's brother asking the latter's forgiveness for the killing of Romeo de Guzman. In a long line of cases,[22] the Supreme Court held that appellant's act of pleading for forgiveness may be considered as analogous to an attempt to compromise, which in turn, can be received as an implied admission of guilt under Section 27, Rule 130 of the Rules of Court.[23]

Then, second, on 26 September 2005, while on re-direct examination on the witness stand, appellant admitted having killed Romeo de Guzman. Thus:

---

[19] TSN, 7 August 2002, p. 8.

[20] *People v. Nogra*, G.R. No. 170834, 29 August 2008, 563 SCRA 723, 735.

[21] Exhibit "S", Records, p. 269.

[22] *People v. Español*, G.R. No. 175603, 13 February 2009, 579 SCRA 326, 339 citing *People v. Castillo*, G.R. No. 172695, 29 June 2007, 526 SCRA 215 and *People v. Abadies*, 433 Phil. 814, 824 (2002).

[23] Section 27. *Offer of compromise not admissible*

Court:

Why did you write your *kumpareng* Ilay?

Witness:

To ask for forgiveness, Your Honor.

Court:

Forgiveness for what?

x x x x x x x x x

Witness:

Para sa pagkamatay ng kapatid niya.

x x x x x x x x x

Court:

So, in effect, you are saying that you are admitting having killed Romeo de Guzman?

Witness:

Basta nag-agawan kami.

Court:

The question is answerable by yes or no.

Witness:

Yes, Your Honor.[24] (Emphasis supplied.)

Appellant's testimony amounts to a judicial admission of guilt which may be given in evidence against himself under Section 26 Rule 130[25] of the Rules of Court.

---

x x x x x x x x x

In criminal cases, except those involving quasi-offense (criminal negligence) or those allowed by law to be compromised, an offer of compromise by the accused may be received in evidence as an implied admission of guilt.

[24] TSN, 26 September 2005, pp. 30-31.

[25] Section 26. *Admissions of a party*. — The act, declaration or omission of a party as to a relevant fact may be given in evidence against him.

Considering the overwhelming evidence of the prosecution, the guilt of appellant was clearly proved beyond reasonable doubt.

As to the manner by which appellant killed the victim, there is no doubt that the same was attended by treachery. Time and again, the Supreme Court has held that an attack on a victim who has just wakened or who was roused from sleep is one attended by treachery[26] because in such situation, the victim is in no position to put up any form of defense.[27] There is treachery where the attack was sudden and unexpected, rendering the victim defenseless and ensuring the accomplishment of the assailant's purpose without risk to himself.[28] The essence of treachery is the swift and unexpected attack on an unsuspecting and unarmed victim who does not give the slightest provocation.[29]

In this case, it was evident that Romeo de Guzman was not aware that he would be attacked by appellant. He had just wakened when appellant stabbed him having been roused from his sleep by appellant's act of kicking the door behind which the victim usually sleeps.[30] It must also be pointed out that the victim was drunk when the attack happened, having been earlier engaged in a drinking spree with appellant, thus rendering him even more powerless to defend himself from appellant's assault. Clearly, the victim's guard was down when appellant stabbed him with the *bolo*.

Thus, both the RTC and the Court of Appeals correctly appreciated the qualifying circumstance of treachery.

---

[26] *People v. Alabado*, G.R. No. 176267, 3 September 2007, 532 SCRA 189, 210 citing *People v. Abolidor*, 467 Phil. 709, 720 (2004); *People v. Delmindo*, 473 Phil. 597, 613 (2004) and *People v. Fernandez*, 434 Phil. 224, 238-239 (2002).

[27] *People v. Abolidor*, *id.*

[28] *People v. Molina*, 370 Phil. 546, 556 (1999) citing *People v. Uycoque*, G.R. No. 107495, 31 July 1995, 246 SCRA 769.

[29] *People v. Balais*, G.R. No. 173242, 17 September 2008, 565 SCRA 555, 568-569 citing *People v. Bermas*, 369 Phil. 191, 234 (1999).

[30] TSN, 3 April 2002, p. 19.

As for damages, the Court of Appeals awarded the following amounts: (a) ₱50,000.00 as indemnity for the victim's death; (b) ₱50,000.00 as moral damages; (c) ₱25,000.00 as exemplary damages; and (d) ₱25,000.00 as temperate damages.[31]

The award for civil indemnity is mandatory and is granted to the heirs of the victim without need of proof other than the commission of the crime.[32] To conform with recent jurisprudence,[33] however, the amount awarded by the Court of Appeals is hereby increased to ₱75,000.00.

As in the case of civil indemnity *ex delicto*, moral damages in murder cases require no further proof than death.[34] The Regional Trial Court and the Court of Appeals correctly awarded moral damages in the amount of ₱50,000.00 in view of the violent death of the victim and the resultant grief to his family.[35]

On the other hand, exemplary damages shall be imposed as part of the civil liability arising from the crime where aggravating circumstances attended the commission thereof.[36] Thus, the award of exemplary damages is also warranted because of the presence of the qualifying aggravating circumstance of treachery in the commission of the crime.[37] The amount of ₱25,000.00 granted by the trial court and the Court of Appeals should, however, be increased to ₱30,000.00 in line with current jurisprudence on the matter.[38]

---

[31] *Rollo*, p. 13.

[32] *People v. Balais*, *supra* note 29 at 571.

[33] *People v. Obligado*, G.R. No. 171735, 16 April 2009, 585 SCRA 380, 385 citing *People v. Malolot*, G.R. No. 174063, 14 March 2008, 548 SCRA 676.

[34] *People v. Dumalahay*, 429 Phil. 540, 553 (2002) citing *People v. Tumanon*, 404 Phil. 523, 542 (2001).

[35] *People v. Balais*, *supra* note 29 at 571.

[36] *People v. Dumalahay*, *supra* note 34, citing Art. 2230 of the New Civil Code.

[37] *People v. Balais*, *supra* note 29 AT 571-572.

[38] *People v. Ortiz*, G.R. No. 188704, 7 July 2010 and *People v. Gutierrez*, G.R. No. 188602, 4 February 2010.

Finally, temperate damages are awarded when it appears that the heirs of the victim suffered pecuniary loss but the amount thereof cannot be proved with certainty.[39] While Beverly de Guzman, the brother of the victim, testified that he spent ₱50,000.00 as funeral expenses and ₱5,000.00 as hospital expenses he, however failed to present duly issued receipts therefore. Hence, he cannot recover actual damages as these require that the amount claimed be supported by receipts.[40] Thus, the award of temperate damages in the amount of ₱25,000.00 is likewise proper.

WHEREFORE, the Decision of the Court of Appeals in CA-G.R. CR No. 02350 promulgated on 27 July 2007 is hereby *AFFIRMED* with the *MODIFICATION* that the amount of civil indemnity and exemplary damages are increased to ₱75,000.00 and ₱30,000.00, respectively.

SO ORDERED.

Corona, C.J. (Chairperson), Leonardo-de Castro,[*] *Bersamin,*[**] and *Del Castillo, JJ.,* concur.

---

[39] *People v. Masagnay*, G.R. No. 137364, 10 June 2004, 431 SCRA 572.

[40] *People v. Demate*, G.R. Nos. 132310 and 143968-69, 20 January 2004, 420 SCRA 229.

[*] Designated as Working Chairperson in lieu of Associate Justice Presbitero J. Velasco, Jr. per Special Order No. 878 dated 2 August 2010.

[**] Designated as Additional Member in lieu of Associate Justice Presbitero J. Velasco, Jr. per Special Order No. 876 dated 2 August 2010.

FIRST DIVISION

[G.R. No. 181244. August 9, 2010]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **ANITA "KENNETH" TRINIDAD,** *defendant-appellant.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; MIGRANT WORKERS AND OVERSEAS FILIPINOS ACT OF 1995 (RA NO. 8042); ILLEGAL RECRUITMENT, DEFINED. — Section 6 of Republic Act No. 8042 or the "Migrant Workers and Overseas Filipinos Act of 1995" defines illegal recruitment as "any act of canvassing, enlisting, contracting, transporting, utilizing, hiring or procuring workers and includes referring contract services, promising or advertising for employment abroad, whether for profit or not, when undertaken by a non-licensee or non-holder of authority contemplated under Article 13(f) of Presidential Decree No. 442, as amended, otherwise known as the Labor Code of the Philippines.

2. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; FINDINGS OF TRIAL COURT, RESPECTED. — All three private complainants testified in a categorical and straightforward manner; hence, the trial court properly accorded full faith and credence to their declarations on the witness stand. The well-settled rule is that the credibility of witnesses is best left to the judgment of the trial judge whose findings are generally not disturbed on appeal, absent any showing that substantial errors were committed or that determinative facts were overlooked which, if appreciated, would call for a different conclusion. The trial court has the advantage, not available to the appellate courts, of observing the deportment of witnesses and their manner of testifying during trial. Thus, the appellate courts confer highest respect to such findings and conclusions of the lower courts.

3. ID.; ID.; DENIAL; CANNOT PREVAIL OVER POSITIVE TESTIMONIES. — The only defense offered by appellant against the allegations against her was mere denial, an inherently weak defense which cannot prevail over the positive and

unequivocal testimonies of complainants. Bare denials, without clear and convincing evidence to support them, cannot sway judgment. They are self-serving statements which can easily be put forward. It is inconceivable that private complainants would be mistaken in their claim that it was appellant who recruited them considering that it was she who personally talked with them on several occasions and received the sums of money for which she issued receipts. It is contrary to human nature and experience for persons to conspire and accuse a stranger of a crime, or even a casual acquaintance for that matter, that would take the latter's liberty and send him to prison just to appease their feeling of rejection and assuage the frustration of their dreams to go abroad.

4. LABOR AND SOCIAL LEGISLATION; MIGRANT WORKERS AND OVERSEAS FILIPINOS ACT OF 1995 (RA NO. 8042); ILLEGAL RECRUITMENT CONCEPT, BROADENED. — The proliferation of illegal job recruiters and syndicates preying on innocent people anxious to obtain employment abroad is one of the primary considerations that led to the enactment of *The Migrant Workers and Overseas Filipinos Act of 1995*. Aimed at affording greater protection to Overseas Filipino Workers (OFWs), it is a significant improvement on existing laws in the recruitment and placement of workers for overseas employment. Otherwise known as the Magna Carta of Overseas Filipino Workers, it broadened the concept of illegal recruitment under the Labor Code and provided stiffer penalties therefor, especially those that constitute economic sabotage, *i.e.*, Illegal Recruitment in Large Scale and Illegal Recruitment Committed by a Syndicate.

5. ID.; ID.; ID.; ILLEGAL RECRUITMENT IN LARGE SCALE; PENALTY. — In the instant case, appellant is guilty of illegal recruitment in large scale because it was committed against three private complainants. This is in accordance with the penultimate paragraph of Section 6 Republic Act No. 8042 which provides, thus: Illegal recruitment is deemed committed by a syndicate if carried out by a group of three (3) or more persons conspiring or confederating with one another. **It is deemed committed in large scale if committed against three (3) or more persons individually or as a group.** The trial court, as affirmed by the Court of Appeals, imposed upon the appellant the penalty of life imprisonment and a fine of

₱100,000.00 plus actual damages, with interest thereon. However, the fine of ₱100,000.00 should be increased to ₱500,000.00 pursuant to Section 7(b) of Republic Act No. 8042 which reads, thus: (b) The penalty of life imprisonment and a fine of not less than Five hundred thousand pesos (₱500,000.00) nor more than One million pesos (₱1,000,000.00) shall be imposed if illegal recruitment constitutes economic sabotage as defined therein.

APPEARANCES OF COUNSEL

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

D E C I S I O N

PEREZ, *J.*:

Appellant, together with Taciana "Tess" Aquino, Mauro Marasigan, Louella Garen and Daniel Trinidad, were charged with violation of Section 6 in relation to Section 7 of Republic Act No. 8042[1] for large scale illegal recruitment committed by a syndicate in an information which reads:

That in or about the months of May, June, August and December, 1998, or sometime prior and subsequent thereto, in the City of Pasay, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and mutually helping each other, did then and there willfully, unlawfully and feloniously contract, enlist and promise employment to the following **Aires V. Pascual, Elma J. Hernandez, Gemma Noche dela Cruz** and **Elizabeth de Villad** (sic), as domestic helpers in Italy, without first securing the required licensed (sic) or authority from the Philippine Overseas Employment Administration.[2]

Upon arraignment, appellant pleaded not guilty to the charge against her. The rest of the accused have all remained at large.[3]

[1] *The Migrant Workers and Overseas Filipinos Act of 1995*.

[2] Records, p. 1.

[3] *Id.* at 50.

The factual antecedents of the case, based on the records, are as follows:

Sometime in May 1998, private complainant Elizabeth de Villa (De Villa), together with her cousin Elma Hernandez, was brought by their aunt Patricia to the house of appellant in Pasay City for possible job placement as domestic helpers in Italy.[4] A cousin of hers was earlier able to leave for abroad through the help of appellant.[5] Convinced by appellant's representation that she can send her to Italy, De Villa agreed to give appellant ₱240,000.00, representing the price of her ticket and the processing of her papers,[6] which amount she paid in three installments. The first installment of ₱100,000.00, was given by de Villa to appellant in the same month of May after their first meeting.[7] This initial payment was covered by a handwritten receipt signed and issued by appellant herself.[8] The second and third installments, in the amounts of ₱50,000.00 and ₱90,000.00, respectively, were paid by de Villa in June and August 1998.[9] These latter amounts were no longer covered by receipts because, according to De Villa, appellant had won her trust as a result of the former's assurances that she would be able to send her to Italy.[10]

On 8 August 1998, de Villa and three other recruits left the Philippines.[11] However, instead of sending them to Italy, appellant and accused Mauro Marasigan (Marasigan) sent them to Bangkok, Thailand and told them that they (appellant and Marasigan) will secure the visas for Italy in Bangkok because it would be easier to get an Italian visa in Bangkok.[12]

---

[4] TSN, 1 February 2002, p. 3.

[5] *Id.* at 18.

[6] *Id.* at 4 & 7.

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

[8] Exhibit "B", Records, p. 632.

[9] TSN, 1 February 2002, pp. 25-26 and 29-30.

[10] *Id.* at 16, 27 and 30.

[11] *Id.* at 10.

[12] *Id.* at 9-10.

Elma Hernandez (Hernandez), a cousin of De Villa, was likewise introduced to appellant by their aunt Patricia sometime after the elections of May 1998. Upon meeting appellant, Hernandez asked if appellant could really send her to Italy to work as a domestic helper, and appellant replied positively. Whereupon, she agreed to give ₱240,000.00 to appellant representing the expenses for the processing of her Italian visa.[13] Hernandez paid this amount in three installments: ₱100,000.00 was paid in May 1998, which payment was evidenced by the same receipt issued by appellant to De Villa;[14] ₱100,000.00 in June of the same year; and the balance of ₱40,000.00 was paid by her Aunt Patricia to appellant in August 1998 because at that time, Hernandez had already left the Philippines.[15] No receipts were issued for the latter amounts because she trusted appellant's promise that she would send her to Italy.[16]

Appellant told her that she was tentatively scheduled to leave in May 1998, but because the processing of her papers were allegedly not completed on time, appellant moved her flight to August. Hernandez was able to leave the Philippines on this later date but not for Italy as agreed upon, but for Bangkok where appellant will allegedly secure her Italian visa.[17]

Gemma dela Cruz (Dela Cruz) first met appellant and accused Taciana "Tess" Aquino (Aquino) on 25 August 1998 in the house of one of appellant's victims in Blumentritt, Manila. During this meeting, appellant and Aquino convinced her of their ability to send her to Italy as long as she can produce the amount of ₱250,000.00. Their agreement was that Dela Cruz would give an initial amount of ₱150,000.00 and when she gets to Italy, she will give the remaining balance of ₱100,000.00. Thus, on the same date, Dela Cruz went to appellant's house in Pasay

---

[13] TSN, 1 March 2002, pp. 4-5.

[14] *Id.* at 37.

[15] *Id.* at 6 and 9.

[16] *Id.* at 38-40.

[17] *Id.* at 8-10 and 13.

City and paid ₱150,000.00 to appellant.[18] This transaction was witnessed by dela Cruz's sister, Geraldine Noche, and the latter's fiancé, Neopito Laraya[19] (Laraya) and is evidenced by a document, denominated as "Contract to Service"[20] which was signed by appellant and Laraya. Dela Cruz did not sign the contract because it was meant to be a proof that the ₱50,000.00 Laraya loaned to dela Cruz to complete the ₱150,000.00 payment to appellant was indeed given to the latter.[21] This claim was affirmed by Laraya when he took the witness stand on 27 June 2002 to testify for the prosecution.

Dela Cruz was able to leave the Philippines the following day, 26 August 2002. However, as in the cases of De Villa and Hernandez, Dela Cruz was sent to Bangkok instead of Italy.[22]

In Bangkok, De Villa, Hernandez and Dela Cruz met at the Benz Residence Hotel where appellant and Marasigan instructed all their recruits to stay. There, they met appellant's brother Daniel Trinidad (Trinidad), who likewise assured them that appellant would be able to secure an Italian visa for them.[23] Appellant and Marasigan followed them to Bangkok in the month of September but nothing happened insofar as their visas were concerned.[24] They stayed in Bangkok for four months but because they could stay in Thailand for only one month at a time, they had to exit to Malaysia two times to have their passports stamped to reflect their act of exiting Thailand so they could return to Bangkok.[25] For this, Dela Cruz incurred expenses in the total

---

[18] TSN, 21 June 2002, pp. 3-5.

[19] *Id.* at 5.

[20] Exhibit "D", Records, p. 634.

[21] TSN, 21 June 2002, p. 20 and TSN, 27 June 2002, pp. 4 and 13-14.

[22] TSN, 21 June 2002, p. 8.

[23] TSN, 21 June 2002, p. 9, TSN, 1 February 2002, p. 18 and TSN, 1 March 2002, p. 21.

[24] TSN, 21 June 2002, p. 8, TSN, 1 February 2002, p. 11 and TSN, 1 March 2002, p. 14.

[25] TSN, 21 June 2002, pp. 9-11 and TSN, 1 March 2002, pp. 14-15.

amount of US$200.[26] She incurred additional expenses for the duration of her stay in Bangkok for calling collect to the Philippines, totaling ₱9,387.30.[27] For her part, Hernandez spent a total of US$500 for board and lodging during her stay in Bangkok.[28]

After staying idle for four months in Bangkok, De Villa, Hernandez, and dela Cruz, together with other recruits, were taken by appellant and Marasigan to Morocco, again, allegedly for the purpose of securing their Italian visa there. For this, Hernandez and Dela Cruz each spent another US$2,700, which they gave to Marasigan and his wife Louella Garen.[29]

The group stayed in Morocco for two months but appellant continued to fail to deliver her promise of securing Italian visas for them. Hence, they returned to Bangkok and stayed there for another month during which appellant persisted in dissuading them from returning to the Philippines, assuring them that she would send them to Italy.[30] They failed to be further dissuaded, however, and they returned to the Philippines on 27 March 1999 and on 29 March 1999, filed a complaint against appellant and her companions.[31]

On 24 October 2002, the trial court rendered judgment as follows:

WHEREFORE, accused ANITA "KENNETH" TRINIDAD, also known as ANITA TRINIDAD MORAUDA, is hereby found GUILTY beyond reasonable doubt of the crime of LARGE SCALE ILLEGAL RECRUITMENT as defined under Section 6 of R.A. No. 8042, and penalized under Article 39(a) of the Labor Code of the Philippines.

---

[26] TSN, 21 June 2002, p. 10.

[27] *Id*. at 13-14 and Exhibits "E", "F", "G", "H", and "I", Records, pp. 635-644.

[28] TSN, 1 March 2002, p. 14.

[29] TSN, 1 March 2002, p. 17, TSN, 1 February 2002, p. 12 and TSN, 21 June 2002, pp. 8-9 and 11.

[30] TSN, 1 March 2002, p. 17, TSN, 1 February 2002, p. 13 and TSN, 21 June 2002, p. 11.

[31] TSN, 1 February 2002, pp. 13-14 and TSN, 21 June 2002, p. 15.

Accordingly, said accused is hereby sentenced to suffer the penalty of LIFE IMPRISONMENT, and to pay a fine of ₱100,000.00.

Further, she is ordered to pay the sum of ₱270,000.00 to Elizabeth de Villa; ₱270,000.00 plus the peso equivalent of US$500 to Elma Hernandez, and ₱159,387.30 plus the peso equivalent of US$2,900 to Gemma dela Cruz.[32]

The trial court rejected appellant's defense that the real illegal recruiter is Mauro Marasigan to whom she referred private complainants when they sought her help regarding jobs abroad and that they complained against her only because they could no longer locate Marasigan. The trial court likewise disregarded appellant's bare denials that she did not promise employment to complainants, that she did not receive any money from them, and that the signature appearing on the receipt presented by them is not hers.[33] Instead, it gave credence to the respective testimonies of private complainants that they were recruited by appellant, who was not duly licensed to conduct recruitment activities, as certified[34] by the Philippine Overseas Employment Administration (POEA) and the testimony of prosecution witness Rosa Mangila, Senior Labor and Employment Officer of the POEA.[35]

On 31 August 2007, the Court of Appeals rendered the herein assailed Decision[36] affirming the judgment of the trial court.

Thus, appellant is now before us on the following assignment of errors:

I

THE TRIAL COURT GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY BEYOND REASONABLE

---

[32] Records, pp. 857-873.

[33] TSN, 29 August 2002, pp. 8-9.

[34] Exhibit "C", Records, p. 633.

[35] TSN, 5 April 2002, pp. 3-5.

[36] Penned by Justice Estela M. Perlas-Bernabe with Justices Portia Aliño-Hormachuelos and Lucas P. Bersamin (now member of this Court), concurring. *Rollo,* pp. 2-10.

DOUBT OF THE CRIME CHARGED DESPITE THE PATENT WEAKNESS OF THE PROSECUTION'S EVIDENCE.

II

THE TRIAL COURT GRAVELY ERRED IN NOT CONSIDERING THE DEFENSE INTERPOSED BY THE ACCUSED-APPELLANT.[37]

Appellant maintains that she is a mere victim of circumstances in this case as the person responsible for the crime imputed to her, Marasigan, is a fugitive from justice. Thus, in order for private complainants to recover their money, they blamed her. She claims that she simply indorsed complainants to Marasigan, after which, she no longer had any participation in their transactions.[38]

Appellant's submissions fail to convince us.

Section 6 of Republic Act No. 8042 or the "Migrant Workers and Overseas Filipinos Act of 1995" defines illegal recruitment as "any act of canvassing, enlisting, contracting, transporting, utilizing, hiring or procuring workers and includes referring contract services, promising or advertising for employment abroad, whether for profit or not, when undertaken by a non-licensee or non-holder of authority contemplated under Article 13(f) of Presidential Decree No. 442, as amended, otherwise known as the Labor Code of the Philippines.

During their respective testimonies, complainants described their dealings with appellant as follows:

1. Elizabeth de Villa:

x x x x x x x x x

How [will] you be able to work in Italy by the mere fact that you were introduced to the accused?

A: **She convinced us that she could send us to Italy to work**.

---

[37] CA *rollo,* p. 50.

[38] *Id.* at 62-62A.

Fiscal Kuong to the witness:

Q: Whom you are referring to that convinced you that you will be sent to Italy?

A: Kenneth, ma'am.

Q: Can you give the full name of Kenneth Trinidad?

A: Anita Kenneth Trinidad.

Q: Ms. Witness, what happened after you and your aunt Patricia went to the house of Kenneth Trinidad?

A: We have an agreement that we will give her the amount of ₱240,000.

x x x x x x x x x

A: We do not give the whole amount of ₱240,000 but partially I gave the amount of ₱100,000 on the month of May I cannot recall the exact date.

x x x x x x x x x

Q: Do you recall where it was that you gave her ₱100,000 in May of 1998?

A: In her house located in Lucban St., Pasay City.

x x x x x x x x x

Q: And also for what is the payment given to Anita Kenneth Trinidad?

x x x x x x x x x

A: In payment for our ticket and also for processing of the requirements.

Court to the witness:

Q: Who will process the requirement?

A: Kenneth Trinidad.

Q: And what are these requirements for?

A: For us to go to Italy.

x x x x x x x x x

Q: And upon giving her ₱100,000 did she issue to you any receipt?

A: Yes sir, the one I handed to you earlier.

x x x x x x x x x

Q: x x x. Now, you said the accused wrote this writings in a piece of paper in your residence in Pasay City, did she leave you for a while in order to make this writing in the piece of paper?

A: No sir, she wrote that in front of me and I saw it.

x x x x x x x x x

Q: And after writing the same the accused signed her signature Kenneth Trinidad?

A: Yes sir.

Q: Are you sure this is her signature?

A: Yes sir.

x x x x x x x x x

Q: Was this writing continuous from beginning to end?

A: No sir, she wrote the word commission ₱30,000, the amount of ₱570,000 and deposit 100,000. When she wrote commission of ₱30,000 it means that, because we were 3 she gave the discount of ₱30,000, sir.

x x x x x x x x x

Q: Now, who accompanied you to the airport?

A: Anita Kenneth Trinidad.

x x x x x x x x x

Q: Who was your companion aside from the accused?

A: We were conveyed by Anita Kenneth Trinidad because we were at her residence, Kenneth Trinidad accompanied me to the airport.

x x x x x x x x x

Q: Ms. Witness, you stated accused Kenneth Trinidad, told you that she will get employment for you in Italy. What exactly, Ms. Witness, she told you?

A: **She assured us she will help us to secure employment** because she has a lot of relatives in Italy.[39] (Emphases supplied)

2. Elma Hernandez:

x x x x x x x x x

Q: And what did you do after you went to her house at Lucban?

A: I asked her if she could really sent (*sic*) [me] to Italy and she replied positively, ma'am.

COURT:

To sent you to Italy as what?

WITNESS:

To work there as a domestic helper, your Honor.

Q: In what arrangements did you make with her regarding the payment of your visa?

A: She asked me to give her ₱100,000.00 in order for her to process my documents in going to Italy, ma'am.

Q: So, the ₱100,000.00 is only for the processing of your documents, was there any other fees that the accused Kenneth Trinidad asked from you?

A: Yes, ma'am.

Q: And how much more, Miss witness?

A: All in all ₱240,000.00, ma'am.

x x x x x x x x x

Q: After you gave the payment to the accused Kenneth Trinidad, what arrangement did you and the accused make regarding your flight to Italy?

---

[39] TSN, 1 February 2002, pp. 4-5, 7, 22-24, 34-35 and 43.

A: She told me that she could have secured a visa for me in going to Italy.

x x x x x x x x x

COURT:

So, what was the undertaking of accused Anita Trinidad aside from sending you to Italy?

WITNESS:

She told me that she has a lot of relatives there and she promised an employment to me, your Honor.

COURT:

If the undertaking of the accused was only to send you to Italy or secure a visa for you for Italy, would you have given her the amount of ₱240,000.00?

WITNESS:

No, your honor.

x x x x x x x x x

Q: And you would agree with me that you were able to meet the accused Kenneth Trinidad through the intercession of your Tita Patricia, am I correct?

A: Yes, sir.

Q: And likewise your Tita Patricia informed you that she knows this Kenneth Trinidad and she told you that Kenneth Trinidad can help you in going to Italy am I correct?

A: It was Tita Patricia who introduced Kenneth Trinidad to me **but if Kenneth Trinidad would not promised** (*sic*) **that employment I would not agree to pay that amount to her.**

x x x x x x x x x

Q: May I clarify, if your Tita Patricia [was] not involved in this case, you would not met (*sic*) Kenneth Trinidad?

A: Yes, sir, if not because of Tita Patricia I would not know this Kenneth Trinidad but **if not for the promised**

(*sic*) **of Kenneth Trinidad that she could secure employment for us, I will not apply.**

x x x x x x x x x

Q: So when you arrived at the house of the accused in Lucban Street, Pasay City, your Tita Patricia was the one holding that money?

A: Yes, sir.

Q: And when you arrived there your Tita Patricia brought out the money and she started counting the same, is that correct?

A: Yes, sir.

Q: After counting the money she handed it over to Kenneth Trinidad, the accused?

A: After counting that money the money was not yet handed to Anita Kenneth Trinidad because I'm still clearing if she really could secure employment for me in Italy, sir.

Q: And after having cleared the fact that she could secure employment for you, your Tita Patricia already gave the amount of ₱100,000.00 to the accused, correct?

A: Not yet, sir, my Tita Patricia still asked for my decision if I am decided to give that amount to Kenneth Trinidad.

Q: After you have decided to give that amount, your Tita Patricia gave the amount to the accused?

A: Yes sir.

x x x x x x x x x

Q: Now, this piece of paper which is the receipt, this was according to you prepared by Kenneth Trinidad, the accused in this case?

A: Yes, sir.

Q: And did she execute this receipt in front of you?

A: Yes, sir.

Q: Were you able to see her actually writing the notations here in this piece of paper?

A: Yes, sir.

Q: Whose signature is this, Miss witness?

A: That is the signature of Anita Kenneth Trinidad, sir.[40] (Emphasessupplied).

3. Gemma dela Cruz:

Q: Can you tell us what transpire[d] during the meeting with accused Taciana "Tess" Aquino and Anita "Kenneth" Trinidad?

A: When I went to the house of Pisyang Agno located at Blumentritt, I met Trinidad and Aquino who convinced me that they could send me to Italy as long as I can produce the amount of ₱250,000.00.

COURT:

Who told you that they can send you abroad if you will give the amount of ₱250,000.00?

WITNESS:

Kenneth Trinidad and Taciana Aquino, your Honor.

x x x x x x x x x

Q: And Madam Witness, what was the terms of your agreement with the two accused as regards this payment of ₱250,000.00?

A: The agreement with them was that, initially, I will give the amount of ₱150,000.00, if I'm already in Italy that's the time I give the remaining ₱100,000.00.

Q: What happened after the meeting on August 25, 1998?

A: I gave her ₱150,000.00, in fact I have two witnesses, Geraldine Noce (sic) and Taraya (sic). And I also have receipt with me to prove that she received the amount of ₱150,000.00.

---

[40] TSN, 1 March 2002, pp. 5-8, 11-12, 27-28 and 34-36.

x x x x x x x x x

Q: To whom did you hand the amount of ₱150,000.00?

A: To Neopito Laraya, I first handed the ₱150,000.00 to Neopito Laraya and Neopito Laraya in turn handed the ₱150,000.00 to Anita "Kenneth" Trinidad. In that ₱150,000.00, I borrowed the ₱50,000.00 from my sister's boyfriend and the ₱100,000.00 I borrowed it from a Lending Company.

Q: Miss Witness, do you have any documents to show that accused Anita "Kenneth" Trinidad, received the amount of ₱150,000.00?

A: Yes, Ma'am.

Q: Showing to you this document entitled "CONTRACT OF SERVICE", is this the document you are referring to?

A: Yes, Ma'am.

x x x x x x x x x

Q: Miss Witness, showing to you this signature above the handwritten word Anita Trinidad, do you know whose signature is this?

A: Yes, Ma'am, that is the signature of Anita "Kenneth" Trinidad.

Q: How do you know that this is the signature of Anita "Kenneth" Trinidad

A: Because she affixed her signature in front of me.[41]

It is clear from the aforequoted statements that appellant engaged in recruitment activities. The respective testimonies of private complainants clearly established that appellant promised them employment in Italy and that she asked money from them for the processing of their papers. Relying upon appellant's representations, complainants parted with their money. That appellant recruited them without the requisite license from the POEA makes her liable for illegal recruitment.

[41] TSN, 21 June 2002, pp. 3-6.

All three private complainants testified in a categorical and straightforward manner; hence, the trial court properly accorded full faith and credence to their declarations on the witness stand. The well-settled rule is that the credibility of witnesses is best left to the judgment of the trial judge whose findings are generally not disturbed on appeal, absent any showing that substantial errors were committed or that determinative facts were overlooked which, if appreciated, would call for a different conclusion.[42] The trial court has the advantage, not available to the appellate courts, of observing the deportment of witnesses and their manner of testifying during trial. Thus, the appellate courts confer highest respect to such findings and conclusions of the lower courts.[43]

Besides, the only defense offered by appellant against the allegations against her was mere denial, an inherently weak defense which cannot prevail over the positive and unequivocal testimonies of complainants. Bare denials, without clear and convincing evidence to support them, cannot sway judgment. They are self-serving statements which can easily be put forward.[44] It is inconceivable that private complainants would be mistaken in their claim that it was appellant who recruited them considering that it was she who personally talked with them on several occasions and received the sums of money for which she issued receipts.[45] It is contrary to human nature and experience for persons to conspire and accuse a stranger of a crime, or even a casual acquaintance for that matter, that would take the latter's liberty and send him to prison just to appease their feeling of

---

[42] *People vs. Villas*, G.R. No. 112180, 15 August 1997, 277 SCRA 391, 404 citing *People vs. Comia*,1 September 1994, 236 SCRA 185, 194-195 and *People vs. Naparan*, 30 August 1993, 225 SCRA 714, 721, 722.

[43] *Id.*, citing *People vs. Goce*, 317 Phil. 897, 910-911 (1995) and *People vs. Comia, id.*

[44] *People vs. Navarra*, 404 Phil. 693, 701 (2001) citing *People vs. Agustin* 317 Phil. 897 (1995); *People vs. Hernandez*, G.R. No. 108027, 4 March 1999, 304 SCRA 186; *People vs. Mercado*, G.R. Nos. 108440-02, 11 March 1999, 304 SCRA 504; *People vs. Apongan*, 337 Phil. 393 (1997); and *People vs. Henson*, 337 Phil. 318 (1997).

[45] *People vs. Dionisio*, 425 Phil. 651, 664 (2002).

rejection and assuage the frustration of their dreams to go abroad.[46]

The proliferation of illegal job recruiters and syndicates preying on innocent people anxious to obtain employment abroad is one of the primary considerations that led to the enactment of *The Migrant Workers and Overseas Filipinos Act of 1995*. Aimed at affording greater protection to Overseas Filipino Workers (OFWs), it is a significant improvement on existing laws in the recruitment and placement of workers for overseas employment. Otherwise known as the Magna Carta of Overseas Filipino Workers, it broadened the concept of illegal recruitment under the Labor Code and provided stiffer penalties therefor, especially those that constitute economic sabotage, *i.e.*, Illegal Recruitment in Large Scale and Illegal Recruitment Committed by a Syndicate.[47]

In the instant case, appellant is guilty of illegal recruitment in large scale because it was committed against three private complainants. This is in accordance with the penultimate paragraph of Section 6 Republic Act No. 8042 which provides, thus:

> Illegal recruitment is deemed committed by a syndicate if carried out by a group of three (3) or more persons conspiring or confederating with one another. **It is deemed committed in large scale if committed against three (3) or more persons individually or as a group**.[48]

The trial court, as affirmed by the Court of Appeals, imposed upon the appellant the penalty of life imprisonment and a fine of ₱100,000.00 plus actual damages, with interest thereon. However, the fine of ₱100,000.00 should be increased to

---

[46] *People vs. Baytic*, 446 Phil. 23, 30 (2003), citing *People vs. Librero*, G.R. No. 132311, 28 September 2000, 341 SCRA 229.

[47] *People vs. Gamboa*, 395 Phil. 675, 682, 683 (2000), citing Jorge R. Coquia, Annotation on Illegal Recruitment of Overseas Filipino Workers as Economic Sabotage, 279 SCRA 199, 16 September 1997.

[48] *People vs. Ang*, G.R. No. 181245, 6 August 2008, 561 SCRA 370, 378.

₱500,000.00 pursuant to Section 7(b) of Republic Act No. 8042 which reads, thus:

> (b) The penalty of life imprisonment and a fine of not less than Five hundred thousand pesos (₱500,000.00) nor more than One million pesos (₱1,000,000.00) shall be imposed if illegal recruitment constitutes economic sabotage as defined therein.[49]

WHEREFORE, the Decision of the Court of Appeals dated 31 August 2007 in CA-G.R. CR-H.C. No. 00490, affirming the Judgment of the Regional Trial Court of Pasay City, Branch 117, finding appellant Anita "Kenneth" Trinidad guilty of illegal recruitment in large scale, sentencing her to suffer the penalty of life imprisonment and ordering her to pay a fine and actual damages, is hereby *AFFIRMED* with the following *MODIFICATIONS*: (1) the amount of fine is increased to ₱500,000.00; and (2) appellant is further ordered to pay Elma Hernandez the peso equivalent of US$2,700.00.

SO ORDERED.

Corona, C.J. (Chairperson), Leonardo-de Castro,[*] *Bersamin,*[**] and *Del Castillo, JJ.,* concur.

---

[49] *Id.*

[*] Designated as Working Chairperson in lieu of Associate Justice Presbitero J. Velasco, Jr. per Special Order No. 878 dated 2 August 2010.

[**] Designated as Additional Member in lieu of Associate Justice Presbitero J. Velasco, Jr. per Special Order No. 876 dated 2 August 2010.

FIRST DIVISION

[G.R. No. 182877. August 9, 2010]

SCA HYGIENE PRODUCTS CORPORATION EMPLOYEES ASSOCIATION-FFW, *petitioner, vs.* **SCA HYGIENE PRODUCTS CORPORATION,** *respondent.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; TERMINATION OF EMPLOYMENT; MANAGEMENT PREROGATIVE TO IMPLEMENT LEGITIMATE JOB EVALUATION PROGRAM OR RE-ORGANIZATION, RESPECTED. — It is a well-settled rule that labor laws do not authorize interference with the employer's judgment in the conduct of its business. The Labor Code and its implementing rules do not vest managerial authority in the labor arbiters or in the different divisions of the National Labor Relations Commission or in the courts. The hiring, firing, transfer, demotion, and promotion of employees have been traditionally identified as a management prerogative subject to limitations found in the law, a collective bargaining agreement, or in general principles of fair play and justice. This is a function associated with the employer's inherent right to control and manage effectively its enterprise. Even as the law is solicitous of the welfare of employees, it must also protect the right of an employer to exercise what are clearly management prerogatives. The free will of management to conduct its own business affairs to achieve its purpose cannot be denied. Accordingly, this Court has recognized and affirmed the prerogative of management to implement a job evaluation program or a re-organization for as long as it is not contrary to law, morals or public policy.

2. ID.; ID.; ID.; PROMOTION; PRIMORDIAL CONSIDERATION IS THE NATURE OF EMPLOYEE'S FUNCTIONS. — We are not prepared to grant any conversion or promotion increase to the 22 daily paid rank-and-file employees since what transpired was only a promotion in nomenclature. Of primordial consideration is not the nomenclature or title given to the employee, but the nature of his functions.

APPEARANCES OF COUNSEL

Federation of Free Workers FFW Legal Center for petitioner.
Picazo Buyco Tan Fider & Santos for respondent.

D E C I S I O N

PEREZ, *J.*:

For review on *certiorari* are the Decision[1] dated 19 February 2008 and the Resolution[2] dated 5 May 2008 of the Court of Appeals in CA-G.R. SP No. 100308, which reversed the Resolution[3] dated 2 August 2007 of Voluntary Arbitrator Renato Q. Bello in V.A. Case No. 013-06.

The undisputed facts are as follows:

Respondent SCA Hygiene Products Corporation is a domestic corporation engaged in the manufacture, sale and distribution of industrial paper, tissue and allied products. It has existing Collective Bargaining Agreements (CBAs) with SCA Hygiene Products Corporation Monthly Employees Union-FSM (Monthly Employees Union) and petitioner SCA Hygiene Products Corporation Employees Association-FFW (Daily Employees Union), which represent the monthly and daily paid rank-and-file employees, respectively.

Both CBAs of the Monthly Employees Union and the Daily Employees Union contain provisions on Job Evaluation which state that:

ARTICLE VIII
JOB EVALUATION

SECTION 1. The Management (COMPANY) will conduct Job Evaluation when deemed necessary. A third party consultant may

[1] *Rollo*, pp. 36-48. Penned by Associate Justice Mariano C. Del Castillo (now a member of this Court) with Associate Justices Arcangelita M. Romilla-Lontok and Romeo F. Barza concurring.

[2] *Id.* at 51.

[3] *Id.* at 82-94.

be tasked to conduct the program. The COMPANY agrees to maintain the practice of involving the incumbent employee member of the UNION in writing the Job Description which serves as input in the Job Evaluation Program. The third party consultant will conduct an orientation to both Union and Management of the Job Evaluation Process.

x x x x x x x x x

ARTICLE VIII
JOB EVALUATION

SECTION 1. The COMPANY and the UNION agrees to abide by the result of the Job Evaluation (JE) conducted by the COMPANY's third party consultants. The UNION may participate in this activity in the form of consultations and suggestions.

SECTION 2. The COMPANY agrees to advise the individual members of the UNION of the result of the JE concerning their respective positions and shall furnish the employee a copy of his/her job description.[4]

Sometime in 2003, respondent conducted a company-wide job evaluation through an independent consultant, Mercer Human Resource Consulting, Inc. As provided for in the CBAs, respondent conducted an orientation on the job evaluation process. All covered employees executed written job descriptions which were used in the job evaluation of their respective positions.

In February 2004, Mercer Human Resource Consulting, Inc. informed respondent of the result of the job evaluation which led respondent to adopt eight new job grade levels:[5]

Job Grade Level	Employee[s'] Category
8	Executive
7	Executive

[4] *Id*. at 58-59. There are two CBAs entered into by the corporation – one, with the monthly paid employees and the other with the daily paid employees. Both CBAs embody identical provisions denominated as Article VIII on Job Evaluation.

[5] *Id*. at 60.

6	Department Manager
5	Unit Manager
4	Unit Manager
3	Management Team Member
2	Rank-and-File
1	Rank-and-File

In a Letter dated 24 February 2004,[6] respondent informed 22 daily paid rank-and-file employees that their positions had been classified as Job Grade Level 2.

As a result, the Monthly Employees Union demanded that the 22 daily paid rank-and-file employees be given conversion increase, promotion increase as well as retroactive salary increase from the time the job evaluation was completed on the ground that their positions had been converted into a higher job grade level which amounted to a promotion. Likewise, the Daily Employees Union asked for the adjustment of said employees' compensation since the conversion warranted their entitlement to the benefits, status and privileges of a monthly paid rank-and-file employee.

As respondent failed to respond, both unions submitted their grievances for mediation. When the parties failed to reach an amicable settlement, they submitted the case for voluntary arbitration.

The unions claimed that the 22 daily paid rank-and-file employees were entitled to conversion increase since Job Grade Level 2 positions are meant for monthly paid rank-and-file employees and along with the conversion, said employees were given additional job descriptions. They were also entitled to promotion increase since such is the company practice everytime an employee's rank is converted to a higher job grade level. The unions added that the company violated their CBAs by

[6] *Id.* at 161-180.

refusing to implement the result of the job evaluation considering that those converted from Job Grade Level 2 positions to Job Grade Level 3 positions were granted the benefits concomitant to their new positions.

The company countered that the job evaluation was merely a process of determining the relative contribution and value of the positions in its operations and does not provide for any adjustment in the salaries of the covered employees. The subject employees cannot be converted to monthly paid rank-and-file employees and given a conversion increase since they continue to occupy the same positions that they were occupying prior to the job evaluation. They are not entitled to any promotion increase since they were never promoted to a higher position as a Job Grade Level 2 position does not involve any increase in their duties and responsibilities. The company added that those employees converted to Job Grade Level 3 positions are entitled to salary and benefits increase since they are classified as managerial employees. On the other hand, those holding Job Grade Level 2 positions remained rank-and-file employees.

On 2 August 2007, Voluntary Arbitrator Renato Q. Bello ruled in favor of the unions and awarded conversion increase and attorney's fees to the 22 daily paid rank-and-file employees. In so ruling, he noted that said employees were performing the duties and responsibilities of a monthly paid rank-and-file employee. The only difference was that there was no clear classification of their positions.

The dispositive portion of the resolution provides:

WHEREFORE, in view of the foregoing, this Voluntary Arbitrator promulgates the following:

1. Declaring that the following employees are now deemed monthly paid rank-and-file employees and thus are entitled to conversion increase equivalent to ten per cent (10%) of their current basic salary as daily paid rank-and-file employees, retroactive from 24 February 2006 up to the time that full payment thereof is made by the Company:

	Names	Positions
1.	Julius M. Concepcion	Shift Mechanical Technician
2.	Rolando C. Miel	Shift Mechanical Technician
3.	Leonilo T. Sabinada	Electro Mechanical Technician
4.	Danilo T. Maningas	Electrical Technician
5.	Rulen A. Acosta	Back Tender
6.	Luisito P. Diaz	Back Tender
7.	Reynaldo M. Legario	Back Tender
8.	Arnel T. Limbaring	Back Tender
9.	Arlon Sison	Back Tender
10.	Roberto dela Cruz	Preventive Mechanical Technician
11.	Elaido V. Agbayani	Preventive Mechanical Technician
12.	Charlie M. Manaois	Mechanical Technician
13.	Nelio E. Bejosano	Warehouse Custodian
14.	Inventor V. Florada, Jr.	Mechanical Technician
15.	Paulo B. Romero	Electrical
16.	Dennis A. Ligue	Production Operator
17.	Samuel F. Villosimo	Boiler Tender
18.	Marian F. Perolino	Boiler Tender
19.	Renante Anding	Boiler Tender
20.	Gemar de Leola	Electro Mechanical Technician
21.	Julius Cellona	Electro Mechanical Technician
22.	Wenceslao B. Codizal	Instrumentation Technician

2. Denying the Union's claim for retroactive payment of promotional increase for lack of merit; and

3. Dismissing the Unions' claim for damages also for lack of merit and awarding ten per cent (10%) attorney's fees to the Unions based on the total computed conversion increase due the twenty two (22) employees. For this purpose, the management of the Company and the duly authorized officers of the Unions are enjoined to sit down and discuss the mechanics of the actual implementation of this judgment award.[7]

On appeal, the Court of Appeals ruled in favor of respondent. *First*, it held that the job evaluation was conducted as a reorganization process to standardize the company's organizational set-up. It was not designed to provide any conversion or adjustment to the salaries of the employees. The

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

CBAs merely provided the procedure for the implementation of the job evaluation. It did not specifically state that the covered employees are entitled to any salary adjustment after the job evaluation. Hence, in the absence of any law or agreement between the parties, any conversion much less promotion is left entirely to respondent's sound discretion. *Second*, the appellate court did not give credence to the unions' claim that the grant of conversion/promotion increase was respondent's long-standing practice. To be considered a regular practice, the grant of such increase should have been done over a long period of time and must be shown to be consistent and deliberate. In this case, there was no evidence that respondent agreed to continue giving the benefits knowing fully well that its employees are not covered by the law requiring payment thereof. *Third*, the appellate court noted that those employees converted to Job Grade Level 3 positions were given salary and benefits increase since they became managerial employees after the job evaluation. The same could not be said with regard to those holding Job Grade Level 2 positions since they remained rank-and-file employees.

The decretal portion of the decision provides:

WHEREFORE, the petition for review is **GRANTED** and the Resolution dated August 2, 2007 of the voluntary arbitrator is **NULLIFIED** and **SET ASIDE**.[8]

Hence, the instant petition raising the following issues:

I.

THE HONORABLE COURT OF APPEALS GROSSLY ERRED WHEN IT DECIDED THE CASE IN UTTER DISREGARD OF THE SUBSTANTIATED FACTS THAT A PROMOTION TOOK PLACE WHEN THE TWENTY-TWO (22) DAILY PAID EMPLOYEES, WHO WERE PREVIOUSLY OCCUPYING JOB LEVEL I POSITIONS, WERE SUBSEQUENTLY CONVERTED INTO OR PROMOTED TO JOB LEVEL 2 POSITIONS AFTER THE RESULT OF THE JOB EVALUATION ON FEBRUARY 24, 2004.

---

[8] *Id*. at 47.

II.

THE HONORABLE COURT OF APPEALS GROSSLY ERRED WHEN IT DECIDED THE CASE IN UTTER DISREGARD OF THE SUBSTANTIATED FACTS AND THE EVIDENCE ADDUCED TO THE EFFECT THAT THERE WAS A LONG-STANDING [COMPANY PRACTICE] THAT EVERYTIME THERE IS A CHANGE IN THE JOB LEVEL POSITION OF AN EMPLOYEE, THE COMPANY GRANTS A CORRESPONDING CONVERSION INCREASE OF TEN [PERCENT] (10%), BASED ON THE EMPLOYEE'S CURRENT BASIC SALARY.[9]

Briefly, the key issues in this petition are: (1) Were the 22 daily paid rank-and-file employees promoted after their positions have been converted from Job Grade Level 1 to Job Grade Level 2?; and (2) if so, are they entitled to conversion increase equivalent to 10% of their current basic salary?

Petitioner contends that the 22 daily paid rank-and-file employees were promoted after the job evaluation. In fact, they have been performing the duties and responsibilities of a monthly paid rank-and-file employee occupying a Job Grade Level 2 position even before the job evaluation. Petitioner adds that said employees are entitled to conversion increase since such has been the company practice everytime an employee's rank is converted to a higher job grade level.

Respondent counters that the job evaluation was merely a process of determining the relative contribution and value of the positions in its operations and does not provide for any adjustment in the salaries of the covered employees. It adds that the 22 daily paid rank-and-file employees were not promoted since they continue to occupy the same positions that they were occupying prior to the job evaluation. They also perform the same functions and have the same responsibilities.

The petition has no merit.

It is a well-settled rule that labor laws do not authorize interference with the employer's judgment in the conduct of its

[9] *Id*. at 22.

business. The Labor Code and its implementing rules do not vest managerial authority in the labor arbiters or in the different divisions of the National Labor Relations Commission or in the courts. The hiring, firing, transfer, demotion, and promotion of employees have been traditionally identified as a management prerogative subject to limitations found in the law, a collective bargaining agreement, or in general principles of fair play and justice. This is a function associated with the employer's inherent right to control and manage effectively its enterprise. Even as the law is solicitous of the welfare of employees, it must also protect the right of an employer to exercise what are clearly management prerogatives. The free will of management to conduct its own business affairs to achieve its purpose cannot be denied. Accordingly, this Court has recognized and affirmed the prerogative of management to implement a job evaluation program or a re-organization for as long as it is not contrary to law, morals or public policy.[10]

In the case at bar, petitioner has miserably failed to convince this Court that respondent acted in bad faith in implementing the job evaluation program. There is no showing that it was intended to circumvent the law and deprive the 22 daily paid rank-and-file employees of the benefits they are supposed to receive.

The job evaluation program was undertaken to streamline respondent's operations and to place its employees in their proper positions or groupings. A perusal of the CBAs of the parties showed that, as correctly ruled by the Court of Appeals, it merely provided the procedure for the implementation of the job evaluation and did not guarantee any adjustment in the salaries of the employees.

We are not prepared to grant any conversion or promotion increase to the 22 daily paid rank-and-file employees since what

---

[10] *Hongkong and Shanghai Banking Corporation Employees Union v. National Labor Relations Commission*, 346 Phil. 524, 534-535 (1997); See *Nagkahiusang Namumuo sa Dasuceco-National Federation of Labor (NAMADA-NFL) v. Davao Sugar Central Co., Inc.*, G.R. No. 145848, 9 August 2006, 498 SCRA 271, 274-275.

transpired was only a promotion in nomenclature. Of primordial consideration is not the nomenclature or title given to the employee, but the nature of his functions.[11] Based on the eight new job grade levels which respondent adopted after the job evaluation, Job Grade Levels 1 and 2 positions are both categorized as rank-and-file employees. Said employees continued to occupy the same positions they were occupying prior to the job evaluation. Moreover, their job titles remained the same and they were not given additional duties and responsibilities.

There is also no evidence to show that Job Grade Levels 1 and 2 positions are confined only to daily and monthly paid rank-and-file employees, respectively, such that when a conversion from Job Grade Level 1 to Job Grade Level 2 takes place, a promotion automatically ensues. The pronouncement of Voluntary Arbitrator Renato Q. Bello that Job Grade Level 2 positions are mostly occupied by monthly paid rank-and-file employees implies that some daily paid rank-and-file employees also occupy that position.[12] Thus, a mere conversion from Job Grade Level 1 position to Job Grade Level 2 position does not, of course, make a daily paid rank-and-filer a monthly paid one with a concomitant conversion and promotion increase.

Petitioner also failed to substantiate its allegation that it has been a long-standing company practice to grant a conversion or promotion increase everytime an employee's rank is converted to a higher job grade level. The instances which petitioner cited showed clear intent on respondent's part to promote the employees concerned. The job titles and positions held by such employees have changed following the fact that they have assumed additional duties and responsibilities.

Finally, we see why petitioners cannot make common cause with those whose positions were converted from Job Grade Level 2 to Job Grade Level 3 and were, thereby, given the benefits concomitant to the higher level. Those who were elevated

---

[11] *National Federation of Labor Unions v. National Labor Relations Commission*, G.R. No. 90739, 3 October 1991, 202 SCRA 346, 353.

[12] *Rollo*, p. 90.

to Job Grade Level 3 positions were rightfully given the additional benefits since they have become managerial employees, specifically Management Team Members, and not merely rank-and-file employees. The same cannot be said of the twenty-two (22) daily paid rank-and-file employees involved in the case at bar.

WHEREFORE, the petition is *DENIED*. The Decision dated 19 February 2008 and the Resolution dated 5 May 2008 of the Court of Appeals in CA-G.R. SP No. 100308 are *AFFIRMED*.

SO ORDERED.

Corona, C.J. (Chairperson), Leonardo-de Castro, Bersamin,[*] and *Mendoza,*[**] *JJ.,* concur.

SECOND DIVISION

[G.R. No. 182937. August 9, 2010]

ERNESTO VILLEZA, *petitioner, vs.* **GERMAN MANAGEMENT AND SERVICES, INC., DOMINGO RENE JOSE, PIO DIOKNO, SESINANDO FAJARDO, BAYANI OLIPINO, ROLANDO ROMILO and JOHN DOES,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; JUDGMENTS; RULES ON REVIVAL OF JUDGMENT. — An action for

---

[*] Per Special Order No. 876, Associate Justice Lucas P. Bersamin is designated an additional member in place of Associate Justice Presbitero J. Velasco, Jr. who is on official leave under the Court's Wellness Program.

[**] Per raffle dated 7 July 2010, Associate Justice Jose Catral Mendoza is designated as an additional member in place of Associate Justice Mariano C. Del Castillo.

revival of judgment is governed by Article 1144 (3), Article 1152 of the Civil Code and Section 6, Rule 39 of the Rules of Court. Thus, *Art. 1144.* The following actions must be brought **within ten years** from the time the right of action accrues: x x x (3) Upon a judgment. Article 1152 of the Civil Code states: Art. 1152. The period for prescription of actions to demand the fulfillment of obligations declared by a judgment commences from the time the judgment became final. Apropos, Section 6, Rule 39 of the Rules of Court reads: *Sec. 6. Execution by motion or by independent action.* — A final and executory judgment or order may be executed on motion within five (5) years from the date of its entry. After the lapse of such time, and before it is barred by the **statute of limitations**, a judgment may be enforced by action. The revived judgment may also be enforced by motion within five (5) years from the date of its entry and thereafter by action before it is barred by the **statute of limitations**. The rules are clear. Once a judgment becomes final and executory, the prevailing party can have it executed as a matter of right by mere motion within five years from the date of entry of judgment. If the prevailing party fails to have the decision enforced by a motion after the lapse of five years, the said judgment is reduced to a right of action which must be enforced by the institution of a complaint in a regular court within ten years from the time the judgment becomes final.

2. ID.; ID.; ID.; ID.; NON-COMPLIANCE THEREWITH WILL NOT BE SAVED BY THE MERE ALLEGATION OF LIBERAL APPLICATION OF THE RULE FOR THE SAKE OF JUSTICE. — The Court has pronounced in a plethora of cases that it is revolting to the conscience to allow someone to further avert the satisfaction of an obligation because of sheer literal adherence to technicality; that although strict compliance with the rules of procedure is desired, liberal interpretation is warranted in cases where a strict enforcement of the rules will not serve the ends of justice; and that it is a better rule that courts, under the principle of equity, will not be guided or bound strictly by the statute of limitations or the doctrine of laches when to do so, manifest wrong or injustice would result. These cases, though, remain exceptions to the general rule. The purpose of the law in prescribing time limitations for enforcing judgment by action is precisely to prevent the winning parties from sleeping on their rights. This

> Court cannot just set aside the statute of limitations into oblivion every time someone cries for equity and justice. Indeed, "if eternal vigilance is the price of safety, one cannot sleep on one's right for more than a 10th of a century and expect it to be preserved in pristine purity."

APPEARANCES OF COUNSEL

Imelda A. Herrera for petitioner.
Bonifacio Law Office for respondents.

D E C I S I O N

MENDOZA, *J.*:

This petition sprouted from an earlier Supreme Court ruling in *German Management v. Court of Appeals*,[1] G.R. Nos. 72616-76217, September 14, 1989, which has already become final and executory. The decision, however, remains unenforced due to the prevailing party's own inaction. This petition, therefore, is the struggle of a victor trying to retrieve the prize once won.

It appears that *German Management v. Court of Appeals* stemmed from a forcible entry case instituted by petitioner Ernesto Villeza against respondent German Management, the authorized developer of the landowners, before the Metropolitan Trial Court of Antipolo City *(MeTC)*. The Decision of this Court favoring the petitioner became final and executory on October 5, 1989.[2] In ruling against German Management, We wrote:

> Although admittedly, petitioner may validly claim ownership based on the muniments of title it presented, such evidence does not responsively address the issue of prior actual possession raised in a forcible entry case. It must be stated that regardless of the actual condition of the title to the property, the party in peaceable quiet possession shall not be turned out by a strong hand, violence or terror. Thus, a party who can prove prior possession, can recover

[1] 177 SCRA 495, 500.

[2] *Rollo*, p. 40.

such possession even against the owner himself. Whatever may be the character of his prior possession if he has in his favor priority in time, he has the security that entitles him to remain on the property until he is lawfully ejected by a person having a better right by *accion publiciana* or *accion reinvindicatoria.*[3]

On May 27, 1991, the petitioner filed a Motion for Issuance of Writ of Execution with the MeTC. On February 27, 1992, he filed a Motion to Defer Resolution[4] thereon because "he was permanently assigned in Iloilo and it would take quite sometime before he could come back." On February 28, 1992, the MeTC issued an order holding in abeyance the resolution of his motion to issue writ of execution until his return. Three years later, as there was no further movement, the said court issued an order dated January 9, 1995 denying petitioner's pending Motion for Issuance of Writ of Execution for lack of interest.

More than three (3) years had passed before petitioner filed a Motion for Reconsideration dated May 29, 1998 alleging that he had retired from his job in Iloilo City and was still interested in the issuance of the writ. On October 8, 1998, the MeTC issued a writ of execution.

As the sheriff was implementing the writ, an Opposition with Motion to Quash Writ of Execution was filed by German Management and Services, Inc. On June 3, 1999, an order was handed down granting the motion to quash the writ of execution issued. Pertinently, the said Order reads:

> Considering the provision of Section 6, Rule 39 of the 1997 Rules of Civil Procedure, after the lapse of five years from the date of entry, judgment may no longer be enforced by way of motion but by independent action.[5]

On October 3, 2000, Villeza filed with the MeTC a Complaint for Revival of Judgment of the Decision of the Supreme Court dated September 14, 1989.

---

[3] *Supra* note 1.

[4] *Rollo,* pp. 42-43.

[5] Cited in CA Decision, *rollo,* p. 29.

Respondent German Management moved to dismiss the complaint. It alleged that it had been more than 10 years from the time the right of action accrued, that is, from October 5, 1989, the date of the finality of the Court's decision to October 3, 2000, the date of the filing of the complaint for its revival. It further argued that, pursuant to Section 6, Rule 39 of the Rules of Court in relation to Article 1144 of the Civil Code, the complaint is now barred by the statute of limitations.

On March 29, 2001, the MeTC granted the motion to dismiss reasoning that Article 1144 of the Civil Code was categorical that an action to enforce a judgment must be brought within ten years from the time such right accrues. Since it had been almost 11 years from the time the 1989 Court's decision became final and executory, the action to revive it was barred.

Aggrieved, petitioner Villeza appealed the decision to the Regional Trial Court *(RTC)* which affirmed *in toto* the MeTC order of dismissal in its April 24, 2004 Decision.

Petitioner Villeza elevated the case to the Court of Appeals (CA) arguing that the 10-year prescriptive period was tolled by the suspension granted him by the MeTC of Antipolo pursuant to his request to hold in abeyance the issuance of the writ of execution. He claimed that he could not be considered to have slept on his rights as he filed the necessary action to enforce the final decision. Nevertheless, the CA ruled against him. Thus:

> Petitioner's claim that the prescriptive period should be deemed interrupted by the grant of his move to defer action on the motion to execute cannot be countenanced. While there had been many instances where the Hon. Supreme Court allowed execution by motion even after the lapse of five years, said exceptions were occasioned by delay attributed to the judgment debtor. In the case at bar, the delay in the excution (sic) of the judgment is attributable to the petitioner, the party in whose favor judgment was issued.
>
> x x x x x x x x x

WHEREFORE, in view of the foregoing, the petition is DENIED. The decision appealed from is hereby AFFIRMED.[6]

Hence, this Petition for Review on *Certiorari* under Rule 45 of the Rules of Court.

Petitioner Villeza reiterates his argument that he never slept on his right as he pursued several remedies. Still, he insists that the interruption or suspension granted by the MeTC must be considered in computing the period because it has the effect of tolling or stopping the counting of the period for execution.[7] Besides, the Court has in the past provided several exceptions affording extension of the prescriptive period. Thus, he averred: "It is revolting to the conscience to allow respondents to further avert the satisfaction of its obligation because of the sheer literal adherence to technicality."[8]

The Court finds no merit in this petition.

An action for revival of judgment is governed by Article 1144 (3), Article 1152 of the Civil Code and Section 6, Rule 39 of the Rules of Court. Thus,

Art. 1144. The following actions must be brought **within ten years** from the time the right of action accrues:

x x x x x x x x x

(3) Upon a judgment

Article 1152 of the Civil Code states:

Art. 1152. The period for prescription of actions to demand the fulfillment of obligations declared by a judgment commences from the time the judgment became final.

Apropos, Section 6, Rule 39 of the Rules of Court reads:

---

[6] *Id.* at 29-30. CA Decision penned by Associate Justice Arcangelita Romilla-Lontok with Associate Justice Mariano C. del Castillo (now a member of this Court) and Associate Justice Ricardo R. Rosario concurring.

[7] *Id.* at 14.

[8] *Id.* at 18.

Sec. 6. Execution by motion or by independent action. — A final and executory judgment or order may be executed on motion within five (5) years from the date of its entry. After the lapse of such time, and before it is barred by the **statute of limitations**, a judgment may be enforced by action. The revived judgment may also be enforced by motion within five (5) years from the date of its entry and thereafter by action before it is barred by the **statute of limitations**. (emphasis supplied)

The rules are clear. Once a judgment becomes final and executory, the prevailing party can have it executed as a matter of right by mere motion within five years from the date of entry of judgment. If the prevailing party fails to have the decision enforced by a motion after the lapse of five years, the said judgment is reduced to a right of action which must be enforced by the institution of a complaint in a regular court within ten years from the time the judgment becomes final.

When petitioner Villeza filed the complaint for revival of judgment on October 3, 2000, it had already been eleven (11) years from the finality of the judgment he sought to revive. Clearly, the statute of limitations had set in.

Petitioner Villeza, however, wants this Court to agree with him that the abeyance granted to him by the lower court tolled the running of the prescriptive period. He even cited cases allowing exceptions to the general rule. The Court, nevertheless, is not persuaded. The cited cases are, in fact, not applicable to him, despite his endeavor to tailor them to fit in to his position. The same cases lamentably betray him.

Republic v. Court of Appeals[9] deals with the stay of the period due to the acts of the losing party. It was impossible for the winning party to have sought the execution of the judgment because of the dilatory schemes and maneuvers resorted to by the other party.[10]

---

[9] 221 Phil. 685, 695 (1985).

[10] *Id.*

In *Torralba v. delos Angeles*,[11] the running of the period was interrupted when the winning party filed a motion for the issuance of the writ of execution. The order of ejectment was not carried out, however, due to the judgment debtor's begging to withhold the execution of judgment because of financial difficulties.[12] The agreement of the parties to defer or suspend the enforcement of the judgment interrupted the period of prescription.[13]

In *Casela v. Court of Appeals*,[14] it was the judgment obligor who moved to suspend the writ of execution. The judgment obligee was not in delay because he exhausted all legal means within his power to eject the obligor from his land. The writs of execution issued by the lower court were not complied with and/or were suspended by reason of acts or causes not of obligee's own making and against his objections.[15]

Unlike the cases cited above, the records reveal that it was petitioner Villeza, the prevailing party himself, who moved to defer the execution of judgment. The losing party never had any hand in the delay of its execution. Neither did the parties have any agreement on that matter. After the lapse of five years (5) from the finality of judgment, petitioner Villeza should have instead filed a complaint for its revival in accordance with Section 6, Rule 39 of the Rules of Court. He, however, filed a motion to execute the same which was a wrong course of action. On the 11th year, he finally sought its revival but he requested the aid of the courts too late.

The Court has pronounced in a plethora of cases that it is revolting to the conscience to allow someone to further avert the satisfaction of an obligation because of sheer literal adherence to technicality;[16] that although strict compliance with the rules

---

[11] 185 Phil. 40, 47 (1980).

[12] *Id.*

[13] *Id.*

[14] 146 Phil. 292, 296 (1970).

[15] *Id.*

[16] *Philippine Veterans Bank v. Solid Homes*, G.R. No. 170126, June 9, 2009, 589 SCRA 40.

of procedure is desired, liberal interpretation is warranted in cases where a strict enforcement of the rules will not serve the ends of justice;[17] and that it is a better rule that courts, under the principle of equity, will not be guided or bound strictly by the statute of limitations or the doctrine of laches when to do so, manifest wrong or injustice would result.[18] These cases, though, remain exceptions to the general rule. The purpose of the law in prescribing time limitations for enforcing judgment by action is precisely to prevent the winning parties from sleeping on their rights.[19] This Court cannot just set aside the statute of limitations into oblivion every time someone cries for equity and justice. Indeed, "if eternal vigilance is the price of safety, one cannot sleep on one's right for more than a 10th of a century and expect it to be preserved in pristine purity."[20]

WHEREFORE, the May 9, 2008 Decision of the Court of Appeals in CA-GR No. SP No. 84035 is *AFFIRMED.*

SO ORDERED.

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

---

[17] *Id.*

[18] *Bausa v. Heirs of Juan Dino,* G.R. No. 167281, August 28, 2008, 563 SCRA 533, 542.

[19] *Macias v. Lim*, G.R. No. 139284, June 4, 2004, 431 SCRA 20, 38.

[20] *Asociacion Cooperativa de Credito Agricola de Miagao v. Monteclaro,* 74 Phil. 281 (1943).

THIRD DIVISION

[G.R. No. 183352. August 9, 2010]

HEIRS OF JOSE M. CERVANTES, namely ROSALINA S. CERVANTES, TEODORO S. CERVANTES, LUISITO S. CERVANTES and JOSELITO S. CERVANTES, *petitioners, vs.* **JESUS G. MIRANDA,** *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; DEPARTMENT OF AGRARIAN REFORM ADJUDICATION BOARD (DARAB); JURISDICTION; AGRARIAN DISPUTES. — The DARAB has jurisdiction over agrarian disputes. An agrarian dispute refers to any controversy relating to tenurial arrangements, whether leasehold, tenancy, stewardship, or otherwise, over lands devoted to agriculture, including disputes concerning farmworkers' associations or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of such tenurial arrangements. It includes any controversy relating to compensation of lands acquired and other terms and conditions of transfer of ownership from landowner to farmworkers, tenants, and other agrarian reform beneficiaries, **whether the disputants stand in the proximate relation of farm operator and beneficiary, landowner and tenant, or lessor and lessee**. It relates to any controversy relating to, among others, tenancy over lands devoted to agriculture.

2. ID.; ID.; ID.; ID.; ID.; INCLUDES A CASE ALTHOUGH MERELY AN INCIDENT INVOLVING THE IMPLEMENTATION OF THE AGRARIAN PROGRAM; CASE AT BAR. — In the present case, although there is admittedly no tenancy relationship between Jose and respondent and the complaint filed before the DARAB was denominated as one for forcible entry, it is the DARAB and not the regular courts which has jurisdiction of the case. As *Spouses Carpio v. Sebastian* teaches: **Although the opposing parties in this case are not the landlord against his tenants, or *vice-versa*, the case still falls within the jurisdiction of the DARAB** pursuant to this Court's ruling in *Department of Agrarian*

Reform v. Abdulwahid where the Court pronounced, thus: The Department of Agrarian Reform Adjudication Board (DARAB) is vested with primary and exclusive jurisdiction to determine and adjudicate agrarian reform matters, including all matters involving the implementation of the agrarian reform program. Thus, **when a case is merely an incident involving the implementation of the Comprehensive Agrarian Reform Program (CARP), then jurisdiction remains with the DARAB, and not with the regular courts**. x x x **[J]urisdiction should be determined by considering not only the status or relationship of the parties but also the nature of the issues or questions that is the subject of the controversy**. Thus, **if the issues between the parties are intertwined with the resolution of an issue within the exclusive jurisdiction of the DARAB, such dispute must be addressed and resolved by the DARAB**. Furthermore, under Rule II (Jurisdiction of the Board and Adjudicators) of the 2009 DARAB's Rules of Procedure, *viz*: **SECTION 1. Primary and Exclusive Original and Appellate Jurisdiction**. The Board shall have primary and exclusive jurisdiction, both original and appellate, to determine and adjudicate all agrarian disputes involving the implementation of the Comprehensive Agrarian Reform Program (CARP) under R.A. No. 6657, as amended by R.A. No. 9700, E.O. Nos. 228, 229, and 129-A, R.A. No. 3844 as amended by R.A. No. 6389, Presidential Decree No. 27 and other agrarian laws and their Implementing Rules and Regulations. Specifically, such jurisdiction shall include but not be limited to cases involving the following: x x x **d. Those cases involving the ejectment and dispossession of tenants and/or leaseholders**; x x x From a perusal of the submissions of the parties and their respective allegations during the hearings before the DARAB, the following undisputed facts emerge: Jose was physically dispossessed of the land of which he claims to be a tenant; and respondent himself claims to be a tenant. ***The resolution of the case then hinges on a determination of who between Jose's successors-in-interest and respondent is the true farmer-beneficiary of the leasehold in question, a matter which is best resolved by the DARAB and not by the regular courts***. Even if no landowner-tenant *vinculum juris* was alleged between Jose and respondent then, the present controversy can be characterized as an agrarian dispute over which the DARAB can assume jurisdiction.

3. ID.; ID.; ID.; FACTUAL FINDINGS OF DARAB, RESPECTED. — As to the DARAB's disquisition of the case on the merits, the Court has consistently held that the findings of fact of administrative agencies and quasi-judicial bodies, like the DARAB, which have acquired expertise because their jurisdiction is confined to specific matters, are generally accorded respect. In the present case, there is no ground to disturb the DARAB's findings, which affirmed those of the PARAB after due hearing and appreciation of the evidence submitted by both parties.

APPEARANCES OF COUNSEL

Proceso M. Nacino for petitioners.

D E C I S I O N

CARPIO MORALES, *J.*:

Arturo Miranda (Arturo) was a holder of Certificate of Land Transfer (CLT) No. 160774 covering a parcel of land denominated as Lot No. 1532 in the name of Jesus Panlilio, located in Cabalantian, Bacolor, Pampanga measuring about 2.8070 hectares (the land).

On August 10, 1981, Arturo executed a waiver[1] surrendering his CLT in favor of his cousin Jose M. Cervantes (Jose), predecessor-in-interest of herein petitioners. The waiver reads:

I, ARTURO O. MIRANDA, of legal age, married, Filipino, with residence and postal address at Cabalantian, Bacolor, Pampanga, **that I am a tenant-farmer of a parcel of land devoted to the production of rice located at Cabalantian, Bacolor, Pampanga at the estate of Jesus Panlilio containing an area of 2.8070 has., more or less**;

That I have abandone [*sic*] and surrender [*sic*] my farmholding because I landed a job in Saudi Arabia and cannot work on the farm as well as I cannot cope with the payment of said landholdings;

[1] CA *rollo*, pp. 78-77.

That my wife and children are not interested to cultivate said land due to the fact that they are engaged in other forms of business;

That due to the aforementioned circumstances, **I have waive [*sic*] all my rights and interest over the said landholding in favor of JOSE M. CERVANTES**, likewise of legal age, married, Filipino, with residence and postal address at Cabalantian, Bacolor, Pampanga, who is my cousin and the actual tiller and the most qualified to till the land; (emphasis and underscoring supplied)

x x x x x x x x x

By virtue of the above document, the *Samahang Nayon of Cabalantian*, through a Resolution[2] approved on September 11, 1981 Arturo's surrender of the CLT, and awarded the land to Jose.

On May 10, 2002, Jesus G. Miranda (respondent) plowed through the land by force and stealth. As mediation[3] between Jose and respondent failed to settle the matter, Jose filed a complaint at the Provincial Agrarian Reform Adjudication Board (PARAB) before which he submitted documentary evidence including Arturo's waiver and *the Samahang Nayon* Resolution approval of the surrender of the CLT to him; tax declarations[4] of the subject land in Arturo's name, and affidavits[5] from various individuals stating that he (Jose) is a tenant of the land whereas respondent was not, the latter being a bus driver and, therefore, could not have cultivated it. He likewise submitted various previous certifications[6] from government agencies/offices as to

---

[2] CA *rollo*, p. 76.

[3] *Vide* Certification from the Bacolor Municipal Agrarian Reform Officer dated June 17, 2002; records, p. 66.

[4] *Id.* at 64-63

[5] *Id.* at 61-58.

[6] *Vide* Certification from the Municipal Agrarian Reform Office dated April 24, 1984 signed by Team leader Gregorio A. Nunag; Certification dated February 8, 1993 by Brgy. Captain Conrado O. Pangilinan, Jr.; Certification dated August 13, 1991 of Samahang Nayon President Cayetano O. Bengco.; records, pp. 71-69.

his being the tiller/tenant of the land, and a certification[7] from the Bureau of Immigration that respondent is an American citizen and had just arrived from the United States on March 29, 2002.

For his part, respondent claimed that his father Anselmo Miranda was the original tenant of the land and that he and his brothers had been in its possession since the 1940s; in the 1950s, he alone paid rentals to the owner of the land, Luz *Vda. de* Panlilio; in the 1960s, the land was submerged in water, and in the 1990s, it was affected by the lahar from Mt. Pinatubo, rendering the land unfit for cultivation for a number of years; that he was petitioned by his children living in the United States in the late 1960s and he eventually became an American citizen, and on his return from the United States in 2002, learning that the land may now be tilled, he proceeded to have it cleared.

Respondent submitted a July 10, 2002 letter[8] of Lourdes Panlilio, an alleged heir of the original owner of the land, addressed to the Municipal Agrarian Reform Office (1) discrediting the *Samahang Nayon* Resolution which appeared not to bear the signature of the *barangay* captain; (2) stating that respondent was "indorsed" to them by respondent's father Anselmo, and that respondent did not pay rentals; (3) stating that she doesn't know Jose, predecessor-in-interest of petitioners; and (4) opining that respondent should be preferred over Jose. He likewise submitted several affidavits[9] executed by alleged neighbors stating that it was he who actually tilled the land before it was submerged in water, and an Affidavit[10] of Retraction from Arturo Miranda where the latter stated that he did not voluntarily waive his rights to the land in favor of Jose and that he (Arturo) did not himself have rights to it in the first place.

By Decision[11] of August 23, 2004, PARAB Adjudicator Erasmo SP. Cruz, ruling in favor of Jose, held that the land is covered

---

[7] *Vide* Certification dated June 25, 2002 issued by Renato O. Santiago.

[8] Records, pp. 27-26.

[9] *Id.* at 214-211.

[10] *Id.* at 192.

[11] *Id.* at 310-306.

by the operation land transfer scheme of the government and as between the two parties, Jose had shown through documentary evidence that he had a better right as tenant; and that assuming *arguendo* that respondent indeed cultivated the land prior to its being submerged in water in the 1960s, his non-payment of rentals and he having returned to the country only in 2002 amounted to abandonment.

The Adjudicator went on to hold that as between an American citizen (respondent) and a former Assemblyman of the Interim Batasang Pambansa for the agricultural sector (Jose), the latter should be preferred as the qualified farmer-beneficiary.

Respondent's motion for reconsideration was denied by Order[12] of January 4, 2005, hence, he appealed to the Department of Agrarian Reform Adjudication Board (DARAB) which, by Decision[13] of October 3, 2005, affirmed the ruling of the Provincial Adjudicator, and denied respondent's motion for reconsideration by Resolution[14] of October 10, 2006.

Before the Court of Appeals, respondent challenged the DARAB Decision raising, among other issues, the DARAB's lack of jurisdiction over the case.

The Court of Appeals, by Decision[15] of October 31, 2007, set aside the Decision of the DARAB saying it lacked jurisdiction over the case as it was essentially one for forcible entry and unlawful detainer that should have been lodged in the Municipal Trial Court. For the DARAB to acquire jurisdiction over a similar dispute, the appellate court held, "there must exist a tenancy relationship between the parties" which is lacking in the present case.

---

[12] *Id.* at 479.

[13] *Id.* at 572-568. Penned by Asst. Sec. Lorenzo R. Reyes and concurred in by Usec Severino T. Madronio, Asst. Sec. Augusto P. Quijano, Asst. Sec. Edgar A. Igano and Asst. Sec. Delfin B. Samson.

[14] *Id.* at 627-626. Penned by Ma. Patricia Rualo-Bello and concurred in by Augusto P. Quijano and Edgar A. Igano.

[15] CA *rollo*, pp. 357-366. Penned by Associate Justice Amelita G. Tolentino and concurred in by Associate Justices Lucenito N. Tagle and Agustin S. Dizon.

Further, the appellate court held that even if the therein petitioner-herein respondent only raised the question of jurisdiction on appeal, he is not in estoppel as jurisdiction over a case is determined by law and not by the consent or waiver of the parties.

On the merits, the appellate court held that the findings of the DARAB was not supported by evidence since the documents submitted by Jose, particularly on the identity of the lot, had discrepancies or were inconsistent. Hence, the present petition.

The Court finds for petitioner.

The DARAB has jurisdiction over agrarian disputes. An agrarian dispute refers to any controversy relating to tenurial arrangements, whether leasehold, tenancy, stewardship, or otherwise, over lands devoted to agriculture, including disputes concerning farmworkers' associations or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of such tenurial arrangements. It includes any controversy relating to compensation of lands acquired and other terms and conditions of transfer of ownership from landowner to farmworkers, tenants, and other agrarian reform beneficiaries, **whether the disputants stand in the proximate relation of farm operator and beneficiary, landowner and tenant, or lessor and lessee**. It relates to any controversy relating to, among others, tenancy over lands devoted to agriculture.[16]

In the present case, although there is admittedly no tenancy relationship between Jose and respondent and the complaint filed before the DARAB was denominated as one for forcible entry, it is the DARAB and not the regular courts which has jurisdiction of the case. As *Spouses Carpio v. Sebastian*[17] teaches:

Although the opposing parties in this case are not the landlord against his tenants, or *vice-versa*, the case still falls within the jurisdiction of the DARAB pursuant to this Court's ruling in

---

[16] *Vide Amurao v.Villalobos,* G.R. No. 157491, June 20, 2006, 491 SCRA 464.

[17] G.R. No. 166108, June 16, 2010 citing *Department of Agrarian Reform v. Abdulwahid,* G.R. No. 163285, February 27, 2008, 547 SCRA 30.

Department of Agrarian Reform v. Abdulwahid where the Court pronounced, thus:

> The Department of Agrarian Reform Adjudication Board (DARAB) is vested with primary and exclusive jurisdiction to determine and adjudicate agrarian reform matters, including all matters involving the implementation of the agrarian reform program. Thus, **when a case is merely an incident involving the implementation of the Comprehensive Agrarian Reform Program (CARP), then jurisdiction remains with the DARAB, and not with the regular courts**.
>
> x x x x x x x x x
>
> x x x **[J]urisdiction should be determined by considering not only the status or relationship of the parties but also the nature of the issues or questions that is the subject of the controversy**. Thus, **if the issues between the parties are intertwined with the resolution of an issue within the exclusive jurisdiction of the DARAB, such dispute must be addressed and resolved by the DARAB.** (emphasis in the original; underscoring supplied)

Furthermore, under Rule II (Jurisdiction of the Board and Adjudicators) of the 2009 DARAB's Rules of Procedure, *viz*:

> **SECTION 1. Primary and Exclusive Original and Appellate Jurisdiction.** The Board shall have primary and exclusive jurisdiction, both original and appellate, to determine and adjudicate all agrarian disputes involving the implementation of the Comprehensive Agrarian Reform Program (CARP) under R.A. No. 6657, as amended by R.A. No. 9700, E.O. Nos. 228, 229, and 129-A, R.A. No. 3844 as amended by R.A. No. 6389, Presidential Decree No. 27 and other agrarian laws and their Implementing Rules and Regulations. Specifically, such jurisdiction shall include but not be limited to cases involving the following:
>
> x x x x x x x x x
>
> **d. Those cases involving the ejectment and dispossession of tenants and/or leaseholders;**
>
> x x x (emphasis supplied)

From a perusal of the submissions of the parties and their respective allegations during the hearings before the DARAB, the following undisputed facts emerge: Jose was physically dispossessed of the land of which he claims to be a tenant; and respondent himself claims to be a tenant. ***The resolution of the case then hinges on a determination of who between Jose's successors-in-interest and respondent is the true farmer-beneficiary of the leasehold in question, a matter which is best resolved by the DARAB and not by the regular courts.***

Even if no landowner-tenant *vinculum juris* was alleged between Jose and respondent then, the present controversy can be characterized as an agrarian dispute over which the DARAB can assume jurisdiction.

As to the DARAB's disquisition of the case on the merits, the Court has consistently held that the findings of fact of administrative agencies and quasi-judicial bodies, like the DARAB, which have acquired expertise because their jurisdiction is confined to specific matters, are generally accorded respect. In the present case, there is no ground to disturb the DARAB's findings, which affirmed those of the PARAB after due hearing and appreciation of the evidence submitted by both parties.

WHEREFORE, the petition is *GRANTED*. The Decision dated October 31, 2007 and the Resolution dated May 13, 2008 of the Court of Appeals are *REVERSED* and *SET ASIDE*. The Decision and Order dated October 3, 2005 and October 10, 2006 respectively of the **DARAB** affirming the Decision of the Provincial Adjudicator in Case No. 5912 P 2002 are *REINSTATED*.

SO ORDERED.

Brion, Bersamin, Abad,[*] and *Villarama, Jr., JJ.,* concur.

---

[*] Additional member per Special Order No. 838 dated May 17, 2010.

SECOND DIVISION

[G.R. No. 185091. August 9, 2010]

REPUBLIC OF THE PHILIPPINES, REPRESENTED BY THE DEPARTMENT OF EDUCATION DIVISION OF LIPA CITY (FOR PANINSINGIN PRIMARY SCHOOL), *petitioner, vs.* **PRIMO MENDOZA and MARIA LUCERO,** *respondents.*

SYLLABUS

1. CIVIL LAW; LAND TITLES; REGISTRATION; SIGNIFICANCE THEREOF. — A decree of registration is conclusive upon all persons, including the Government of the Republic and all its branches, whether or not mentioned by name in the application for registration or its notice. Indeed, title to the land, once registered, is imprescriptible. No one may acquire it from the registered owner by adverse, open, and notorious possession. Thus, to a registered owner under the Torrens system, the right to recover possession of the registered property is equally imprescriptible since possession is a mere consequence of ownership.

2. ID.; ID.; CANNOT BE DEFEATED BY TAX DECLARATIONS. — That the City Government of Lipa tax-declared the property and its improvements in its name cannot defeat the Mendozas' title. This Court has allowed tax declarations to stand as proof of ownership only in the absence of a certificate of title. Otherwise, they have little evidentiary weight as proof of ownership.

3. POLITICAL LAW; POWER OF THE STATE; EMINENT DOMAIN; EXPROPRIATION PROCEEDINGS; DEEMED WAIVED WHEN OWNER AGREES VOLUNTARILY TO THE TAKING OF HIS PROPERTY FOR PUBLIC USE, AND FAILURE TO QUESTION LACK OF EXPROPRIATION PROCEEDING IS WAIVER OF RIGHT TO GAIN BACK POSSESSION. — The Court holds that, where the owner agrees voluntarily to the taking of his property by the government for public use, he thereby waives his right to the institution of a formal expropriation proceeding covering

such property. Further, as the Court also held in *Eusebio v. Luis*, the failure for a long time of the owner to question the lack of expropriation proceedings covering a property that the government had taken constitutes a waiver of his right to gain back possession. The Mendozas' remedy is an action for the payment of just compensation, not ejectment.

4. ID.; ID.; ID.; ID.; JUST COMPENSATION; THE REGIONAL TRIAL COURT MAY AWARD JUST COMPENSATION EVEN IN THE ABSENCE OF EXPROPRIATION PROCEEDING; TIME WHEN JUST COMPENSATION SHOULD BE FIXED. — In *Republic of the Philippines v. Court of Appeals*, the Court affirmed the RTC's power to award just compensation even in the absence of a proper expropriation proceeding. It held that the RTC can determine just compensation based on the evidence presented before it in an ordinary civil action for recovery of possession of property or its value and damages. As to the time when just compensation should be fixed, it is settled that where property was taken without the benefit of expropriation proceedings and its owner filed an action for recovery of possession before the commencement of expropriation proceedings, it is the value of the property at the time of taking that is controlling.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.
Mauricio Law Office for respondents.

D E C I S I O N

ABAD, *J.*:

This case is about the propriety of filing an ejectment suit against the Government for its failure to acquire ownership of a privately owned property that it had long used as a school site and to pay just compensation for it.

The Facts and the Case

Paninsingin Primary School (PPS) is a public school operated by petitioner Republic of the Philippines (the Republic) through

the Department of Education. PPS has been using 1,149 square meters of land in Lipa City, Batangas since 1957 for its school. But the property, a portion of Lots 1923 and 1925, were registered in the name of respondents Primo and Maria Mendoza (the Mendozas) under Transfer Certificate of Title (TCT) T-11410.[1]

On March 27, 1962 the Mendozas caused Lots 1923 and 1925 to be consolidated and subdivided into four lots, as follows:

> Lot 1 – 292 square meters in favor of Claudia Dimayuga
> Lot 2 – 292 square meters in favor of the Mendozas
> Lot 3 – 543 square meters in favor of Gervacio Ronquillo; and
> Lot 4 – 1,149 square meters in favor of the City Government of Lipa[2]

As a result of subdivision, the Register of Deeds partially cancelled TCT T-11410 and issued new titles for Lots 1 and 3 in favor of Dimayuga and Ronquillo, respectively. Lot 2 remained in the name of the Mendozas but no new title was issued in the name of the City Government of Lipa for Lot 4.[3] Meantime, PPS remained in possession of the property.

The Republic claimed that, while no title was issued in the name of the City Government of Lipa, the Mendozas had relinquished to it their right over the school lot as evidenced by the consolidation and subdivision plan. Further, the property had long been tax-declared in the name of the City Government and PPS built significant, permanent improvements on the same. These improvements had also been tax-declared.[4]

The Mendozas claim, on the other hand, that although PPS sought permission from them to use the property as a school site, they never relinquished their right to it. They allowed PPS to occupy the property since they had no need for it at that

---

[1] *Rollo,* p. 46.

[2] *Id.* at 48.

[3] *Id.* at 46-48.

[4] *Id.* at 49-50; Tax Declaration (TD) 00491 issued in 1989, cancelled by TD 01914 (for the lot) and TD 0915 (for the buildings), and further cancelled by TD 00748 issued in 1995.

time. Thus, it has remained registered in their name under the original title, TCT T-11410, which had only been partially cancelled.

On November 6, 1998 the Mendozas wrote PPS, demanding that it vacate the disputed property.[5] When PPS declined to do so, on January 12, 1999 the Mendozas filed a complaint with the Municipal Trial Court in Cities (MTCC) of Lipa City in Civil Case 0002-99 against PPS for unlawful detainer with application for temporary restraining order and writ of preliminary injunction.[6]

On July 13, 1999 the MTCC rendered a decision, dismissing the complaint on ground of the Republic's immunity from suit.[7] The Mendozas appealed to the Regional Trial Court (RTC) of Lipa City which ruled that the Republic's consent was not necessary since the action before the MTCC was not against it.[8]

In light of the RTC's decision, the Mendozas filed with the MTCC a motion to render judgment in the case before it.[9] The MTCC denied the motion, however, saying that jurisdiction over the case had passed to the RTC upon appeal.[10] Later, the RTC remanded the case back to the MTCC,[11] which then dismissed the case for insufficiency of evidence.[12] Consequently, the Mendozas once again appealed to the RTC in Civil Case 2001-0236.

On June 27, 2006 the RTC found in favor of the Mendozas and ordered PPS to vacate the property. It held that the Mendozas had the better right of possession since they were its registered owners. PPS, on the other hand, could not produce any document

---

[5] *Id.* at 53.

[6] *Id.* at 52-56

[7] *Id.* at 57-59.

[8] *Id.* at 60-67.

[9] CA *rollo*, pp. 74-77.

[10] *Id.* at 49-51.

[11] *Rollo*, pp. 68-70.

[12] *Id.* at 71-74.

to prove the transfer of ownership of the land in its favor.[13] PPS moved for reconsideration, but the RTC denied it.

The Republic, through the Office of the Solicitor General (OSG), appealed the RTC decision to the Court of Appeals (CA) in CA-G.R. SP 96604 on the grounds that: (1) the Mendozas were barred by laches from recovering possession of the school lot; (2) sufficient evidence showed that the Mendozas relinquished ownership of the subject lot to the City Government of Lipa City for use as school; and (3) Lot 4, Pcs-5019 has long been declared in the name of the City Government since 1957 for taxation purposes.[14]

In a decision dated February 26, 2008, the CA affirmed the RTC decision.[15] Upholding the Torrens system, it emphasized the indefeasibility of the Mendozas' registered title and the imprescriptible nature of their right to eject any person occupying the property. The CA held that, this being the case, the Republic's possession of the property through PPS should be deemed merely a tolerated one that could not ripen into ownership.

The CA also rejected the Republic's claim of ownership since it presented no documentary evidence to prove the transfer of the property in favor of the government. Moreover, even assuming that the Mendozas relinquished their right to the property in 1957 in the government's favor, the latter never took steps to have the title to the property issued in its name or have its right as owner annotated on the Mendozas' title. The CA held that, by its omissions, the Republic may be held in estoppel to claim that the Mendozas were barred by laches from bringing its action.

With the denial of its motion for reconsideration, the Republic has taken recourse to this Court *via* petition for review on *certiorari* under Rule 45.

---

[13] CA *rollo*, pp. 58-63. Penned by Judge Jane Aurora C. Lantion.

[14] *Id.* at 2-21.

[15] *Rollo*, pp. 24-36. Penned by Associate Justice Bienvenido L. Reyes and concurred in by Associate Justices Arcangelita Romilla-Lontok and Apolinario D. Bruselas, Jr.

The Issue Presented

The issue in this case is whether or not the CA erred in holding that the Mendozas were entitled to evict the Republic from the subject property that it had used for a public school.

The Court's Ruling

A decree of registration is conclusive upon all persons, including the Government of the Republic and all its branches, whether or not mentioned by name in the application for registration or its notice.[16] Indeed, title to the land, once registered, is imprescriptible.[17] No one may acquire it from the registered owner by adverse, open, and notorious possession.[18] Thus, to a registered owner under the Torrens system, the right to recover possession of the registered property is equally imprescriptible since possession is a mere consequence of ownership.

Here, the existence and genuineness of the Mendozas' title over the property has not been disputed. While the consolidation and subdivision plan of Lots 1923 and 1925 shows that a 1,149 square meter lot had been designated to the City Government, the Republic itself admits that no new title was issued to it or to any of its subdivisions for the portion that PPS had been occupying since 1957.[19]

That the City Government of Lipa tax-declared the property and its improvements in its name cannot defeat the Mendozas' title. This Court has allowed tax declarations to stand as proof of ownership only in the absence of a certificate of title.[20]

---

[16] Amending and Codifying The Laws Relative to Registration of Property and for Other Purposes, Presidential Decree No. 1529, [P.D. No. 1529], § 31, ¶ 2.

[17] Section 47 of P.D. 1529 or the Property Registration Decree.

[18] *Id.* at § 47.

[19] *Rollo*, p. 11.

[20] *Republic of the Philippines v. Catarroja*, G.R. No. 171774, February 12, 2010. In this case, the tax declaration could stand as evidence of ownership because the certificate of title was never reconstituted after its loss and no proof that it had ever been issued by a valid land registration court; and in

Otherwise, they have little evidentiary weight as proof of ownership.[21]

The CA erred, however, in ordering the eviction of PPS from the property that it had held as government school site for more than 50 years. The evidence on record shows that the Mendozas intended to cede the property to the City Government of Lipa permanently. In fact, they allowed the city to declare the property in its name for tax purposes. And when they sought in 1962 to have the bigger lot subdivided into four, the Mendozas earmarked Lot 4, containing 1,149 square meters, for the City Government of Lipa. Under the circumstances, it may be assumed that the Mendozas agreed to transfer ownership of the land to the government, whether to the City Government of Lipa or to the Republic, way back but never got around to do so and the Republic itself altogether forgot about it. Consequently, the Republic should be deemed entitled to possession pending the Mendozas' formal transfer of ownership to it upon payment of just compensation.

The Court holds that, where the owner agrees voluntarily to the taking of his property by the government for public use, he thereby waives his right to the institution of a formal expropriation proceeding covering such property. Further, as the Court also held in *Eusebio v. Luis*,[22] the failure for a long time of the owner to question the lack of expropriation proceedings covering a property that the government had taken constitutes a waiver of his right to gain back possession. The Mendozas' remedy is an action for the payment of just compensation, not ejectment.

In *Republic of the Philippines v. Court of Appeals*,[23] the Court affirmed the RTC's power to award just compensation even in the absence of a proper expropriation proceeding. It

---

Aguirre v. Heirs of Lucas Villanueva, G.R. No. 169898, October 27, 2006, 505 SCRA 855, 861-862, only tax declarations were presented to prove ownership along with actual possession.

[21] *Arbias v. Republic of the Philippines*, G.R. No. 173808, September 17, 2008, 565 SCRA 582, 593-594.

[22] G.R. No. 162474, October 13, 2009, 603 SCRA 576, 584.

[23] 494 Phil. 494 (2005).

held that the RTC can determine just compensation based on the evidence presented before it in an ordinary civil action for recovery of possession of property or its value and damages. As to the time when just compensation should be fixed, it is settled that where property was taken without the benefit of expropriation proceedings and its owner filed an action for recovery of possession before the commencement of expropriation proceedings, it is the value of the property at the time of taking that is controlling.[24]

Since the MTCC did not have jurisdiction either to evict the Republic from the land it had taken for public use or to hear and adjudicate the Mendozas' right to just compensation for it, the CA should have ordered the complaint for unlawful detainer dismissed without prejudice to their filing a proper action for recovery of such compensation.

WHEREFORE, the Court partially *GRANTS* the petition, *REVERSES* the February 26, 2008 decision and the October 20, 2008 resolution of the Court of Appeals in CA-G.R. 96604, and *ORDERS* the dismissal of respondents Primo and Maria Mendoza's action for eviction before the Municipal Trial Court in Cities of Lipa City in Civil Case 0002-99 without prejudice to their filing an action for payment of just compensation against the Republic of the Philippines or, when appropriate, against the City of Lipa.

SO ORDERED.

Carpio, Villarama, Jr.,[*] *Perez,*[**] and *Mendoza, JJ.*, concur.

---

[24] *Supra* note 22, at 586.

[*] Designated as additional member in lieu of Associate Justice Antonio Eduardo B. Nachura, per raffle dated July 28, 2010.

[**] Designated as additional member in lieu of Associate Justice Diosdado M. Peralta, per raffle dated July 28, 2010.

FIRST DIVISION

[G.R. No. 186533. August 9, 2010]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **EFREN CASTILLO,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; RAPE; WHEN AND HOW COMMITTED. — In rape cases, the gravamen of the offense is sexual intercourse with a woman against her will or without her consent. Article 266-A, paragraph 1 of the Revised Penal Code, as amended by Republic Act No. 8353, states: 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; b) When the **offended party is deprived of reason or otherwise unconscious**; c) By means of fraudulent machination or grave abuse of authority; and d) When the offended party is under twelve (12) years of age or is demented, even though none of the circumstances mentioned above be present.

2. ID.; ID.; ID.; CARNAL KNOWLEDGE WITH A WOMAN "DEPRIVED OF REASON"; INCLUDES ONE SUFFERING FROM MENTAL RETARDATION. — It can be deduced from the aforequoted provision that for the charge of rape to prosper, the prosecution must prove that; (1) **the offender had carnal knowledge of a woman, and** (2) he accomplished such act through force or intimidation, or **when she is deprived of reason** or otherwise unconscious, or when she is under 12 years of age or is demented. The term "woman deprived of reason" includes one suffering from mental retardation. Clearly, carnal knowledge of a woman who is a mental retardate is rape under the aforesaid provisions of law. Proof of force or intimidation is not necessary as a mental retardate is not capable of giving consent to a sexual act. **What needs to be proven are the facts of sexual congress between the accused and the victim, and the mental retardation of the latter**. In *People v. Dalandas*, citing *People v. Dumanon*, this Court held that mental retardation can be proven by evidence other than medical/

clinical evidence, such as the testimony of witnesses and even the observation by the trial court.

3. REMEDIAL LAW; EVIDENCE; RULES OF ADMISSIBILITY; OPINION OF ORDINARY WITNESSES; ON THE SANITY OF A PERSON; MOTHER OF RAPE VICTIM CAN TESTIFY ON THE LATTER'S MENTAL CONDITION. — Section 50, Rule 130 of the Revised Rules on Evidence explicitly provides: SEC. 50. *Opinion of ordinary witnesses*. — The opinion of a witness for which proper basis is given, may be received in evidence regarding — (a) x x x (b) x x x (c) The **mental sanity of a person with whom he is sufficiently acquainted**. The witness may also testify on his impressions of the emotion, behavior, condition or appearance of a person. Accordingly, it is competent for the ordinary witness to give his opinion as to the sanity or mental condition of a person, **provided the witness has had sufficient opportunity to observe the speech, manner, habits, and conduct of the person in question**. Commonly, it is required that the witness details the factors and reasons upon which he bases his opinion before he can testify as to what it is. As the Supreme Court of Vermont said: "A non-expert witness may give his opinion as to the sanity or insanity of another, when based upon conversations or dealings which he has had with such person, or upon his appearance, or upon any fact bearing upon his mental condition, with the witness' own knowledge and observation, he having first testified to such conversations, dealings, appearance or other observed facts, as the basis for his opinion." The mother of an offended party in a rape case, though not a psychiatrist, if she knows the physical and mental condition of the party, how she was born, what she is suffering from, and what her attainments are, is competent to testify on the matter. x x x This Court, in *People v. Dalandas*, clarified that a **mental retardate, in general, exhibits a slow rate of maturation, physical and/or psychological, as well as impaired learning capacity**. Further, the mental retardation of persons and the degrees thereof may be manifested by their overt acts, appearance, attitude and behavior. The dentition, manner of walking, ability to feed oneself **or attend to personal hygiene**, capacity to develop resistance or immunity to infection, **dependency on others for protection and care and inability to achieve intelligible speech may be indicative of the degree of mental retardation of a person**. All these may be testified

on by ordinary witnesses who come in contact with an alleged mental retardate. It bears stressing that the deprivation of reason contemplated by law need not be complete; mental abnormality or deficiency is sufficient.

4. ID.; ID.; FINDINGS OF TRIAL COURT ON THE MENTAL CONDITION OF WITNESS, RESPECTED. — For purposes of determining the mental capacity of a person, this Court held that the personal observation of the trial judge suffices even in the absence of an expert opinion. Hence, the aforesaid findings of the trial court are entitled to great weight and respect being in the best position as it had the opportunity to hear and observe the demeanor, conduct and attitude of AAA while testifying.

5. ID.; ID.; CREDIBILITY OF WITNESSES; TESTIMONY OF MENTALLY DEFICIENT RAPE VICTIM WHO CAN EFFECTIVELY COMMUNICATE HER ORDEAL, UPHELD. — It bears emphasis that the competence and credibility of mentally deficient rape victims as witnesses have been upheld by this Court where it is shown that they can communicate their ordeal capably and consistently. Rather than undermine the gravity of the complainant's accusations, it even lends greater credence to her testimony, that, someone as feeble-minded and guileless could speak so tenaciously and explicitly on the details of the rape if she has not in fact suffered such crime at the hands of the accused. Moreover, it is settled that when a woman says she has been raped, she says in effect all that is necessary to show that she has been raped and her testimony alone is sufficient if it satisfies the exacting standard of credibility needed to convict the accused. It is also worth stressing that during AAA's testimony, she positively identified the appellant as the person who had raped her. Thus, the straightforward narration of AAA of what transpired, accompanied by her categorical identification of appellant as the malefactor, sealed the case for the prosecution.

6. CRIMINAL LAW; RAPE; TESTIMONY OF RAPE VICTIM CORROBORATED BY THE MEDICAL FINDINGS IS SUFFICIENT EVIDENCE. — The fact of sexual congress between AAA and the appellant was also supported by the medical findings of healed hymenal lacerations at 3 o'clock and 9 o'clock positions which, according to Dr. Antillon-Malimas, could have resulted from sexual intercourse. When

the victim's testimony is corroborated by the physician's finding of penetration, there is sufficient foundation to conclude the existence of the essential requisite of carnal knowledge. Laceration, whether healed or fresh, is the best physical evidence of forcible defloration. Thus, the said medical findings, together with the straightforward testimony of AAA, even strengthens her claim of sexual violation by appellant.

7. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; UPHELD IN THE ABSENCE OF ILL MOTIVE. — The records also failed to show that AAA was prompted by ill motive in imputing such a grave offense against the appellant. The absence of evidence of improper motive on the part of the prosecution witnesses to testify against the appellant strongly tends to sustain the conclusion that no such improper motive exists and that their testimonies are worthy of full faith and credit. x x x [And] no mother in her right mind would possibly 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. It is unnatural for a parent to use her offspring as an engine of malice, especially if it will subject her daughter to embarrassment and even stigma. It is hard to believe that a mother would sacrifice her own daughter and present her to be the subject of a public trial if she, in fact, has not been motivated by an honest desire to have the culprit punished. x x x [That] appellant's father went further in saying that they went to AAA's house to ask for forgiveness, this Court has ruled that an act of asking for forgiveness is undeniably indicative of guilt.

8. ID.; ID.; DENIAL AND ALIBI; WEAK DEFENSE THAT CANNOT PREVAIL OVER POSITIVE TESTIMONY. — Denial and *alibi* are inherently weak defenses and, unless supported by clear and convincing evidence, the same cannot prevail over the positive declaration of the victim, who in a simple and straightforward manner, convincingly identified the appellant who sexually molested her. For *alibi* to prosper, the accused must show that it was impossible for him to have been at the scene of the commission of the crime at the time of its commission.

9. CRIMINAL LAW; RAPE; VICTIM'S MENTAL RETARDATION NOT ESTABLISHED DURING TRIAL MAKES THE CRIME SIMPLE RAPE. — Although the complaint specifically

alleged the circumstance of appellant's knowledge of the victim's mental retardation at the time of the commission of the crime of rape, which qualifies the crime and makes it punishable by death under Article 266-B, paragraph 10 of the Revised Penal Code, as amended, the prosecution did not adduce any evidence to prove the same during trial. This Court, therefore, is fully convinced that the trial court and the appellate court correctly convicted the appellant for the crime of simple rape under Article 266-A, par. 1(b) of the Revised Penal Code, which is punishable by *reclusion perpetua*.

10. ID.; ID.; CIVIL PENALTIES; CIVIL INDEMNITY AND MORAL DAMAGES PROPER BUT NOT EXEMPLARY DAMAGES THERE BEING NO AGGRAVATING CIRCUMSTANCE. — Anent the award of damages, civil indemnity *ex delicto* is mandatory upon finding of the fact of rape while moral damages is awarded upon such finding without need of further proof because it is assumed that a rape victim had actually suffered moral injuries entitling the victim to such award. Exemplary damages, on the other hand, are awarded under Article 2230 of the Civil Code if there is an aggravating circumstance, whether ordinary or qualifying. Thus, this Court similarly affirms the ₱50,000.00 civil indemnity and ₱50,000.00 moral damages awarded by the lower courts to AAA. However, there being no aggravating circumstance that can be considered, no exemplary damages can be awarded to 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

PEREZ, *J.*:

This is an appeal from the Decision[1] dated 7 November 2008 of the Court of Appeals in CA-G.R. CR-H.C. No. 00030-MIN

[1] Penned by Associate Justice Romulo V. Borja with Associate Justices Mario V. Lopez and Elihu A. Ybañez, concurring. *Rollo*, pp. 4-33.

which affirmed with modification the Decision[2] dated 14 April 2004 of the Regional Trial Court (RTC) of Gingoog City, 10th Judicial Region, Branch 43, in Criminal Case No. 2000-211 finding herein appellant Efren Castillo guilty beyond reasonable doubt of the crime of rape under Article 266-A, par. 1(b) of the Revised Penal Code, committed against AAA,[3] thereby imposing upon him the penalty of *reclusion perpetua*. The appellate court further ordered the appellant to pay AAA ₱50,000.00 as moral damages, in addition to the ₱50,000.00 civil indemnity awarded by the trial court.

In a Complaint[4] dated 10 July 2000, appellant was charged by AAA, assisted by her mother, BBB, with the crime of rape committed as follows:

> That sometime in March 2000, in XXX, XXX City, Philippines, and within the jurisdiction of this Honorable Court, the above-named [appellant], did then and there wilfully (sic), unlawfully and feloniously force and intimidate AAA, known by the [appellant] to be mentally retarded, and then forcibly committed sexual intercourse with the said AAA, against her will.

---

[2] Penned by Presiding Judge Editho E. Lucagbo, CA *rollo*, pp. 43-53.

[3] 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 *Rules on Violence Against Women and Their Children* effective 15 November 2004.

[4] Records, pp. 2-3.

Contrary to and in violation of Article 266-A, paragraph 1, of the Revised Penal Code, as amended by [Republic Act No.] 8353.[5]

When arraigned[6] on 23 August 2000, appellant, assisted by counsel *de oficio*, pleaded NOT GUILTY to the crime charged.

At the pre-trial conference, both the prosecution and the defense failed to make any stipulation of facts.[7] The pre-trial conference was then terminated and trial on the merits ensued.

The prosecution presented the following witnesses: AAA, the private offended party; Dr. Thessa Marie Antillon-Malimas (Dr. Antillon-Malimas),[8] the doctor in Gingoog District Hospital who examined AAA; BBB, the mother of AAA, who was also presented as rebuttal witness; and Myrna delos Reyes-Villanueva, the Guidance Psychologist at the Northern Mindanao Medical Center who conducted psychological tests on AAA to determine her mental capacity.

On the basis of the testimonies of the aforesaid witnesses, the prosecution established that AAA was 18 years old[9] when she was raped by the appellant. She is the eldest of the four children of BBB and CCC, the deceased father of AAA. She began attending school when she was already eight years old. AAA, however, was not able to finish her Grade I level primarily because of her epileptic seizures which started when she was nine years old. Since then she suffered epileptic seizures at least once a month. During attacks, AAA trembles and becomes stiff. AAA also had difficulty understanding her lessons in school,

---

[5] *Id.*

[6] Order dated 23 August 2000. *Id.* at 14.

[7] Pre-Trial Order dated 21 September 2000. *Id.* at 19-20.

[8] From 2001 up to the present, she is already at the Northern Mindanao Medical Center.

[9] In the direct testimony of AAA conducted on 26 February 2003, the prosecution stated that she was 16 years old; however, AAA's mother stated during her testimony on 25 June 2003 that AAA was born on 12 April 1982, thus, AAA was already 18 years old when she was allegedly raped by the appellant.

she cannot write well and she had poor memory. Compared to her younger siblings, AAA had difficulty following instructions given to her at home and in school.[10]

AAA's ordeal began sometime in March 2000 when she approached the appellant in order to collect his debt for the rice cake he bought from her mother. Instead of settling his account, the appellant cuddled AAA until they reached the house of a certain Atok located in *Barangay* Agay-ayan, Gingoog City. Once inside, the appellant made her lie down on the bed and removed her short pants and panty. The appellant subsequently removed his pants and underwear. When both of them were already naked, the appellant mounted AAA and successfully inserted his penis into AAA's vagina. AAA felt pain. After satisfying his bestial desire, the appellant instructed AAA to go home.[11]

Days thereafter, such awful experience of AAA was repeated when she was on her way to visit her aunt's house. The appellant, who was then standing by the mango grove, approached AAA, walked along with her and led her to a nearby chapel also in Agay-ayan, Gingoog City. While outside the chapel, the appellant undressed AAA by removing her short pants and panty. The appellant likewise removed his pants and underwear. In a standing position, the appellant, once again, inserted his penis into AAA's vagina and successfully had sexual intercourse with her.[12] Thereafter, AAA told her mother, BBB, what the appellant did to her.

On 11 May 2000, BBB accompanied AAA at Gingoog District Hospital where she was examined by Dr. Antillon-Malimas. Upon examination, Dr. Antillon-Malimas found that AAA had a 7x6 cm. contusion hematoma lateral aspect of the right buttocks which could have been caused by a blunt force or violence applied on the area. Based on the appearance of the contusion, it could have been sustained two days prior to AAA's examination and

---

[10] TSN, 25 June 2003, pp. 29-37; TSN, 26 February 2003, pp. 3-5.

[11] TSN, 26 February 2003, pp. 6-14.

[12] *Id.* at 15-17.

it would exist for a period of four to five days. Dr. Antillon-Malimas' findings on AAA's genitalia, particularly the *vulva*, revealed no swelling, no tenderness and no contusion. Her findings on AAA's hymen showed healed lacerations at 3 o'clock and 9 o'clock positions which could have been caused by a blunt object or by violence or by reason of sexual intercourse. An examination of AAA's vaginal canal yielded negative result for *spermatozoa* but another contusion was found therein.[13] The result of AAA's physical examination was reduced into writing as evidenced by Medico-Legal Certificate[14] dated 11 May 2000.

Subsequently, AAA executed her sworn statement[15] before Senior Police Officer 4 Myrna Z. Palad (SPO4 Palad), the investigator at Gingoog City Police Station.

AAA was also subjected to psychological tests to determine her mental capacity. The psychological tests administered by Myrna Delos Reyes-Villanueva on AAA consist of the *Draw-A-Person Test* and the *Bender Visual Motor Test*. The aforesaid psychological tests showed that AAA has poor visual motor coordination and low level mental functioning not within her chronological age, *i.e.*, 21 years old at the time of her examination. In view of that result, Myrna Delos Reyes-Villanueva concluded that AAA is suffering from mild to moderate mental retardation with a mental age of 8 to 12 years old and can be educated up to Grade VI level. She also noted that AAA lacked personal hygiene and has a vague concept of big numbers and time, like days of the week. She further declared that AAA's instinct to resist any sexual assault is always there; however, with her low level mental functioning she could easily be deceived or persuaded by a man to engage into sexual intercourse.[16] The result of AAA's psychological tests was also reduced into writing as evidenced by a Psychological Report[17] dated 2 September 2003.

---

[13] TSN, 25 June 2003, pp. 5-12.

[14] Records (Folder of Exhibits), p. 1.

[15] *Id.* at 2.

[16] TSN, 1 December 2003, pp. 7-36.

[17] Records (Folder of Exhibits), pp. 11-12.

For its part, the defense presented Rolando Castillo (Rolando), appellant's father, and the appellant himself whose testimony consists mainly of bare denial and *alibi*.

The appellant denied having raped AAA. He stated that it was impossible for him to rape AAA in March 2000 because for the entire period of the said month he was harvesting coconuts from the land of a certain Elizabeth Camus from 7:00 a.m. until 5:00 p.m. or 6:00 p.m. every day. Similarly, the house of Atok, where the first rape incident allegedly happened, was already demolished as early as 1998 and he was one of those who dismantled the said house.[18]

On 9 May 2000, the appellant admits that he went to the house of his uncle in Buenavista, Agusan del Norte. He stayed there until he received a letter from his father sometime in June 2000 informing him that a rape case was filed against him by AAA and advising him to go home. The appellant then decided to go home in Agay-ayan, Gingoog City. Upon arrival, his father immediately inquired if the rape charged against him was true to which he replied in the negative.[19]

On 15 August 2000, two months after his arrival in Agay-ayan, Gingoog City, the appellant, his father, and a certain Eddie Camus went to AAA's place to ask her mother to have the case settled. The appellant asked AAA's mother, BBB, why her family filed a case against him when he did not do anything to her daughter, AAA, to which BBB allegedly responded, "Just forgive me because the case was already filed in court." They went home thereafter.[20]

The appellant also insisted that he was not arrested; instead, he surrendered voluntarily to the *Barangay* Captain of Agay-ayan, Gingoog City, upon the advice of his father. It was the *Barangay* Captain of Agay-ayan, Gingoog City, who accompanied him to the police station.[21]

---

[18] TSN, 10 February 2004, pp. 9-10 and 18.

[19] *Id.* at 4-5 and 29.

[20] *Id.* at 6 and 25-30.

[21] *Id.* at 7.

Likewise, the appellant claimed that he does not know of any reason why AAA would impute such a grave offense against him. The only thing he could remember was AAA's mother, BBB, who got angry at him when he told her to get married since she is now a widow. Since then BBB did not talk to him anymore. The appellant believed this could be the reason why AAA's family charged him with rape.[22]

The defense likewise presented appellant's father, Rolando, who categorically admitted that AAA is mentally retarded.[23] Rolando also disclosed that he accompanied the appellant to AAA's place to talk to her mother and ask forgiveness in case the charge against him was true so that the matter will no longer reach the court. The appellant then asked forgiveness from AAA's mother by saying, "*Ya*, forgive me because the charge against me is not true." Then BBB allegedly replied, "We cannot withdraw the case 'Fren because it was already filed in court." Rolando also divulged that immediately after they went to AAA's house, there were already police officers who were about to arrest the appellant but the latter ran away. When the appellant went home, he told him to surrender, which the appellant obeyed.[24]

On rebuttal, BBB disclosed that even prior to the filing of the instant case the appellant already admitted that he truly molested AAA. The appellant, indeed, went to their house in August 2000 asking forgiveness from her but she told him that the case was already in court. BBB also clarified that the house of Atok where the first rape incident happened was not yet demolished in 1998. The house demolition happened only in 2000. She was certain about this because during the demolition she was there gathering firewood.[25]

The trial court, convinced on the merits of the prosecution's case, rendered a Decision on 14 April 2004, finding the appellant

---

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

[23] TSN, 11 February 2004, p. 14.

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

[25] TSN, 12 February 2004, pp. 5-8; TSN, 8 March 2004, p. 4.

guilty beyond reasonable doubt of the crime of rape and sentenced him to an imprisonment term of *reclusion perpetua* and ordered him to indemnify AAA in the amount of ₱50,000.00 as civil indemnity.

The records were originally transmitted to this Court on appeal. In view, however, of this Court's ruling in *People v. Mateo*,[26] the case was transferred to the Court of Appeals for intermediate review.

In his brief, the appellant assigned the following errors:

I.

THE COURT *A QUO* GRAVELY ERRED IN FINDING THAT [AAA] IS A MENTAL RETARDATE DESPITE THE FAILURE OF THE PROSECUTION TO PROVE SUCH MENTAL RETARDATION.

II.

THE COURT *A QUO* GRAVELY ERRED IN CONVICTING THE [APPELLANT] OF THE CRIME OF RAPE UNDER ARTICLE 266-A, par. 1(B), AS AMENDED BY R.A. 8353, DESPITE THE FAILURE OF THE PROSECUTION TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.[27]

The Court of Appeals, taking into consideration the aforesaid assignment of errors and after a thorough study of the records of the case, rendered the assailed Decision dated 7 November 2008, affirming appellant's conviction for rape with the modification for an additional award of ₱50,000.00 as moral damages. The records were then forwarded to this Court for further review.

This Court affirms appellant's conviction.

Appellant contends that the records are bereft of any evidence that would conclusively show that AAA was suffering from mental retardation. BBB's declaration that AAA is a slow thinker does not sufficiently establish AAA's mental retardation. Further,

---

[26] G.R. Nos. 147678-87, 7 July 2004, 433 SCRA 640.

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

the "expert witness qualification" of the prosecution's supposed expert witness is highly questionable because she had not acquired any doctorate degree in the field of psychology or psychiatry. More so, the psychological tests administered by her on AAA were inadequate to establish AAA's mental capacity.

Appellant anchors his argument for acquittal on the alleged failure of the prosecution to establish AAA's mental retardation to make him guilty of rape under Article 266-A, par. 1(b), of the Revised Penal Code. Appellant concludes that his guilt has not been proven beyond reasonable doubt.

We reject appellant's position.

In rape cases, the gravamen of the offense is sexual intercourse with a woman against her will or without her consent.[28] Article 266-A, paragraph 1 of the Revised Penal Code, as amended by Republic Act No. 8353, states:

> 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;
>
> b) When the **offended party is deprived of reason or otherwise unconscious**;
>
> c) By means of fraudulent machination or grave abuse of authority; and
>
> d) When the offended party is under twelve (12) years of age or is demented, even though none of the circumstances mentioned above be present. [Emphasis supplied]

It can be deduced from the aforequoted provision that for the charge of rape to prosper, the prosecution must prove that; (1) **the offender had carnal knowledge of a woman, and** (2) he accomplished such act through force or intimidation, or **when she is deprived of reason** or otherwise unconscious, or when

---

[28] *People v. Ybañez*, 404 Phil. 423, 429 (2001).

she is under 12 years of age or is demented.[29] The term "woman deprived of reason" includes one suffering from mental retardation.[30] Clearly, carnal knowledge of a woman who is a mental retardate is rape under the aforesaid provisions of law. Proof of force or intimidation is not necessary as a mental retardate is not capable of giving consent to a sexual act. **What needs to be proven are the facts of sexual congress between the accused and the victim, and the mental retardation of the latter**.[31]

In *People v. Dalandas*,[32] citing *People v. Dumanon*,[33] this Court held that mental retardation can be proven by evidence other than medical/clinical evidence, such as the testimony of witnesses and even the observation by the trial court.[34]

Section 50, Rule 130 of the Revised Rules on Evidence explicitly provides:

> SEC. 50. *Opinion of ordinary witnesses*. — The opinion of a witness for which proper basis is given, may be received in evidence regarding —
>
> (a) x x x
>
> (b) x x x
>
> (c) The **mental sanity of a person with whom he is sufficiently acquainted**.
>
> The witness may also testify on his impressions of the emotion, behavior, condition or appearance of a person. [Emphasis supplied]

Accordingly, it is competent for the ordinary witness to give his opinion as to the sanity or mental condition of a person,

---

[29] *People v. Dela Paz*, G.R. No. 177294, 19 February 2008, 546 SCRA 363, 376.

[30] *People v. Bacaling*, 447 Phil. 197, 203 (2003).

[31] *People v. Dela Paz*, *supra* note 29 at 376.

[32] 442 Phil. 688 (2002).

[33] 401 Phil. 658 (2000).

[34] *People v. Dalandas*, *supra* note 32 at 697.

provided the witness has had sufficient opportunity to observe the speech, manner, habits, and conduct of the person in question. Commonly, it is required that the witness details the factors and reasons upon which he bases his opinion before he can testify as to what it is. As the Supreme Court of Vermont said: "A non-expert witness may give his opinion as to the sanity or insanity of another, when based upon conversations or dealings which he has had with such person, or upon his appearance, or upon any fact bearing upon his mental condition, with the witness' own knowledge and observation, he having first testified to such conversations, dealings, appearance or other observed facts, as the basis for his opinion." [35]

The mother of an offended party in a rape case, though not a psychiatrist, if she knows the physical and mental condition of the party, how she was born, what she is suffering from, and what her attainments are, is competent to testify on the matter.[36] Thus, even though the Guidance Psychologist who examined AAA may not qualify as an expert witness, though the psychological tests conducted by her on AAA may not be accurate to determine AAA's mental capacity, such circumstance is not fatal to the prosecution's cause.

In the case at bench, BBB testified that AAA has been suffering from epilepsy since she was nine years old, which is one of the reasons why AAA was not able to finish her Grade I level. AAA also had to stop schooling because she had difficulties understanding her lessons in school, she cannot write well, she had poor memory and she had difficulty answering even the simplest question asked of her. BBB further stated that AAA is the eldest of her four children; however, compared to her younger siblings, AAA had a hard time comprehending the instructions given to her at home and in school.

In the same way, though the Guidance Psychologist who examined AAA may not be qualified as an expert witness, her

---

[35] *People v. Duranan*, 402 Phil. 205, 215-216 (2001) citing V. J. Francisco, *The Revised Rules of Court of the Philippines*, pp. 735-736 (1997).

[36] *People v. Duranan*, *id.* at 215.

observations, however, as regards the appearance, manner, habits and behavior of AAA, is also admissible in evidence as an ordinary witness' testimony. Even before the Guidance Psychologist administered the psychological tests on AAA, she already noticed that AAA lacked personal hygiene. While conversing with AAA, she observed that AAA has low level mental functioning as she has difficulty understanding simple things, has a vague concept of big numbers and time — like days of the week, and has regressed behavior that is not congruent to her age, *i.e.*, 21 years old at the time of her examination. She also stated that she was not able to administer the *Purdue Non-Language Test*, which is an *Intelligence Quotient Test*, on AAA due to the latter's inability to identify the items therein.

This Court, in *People v. Dalandas*, clarified that a **mental retardate, in general, exhibits a slow rate of maturation, physical and/or psychological, as well as impaired learning capacity**. Further, the mental retardation of persons and the degrees thereof may be manifested by their overt acts, appearance, attitude and behavior. The dentition, manner of walking, ability to feed oneself **or attend to personal hygiene**, capacity to develop resistance or immunity to infection, **dependency on others for protection and care and inability to achieve intelligible speech may be indicative of the degree of mental retardation of a person**. All these may be testified on by ordinary witnesses who come in contact with an alleged mental retardate.[37]

It bears stressing that the deprivation of reason contemplated by law need not be complete; mental abnormality or deficiency is sufficient.[38] Thus, it is clear from the foregoing that AAA's impaired learning capacity, lack of personal hygiene and difficulty in answering simple questions, as testified to by her mother and the Guidance Psychologist who had an opportunity to observe her appearance, manner, habits and behavior, are indicative that she is truly suffering from some degree of mental retardation.

---

[37] *People v. Dalandas*, *supra* note 32 at 696-697.

[38] *People v. Atuel*, G.R. No. 106962, 3 September 1996, 261 SCRA 339, 355.

More telling is the trial court's own observation on AAA's manner of testifying that confirms the fact that AAA is a mental retardate, to wit:

Court: Alright, Order.

The prosecution presented their first witness in the person of the victim herself, AAA, **who seemed to be a retardate**.

The witness finds it hard to answer simple questions and it has to be repeated to ask questions in a simple way as possible in order for her to understand.

In the course of her direct testimony it developed and appeared that she was already tired and she could not concentrate well probably because of her predicament she being also an epileptic and it is for this reason that the prosecution and the defense agreed that the cross examination of the witness be continued later in order to give her a chance to rest x x x.[39] [Emphases supplied.]

For purposes of determining the mental capacity of a person, this Court held that the personal observation of the trial judge suffices even in the absence of an expert opinion.[40] Hence, the aforesaid findings of the trial court are entitled to great weight and respect being in the best position as it had the opportunity to hear and observe the demeanor, conduct and attitude of AAA while testifying.

Surprisingly, though the appellant vehemently contends that the prosecution was not able to establish AAA's mental retardation, he failed to notice that his own father, Rolando, during his testimony before the court *a quo*, categorically admitted and confirmed that, indeed, AAA is mentally retarded and feeble-minded. Here we quote appellant's father's testimony:

Q: Will you agree with me that this AAA is somewhat mentally retardate?

A: Yes, Sir. That is really true.

x x x x x x x x x

[39] TSN, 26 February 2003, pp. 22-23.

[40] *People v. Bacaling*, *supra* note 30 at 204.

Q: But you knew for a fact that this AAA is a feeble-minded?

A: Yes, Your Honor.[41]

Such testimony puts beyond doubt that AAA is truly a mental retardate. Her condition was so apparent to people who have had an opportunity to interact and deal with her that even appellant's own father, who happens to be AAA's neighbor, could not deny her mental state. The prosecution evidence settled this issue.

As well and as much established is the fact of sexual congress between the appellant and AAA.

AAA was able to recall and narrate in detail before the court *a quo* how she was ravished by the appellant on two occasions; *first*, at the house of a certain Atok and *second*, outside the chapel. On the first rape incident, AAA vividly described how the appellant cuddled her until they reached the house of a certain Atok. Once inside, the appellant made her lie down on the bed and removed her short pants and panty. The appellant subsequently undressed himself and inserted his penis into her vagina. On the second rape, AAA similarly recalled how the appellant led her to a nearby chapel. While they were outside the chapel, the appellant undressed her and likewise removed his shorts and underwear and had sexual intercourse with her in a standing position. Such testimony of AAA can be characterized as categorical and straightforward. Also, as noted by the trial court, although AAA could not easily grasp the questions asked, her answers were nonetheless marked with candidness even as they were given simplemindedly.

It bears emphasis that the competence and credibility of mentally deficient rape victims as witnesses have been upheld by this Court where it is shown that they can communicate their ordeal capably and consistently. Rather than undermine the gravity of the complainant's accusations, it even lends greater credence to her testimony, that, someone as feeble-minded and guileless could speak so tenaciously and explicitly on the details of the

[41] TSN, 11 February 2004, pp. 14-15.

rape if she has not in fact suffered such crime at the hands of the accused.[42] Moreover, it is settled that when a woman says she has been raped, she says in effect all that is necessary to show that she has been raped and her testimony alone is sufficient if it satisfies the exacting standard of credibility needed to convict the accused.[43]

It is also worth stressing that during AAA's testimony, she positively identified the appellant as the person who had raped her.[44] Thus, the straightforward narration of AAA of what transpired, accompanied by her categorical identification of appellant as the malefactor, sealed the case for the prosecution.[45]

The fact of sexual congress between AAA and the appellant was also supported by the medical findings of healed hymenal lacerations at 3 o'clock and 9 o'clock positions which, according to Dr. Antillon-Malimas, could have resulted from sexual intercourse. When the victim's testimony is corroborated by the physician's finding of penetration, there is sufficient foundation to conclude the existence of the essential requisite of carnal knowledge. Laceration, whether healed or fresh, is the best physical evidence of forcible defloration.[46] Thus, the said medical findings, together with the straightforward testimony of AAA, even strengthens her claim of sexual violation by appellant.

The records also failed to show that AAA was prompted by ill motive in imputing such a grave offense against the appellant. The absence of evidence of improper motive on the part of the prosecution witnesses to testify against the appellant strongly tends to sustain the conclusion that no such improper motive exists and that their testimonies are worthy of full faith and

---

[42] *People v. Dela Paz, supra* note 29 at 381-382.

[43] *People v. Agunos*, 375 Phil. 315, 323-324 (1999).

[44] TSN, 26 February 2003, p. 5.

[45] *People v. Macapal, Jr.*, G.R. No. 155335, 14 July 2005, 463 SCRA 387, 400.

[46] *People v. Malones*, 469 Phil. 301, 325-326 (2004).

credit.[47] The claim of the appellant that his remark on AAA's mother, that since she was already a widow she should already get married, could possibly trigger the filing of this case against him is highly implausible. As the trial court had stated, it is quite unbelievable that BBB's anger could have been triggered by such an innocuous joke to the extent of allowing the examination of AAA's private parts and subjecting AAA to the humiliation of declaring in open court the sexual molestation she underwent in the hands of the appellant. Besides, no mother in her right mind would possibly 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. It is unnatural for a parent to use her offspring as an engine of malice, especially if it will subject her daughter to embarrassment and even stigma. It is hard to believe that a mother would sacrifice her own daughter and present her to be the subject of a public trial if she, in fact, has not been motivated by an honest desire to have the culprit punished.[48]

It is also worthy to note the testimony of the appellant that he, together with his father, and a certain Eddie Camus, went to the house of AAA to have the case settled, which testimony was corroborated by his own father. Appellant's father went further in saying that they went to AAA's house to ask for forgiveness. AAA's mother, BBB, confirmed appellant's importunity. This Court has ruled that an act of asking for forgiveness is undeniably indicative of guilt.[49] If the appellant so believed that he did not commit any wrongdoing against AAA, he would not bother to go to AAA's house to have the case settled and to ask for forgiveness.

The array of the prosecution evidence stresses the weakness of appellant's defense of denial and *alibi*.

---

[47] *People v. Garin*, 476 Phil. 455, 472 (2004).

[48] *People v. Jose*, 367 Phil. 68, 78 (1999).

[49] *People v. Erardo*, G.R. No. 119368, 18 August 1997, 277 SCRA 643, 657.

Denial and *alibi* are inherently weak defenses and, unless supported by clear and convincing evidence, the same cannot prevail over the positive declaration of the victim, who in a simple and straightforward manner, convincingly identified the appellant who sexually molested her.[50] For *alibi* to prosper, the accused must show that it was impossible for him to have been at the scene of the commission of the crime at the time of its commission.[51]

In the instant case, the appellant claimed that he cannot rape AAA in March 2000 because for the entire period of the said month he was harvesting coconuts from the land of a certain Elizabeth Camus from 7:00 a.m. until 5:00 p.m. or 6:00 p.m. every day. Similarly, the house of Atok, where the first rape incident allegedly happened, was already demolished as early as 1998 and he was one of those who dismantled the said house. However, these assertions of the appellant remained uncorroborated. He also failed to show the physical impossibility of his presence at the scene of the crime at the time of its commission. As can be inferred from his testimony, he left Agay-ayan, Gingoog City, only in May 2000, so at the time the rape incidents happened sometime in March 2000, he was still in the place where the crime was committed.

In sum, AAA's straightforward testimony, as well as her unwavering and positive identification of the appellant as her defiler and tormentor, corroborated by the medical findings conducted by Dr. Antillon-Malimas, was sufficient to convict the appellant. The flimsy and self-serving defenses of denial and *alibi* of the appellant failed to destroy the truthfulness and the credibility of AAA's testimony.[52]

Although the complaint specifically alleged the circumstance of appellant's knowledge of the victim's mental retardation at the time of the commission of the crime of rape, which qualifies the crime and makes it punishable by death under Article 266-B,

---

[50] *People v. Agravante*, 392 Phil. 543, 551 (2000).

[51] *People v. Kimura*, 471 Phil. 895, 919-920 (2004).

[52] *People v. Nieto*, G.R. No. 177756, 3 March 2008, 547 SCRA 511, 527-528.

paragraph 10[53] of the Revised Penal Code, as amended, the prosecution did not adduce any evidence to prove the same during trial. This Court, therefore, is fully convinced that the trial court and the appellate court correctly convicted the appellant for the crime of simple rape[54] under Article 266-A, par. 1(b) of the Revised Penal Code, which is punishable by *reclusion perpetua*.[55]

Anent the award of damages, civil indemnity *ex delicto* is mandatory upon finding of the fact of rape while moral damages is awarded upon such finding without need of further proof because it is assumed that a rape victim had actually suffered moral injuries entitling the victim to such award.[56] Exemplary damages, on the other hand, are awarded under Article 2230[57] of the Civil Code if there is an aggravating circumstance, whether ordinary or qualifying.[58] Thus, this Court similarly affirms the

---

[53] ART. 266-B. *Penalties*. x x x.

x x x x x x x x x

The death penalty shall also be imposed if the crime of rape is committed with any of the following aggravating/qualifying circumstances:

x x x x x x x x x

10. When the offender knew of the mental disability, emotional disorder and/or physical handicap of the offended party at the time of the commission of the crime.

[54] 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) x x x;

b) When the offended party is deprived of reason or otherwise unconscious;

x x x. (Revised Penal Code).

[55] ART. 266-B. *Penalties*. — Rape under paragraph 1 of the next preceeding article shall be punished by *reclusion perpetua*. (Revised Penal Code).

[56] *People v. Calongui*, G.R. No. 170566, 3 March 2006, 484 SCRA 76, 88.

[57] 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.

[58] *People v. Gragasin*, G.R. No. 186496, 25 August 2009, 597 SCRA 214, 232-233.

₱50,000.00 civil indemnity and ₱50,000.00 moral damages awarded by the lower courts to AAA. However, there being no aggravating circumstance that can be considered, no exemplary damages can be awarded to AAA.

WHEREFORE, premises considered, the Decision of the Court of Appeals in CA-G.R. CR-H.C. No. 00030-MIN dated 7 November 2008 finding herein appellant guilty beyond reasonable doubt of the crime of rape is hereby *AFFIRMED*.

SO ORDERED.

Corona, C.J. (Chairperson), Leonardo-de Castro, Bersamin,[*] and *Del Castillo, JJ.*, concur.

THIRD DIVISION

[G.R. No. 187288. August 9, 2010]

SPOUSES BRAULIO NAVARRO AND CESARIA SINDAO, *petitioners, vs.* **PERLA RICO GO,** *respondent.*

SYLLABUS

1. CIVIL LAW; LAND TITLES; INDEFEASIBLE, BUT SHOULD NOT BE USED TO PERPETUATE FRAUD AGAINST THE RIGHTFUL PROPERTY OWNER. — A person dealing with registered land may safely rely on the correctness of its certificate of title and the law will not oblige him to go beyond what appears on the face thereof to determine the condition of the property. The indefeasibility of the Torrens title should not,

---

[*] Per Special Order No. 876, Associate Justice Lucas P. Bersamin is designated as additional member in place of Associate Justice Presbitero J. Velasco, Jr. who is on official leave under the Court's Wellness Program.

however, be used as a means to perpetuate fraud against the rightful owner of real property.

2. ID.; ID.; ID.; INNOCENT PURCHASER IN GOOD FAITH; ELUCIDATED. — A person is considered an innocent purchaser in good faith when he buys the property of another, without notice that some other person has a right or an interest in such property, and pays a full price for the same at the time of such purchase, or before he has notice of the claims or interest of some other person in the property. Whether petitioners were in good faith when they bought the property from the Samson heirs is a question of fact that will not be disturbed in a petition for review under Rule 45 of the Rules of Court, save for meritorious exceptions.

3. ID.; ID.; ID.; ID.; NOT APPRECIATED WHERE THE PROPERTY BOUGHT WAS POSSESSED BY ANOTHER AND VENDEE DID NOT MAKE FURTHER INVESTIGATION. — Where the land subject of sale is in possession of a person other than the vendor, prudence dictates that the vendee should go beyond the certificate of title. Absent such investigation, good faith cannot be presumed.

APPEARANCES OF COUNSEL

Butch Cardinal N. Torio and *Edilberto Cosca* for petitioners.
Manuel P. Parras for respondent.

D E C I S I O N

CARPIO MORALES, *J.*:

Challenged *via* petition for review on *certiorari* is the Court of Appeals Decision of December 12, 2008[1] which disposed as follows:

. . . [T]he decision appealed from is MODIFIED, in that in lieu of decreeing the nullity of the patent and titles, the defendants Navarro

[1] Penned by Associate Justice Mario L. Guariña III with the concurrence of Associate Justices Celia Librega-Leagogo and Sesinando E. Villon, *rollo*, pp. 36-44.

are ordered to **reconvey the title to the plaintiff**. The case against Aurelia Caballero is dismissed. All other aspects of the decision are affirmed.

SO ORDERED.[2] (emphasis and underscoring supplied)

By Deed of Sale of Real Property dated May 23, 1937, Emilia Samson (Emilia) conveyed to Josefa Parras (Josefa), mother of Perla Rico Go (respondent), a 405 square meter parcel of land situated in Domalandan West, Lingayen, Pangasinan.

On December 1971, Free Patent No. 51563 (OCT No. P-14822) was issued to the Heirs of Emilia's brother, Lorenzo Samson (the Samson heirs), covering the land.

After Josefa purchased the land in 1937, she allowed one Rufino Palma (Palma), nephew of petitioner Cesaria, to stay there. In 1984, Josefa donated the land to respondent who allowed Palma to remain on the land until 1989. Via two documents entitled "*Paknaan*," Palma recognized respondent's ownership of the land.[3] Photographs of the execution of the documents were in fact taken.[4]

When Palma vacated the land, respondent constructed fences made of galvanized roofing sheets and wooden posts on which was posted a "Private Property, No Trespass" sign.

On April 27, 1990, the Samson heirs transferred their rights to the land by a Deed of Extra-Judicial Partition with Sale to Spouses Braulio Navarro and Cesaria Sindao (petitioners). After 11 years or on May 2001, Transfer Certificate of Title No. 254853 was issued in petitioners' name.

Petitioner Braulio thereupon destroyed the fences of, and cut all the trees in the land, drawing respondent to file a complaint for annulment of documents — Deed of Extra-Judicial Partition

---

[2] *Id.* at 43.

[3] Offered in evidence as "Exhibits E-E1", and "Exhibit "F", records, pp. 116-118.

[4] Offered in evidence as "Exhibits G-G1", *id.* at 123.

with Sale, Free Patent, Original Certificate of Title, Tax Declarations, Declaration of Ownership of Real Property and Damages against petitioners before the Regional Trial Court (RTC) of Lingayen, Pangasinan. Petitioner Braulio passed away on March 22, 2002 and was substituted in the action by his heirs.[5]

Before the RTC, petitioners invoked good faith in purchasing the land from the Samson heirs in 1990, no encumbrances on the title to the land on file at the Register of Deeds having been annotated.

By Decision of April 1, 2003, Branch 38 of the Lingayen RTC upheld respondent's possession and that of her predecessors-in-interest in the concept of an owner, and declared that the issuance of a free patent title in favor of the Samson heirs is a nullity for "the land is beyond the jurisdiction of the Bureau of Lands to bestow . . ."[6] Held the trial court:

> The land in suit was already sold in 1937 by Emilia Samson to Josefa Paras Rico, mother of the plaintiff. (respondent) Since 1937 up to May 2001, the possession of Perla Rico Go in the concept of owner was never disturbed although the Heirs of Lorenzo Samson were able to secure OCT No. P-14822 in 1971. They never asserted their rights to the property, instead, they surreptitiously sold it to the defendant-Navarros. Thus, the Heirs of Lorenzo Samson have no more property to be titled and sold because Emilia Samson already sold what they are claiming as their own way back in 1937. It is also surprising why, Lorenzo Samson did not file any case to recover the property knowing fully well that it was already sold by his sister.[7] (underscoring supplied)

Brushing aside petitioners' claim of good faith, the trial court noted the fact that petitioners live not more than 200 meters away from the land on which Josefa constructed noticeable improvements.

---

[5] Braulio Navarro's Certificate of Death, *id.* at 68.

[6] *Rollo*, p. 66.

[7] *Id.* at 66-67.

On appeal, the Court of Appeals, by Decision of December 12, 2008, *affirmed with modification* the trial court's decision. Instead of nullifying the OCT of petitioners' predecessor-in-interest and the title of petitioners, it ordered petitioners to reconvey the title to respondent.

> We cannot deny the plaintiff the legal remedy that is proper to a proven cause of action even if it was not expressly prayed for in the complaint. *Chacon Enterprises vs. Court of Appeals, supra*, at 793. We can rightly say in this respect that an action for reconveyance falls within the ambit of general prayer against the defendants to *relinquish all claims to the property to the plaintiff*. x x x
>
> IN VIEW OF THE FOREGOING, the decision appealed from is MODIFIED, in that in lieu of decreeing the nullity of the patent and titles, the defendants Navarro are ordered to reconvey the title to the plaintiff. The case against Aurelia Caballero is dismissed. All other aspects of the decision are affirmed.[8] (underscoring supplied)

Petitioners' motion for reconsideration was denied by Resolution of March 4, 2009, hence, the present petition.

Maintaining that they purchased the land in good faith, petitioners cite *Barstowe Philippines Corporation v. Republic*[9] and *Republic v. Mendoza, Sr.*[10] which held that "one who deals with property registered under the Torrens System need not go beyond the same but only has to rely on the certificate of title."[11]

The petition fails.

A person dealing with registered land may safely rely on the correctness of its certificate of title and the law will not oblige him to go beyond what appears on the face thereof to determine the condition of the property.[12]

---

[8] *Id.* at 43.

[9] G.R. No. 133110, March 28, 2007, 519 SCRA 148

[10] G.R. Nos. 153726 and 154014, March 28, 2007, 519 SCRA 203.

[11] *Vide* petitioners' petition for review on *certiorari*, *rollo*, p. 28.

[12] *San Roque Realty and Development Corporation v. Republic*, G.R. No. 163130, September 7, 2007, 532 SCRA 493, 511.

The indefeasibility of the Torrens title should not, however, be used as a means to perpetuate fraud against the rightful owner of real property.[13]

A person is considered an innocent purchaser in good faith when he buys the property of another, without notice that some other person has a right or an interest in such property, and pays a full price for the same at the time of such purchase, or before he has notice of the claims or interest of some other person in the property.[14]

Whether petitioners were in good faith when they bought the property from the Samson heirs is a question of fact that will not be disturbed in a petition for review under Rule 45 of the Rules of Court, save for meritorious exceptions.[15] None of these exceptions is present, however, in the case at bar. There is thus no compelling reason to overturn the factual findings of the trial court, which was affirmed by the Court of Appeals, respecting petitioners' notice of respondent's possession.

As reflected earlier, Palma, a relative of petitioner Cesaria, acknowledged via two documents having been allowed by Josefa,

---

[13] *Heirs of Julian Tiro v. Philippine Estates Corporation*, G.R. No. 170528, August 26, 2008, 563 SCRA 309, 318.

[14] *Id.* at 318-319.

[15] (1) when the findings are grounded entirely on speculation, surmises or conjectures; (2) when the inference made is manifestly mistaken, absurd or impossible; (3) when there is grave abuse of discretion; (4) when the judgment is based on a misapprehension of facts; (5) when the findings of fact are conflicting; (6) when in making its findings the Court of Appeals went beyond the issues of the case, or its findings are contrary to the admissions of both the appellant and the appellee; (7) when the findings are contrary to the trial court; (8) when the findings are conclusions without citation of specific evidence on which they are based; (9) when the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondent; (10) when the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record; and (11) when the Court of Appeals manifestly overlooked certain relevant facts not disputed by the parties, which, if properly considered, would justify a different conclusion. (emphasis omitted) [*Chua v. Soriano*, G.R. No. 150066, April 13, 2007, 521 SCRA 68, 77-78].

respondent's mother, to occupy the land. His testimony, therefore, that he sought the permission of the Samson heirs, and not from Josefa, must give way to documentary evidence.

In another vein, as noted above, petitioners live in the vicinity of the land which was fenced and planted to fruit bearing trees. As such, they were put on notice that the land was possessed by someone. Where the land subject of sale is in possession of a person other than the vendor, prudence dictates that the vendee should go beyond the certificate of title. Absent such investigation, good faith cannot be presumed.[16]

WHEREFORE, the petition is *DENIED*. The Court of Appeals Decision of December 12, 2008 is hereby *AFFIRMED*.

SO ORDERED.

Brion, Bersamin, Abad,[*] and *Villarama, Jr., JJ.*, concur.

THIRD DIVISION

[G.R. No. 187698. August 9, 2010]

RODOLFO J. SERRANO, *petitioner, vs.* **SEVERINO SANTOS TRANSIT and/or SEVERINO SANTOS,** *respondents.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; TERMINATION OF EMPLOYMENT; RA NO. 7641 AND IMPLEMENTING RULES ON RETIREMENT PAY TO QUALIFIED PRIVATE

---

[16] *Tio v. Abayata*, G.R. No. 160898, June 27, 2008, 556 SCRA 175.

[*] Designated as Additional Member, per Special Order No. 843 (May 17, 2010), in view of the vacancy occasioned by the retirement of Chief Justice Reynato S. Puno.

SECTOR EMPLOYEES IN THE ABSENCE OF RETIREMENT PLAN IN THE ESTABLISHMENT. — Republic Act No. 7641 which was enacted on December 9, 1992 *amended* Article 287 of the Labor Code by providing for retirement pay to qualified private sector employees in the absence of any retirement plan in the establishment. The pertinent provision of said law reads: Section 1. Article 287 of Presidential Decree No. 442, as amended, otherwise known as the Labor Code of the Philippines, is hereby amended to read as follows: x x x **In the absence of a retirement plan or agreement providing for retirement benefits of employees in the establishment, an employee upon reaching the age of sixty (60) years or more, but not beyond sixty-five (65) years which is hereby declared the compulsory retirement age, who has served at least five (5) years in the said establishment, may retire and shall be entitled to retirement pay equivalent to at least one-half (½) month salary for every year of service, a fraction of at least six (6) months being considered as one whole year. Unless the parties provide for broader inclusions, the term one-half (½) month salary shall mean fifteen (15) days plus one-twelfth (1/12) of the 13th month pay and the cash equivalent of not more than five (5) days of service incentive leaves. Retail, service and agricultural establishments or operations employing not more than (10) employees or workers are exempted from the coverage of this provision.** x x x Further, the Implementing Rules of said law provide: RULE II Retirement Benefits SECTION 1. General Statement on Coverage. — **This Rule shall apply to all employees in the private sector, regardless of their position, designation or status and irrespective of the method by which their wages are paid, except to those specifically exempted under Section 2** hereof. As used herein, the term "Act" shall refer to Republic Act No. 7641 which took effect on January 7, 1993. SECTION 2 Exemptions. — This Rule **shall not apply** to the following employees: 2.1 **Employees of the National Government** and its political subdivisions, including Government-owned and/or controlled corporations, if they are covered by the Civil Service Law and its regulations. 2.2 Domestic helpers and persons in the personal service of another. 2.3 **Employees of retail, service and agricultural establishment or operations regularly employing not more than ten (10) employees**. As used in this sub-section;

x x x SECTION 5 Retirement Benefits. 5.1 In the absence of an applicable agreement or retirement plan, an employee who retires pursuant to the Act shall be entitled to retirement pay equivalent to at least one-half (½) month salary for every year of service, a fraction of at least six (6) months being considered as one whole year. 5.2 **Components of One-half (½) Month Salary.** — For the purpose of determining the minimum retirement pay due an employee under this Rule, the term "one-half month salary" shall include all of the following: (a) **Fifteen (15) days salary of the employee based on his latest salary rate**. As used herein, **the term "salary" includes all remunerations paid by an employer to his employees for services rendered during normal working days and hours, whether such payments are fixed or ascertained on a time, task, piece of commission basis**, or other method of calculating the same, and includes the fair and reasonable value, as determined by the Secretary of Labor and Employment, of food, lodging or other facilities customarily furnished by the employer to his employees. The term does not include cost of living allowances, profit-sharing payments and other monetary benefits which are not considered as part of or integrated into the regular salary of the employees. (b) The **cash equivalent of not more than five (5) days of service incentive leave**; (c) **One-twelfth of the 13th month pay** due the employee. (d) **All other benefits** that the employer and employee may agree upon that should be included in the computation of the employee's retirement pay. x x x

2. ID.; SERVICE INCENTIVE LAW (SIL) AND RETIREMENT LAW; DIFFERENCE NOTED BETWEEN DRIVERS PAID UNDER THE BOUNDARY SYSTEM AND CONDUCTORS PAID ON COMMISSION BASIS. — The affirmance by the appellate court of the reliance by the NLRC on *R & E Transport, Inc.* is erroneous. In said case, the Court held that a taxi driver paid according to the "boundary system" is not entitled to the 13th month and the SIL pay, hence, his retirement pay should be computed on the sole basis of his salary. For purposes, however, of applying the law on Service Incentive Leave (SIL), as well as on retirement, the Court notes that there is a difference between drivers paid under the "boundary system" and conductors who are paid on commission basis. In practice, taxi drivers do not receive fixed wages. They retain only those sums in excess of the "boundary" or fee they

pay to the owners or operators of the vehicles. Conductors, on the other hand, are paid a certain percentage of the bus' earnings for the day.

3. ID.; SERVICE INCENTIVE LAW (SIL); EXCLUSION FROM ITS COVERAGE OF WORKERS WHO ARE PAID ON A PURELY COMMISSION BASIS IS ONLY WITH RESPECT TO FIELD PERSONNEL; ELUCIDATED. — It bears emphasis that under P.D. 851 or the SIL Law, the exclusion from its coverage of workers who are paid on a purely commission basis is only with respect to field personnel. The more recent case of *Auto Bus Transport Systems, Inc., v. Bautista* clarifies that an employee who is paid on purely commission basis is entitled to SIL: A careful perusal of said provisions of law will result in the conclusion that the grant of service incentive leave has been delimited by the Implementing Rules and Regulations of the Labor Code to apply only to those employees not explicitly excluded by Section 1 of Rule V. **According to the Implementing Rules, Service Incentive Leave shall not apply to employees classified as "field personnel."** The phrase "other employees whose performance is unsupervised by the employer" must not be understood as a separate classification of employees to which service incentive leave shall not be granted. Rather, it serves as an amplification of the interpretation of the definition of field personnel under the Labor Code as those "whose actual hours of work in the field cannot be determined with reasonable certainty." **The same is true with respect to the phrase *"those who are engaged on task or contract basis, purely commission basis."* Said phrase should be related with "field personnel,"** applying the rule on *ejusdem generis* that general and unlimited terms are restrained and limited by the particular terms that they follow. **Hence, employees engaged on task or contract basis or paid on purely commission basis are not automatically exempted from the grant of service incentive leave, unless, they fall under the classification of field personnel.** x x x According to Article 82 of the Labor Code, **"field personnel" shall refer to non-agricultural employees who regularly perform their duties away from the principal place of business or branch office of the employer and whose actual hours of work in the field cannot be determined with reasonable certainty**. This definition is further elaborated in the *Bureau of Working Conditions (BWC), Advisory Opinion to Philippine Technical-Clerical Commercial Employees Association* which states that: As a general rule, [field personnel] are those whose performance of their job/service is not supervised

by the employer or his representative, the workplace being away from the principal office and whose hours and days of work cannot be determined with reasonable certainty; hence, they are paid specific amount for rendering specific service or performing specific work. ***If required to be at specific places at specific times, employees including drivers cannot be said to be field personnel despite the fact that they are performing work away from the principal office of the employee.***

APPEARANCES OF COUNSEL

Peter Andrew Z. Go for petitioner.
Lourdes T. Pagayatan for respondents.

D E C I S I O N

CARPIO MORALES, *J.*:

Petitioner Rodolfo J. Serrano was hired on September 28, 1992 as bus conductor by respondent Severino Santos Transit, a bus company owned and operated by its co-respondent Severino Santos.

After 14 years of service or on July 14, 2006, petitioner applied for optional retirement from the company whose representative advised him that he must first sign the already prepared Quitclaim before his retirement pay could be released. As petitioner's request to first go over the computation of his retirement pay was denied, he signed the Quitclaim on which he wrote "U.P." (under protest) after his signature, indicating his protest to the amount of ₱75,277.45 which he received, computed by the company at 15 days per year of service.

Petitioner soon after filed a complaint[1] before the Labor Arbiter, alleging that the company erred in its computation since under Republic Act No. 7641, otherwise known as the Retirement Pay Law, his retirement pay should have been computed at 22.5 days per year of service to include the cash equivalent of the

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

5-day service incentive leave (SIL) and 1/12 of the 13th month pay which the company did not.

The company maintained, however, that the Quitclaim signed by petitioner barred his claim and, in any event, its computation was correct since petitioner was not entitled to the 5-day SIL and pro-rated 13th month pay for, as a bus conductor, he was paid on commission basis. Respondents, noting that the retirement differential pay amounted to only ₱1,431.15, explained that in the computation of petitioner's retirement pay, five months were inadvertently not included because some index cards containing his records had been lost.

By Decision[2] of February 15, 2007, Labor Arbiter Cresencio Ramos, Jr. ruled in favor of petitioner, awarding him ₱116,135.45 as retirement pay differential, and 10% of the total monetary award as attorney's fees. In arriving at such computation, the Labor Arbiter ratiocinated:

> In the same Labor Advisory on Retirement Pay Law, it was likewise decisively made clear that "the law expanded the concept of "one-half month salary" from the usual one-month salary divided by two," to wit:
>
> B. COMPUTATION OF RETIREMENT PAY
>
> A covered employee who retires pursuant to RA 7641 shall be entitled to retirement pay equivalent to at least one-half (½) month salary for every year of service, a fraction of at least six (6) months being considered as one whole year.
>
> The law is explicit that "one-half month salary shall mean fifteen (15) days plus one-twelfth (1/12) of the 13th month pay and the cash equivalent of not more than five (5) days service incentive leaves" unless the parties provide for broader inclusions. Evidently, the law expanded the concept of "one-half month salary" from the usual one-month salary divided by two.

The retirement pay is equal to half-month's pay per year of service. But "half-month's pay" is "expanded" because it means not just the

---

[2] *Id*. at 96-105. Penned by Labor Arbiter Cresencio Ramos, Jr.

salary for 15 days but also one-twelfth of the 13th-month pay and the cash value of five-day service incentive leave. THIS IS THE MINIMUM. The retirement pay package can be improved upon by voluntary company policy, or particular agreement with the employee, or through a collective bargaining agreement." (The Labor Code with Comments and Cases, C.A. Azcunea, Vol. II, page 765, Fifth Edition 2004).

Thus, having established that 22.5 days pay per year of service is the correct formula in arriving at the complete retirement pay of complainant and inasmuch as complainant's daily earning is based on commission earned in a day, which varies each day, the next critical issue that needs discernment is the determination of what is a fair and rational amount of daily earning of complainant to be used in the computation of his retirement pay.

While complainant endeavored to substantiate his claim that he earned average daily commission of ₱700.00, however, the documents he presented are not complete, simply representative copies, therefore unreliable. On the other hand, while respondents question complainant's use of ₱700.00 (daily income) as basis in determining the latter's correct retirement pay, however it does not help their defense that they did not present a single Conductor's Trip Report to contradict the claim of complainant. Instead, respondents adduced a handwritten summary of complainant's monthly income from 1993 until June 2006. It must be noted also that complainant did not contest the amounts stated on the summary of his monthly income as reported by respondents. Given the above considerations, and most importantly that complainant did not dispute the figures stated in that document, we find it logical, just and equitable for both parties to rely on the summary of monthly income provided by respondent, thus, we added complainant's monthly income from June 2005 until June 2006 or the last twelve months and we arrived at ₱189,591.30) and we divided it by twelve (12) to arrive at complainant's average monthly earning of ₱15,799.28. Thereafter, the average monthly of ₱15,799.28 is divided by twenty-six (26) days, the factor commonly used in determining the regular working days in a month, to arrive at his average daily income of ₱607.66. Finally, ₱607.66 (average daily income) x 22.5 days = ₱13,672.35 x 14 (length of service) = ₱191,412.90 (COMPLETE RETIREMENT PAY). However, inasmuch as complainant already received ₱75,277.45, the retirement

differential pay due him is ₱116,135.45 (₱191,412.90 – ₱75,277.45). (underscoring partly in the original and partly supplied)

The National Labor Relations Commission (NLRC) to which respondents appealed *reversed* the Labor Arbiter's ruling and dismissed petitioner's complaint by Decision[3] dated April 23, 2008. It, however, ordered respondents to pay retirement differential in the amount of ₱2,365.35.

Citing *R & E Transport, Inc. v. Latag,*[4] the NLRC held that since petitioner was paid on purely commission basis, he was excluded from the coverage of the laws on 13th month pay and SIL pay, hence, the 1/12 of the 13th month pay and the 5-day SIL should not be factored in the computation of his retirement pay.

Petitioner's motion for reconsideration having been denied by Resolution[5] of June 27, 2008, he appealed to the Court of Appeals.

By the assailed Decision[6] of February 11, 2009, the appellate court *affirmed* the NLRC's ruling, it merely holding that it was based on substantial evidence, hence, should be respected.

Petitioner's motion for reconsideration was denied, hence, the present petition for review on *certiorari*.

The petition is meritorious.

Republic Act No. 7641 which was enacted on December 9, 1992 *amended* Article 287 of the Labor Code by providing for retirement pay to qualified private sector employees in the absence of any retirement plan in the establishment. The pertinent provision of said law reads:

---

[3] *Id*. at 26-34. Penned by Presiding Commissioner Raul T. Aquino and concurred in by Commissioners Victoriano R. Calaycay and Angelita A. Gacutan (now Associate Justice of the Court of Appeals)

[4] G.R. No. 155214, February 13, 2004, 698 SCRA 422.

[5] CA *rollo*, pp. 35-37. Penned by Presiding Commissioner Raul T. Aquino and concurred in by Commissioners Victoriano R. Calaycay and Angelita A. Gacutan (now Associate Justice of the Court of Appeals)

[6] *Id*. at 195-202. Penned by Associate Justice Jose C. Reyes, Jr., and concurred in by Associate Justices Andres B. Reyes, Jr. (now Presiding Justice) and Normandie B. Pizarro.

Section 1. Article 287 of Presidential Decree No. 442, as amended, otherwise known as the Labor Code of the Philippines, is hereby amended to read as follows:

x x x x x x x x x

In the absence of a retirement plan or agreement providing for retirement benefits of employees in the establishment, an employee upon reaching the age of sixty (60) years or more, but not beyond sixty-five (65) years which is hereby declared the compulsory retirement age, who has served at least five (5) years in the said establishment, may retire and shall be entitled to retirement pay equivalent to at least one-half (½) month salary for every year of service, a fraction of at least six (6) months being considered as one whole year.

Unless the parties provide for broader inclusions, the term one-half (½) month salary shall mean fifteen (15) days plus one-twelfth (½) of the 13th month pay and the cash equivalent of not more than five (5) days of service incentive leaves.

Retail, service and agricultural establishments or operations employing not more than (10) employees or workers are exempted from the coverage of this provision.

x x x (emphasis and underscoring supplied)

Further, the Implementing Rules of said law provide:

RULE II
Retirement Benefits

SECTION 1

General Statement on Coverage. — **This Rule shall apply to all employees in the private sector, regardless of their position, designation or status and irrespective of the method by which their wages are paid, except to those specifically exempted under Section 2** hereof. As used herein, the term "Act" shall refer to Republic Act No. 7641 which took effect on January 7, 1993.

SECTION 2

Exemptions. — This Rule **shall not apply** to the following employees:
2.1 **Employees of the National Government** and its political subdivisions, including Government-owned and/or controlled

corporations, if they are covered by the Civil Service Law and its regulations.
2.2 Domestic helpers and persons in the personal service of another.
2.3 **Employees of retail, service and agricultural establishment or operations regularly employing not more than ten (10) employees**. As used in this sub-section;

x x x x x x x x x

SECTION 5

Retirement Benefits.

5.1 In the absence of an applicable agreement or retirement plan, an employee who retires pursuant to the Act shall be entitled to retirement pay equivalent to at least one-half (½) month salary for every year of service, a fraction of at least six (6) months being considered as one whole year.

5.2 **Components of One-half (½) Month Salary.** — For the purpose of determining the minimum retirement pay due an employee under this Rule, the term "one-half month salary" shall include all of the following:

(a) **Fifteen (15) days salary of the employee based on his latest salary rate**. As used herein, **the term "salary" includes all remunerations paid by an employer to his employees for services rendered during normal working days and hours, whether such payments are fixed or ascertained on a time, task, piece of commission basis**, or other method of calculating the same, and includes the fair and reasonable value, as determined by the Secretary of Labor and Employment, of food, lodging or other facilities customarily furnished by the employer to his employees. The term does not include cost of living allowances, profit-sharing payments and other monetary benefits which are not considered as part of or integrated into the regular salary of the employees.

(b) The **cash equivalent of not more than five (5) days of service incentive leave**;

(c) **One-twelfth of the 13th month pay** due the employee.

(d) **All other benefits** that the employer and employee may agree upon that should be included in the computation of the employee's retirement pay.

x x x (emphasis supplied)

Admittedly, petitioner worked for 14 years for the bus company which did not adopt any retirement scheme. Even if petitioner as bus conductor was paid on commission basis then, he falls within the coverage of R.A. 7641 and its implementing rules. As thus correctly ruled by the Labor Arbiter, petitioner's retirement pay should include the cash equivalent of the 5-day SIL and $^1/_{12}$ of the 13th month pay.

The affirmance by the appellate court of the reliance by the NLRC on *R & E Transport, Inc.* is erroneous. In said case, the Court held that a taxi driver paid according to the "boundary system" is not entitled to the 13th month and the SIL pay, hence, his retirement pay should be computed on the sole basis of his salary.

For purposes, however, of applying the law on SIL, as well as on retirement, the Court notes that there is a difference between drivers paid under the "boundary system" and conductors who are paid on commission basis.

In practice, taxi drivers do not receive fixed wages. They retain only those sums in excess of the "boundary" or fee they pay to the owners or operators of the vehicles.[7] Conductors, on the other hand, are paid a certain percentage of the bus' earnings for the day.

It bears emphasis that under P.D. 851 or the SIL Law, the exclusion from its coverage of workers who are paid on a purely commission basis is only with respect to field personnel. The more recent case of *Auto Bus Transport Systems, Inc. v. Bautista*[8] clarifies that an employee who is paid on purely commission basis is entitled to SIL:

> A careful perusal of said provisions of law will result in the conclusion that the grant of service incentive leave has been delimited by the Implementing Rules and Regulations of the Labor Code to apply only to those employees not explicitly excluded by Section 1 of Rule V. **According to the Implementing Rules, Service Incentive**

---

[7] *Jardin v. NLRC*, G.R. No. 119268, February 23, 2000, 326 SCRA 299, 308.

[8] G.R. No. 156367, May 16, 2005, 458 SCRA 578, 587-588.

Leave shall not apply to employees classified as "field personnel." The phrase "other employees whose performance is unsupervised by the employer" must not be understood as a separate classification of employees to which service incentive leave shall not be granted. Rather, it serves as an amplification of the interpretation of the definition of field personnel under the Labor Code as those "whose actual hours of work in the field cannot be determined with reasonable certainty."

The same is true with respect to the phrase *"those who are engaged on task or contract basis, purely commission basis."* Said phrase should be related with "field personnel," applying the rule on *ejusdem generis* that general and unlimited terms are restrained and limited by the particular terms that they follow. **Hence, employees engaged on task or contract basis or paid on purely commission basis are not automatically exempted from the grant of service incentive leave, unless, they fall under the classification of field personnel.**

x x x x x x x x x

According to Article 82 of the Labor Code, **"field personnel" shall refer to non-agricultural employees who regularly perform their duties away from the principal place of business or branch office of the employer and whose actual hours of work in the field cannot be determined with reasonable certainty**. This definition is further elaborated in the *Bureau of Working Conditions (BWC), Advisory Opinion to Philippine Technical-Clerical Commercial Employees Association* which states that:

> As a general rule, [field personnel] are those whose performance of their job/service is not supervised by the employer or his representative, the workplace being away from the principal office and whose hours and days of work cannot be determined with reasonable certainty; hence, they are paid specific amount for rendering specific service or performing specific work. ***If required to be at specific places at specific times, employees including drivers cannot be said to be field personnel despite the fact that they are performing work away from the principal office of the employee***.
>
> x x x (emphasis, italics and underscoring supplied)

WHEREFORE, the petition is *GRANTED*. The Court of Appeals Decision of February 11, 2009 and Resolution of April 28, 2009

are *REVERSED* and *SET ASIDE* and the Labor Arbiter's Decision dated February 15, 2007 is *REINSTATED*.

SO ORDERED.

Brion, Bersamin, Abad,[*] and *Villarama, Jr., JJ.*, concur.

SECOND DIVISION

[G.R. No. 187741. August 9, 2010]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **PETER M. CAMPOMANES and EDITH MENDOZA,** *accused-appellants.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; FINDINGS OF TRIAL COURT SUSTAINED BY THE COURT OF APPEALS, RESPECTED. — The Court finds no compelling reason to reverse the findings of the trial court and the Court of Appeals. Settled is the rule that the findings and conclusion of the trial court on the credibility of witnesses are entitled to great respect because the trial courts have the advantage of observing the demeanor of witnesses as they testify. The rule finds an even more stringent application where said findings are sustained by the Court of Appeals as in this case.

2. CRIMINAL LAW; COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (RA NO. 9165); ILLEGAL SALE OF DANGEROUS DRUGS; ELEMENTS. — A successful prosecution for the illegal sale of dangerous drugs must establish

---

[*] Designated as Additional Member, per Special Order No. 843 (May 17, 2010), in view of the vacancy occasioned by the retirement of Chief Justice Reynato S. Puno.

the following elements: (1) identities of the buyer and seller, the object, and the consideration; and (2) the delivery of the thing sold and the payment therefor. In the prosecution for illegal sale of *shabu*, what is material is the proof that the transaction or sale actually took place and the presentation in court of the *corpus delicti* as evidence.

3. REMEDIAL LAW; CREDIBILITY OF WITNESSES; NOT AFFECTED BY MINOR INCONSISTENCIES. — Contrary to the claim of accused, the Court finds no material inconsistency or contradiction in the testimonies of PO1 Mapula and PO2 Laro. The alleged inconsistencies or contradictions cited by petitioner are not cogent enough to overturn her conviction. The testimonies of witnesses only need to corroborate one another on material details surrounding the actual commission of the crime. This Court has repeatedly held that a few discrepancies and inconsistencies in the testimonies of witnesses referring to minor details and not actually touching upon the central fact of the crime do not impair their credibility. Thus, the Court will not disturb the findings of the trial court in assessing the credibility of the witnesses, unless some facts or circumstances of weight and influence have been overlooked or the significance of which has been misinterpreted by the trial court. This arises from the fact that the lower courts are in a better position to decide the question, having heard the witnesses themselves and observed their deportment and manner of testifying during the trial.

4. CRIMINAL LAW; COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (RA NO. 9165); THAT APPREHENDING TEAM MUST IMMEDIATELY CONDUCT A PHYSICAL INVENTORY OF THE SEIZED ITEMS AND PHOTOGRAPH THEM; EFFECT OF NON-COMPLIANCE THEREOF. — Although Section 21(1) of R.A. No. 9165 mandates that the apprehending team must immediately conduct a physical inventory of the seized items and photograph them, non-compliance with said Section 21 is not fatal as long as there is a justifiable ground therefor, and as long as the integrity and the evidentiary value of the confiscated/seized items are properly preserved by the apprehending team. Thus, the prosecution must demonstrate that the integrity and evidentiary value of the evidence seized have been preserved. x x x However, such omission shall not render accused-appellant's arrest illegal

or the items seized/confiscated from him as inadmissible in evidence. In *People v. Naelga,* We have explained that what is of utmost importance is the preservation of the integrity and the evidentiary value of the seized items because the same will be utilized in ascertaining the guilt or innocence of the accused.

5. ID.; ID.; ID.; ISSUE OF NON-COMPLIANCE THEREOF AND JUSTIFIABLE GROUND FOR THE SAME, CANNOT BE RAISED FOR THE FIRST TIME ON APPEAL. — It must be stressed that said "justifiable ground" will remain unknown in the light of the apparent failure of the accused-appellant to challenge the custody and safekeeping or the issue of disposition and preservation of the subject drugs and drug paraphernalia before the RTC. She cannot be allowed too late in the day to question the police officers' alleged non-compliance with Section 21 for the first time on appeal.

APPEARANCES OF COUNSEL

The Solicitor General for plaintiff-appellee.
Public Attorney's Office for accused-appellants.

D E C I S I O N

MENDOZA, *J.*:

Before the Court is a petition for review under Rule 45 of the Rules of Court assailing the November 14, 2008 Decision[1] of the Court of Appeals *(CA),* in CA-G.R. CR-H.C. No. 01469, which affirmed the Decision[2] of the Regional Trial Court, Branch 70, Pasig City *(RTC).*[3] The trial court convicted petitioner Edith Mendoza and her co-accused Peter Campomanes of having committed a violation of Section 5, Article II of Republic Act

---

[1] *Rollo,* pp. 2-18. Penned by Justice Juan Q. Enriquez, Jr. and concurred in by Justices Isaias P. Dicdican and Marlene Gonzales-Sison.

[2] Records, pp. 128-135. Penned by Judge Pablito M. Rojas.

[3] In Criminal Case No. 12255-D and Criminal Case No. 12256-D.

(R.A.) No. 9165, otherwise known as The Comprehensive Dangerous Drugs Act of 2002.

On March 24, 2003, two (2) separate informations for violation of Section 5 and Section 12, Article II of R.A. No. 9165 were filed with the RTC of Pasig City. The first information, docketed as Criminal Case No. 12255-D charged accused Campomanes and petitioner with illegal sale of dangerous drugs under Section 5 in relation to Section 26, Article II of R.A. No. 9165. This information reads:

> On or about March 22, 2003 in Pasig City, and within the jurisdiction of this Honorable Court, the accused, conspiring, and confederating together and both of them mutually helping and aiding one another, not being lawfully authorized by law, did then and there willfully, unlawfully and feloniously sell, deliver and gave away to PO1 Allan Mapula, a police poseur buyer, one (1) heat-sealed transparent plastic sachet containing eight (8) centigram (0.08 gram) of white crystalline substance, which was found positive to the test for methylamphetamine hydrochloride, a dangerous drug, in violation of the said law.
>
> Contrary to law.[4]

The second information, docketed as Criminal Case No. 12256-D, charged only accused Campomanes with the crime of illegal possession of drug paraphernalia (Section 12). This second case is not covered by this disposition as accused Peter Campomanes has already passed away.[5] The Court shall, however, refer to his defense as long as it is relevant to the resolution of the case.

As can be gleaned from the prosecution evidence, it appears that sometime in March 2003, after receipt of numerous reports about the drug activities of one *alias* "Pete" in Bagong Ilog, Pasig City, PO1 Mapula was dispatched by his superior officer to conduct casing and surveillance operations against said person.

---

[4] Records, p. 1.

[5] In a letter dated December 23, 2008, P/Insp. II Ramon M. Reyes, Chief Superintendent of the New Bilibid Prison, informed the court that accused Peter Campomanes died on March 14, 2007 at the NBP Hospital. Attached to the letter was accused Campomanes' Death Certificate.

On March 22, 2003, after verifying and confirming the reports, PO1 Mapula reported his findings to his superior, SPO1 Danilo Tuano *(SPO1 Tuano)*, who immediately formed a team to conduct a buy-bust operation. The team members were PO1 Allan Mapula, the poseur-buyer; PO2 Lemuel Laro; PO3 Carlo Luna *(PO3 Luna)*; and PO1 Michael Espares *(PO1 Espares)*.

Before proceeding to the target area, the police officers coordinated with the Philippine Drug Enforcement Agency (PDEA) and prepared the buy-bust money consisting of one (1) one hundred peso (₱100.00) bill. After a briefing, the team, together with the informant, proceeded to Francisco St., Bagong Ilog, Pasig City. At around 4:15 o'clock in the afternoon, PO1 Mapula and the informant went to the house of Pete at No. 17 Francisco St. while the other team members strategically positioned themselves nearby. Upon reaching the house of Pete, the informant knocked at the steel gate. A female person, who was later identified as petitioner Edith Mendoza, opened the gate and asked the informant, "*Kukuha ka ba?*" The informant replied, "*Itong kasama ko, kukuha siya*," referring to PO1 Mapula. PO1 Mapula replied, "*Piso lang, panggamit lang*," and handed to her the marked ₱100.00 bill with serial number VJ979363. Upon receipt of the marked money, petitioner went back inside the house.

After a while, Pete came out and handed to PO1 Mapula a plastic sachet containing an undetermined amount of white crystalline substance. Upon receiving it, PO1 Mapula took hold of Pete and removed his cap signifying a positive bust. Before the other team members could get near them, Pete ran inside the house. PO1 Mapula and the other team members ran after him and were able to corner him in the kitchen. Pete was frisked and the marked 100-peso bill was recovered from him. In the presence of the petitioner, PO1 Mapula immediately marked the plastic sachet containing white crystalline substance with Exhibit "A", AVM-PMC-03/22/03, and the ₱100-peso bill with AVM. PO1 Mapula and PO2 Laro also saw several drug paraphernalia on the table beside where petitioner was seated. There were four (4) aluminum foil strips, three (3) improvised burners, three (3) heat-sealed transparent plastic sachets, one

(1) improvised plastic pipe, one (1) improvised tooter, two (2) disposable lighters colored yellow, one (1) improvised burner, and one (1) improvised bamboo sealer.

Thereafter, the police officers brought Pete and the petitioner to their office, together with the seized items — plastic sachet containing white crystalline substance, marked money and drug paraphernalia. It was only then that the police officers learned that Pete was Peter M. Campomanes. Upon arriving at their office, PO1 Mapula and PO2 Laro turned over the plastic sachet containing white crystalline substance and the drug paraphernalia to their investigator for the preparation of the request for laboratory examination. Then, the marked pieces of evidence were brought by PO1 Mapula to the Eastern Police District (EPD) Crime Laboratory for chemical analysis.

Police Inspector Lourdeliza M. Gural, a forensic chemist, conducted a qualitative examination of the specimen, which tested positive for methylamphetamine hydrochloride, a dangerous drug. She then prepared and issued Chemistry Report No. D-522-2003E containing her findings.[6]

Accused Campomanes[7] and petitioner denied the accusations against them. Campomanes claimed that on March 22, 2003, he was sleeping in his bedroom at No. 17 Francisco St., Bagong Ilog, Pasig City when five (5) police officers, all wearing civilian clothes, entered his two-storey house; that two of the police officers, PO3 Luna and PO2 Laro, entered his room, forced him out of his bed, handcuffed him, and brought him to the living room where his boarder, petitioner Edith Mendoza, was already seated; that while they were in the living room, PO1 Esperas and PO1 Mapula searched his room and petitioner's room located on the second floor of his house; that the police officers did not ask permission before they made the search;

---

[6] Records, p. 62.

[7] As earlier stated, accused Peter Campomanes passed away but his defense will be recited as long as it is relevant to the defense of petitioner Edith Mendoza.

and that the police officers brought them to the police station without informing them of the charges.

Accused Campomanes also denied that he sold *shabu* to PO1 Mapula or PO2 Laro. He did admit, however, that he used and sold *shabu* to his peers; that he sourced his *shabu* from another drug pusher in a place called the *barracks*; that police officers asked him to accompany them to the *barracks* but the drug pusher was not there so they went back to the headquarters; and that his caretaker told him that the police officers were asking for five thousand (₱5,000.00) pesos.

Petitioner Edith Mendoza corroborated the testimony of Campomanes. She claimed that on March 22, 2003 at around 4:15 o'clock in the afternoon, she was in her boarding house owned by Campomanes; that she was cleaning the house when five (5) male persons entered the house; that four (4) of them went straight to the room of Campomanes; that when she asked them what they needed, they told her to sit on the sofa and keep quiet or they would slap her; that after the four men had searched the room of Campomanes, they also searched her room and the other rooms rented by the other boarders; that the police officers forced them to go to the police station for investigation; that she was not hurt or injured by the policemen; and that she did not file any criminal complaint against them.

On February 22, 2005, the RTC rendered a decision convicting both accused Campomanes and the petitioner, the dispositive portion of which reads:

> WHEREFORE, premises considered, judgment is hereby rendered, as follows:
>
> In Criminal Case No. 12255-D both accused Peter Campomanes and Edith Mendoza are hereby found guilty beyond reasonable doubt of the offense of violation of Section 5, Article II, Republic Act 9165 (illegal sale of *shabu*) and are hereby sentenced to LIFE IMPRISONMENT and to solidarily pay a FINE of Five Hundred Thousand Pesos (PHP500,000.00).
>
> In Criminal Case No. 12256-D, accused Peter Campomanes is hereby found GUILTY beyond reasonable doubt of the offense of

Violation of Section 12, Article II, Republic Act 9165 (illegal possession of drug paraphernalia) and is hereby sentenced to Six Months and One (1) Day to Four (4) Years and a Fine of Ten Thousand Pesos (PHP10,000.00)

Considering the penalty imposed by the Court, the immediate commitment of accused Peter Campomanes and Edith Mendoza to the National Penitentiary, New Bilibid Prisons, Muntinlupa City and the Correctional Institute for Women, Mandaluyong City, respectively, is hereby ordered.

Pursuant to Section 20 of Republic Act 9165, the amount of PHP100.00 representing the proceeds from illegal sale of the plastic sachet of *shabu* is hereby ordered forfeited in favor of the government.

Again, pursuant to Section 21 of the same law, the Philippine Drug Enforcement Agency (PDEA) is hereby ordered to take charge and have custody of the sachet of *shabu* subject of Criminal Case No. 12255-D.

Costs against the accused.[8]

On March 1, 2005, accused Campomanes and petitioner filed a notice of appeal.[9] However, on April 21, 2005, a motion to withdraw the notice of appeal with motion for reconsideration was filed by accused.[10] On June 29, 2005, the RTC issued an order denying the motion pursuant to Section 7, Rule 120 of the Revised Rules on Criminal Procedure.[11]

Elevated before it, the Court of Appeals denied the appeal and affirmed the RTC decision based on the testimonies of PO1

---

[8] Records, pp. 134-135.

[9] *Id.* at 138.

[10] *Id.* at 141-144.

[11] Section 7, Rule 120 of the Rules on Criminal Procedure reads:

Sec. 7. Modification of judgment. — A judgment of conviction may, upon motion of the accused, be modified or set aside before it becomes final or before appeal is perfected. Except where the death penalty is imposed, a judgment becomes final after the lapse of the period for perfecting an appeal, or when the sentence has been partially or totally satisfied or served, or when the accused has waived in writing his right to appeal, or has applied for probation.

Mapula and PO2 Laro on the circumstances surrounding the buy-bust operation.[12] The CA found no reason to overturn the RTC findings as it assessed the witnesses to be candid and straightforward. It rejected the defense of denial and frame-up and gave greater credence to PO1 Mapula's testimony favoring it with the presumption of regularity in the performance of official functions. It also sustained the findings of the trial court that conspiracy existed between accused Campomanes and the petitioner. The CA brushed aside the attack on the non-compliance with Section 21 of R.A. No. 9165 citing the case of *People v. Pringas,*[13] where it was held that non-compliance is not fatal as long as the integrity and the evidentiary value of the confiscated items were properly preserved.[14]

As earlier mentioned, the Chief Superintendent of the New Bilibid Prison informed the Court that accused Peter Campomanes died on March 14, 2007 at the NBP Hospital.[15] Attached to the letter was his Death Certificate.[16] Hence, this appeal shall proceed only with respect to petitioner Edith Mendoza in Criminal Case No. 12255-D.

From the records, the principal issues raised in this case are the following:

I. WHETHER OR NOT THE POLICE OFFICERS FOLLOWED THE PRESCRIBED PROCEDURE IN THE INITIAL CUSTODY OF THE DRUGS SEIZED AND/OR CONFISCATED AS PROVIDED UNDER SEC. 21 PAR. A OF RA 9165.

II. WHETHER OR NOT THE HEREIN QUESTIONED DECISION OF THE COURT *A QUO* IS IN ACCORDANCE WITH THE LATEST *EN BANC* JURISPRUDENCE.

---

[12] *Rollo,* p. 17.

[13] G.R. No. 175928, August 31, 2007, 531 SCRA 828, 848.

[14] CA *rollo,* pp. 195-204.

[15] *Id.* at 185.

[16] *Id.* at 186.

III. WHETHER OR NOT THE PROSECUTION HAS PROVEN THE GUILT OF THE ACCUSED WITH PROOF BEYOND REASONABLE DOUBT.[17]

In the Supplemental Appellant's Brief filed by petitioner, she added the following errors:

I.

THE TRIAL COURT GRAVELY ERRED IN FINDING THAT THE TWO (2) ACCUSED-APPELLANTS CONSPIRED AND CONFEDERATED WITH ONE ANOTHER IN THE COMMISSION OF THE CRIME CHARGED.

II.

THE TRIAL COURT GRAVELY ERRED IN FINDING ACCUSED-APPELLANT EDITH MENDOZA GUILTY BEYOND REASONABLE DOUBT OF VIOLATION OF SEC. 5, ARTICLE II, R.A. NO. 9165.[18]

In sum, the issues to be resolved are (1) the credibility of the police officers who conducted the buy-bust operation; and (2) the chain of custody of the seized *shabu*.

Regarding the first issue, the petitioner argues that the presumption of regularity, upon which her conviction rests, should not take precedence over the presumption of innocence. According to her, the trial court overlooked the conflicting testimonies of PO1 Mapula and PO2 Laro. PO1 Mapula testified that he handed the buy-bust money to petitioner and, later, Campomanes handed a sachet of *shabu* to him. PO2 Laro, on the other hand, said that he saw PO1 Mapula talking to a female person and then exchanged something with Campomanes. In other words, the prosecution witnesses' testimonies were not congruent as to who received the buy-bust money. Moreover, PO2 Laro did not identify her as the woman who talked with PO1 Mapula.

The Court finds no compelling reason to reverse the findings of the trial court and the Court of Appeals. Settled is the rule

---

[17] *Id.* at 45.

[18] *Id.* at 109.

that the findings and conclusion of the trial court on the credibility of witnesses are entitled to great respect because the trial courts have the advantage of observing the demeanor of witnesses as they testify.[19] The rule finds an even more stringent application where said findings are sustained by the Court of Appeals as in this case.[20]

A successful prosecution for the illegal sale of dangerous drugs must establish the following elements: (1) identities of the buyer and seller, the object, and the consideration; and (2) the delivery of the thing sold and the payment therefor.[21] In the prosecution for illegal sale of *shabu*, what is material is the proof that the transaction or sale actually took place and the presentation in court of the *corpus delicti* as evidence.[22]

In the present case, all the elements have been clearly established. PO1 Mapula, who acted as the poseur-buyer, positively identified petitioner as the person who came out of the house, and dealt with him and the informant during the buy-bust operation. It was the petitioner herself who asked what they needed and, upon learning that they would buy *shabu*, took the buy-bust money and went inside the house. After a while, Campomanes came out and handed to PO1 Mapula a plastic sachet containing white crystalline substance. Upon examination, the white crystalline substance bought by PO1 Mapula from petitioner tested positive for *shabu* per Chemistry Report No. D-522-2003E issued by the Philippine National Police Crime Laboratory.

Contrary to the claim of accused, the Court finds no material inconsistency or contradiction in the testimonies of PO1 Mapula and PO2 Laro. The alleged inconsistencies or contradictions

---

[19] *People v. Lazaro, Jr.*, G.R. No. 186418, October 16, 2009, 604 SCRA 250.

[20] *People v. De Guzman*, G.R. No. 177569, November 28, 2007, 539 SCRA 306.

[21] *People v. Naelga*, G.R. No. 171018, September 11, 2009, 599 SCRA 477.

[22] *Supra* note 19.

cited by petitioner are not cogent enough to overturn her conviction. The testimonies of witnesses only need to corroborate one another on material details surrounding the actual commission of the crime.[23] This Court has repeatedly held that a few discrepancies and inconsistencies in the testimonies of witnesses referring to minor details and not actually touching upon the central fact of the crime do not impair their credibility.[24]

Thus, the Court will not disturb the findings of the trial court in assessing the credibility of the witnesses, unless some facts or circumstances of weight and influence have been overlooked or the significance of which has been misinterpreted by the trial court.[25] This arises from the fact that the lower courts are in a better position to decide the question, having heard the witnesses themselves and observed their deportment and manner of testifying during the trial.[26]

As to the second issue, petitioner questions the integrity of the evidence used against her on the ground of failure of the prosecution to establish the chain of custody of the seized illegal drugs and drug paraphernalia particularly the inventory and photographing of the seized items as required under Section 21 of R.A. No. 9165. The failure cast serious doubt on whether or not the specimens presented in court were the ones actually confiscated from her.

The Court does not agree.

Section 21(a) of Article II of the *Implementing Rules and Regulations* of R.A. No. 9165 provides that:

(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

---

[23] *Aparis v. People*, G.R. No. 169195, February 17, 2010.

[24] *People v. Lim*, G.R. No. 187503, September 11, 2009, 599 SCRA 712.

[25] *People v. Cruz*, G.R. No. 185381, December 16, 2009.

[26] *People v. Razul*, 441 Phil. 62 (2002).

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.

Although Section 21(1) of R.A. No. 9165 mandates that the apprehending team must immediately conduct a physical inventory of the seized items and photograph them, non-compliance with said section 21 is not fatal as long as there is a justifiable ground therefor, and as long as the integrity and the evidentiary value of the confiscated/seized items are properly preserved by the apprehending team.[27] Thus, the prosecution must demonstrate that the integrity and evidentiary value of the evidence seized have been preserved.[28]

We note that nowhere in the prosecution evidence does it show the "justifiable ground" which may excuse the police operatives involved in the buy-bust operation in the case at bar from complying with Section 21 of Republic Act No. 9165, particularly the making of the inventory and the photographing of the drugs and drug paraphernalia confiscated and/or seized. However, such omission shall not render accused-appellant's arrest illegal or the items seized/confiscated from him as inadmissible in evidence. In *People v. Naelga*,[29] We have explained that what is of utmost importance is the preservation of the integrity and the evidentiary value of the seized items

---

[27] *People v. Sanchez*, G.R. No. 175832, October 15, 2008, 569 SCRA 194.

[28] *People v. Denoman*, G.R. No. 171732, August 14, 2009, 596 SCRA 257.

[29] *Supra* note 21.

because the same will be utilized in ascertaining the guilt or innocence of the accused.

It must be stressed that said "justifiable ground" will remain unknown in the light of the apparent failure of the accused-appellant to challenge the custody and safekeeping or the issue of disposition and preservation of the subject drugs and drug paraphernalia before the RTC. She cannot be allowed too late in the day to question the police officers' alleged non-compliance with Section 21 for the first time on appeal.[30] In *People v. Sta. Maria*,[31] in which the very same issue was raised, We ruled:

> Indeed, the **police officers' alleged violations of Sections 21** and 86 of Republic Act No. 9165 **were not raised before the trial court but were instead raised for the first time on appeal. In no instance did appellant least intimate at the trial court that there were lapses in the safekeeping of seized items that affected their integrity and evidentiary value. Objection to evidence cannot be raised for the first time on appeal; when a party desires the court to reject the evidence offered, he must so state in the form of objection. Without such objection he cannot raise the question for the first time on appeal.** (Emphasis supplied)

In this case, there was substantial compliance with the law and the integrity of the drugs seized was properly preserved. The records of the case disclose that after PO1 Mapula seized the sachet of s*habu* and the buy-bust money, he immediately marked them with his initials in the presence of Campomanes and the petitioner. Then, Campomanes and the petitioner were brought for investigation to the police station where PO1 Mapula and PO2 Laro turned over the sachet of *shabu* and drug paraphernalia to the police investigator for the preparation of the request for laboratory examination. The specimen, together with the request, was subsequently forwarded by PO1 Mapula himself to the EPD crime laboratory for chemical analysis. Per Chemistry Report No. D-522-2003E of P/Insp. Gural, the specimen

---

[30] *People v. Norberto Del Monte y Gapay*, G.R. No. 179940, April 23, 2008, 552 SCRA 627, 642.

[31] G.R. No. 171019, February 23, 2007, 516 SCRA 621, 634.

was found to be methylamphetamine hydrochloride (*shabu*). These links in the chain of custody are undisputed; the integrity of the seized drugs remains intact.

WHEREFORE, the November 14, 2008 Decision of the Court of Appeals, in CA-G.R. CR-H.C. No. 01469, is *AFFIRMED*.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 189092. August 9, 2010]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **MELVIN LOLOS,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; RAPE; GUIDING PRINCIPLES. — In the determination of the innocence or guilt of the accused in rape cases, courts consider the following principles: (1) an accusation of rape can be made with facility and while the accusation is difficult to prove, it is even more difficult for the accused, though innocent, to disprove; (2) considering that in the nature of things, only two persons are usually involved in the crime of rape, the testimony of the complainant should be scrutinized with great 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.

2. ID.; STATUTORY RAPE; ELEMENTS. — The gravamen of the offense of rape is sexual congress with a woman by force and without consent. As provided in the Revised Penal Code, sexual intercourse with a girl below 12 years old is statutory

rape. The two elements of statutory rape are: (1) that the accused had carnal knowledge of a woman; and (2) that the woman was below 12 years of age. Sexual congress with a girl under 12 years old is always rape.

3. REMEDIAL LAW; APPEALS; FACTUAL FINDINGS OF TRIAL COURT, RESPECTED. — Prevailing jurisprudence uniformly holds that findings of fact of the trial court, particularly when affirmed by the Court of Appeals, are binding upon this Court. As a general rule, on the question whether to believe the version of the prosecution or that of the defense, the trial court's choice is generally viewed as correct and entitled to the highest respect because it is more competent to conclude so, having had the opportunity to observe the witnesses' demeanor and deportment on the witness stand as they gave their testimonies. The trial court is, thus, in the best position to weigh conflicting testimonies and to discern if the witnesses were telling the truth.

4. ID.; ID.; CREDIBILITY OF WITNESSES; NOT AFFECTED BY MINOR INCONSISTENCY. — With respect to the inconsistency on the number of occupants inside the house, the matter is inconsequential as it does not bear upon the elements of the crime of rape. The decisive factor in the prosecution for rape is whether the commission of the crime has been sufficiently proven. For a discrepancy or inconsistency in the testimony of a witness to serve as a basis for acquittal, it must refer to the significant facts indispensable to the guilt or innocence of the accused for the crime charged. Thus, the cited inconsistency does not vitiate the integrity of the prosecution evidence.

5. ID.; ID.; ID.; NOT AFFECTED BY THE ALLEGED NOTHING UNUSUAL BEHAVIOR OF THE EIGHT YEAR OLD VICTIM AFTER ACCUSED-UNCLE RAPED HER. — The fact that the accused never threatened or forced AAA on that particular night and that she was still able to go out of the house and buy something from a store cannot exculpate him. Even if she did not resist him or even gave her consent, his having carnal knowledge of her is still considered rape considering that she was only eight (8) years old at that time. It must be remembered that the accused is an uncle of the victim and has moral ascendancy over her. Her behavior can be explained by the fear she had of the accused, who had

repeatedly beaten her for various reasons. His moral ascendancy over her, combined with memories of previous beatings, was more than enough to intimidate her and render her helpless and submissive while she was being brutalized. x x x. The behavior and reaction of every person cannot be predicted with accuracy. It is an accepted maxim that different people react differently to a given situation or type of situation, and there is no standard form of behavioral response when one is confronted with a strange or startling experience. Not every rape victim can be expected to act conformably to the usual expectations of everyone. Some may shout; some may faint; and some be shocked into insensibility, while others may openly welcome the intrusion. Behavioral psychology teaches us that people react to similar situations dissimilarly. There is no standard form of behavior when one is confronted by a shocking incident. The workings of the human mind when placed under emotional stress are unpredictable. This is true specially in this case where the victim is a child of tender age under the moral ascendancy of the perpetrator of the crime.

6. CRIMINAL LAW; RAPE; DATE OR TIME OF RAPE IS NOT MATERIAL. — On her failure to recall the exact date when she was raped, it is quite understandable because he did it to her on several occasions. At any rate, the entrenched doctrine is that the "date or time of the commission of rape is not a material ingredient of the said crime because the gravamen of rape is carnal knowledge of a woman through force and intimidation. The precise time when the rape took place has no substantial bearing on its commission."

7. ID.; ID.; NOT NEGATED BY THE PRESENCE OF "SUPERFICIAL HEALED LACERATION." — We agree with the appellate court when it ruled that there was no merit in the contention of the accused that the presence of "superficial healed laceration" disproves the commission of rape on October 25, 2000. There is no discrepancy as the medical certificate is congruent to her story that it was not the first time that the accused defiled her. He had been doing it to her several times which resulted in her lacerations being healed.

8. ID.; ID.; DAMAGES. — In addition to the award of civil indemnity and moral damages, the Court also awards exemplary damages in the amount of ₱30,000.00 in favor of the victim. The reason

behind the award is to set a public example and to protect the young from sexual abuse.

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 appeal seeks to set aside the July 15, 2009 Decision[1] of the Court of Appeals, in CA-G.R. CR-H.C. No. 03280, which affirmed the November 19, 2007 Decision[2] of the Regional Trial Court, Branch 51, Sorsogon City *(RTC)*, finding accused Melvin Lolos guilty beyond reasonable doubt of the crime of rape which he committed against 8-year-old AAA.[3]

In an information dated December 3, 2000, accused Melvin Lolos was charged with the crime of rape which he allegedly committed as follows:

That on October 25, 2000 at more or less 7:00 o'clock in the evening, Barangay San Isidro, Municipality of Castilla, Province of Sorsogon, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with lewd designs, thru force and intimidation, and taking advantage of the tender age of the victim, did then and there, willfully, unlawfully and feloniously had sexual intercourse with [AAA], a nine year- old girl, who is incapable of

---

[1] *Rollo*, pp. 2-17. Penned by Associate Justice Marlene Gonzales-Sison and concurred in by Associate Justice Bienvenido L. Reyes and Associate Justice Isaias Dicdican.

[2] CA *rollo*, pp. 7-13. Penned by Judge Jose L. Madrid.

[3] Pursuant to the ruling of this Court in *People v. Cabalquinto*, G. R. No. 167693, September 19, 2006, 502 SCRA 419, fictitious initials shall be used to respect the dignity and protect the privacy of the rape victim and that of her family.

giving intelligent consent, against her will to her damage and prejudice.[4]

During the trial, the prosecution presented, as its witnesses, AAA, the victim herself; BBB, the grandmother of the rape victim; and Dr. Salve B. Sapinoso, the attending physician who examined AAA.

As culled from the testimonies of the prosecution witnesses, it appears that AAA was just eight (8) years old on October 25, 2000 when she was raped by accused Melvin Lolos. She had been in the care of her paternal grandmother, BBB, ever since her parents separated. During weekdays, however, she would stay with her great grandmother, CCC, mother of BBB, whose house was just near her school. Accused Melvin Lolos, whom BBB identified as the son of her half-sister on her maternal side, lived with CCC.

On Fridays or Saturdays, BBB would fetch AAA and accompany her back to their house. One day, AAA informed BBB that she was being maltreated and beaten up with a belt by Melvin. BBB confronted him about it but he reasoned out that he was just trying to discipline her. BBB also came to know that DDD, a cousin of AAA's father, heard a rumor from a barbershop that Melvin had raped AAA. When BBB asked AAA about it, the latter confirmed it.

AAA narrated that on October 25, 2000 at around 7:00 o'clock in the evening, her great grandmother, CCC, went out of the house to fetch water. As she went out, Melvin told her to go inside the room of their house where he undressed her and made her lie down. He then licked her vagina, brought out his penis, applied baby oil on it, inserted it inside her vagina, and performed coital movement until a whitish fluid came out of it. His repeated thrusts caused her pain but her vagina did not bleed because it was not the first time that he did it to her, though she could no longer count the number of times he did it. She stressed, however, that they were frequent as the intervals were only a few days.

---

[4] Cited in RTC Decision, CA *rollo*, p. 7.

After satisfying himself, Melvin wiped her vagina and told her not to tell CCC what happened. He then gave her ₱2.00 and she went out to a store nearby.

After hearing her story, BBB and DDD brought her to the police station to report the incident and later to a physician for examination. Dr. Salve B. Sapinoso's examination showed her hymen with incomplete superficial healed lacerations meaning these did not go beyond one-half of the width of the hymen and could have been sustained more than two or three weeks prior to the examination. She added that the lacerations could have been caused most probably by the penetration of a male organ.

The defense, on the other hand, presented three (3) witnesses: Melvin Lolos, the accused himself; Alvin Legaspi, his cousin; and Ligaya A. Legaspi, his aunt and the mother of Alvin.

Melvin Lolos introduced himself as 23 years old and living in CCC's house at the time the alleged incident took place on October 25, 2000. He vehemently denied that he raped AAA in their house on said date and time. He claimed that it was impossible for the rape incident to have taken place because their house had only one room where he slept and there were other occupants sleeping in the sala. He admitted hitting her with a belt that night because he got angry when she failed to come home on time from school. Except for that incident, he saw no reason for AAA to file a rape case against him.

The testimony of his cousin, Alvin Legaspi, was to the effect that Melvin could not have raped AAA on the night of October 25, 2000 without anyone noticing it as there were several persons in the house. He distinctly remembered that he was in CCC's house on said date and time, together with seven (7) other relatives including AAA and Melvin. That night, he slept beside AAA and another niece. He also narrated that he and Melvin went to fetch AAA from San Isidro Elementary school at around 7:00 o'clock that night because she failed to return home early. Melvin hit her with his belt three times.

The mother of Alvin, Ligaya A. Legaspi, testified that her son was in the house of CCC on the night of October 25, 2000. Other than that, she did not have any other information on the incident in question. She only narrated the events that transpired on the following day, October 26, 2000, when she learned about what AAA claimed to have happened and the subsequent arrest of her nephew. According to her, she went to see AAA and the latter told her that the accused did not rape her but spanked her. AAA likewise told her that it was the son of a certain Mering who had raped her. She later accompanied AAA and BBB to the police station to withdraw the case against Melvin, but she (AAA) refused as she wanted to pursue the case against him.

On November 19, 2007, the RTC rendered a decision finding the accused guilty beyond reasonable doubt of the crime of rape and sentenced him to suffer the penalty of *reclusion perpetua.* The dispositive portion of said decision[5] reads:

> WHEREFORE, finding accused MELVIN LOLOS GUILTY beyond reasonable doubt of the offense of Rape, he is hereby sentenced to suffer the penalty of *reclusion perpetua* and to pay the offended party, [AAA], the amount of ₱50,000.00 as civil indemnity and moral damages in the amount of ₱50,000.00.
>
> No pronouncement as to cost.
>
> SO ORDERED.[6]

In ruling against the accused, the trial court held that the categorical statements of the victim must prevail over the bare denials of the accused. It found the testimony of AAA, that she was raped by the accused not just on October 25, 2000 but also on several occasions, to be candid, straightforward, consistent, and far more trustworthy than the self-serving negative averments of the accused. It was convinced that the accused committed the act of rape against his niece.

---

[5] *Id.*

[6] *Id.* at 13.

Apparently not in conformity, the accused appealed the decision of the trial court. On July 15, 2009, the Court of Appeals *(CA)* rendered a decision affirming the decision of the trial court. Thus:

> WHEREFORE, in the light of the foregoing, the Decision of the Regional Trial Court, Branch 51 of Sorsogon City dated November 19, 2007 is hereby AFFIRMED. Accused-appellant Melvin Lolos is found guilty beyond reasonable doubt of the crime of simple rape.
>
> SO ORDERED.[7]

Aggrieved, the accused now comes to this Court via this appeal presenting the following:

ASSIGNMENT OF ERRORS

THE COURT OF APPEALS GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT DESPITE THE PROSECUTION'S FAILURE TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.

THE COURT OF APPEALS GRAVELY ERRED IN GIVING CREDENCE TO THE PROSECUTION'S EVIDENCE DESPITE BEING CONTRARY TO HUMAN EXPERIENCE.

Accused Melvin Lolos argues that the testimonies of the prosecution witnesses were not only inconsistent but also highly incredulous. He claims that the inconsistencies did not only refer to minor details. First, AAA testified that there were only three (3) people staying in the house where the alleged rape incident took place but BBB said that there were four (4) occupants in the house. Second, AAA claimed that she was afraid of the accused but he never threatened or forced her in any way. AAA also related that after the rape incident, she was still able to go out of the house and buy something from a store which makes her story hard to believe.

Her story is all the more doubtful considering that she could not recall the exact date of the incident. She admitted that BBB only told her that the date was October 25, 2000. The medical

---

[7] *Rollo*, p. 16.

certificate and her testimony did not complement each other because said certificate found healed lacerations although AAA had testified that the rape was committed on October 25, 2000, only a day before the medical examination was conducted.

THE COURT'S RULING

In the determination of the innocence or guilt of the accused in rape cases, courts consider the following principles: (1) an accusation of rape can be made with facility and while the accusation is difficult to prove, it is even more difficult for the accused, though innocent, to disprove; (2) considering that in the nature of things, only two persons are usually involved in the crime of rape, the testimony of the complainant should be scrutinized with great 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.[8]

The gravamen of the offense of rape is sexual congress with a woman by force and without consent. As provided in the Revised Penal Code, sexual intercourse with a girl below 12 years old is statutory rape. The two elements of statutory rape are: (1) that the accused had carnal knowledge of a woman; and (2) that the woman was below 12 years of age. Sexual congress with a girl under 12 years old is always rape.[9]

From the foregoing, it is clear that what only needs to be established is that the accused had carnal knowledge of the victim who was under twelve (12) years old.

Prevailing jurisprudence uniformly holds that findings of fact of the trial court, particularly when affirmed by the Court of Appeals, are binding upon this Court. As a general rule, on the question whether to believe the version of the prosecution or that of the defense, the trial court's choice is generally viewed as correct and entitled to the highest respect because it is more

---

[8] *People v. Rante*, G.R. No. 184809, March 29, 2010.

[9] *People v. Perez*, G.R. No. 182924, December 24, 2008, 575 SCRA 653.

competent to conclude so, having had the opportunity to observe the witnesses' demeanor and deportment on the witness stand as they gave their testimonies. The trial court is, thus, in the best position to weigh conflicting testimonies and to discern if the witnesses were telling the truth.

Both courts below were thoroughly and morally convinced of the guilt of the accused. We see no cogent reason to disturb such finding. After an assiduous assessment of the evidentiary records, we found no cause to overturn the findings of fact and conclusions of both the trial court and the Court of Appeals. In this case, the accused was charged with statutory rape. The first element was proven by the positive, straightforward and credible testimony of the victim herself which was supported by the findings of the medico-legal report. The second element was established by the presentation of AAA's Certificate of Live Birth showing that she was born on April 19, 1992. When the crime was committed on October 25, 2000, AAA was only eight (8) years old.

With respect to the inconsistency on the number of occupants inside the house, the matter is inconsequential as it does not bear upon the elements of the crime of rape. The decisive factor in the prosecution for rape is whether the commission of the crime has been sufficiently proven. For a discrepancy or inconsistency in the testimony of a witness to serve as a basis for acquittal, it must refer to the significant facts indispensable to the guilt or innocence of the accused for the crime charged.[10] Thus, the cited inconsistency does not vitiate the integrity of the prosecution evidence.

The fact that the accused never threatened or forced AAA on that particular night and that she was still able to go out of the house and buy something from a store cannot exculpate him. Even if she did not resist him or even gave her consent, his having carnal knowledge of her is still considered rape considering that she was only eight (8) years old at that time. It must be remembered that the accused is an uncle of the victim

---

[10] *People v. Escoton*, G.R. No. 183577, February 1, 2010.

and has moral ascendancy over her. Her behavior can be explained by the fear she had of the accused, who had repeatedly beaten her for various reasons. His moral ascendancy over her, combined with memories of previous beatings, was more than enough to intimidate her and render her helpless and submissive while she was being brutalized.

> x x x. The behavior and reaction of every person cannot be predicted with accuracy. It is an accepted maxim that different people react differently to a given situation or type of situation, and there is no standard form of behavioral response when one is confronted with a strange or startling experience. Not every rape victim can be expected to act conformably to the usual expectations of everyone. Some may shout; some may faint; and some be shocked into insensibility, while others may openly welcome the intrusion. Behavioral psychology teaches us that people react to similar situations dissimilarly. There is no standard form of behavior when one is confronted by a shocking incident. The workings of the human mind when placed under emotional stress are unpredictable. This is true specially in this case where the victim is a child of tender age under the moral ascendancy of the perpetrator of the crime.[11]

On her failure to recall the exact date when she was raped, it is quite understandable because he did it to her on several occasions. At any rate, the entrenched doctrine is that the "date or time of the commission of rape is not a material ingredient of the said crime because the gravamen of rape is carnal knowledge of a woman through force and intimidation. The precise time when the rape took place has no substantial bearing on its commission."[12]

We agree with the appellate court when it ruled that there was no merit in the contention of the accused that the presence of "superficial healed laceration" disproves the commission of rape on October 25, 2000. There is no discrepancy as the medical certificate is congruent to her story that it was not the first time

---

[11] *People v. Mariano*, G.R. No. 168693, June 19, 2009, 590 SCRA 74, 90.

[12] *People v. William Ching*, G.R. No. 177150, November 22, 2007; 538 SCRA 117.

that the accused defiled her. He had been doing it to her several times which resulted in her lacerations being healed.

Finally, in addition to the award of civil indemnity and moral damages, the Court also awards exemplary damages in the amount of ₱30,000.00 in favor of the victim. The reason behind the award is to set a public example and to protect the young from sexual abuse.[13]

WHEREFORE, the July 15, 2009 Decision of the Court of Appeals in CA-G.R. CR-H.C. No. 03280 is *AFFIRMED with MODIFICATION* in that the accused is further ordered to pay the amount of ₱30,000.00 as exemplary damages to AAA.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 189818. August 9, 2010]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **MICHAEL LINDO *y* VERGARA,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; RAPE; RECLASSIFIED AS A CRIME AGAINST PERSONS. — The crime of rape is no longer to be found under Title Eleven of the Revised Penal Code, or crimes against chastity. As per Republic Act No. 8353, or the Anti-Rape Law of 1997, the crime of rape has been reclassified

---

[13] *People v. Lorenzo Layco,* G.R. No. 182191, May 8, 2009, 587 SCRA 803.

as a crime against persons. As of October 22, 1997, the date of effectivity of the Anti-Rape Law, the crime of rape is now defined under Art. 266-A of the Revised Penal Code, with the penalties for rape laid out in Art. 266-B. As the incident happened on April 3, 2001, it is no longer covered by Art. 335 of the Revised Penal Code, but Art. 266-A.

2. ID.; ID.; CAN BE COMMITTED IN A PUBLIC PLACE. — That the act was carried out in a public place does not make it unbelievable. The evil in man has no conscience—the beast in him bears no respect for time and place, driving him to commit rape anywhere, even in places where people congregate such as in parks, along the roadside, within school premises, and inside a house where there are other occupants. There is no rule that rape can only be committed in seclusion. The commission of rape is not hindered by time or place as in fact it can be committed even in the most public of places. Clearly, the argument of accused-appellant that there could be no rape as the place was in full view of the public does not have a legal leg to stand on. The fact that the area was in the public eye would not prevent a potential rapist from carrying out his criminal intent.

3. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; TESTIMONIES OF YOUNG RAPE VICTIM, RESPECTED. — Accused-appellant failed to show any inconsistencies or discrepancies in AAA's testimony, and failed to put the lie to her words. We have held, time and again, that testimonies of rape victims who are young and immature, as in this case, deserve full credence, considering that no young woman, especially one of tender age, would concoct a story of defloration, allow an examination of her private parts, and thereafter testify about her ordeal in a public trial, if she had not been motivated by a desire to obtain justice for the wrong committed against her.

4. ID.; ID.; ALIBI; CANNOT PREVAIL OVER CATEGORICAL POSITIVE TESTIMONY. — Against AAA's straightforward testimony, accused-appellant raises the defense of alibi, stating that he was at work from 8:00 p.m. to 5:00 a.m. To successfully invoke alibi, however, an accused must establish with clear and convincing evidence not only that he was somewhere else when the crime was committed, but also that it was physically

impossible for him to have been at the scene of the crime at the time of its commission. Accused-appellant offers nothing but his bare word that he was elsewhere, and his word must fail against AAA's testimony and positive identification of him as the perpetrator. He could not present any corroborating witness or evidence to prove his presence elsewhere than at the scene of the crime. It is well-settled that positive identification, where categorical, consistent, and not attended by any showing of ill motive on the part of the eyewitness testifying on the matter, prevails over alibi and denial, which, if not substantiated by clear and convincing evidence, are negative and self-serving evidence undeserving weight in law.

5. CRIMINAL LAW; RAPE; RAPE VICTIM'S STRAIGHTFORWARD ACCOUNT CORROBORATED BY MEDICAL FINDINGS IS SUFFICIENT TO SUPPORT A CONVICTION. — Notable as well, as the trial and appellate courts aptly pointed out, is the presentation of Dr. Ignacio, the NBI Medico-Legal Officer, and the fact that she made a physical examination of AAA, which supports AAA's testimony. x x x When a rape victim's account is straightforward and candid, and is corroborated by the medical findings of the examining physician, it is sufficient to support a conviction for rape.

6. ID.; STATUTORY RAPE; PRESENT IN CASE AT BAR. — It has been proved beyond reasonable doubt that accused-appellant Lindo had carnal knowledge of AAA. The insertion of his penis into the vagina of AAA, though incomplete, was sufficient. As held in *People v. Tablang*, the mere introduction of the male organ in the *labia majora* of the victim's genitalia consummates the crime; the mere touching of the *labia* by the penis was held to be sufficient. The elements of the crime of rape under Art. 266-A of the Revised Penal Code are present. Under the said article, it provides that rape is committed by a man who shall have carnal knowledge of a woman when the offended party is under twelve years of age. AAA was 11 years old at the time accused-appellant had carnal knowledge of her. As such, that constitutes statutory rape. The two elements of the crime are: (1) that the accused had carnal knowledge of a woman; and (2) that the woman was below 12 years of age. Thus, the CA correctly upheld the conviction of accused-appellant by the RTC.

7. REMEDIAL LAW; CRIMINAL PROCEDURE; APPEAL IN A CRIMINAL CASE THROWS THE WHOLE CASE OPEN FOR REVIEW. — It is settled that in a criminal case, an appeal throws the whole case open for review, and it becomes the duty of the appellate court to correct such errors as may be found in the judgment appealed from, whether they are made the subject of the assignment of errors or not.

8. ID.; ID.; PROSECUTION OF OFFENSES; DUPLICITY OF OFFENSE; ACCUSED CHARGED OF TWO COUNTS OF RAPE BUT FAILED TO FILE A MOTION TO QUASH THE INFORMATION, MAY BE CONVICTED OF TWO COUNTS OF RAPE. — Two offenses were charged, a violation of Section 13, Rule 110 of the Revised Rules of Criminal Procedure, which states, "A complaint or information must charge only one offense, except when the law prescribes a single punishment for various offenses." Section 3, Rule 120 of the Revised Rules of Criminal Procedure states, "When two or more offenses are charged in a single complaint or information but the accused fails to object to it before trial, the court may convict the appellant of as many as are charged and proved, and impose on him the penalty for each offense, setting out separately the findings of fact and law in each offense." As accused-appellant failed to file a motion to quash the Information he can be convicted of two counts of rape.

9. CRIMINAL LAW; RAPE; DAMAGES; CIVIL INDEMNITY AND EXEMPLARY DAMAGES MADE PROPER. — The CA modified the award of damages by the RTC, adding civil indemnity and exemplary damages. This is but proper, considering that was done to conform to prevailing jurisprudence. The award of civil indemnity to the rape victim is mandatory upon finding that rape took place. As to the award of exemplary damages, it finds support in *People v. Dalisay*. Art. 2229 of the Civil Code serves as the basis for the award of exemplary damages as it pertinently provides, "Exemplary or corrective damages are imposed, by way of example or correction for the public good, in addition to the moral, temperate, liquidated or compensatory damages." 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. By subjecting a child to his sexual depredations, accused-appellant has displayed behavior that society has an interest in curbing. Thus, the purpose of exemplary damages to serve as a deterrent finds application to the present case, to protect the youth from sexual abuse.

10. ID.; ID.; RAPE UNDER ART. 266-A, PAR. 1(D) AND RAPE THROUGH SEXUAL ASSAULT; PENALTY AND DAMAGES. — Accused-appellant was found guilty of two counts of rape, rape under Art. 266-A, par. 1(d) and rape through sexual assault, under Art. 266-A, par. 2. The decision of the CA must therefore be modified. Accused-appellant would then be sentenced for one count of rape and another count for rape through sexual assault. For rape under Art. 266-A, par. 1(d), the imposable penalty is *reclusion perpetua*. For rape through sexual assault under Art. 266-A, par. 2, the imposable penalty is *prision mayor*; and applying the Indeterminate Sentence Law, accused-appellant would be sentenced to an indeterminate penalty of two years, four months and one day of *prision correccional* as minimum, to eight years and one day of *prision mayor* as maximum. As to the damages awarded, considering that accused-appellant is guilty of committing rape under Art. 266-A, par. 1(d) and rape through sexual assault under Art. 266-A, par. 2 of the Revised Penal Code, the award should reflect that: for rape under Art. 266-A, par. 1(d), civil indemnity is pegged at PhP 50,000, moral damages at PhP 50,000, and exemplary damages increased to PhP 30,000, as per prevailing jurisprudence; and for rape through sexual assault under Art. 266-A, par. 2 of the Revised Penal Code, the award of damages will be PhP 30,000 as civil indemnity, PhP 30,000 as moral damages, and PhP 30,000 as exemplary damages, in line with prevailing jurisprudence.

APPEARANCES OF COUNSEL

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

D E C I S I O N

VELASCO, JR., *J.*:

Before this Court on appeal is the Decision of the Court of Appeals[1] (CA) in CA-G.R. CR-H.C. No. 00283 dated April 25, 2008, which upheld the conviction of accused-appellant Michael Lindo *y* Vergara (Lindo) of the crime of rape, in Criminal Case No. 01-191273, decided by the Regional Trial Court (RTC), Branch 38 in Manila on June 28, 2004.

The facts of the case are as follows: AAA,[2] the private complainant, born on May 6, 1989, was 11 years old at the time, residing in San Andres Bukid, Malate, Manila, and accused-appellant Lindo was her neighbor.

On April 3, 2001, AAA attended a *pabasa* at a neighbor's place, during which she fell asleep under a platform that served as a stage. While AAA was sleeping, Lindo took her away to a place near a creek where clothes are placed to dry. It was there that AAA woke up, as Lindo removed her short pants and underwear, and also undressed himself. He tried inserting his penis into her vagina, whereupon his penis made contact with her sex organ but there was no complete penetration. Not achieving full penile penetration, he then made her bend over, and inserted his penis into her anus, causing her to cry out in pain. Lindo then sensed the arrival of a friend of AAA, so he discontinued

---

[1] Penned by Associate Justice Edgardo F. Sundiam and concurred in by Associate Justices Monina Arevalo-Zenarosa and Ramon M, Bato, Jr.

[2] The identity of the victim or any information to establish or compromise her identity, as well as those of her immediate family or household members, shall be withheld pursuant to Republic Act No. 7610, "An Act Providing for Stronger Deterrence and Special Protection Against Child Abuse, Exploitation and Discrimination, and for Other Purposes"; Republic Act No. 9262, "An Act Defining Violence Against Women and Their Children, Providing for Protective Measures for Victims, Prescribing Penalties Therefor, and for Other Purposes"; Section 40 of A.M. No. 04-10-11-SC, known as the "Rule on Violence Against Women and Their Children," effective November 5, 2004; and *People v. Cabalquinto*, G.R. No. 167693, September 19, 2006, 502 SCRA 419.

his act, and told AAA to put on her clothes and go home. These AAA did, and related the incident to her parents, who reported it to the *barangay* authorities. Lindo was arrested the same day.

AAA was examined by Dr. Evelyn B. Ignacio, National Bureau of Investigation (NBI) Medico-Legal Officer, on the same day, and was found to have extragenital physical injuries as well as abrasions on her anal orifice. Dr. Ignacio theorized that the anal injuries could have been caused by the insertion of a blunt object, such as a penis, finger or pencil.

Lindo raised the defenses of denial and alibi, claiming that as a painter working in Ayala, Makati, his usual work schedule was from 8:00 a.m. to 6:00 p.m. He claimed that on April 3, 2001, he reported for work at 8:00 p.m. until 5:00 a.m., and that when he came home from work at 6:00 a.m., he was arrested by a *barangay* official and was brought to the police precinct, where he was investigated for rape.

Lindo was charged in an Information dated April 6, 2001, which reads as follows:

> That on or about April 3, 2001, in the City of Manila, Philippines, the said accused, did then and there wilfully, unlawfully and feloniously, with lewd designs and by means of force and intimidation commit sexual abuse to wit: by then and there carrying said [AAA], a minor, 11 years old, and bringing her to a vacant lot, trying to insert his penis into her vagina but said accused was not able to do so, thereafter inserting his penis into her anus, thereby endangering her normal growth and development.
>
> CONTRARY TO LAW.[3]

The RTC found the testimony of AAA to be more credible, and rendered its decision, the dispositive portion of which reads as follows:

> WHEREFORE, judgment is hereby rendered finding the accused GUILTY BEYOND REASONABLE DOUBT OF THE CRIME OF

---

[3] *Rollo*, p. 3.

Statutory Rape under Art. 335 of the Revised Penal Code in relation to Republic Act No. 7610 and he is hereby sentenced to suffer *reclusion perpetua* with all the necessary penalties provided by law and to pay the victim the amount of ₱50,000.00 as and by way of moral damages.

No pronouncement as to costs.

SO ORDERED.[4]

Lindo appealed to the CA, assailing the credibility of AAA.

Lindo failed to persuade the CA, which affirmed his conviction, but modified the award of damages to AAA. The CA found the award of civil indemnity proper, in line with prevailing jurisprudence. Exemplary damages were also found to be proper, for the purpose of being a deterrent to crime. The dispositive portion of the CA decision reads as follows:

WHEREFORE, premises considered, the Decision appealed from, being in accordance with law and the evidence, is hereby AFFIRMED with the MODIFICATION that accused-appellant MICHAEL LINDO *y* VERGARA is further ORDERED to pay private complainant indemnity in the amount of ₱50,000.00 and exemplary damages in the amount of ₱25,000.00.

SO ORDERED.[5]

Now before this Court, accused-appellant Lindo reiterates his defense presented before the RTC and the CA, questioning the weight given to AAA's testimony and its credibility.

The Court's Ruling

The conviction of accused-appellant Lindo must be affirmed.

At the outset, it must be noted that the RTC and the CA made reference to Article 335 of the Revised Penal Code. The RTC cited Art. 335 in the dispositive portion of its decision, while the CA referred to Art. 335, paragraph 3, as amended.

---

[4] *Id.*

[5] *Id.* at 13.

Both courts were in error to do so. The crime of rape is no longer to be found under Title Eleven of the Revised Penal Code, or crimes against chastity. As per Republic Act No. 8353, or the Anti-Rape Law of 1997, the crime of rape has been reclassified as a crime against persons. As of October 22, 1997, the date of effectivity of the Anti-Rape Law, the crime of rape is now defined under Art. 266-A of the Revised Penal Code, with the penalties for rape laid out in Art. 266-B. As the incident happened on April 3, 2001, it is no longer covered by Art. 335 of the Revised Penal Code, but Art. 266-A.

That matter aside, the defense raised by accused-appellant is a reiteration of his questioning of AAA's credibility. He claims that her testimony is unworthy of belief as it runs counter to the course of human experience. Specifically, he argues that no rape could have taken place as the area was in public view. He also argues that the testimony of AAA, that she was lifted while asleep, is incredible as his alleged lifting of her failed to wake her up.

The arguments raised by accused-appellant fail to discredit the victim and cast doubt upon her testimony.

That the act was carried out in a public place does not make it unbelievable. The evil in man has no conscience—the beast in him bears no respect for time and place, driving him to commit rape anywhere, even in places where people congregate such as in parks, along the roadside, within school premises, and inside a house where there are other occupants.[6] There is no rule that rape can only be committed in seclusion.[7] The commission of rape is not hindered by time or place as in fact it can be committed even in the most public of places.[8] Clearly, the argument of accused-appellant that there could be no rape

---

[6] *People v. Alipio*, G.R. No. 185285, October 5, 2009, 603 SCRA 40, 49.

[7] *People v. Montinola*, G.R. No. 178061, January 31, 2008, 543 SCRA 412, 425.

[8] *People v. Domingo*, G.R. No. 177136, June 30, 2008, 556 SCRA 788, 804.

as the place was in full view of the public does not have a legal leg to stand on. The fact that the area was in the public eye would not prevent a potential rapist from carrying out his criminal intent.

The RTC found the witness to be credible, and it had the best opportunity to observe her testimony. She testified in a straightforward and clear manner, detailing how accused-appellant had carnal knowledge of her.[9] The RTC, as affirmed by the CA, categorically found thus:

> In the case at bar, the story of the complaining witness even finds support in the medical findings of Dr. Ignacio who examined her immediately after the incident. The physician saw multiple abrasions on the victim's neck supporting the latter's testimony that she was strangled by the accused. Additionally, [wreckage] was seen in her anal area which could have been caused by insertion of a blunt object like a male penis buttressing the victim's claim that accused inserted his private organ into her anus.
>
> While the victim testified that the accused did not succeed in inserting his penis into her vagina, time and again [the Supreme Court] held that the slight penetration of the labia by the male organ

---

[9] *Rollo*, p. 9. AAA testified on April 19, 2004, thus:

Q. And then when the accused undressed himself, what happened after?
A. That was when he raped me, sir.
Q. When you say he raped you, what did you do?
A. He inserted his penis into my vagina, sir.
Q. Did he succeed in inserting his penis into your vagina?
A. No, sir.
Q. Why?
A. Because it does not fit, sir.
x x x x x x x x x
Q. And when he was unable to insert his penis, what did he do if any?
A. *Pinatuwad niya po ako*.
Q. And after he made you [bend over], what did he do?
A. He inserted his penis into my anus (*puwit)*, sir.
Q. Did he succeed in inserting his penis into your anus?
A. A little, sir.

still constitutes rape (People vs. Borja, 267 SCRA 370). The lack of lacerated wound does not negate sexual intercourse (People vs. San Juan, 270 SCRA 693). x x x

x x x x x x x x x

It is **clear from the complainant's narration that the accused did not only penetrate her anus but also her vagina only that in the latter case, the accused was not able to insert his penis into the cervical area or the vaginal opening**.[10] x x x (Emphasis supplied.)

Accused-appellant failed to show any inconsistencies or discrepancies in AAA's testimony, and failed to put the lie to her words. We have held, time and again, that testimonies of rape victims who are young and immature, as in this case, deserve full credence, considering that no young woman, especially one of tender age, would concoct a story of defloration, allow an examination of her private parts, and thereafter testify about her ordeal in a public trial, if she had not been motivated by a desire to obtain justice for the wrong committed against her.[11]

Against AAA's straightforward testimony, accused-appellant raises the defense of alibi, stating that he was at work from 8:00 p.m. to 5:00 a.m. To successfully invoke alibi, however, an accused must establish with clear and convincing evidence not only that he was somewhere else when the crime was committed, but also that it was physically impossible for him to have been at the scene of the crime at the time of its commission.[12] Accused-appellant offers nothing but his bare word that he was elsewhere, and his word must fail against AAA's testimony and positive identification of him as the perpetrator. He could not present any corroborating witness or evidence to prove his presence elsewhere than at the scene of

---

[10] CA *rollo*, pp. 82-83; citing the RTC Decision.

[11] *People v. Cañada*, G.R. No.175317, October 2, 2009, 602 SCRA 378, 391.

[12] *People v. Agustin*, G.R. No. 175325, February 27, 2008, 547 SCRA 136, 144.

the crime. It is well-settled that positive identification, where categorical, consistent, and not attended by any showing of ill motive on the part of the eyewitness testifying on the matter, prevails over alibi and denial, which, if not substantiated by clear and convincing evidence, are negative and self-serving evidence undeserving weight in law.[13]

Notable as well, as the trial and appellate courts aptly pointed out, is the presentation of Dr. Ignacio, the NBI Medico-Legal Officer, and the fact that she made a physical examination of AAA, which supports AAA's testimony. AAA testified that accused-appellant tried to insert his penis into her vagina, and inserted it as well in her anus. This jibes with the findings of Dr. Ignacio from her physical examination of AAA. When a rape victim's account is straightforward and candid, and is corroborated by the medical findings of the examining physician, it is sufficient to support a conviction for rape.[14]

It has been proved beyond reasonable doubt that accused-appellant Lindo had carnal knowledge of AAA. The insertion of his penis into the vagina of AAA, though incomplete, was sufficient. As held in *People v. Tablang*,[15] the mere introduction of the male organ in the *labia majora* of the victim's genitalia consummates the crime; the mere touching of the *labia* by the penis was held to be sufficient. The elements of the crime of rape under Art. 266-A of the Revised Penal Code are present. Under the said article, it provides that rape is committed by a man who shall have carnal knowledge of a woman when the offended party is under twelve years of age. AAA was 11 years old at the time accused-appellant had carnal knowledge of her. As such, that constitutes statutory rape. The two elements of the crime are: (1) that the accused had carnal knowledge of a

---

[13] *People v. Ranin, Jr.*, G.R. No. 173023, June 25, 2008, 555 SCRA 297, 309.

[14] *People v. Sumingwa*, G.R. No. 183619, October 13, 2009, 603 SCRA 638, 652.

[15] G.R. No. 174859, October 30, 2009, 604 SCRA 757.

woman; and (2) that the woman was below 12 years of age.[16] Thus, the CA correctly upheld the conviction of accused-appellant by the RTC.

Both the RTC and the CA, however, erred in finding only one count of rape in the present case. It is settled that in a criminal case, an appeal throws the whole case open for review, and it becomes the duty of the appellate court to correct such errors as may be found in the judgment appealed from, whether they are made the subject of the assignment of errors or not.[17] From the information filed, it is clear that accused-appellant was charged with two offenses, rape under Art. 266-A, par. 1 (d) of the Revised Penal Code, and rape as an act of sexual assault under Art. 266-A, par. 2. Accused-appellant was charged with having carnal knowledge of AAA, who was under twelve years of age at the time, under par. 1(d) of Art. 266-A, and he was also charged with committing "an act of sexual assault by inserting his penis into another person's mouth or anal orifice, or any instrument or object, into the genital or anal orifice of another person" under the second paragraph of Art. 266-A. Two instances of rape were indeed proved at the trial, as it was established that there was contact between accused-appellant's penis and AAA's *labia*; then AAA's testimony established that accused-appellant was able to partially insert his penis into her anal orifice. The medical examination also supports the finding of rape under Art. 266-A par. 1(d) and Art. 266-A par. 2, considering the extragenital injuries and abrasions in the anal region reported.

The information, read as a whole, has sufficiently informed accused-appellant that he is being charged with two counts of rape, as it relates his act of inserting his penis into AAA's anal orifice, as well as his trying to insert his penis into her vagina. We held in *People v. Dimaano*:

---

[16] *People v. Peralta*, G.R. No. 187531, October 16, 2009, 604 SCRA 285, 290.

[17] *People v. Jabiniao*, G.R. No. 179499, April 30, 2008, 553 SCRA 769, 784.

For complaint or information to be sufficient, it must state the name of the accused; the designation of the offense given by the statute; the *acts or omissions complained of as constituting the offense;* the name of the offended party; the approximate time of the commission of the offense, and the place wherein the offense was committed. What is controlling is not the title of the complaint, nor the designation of the offense charged or the particular law or part thereof allegedly violated, these being mere conclusions of law made by the prosecutor, but the description of the crime charged and the particular facts therein recited. The acts or omissions complained of must be alleged in such form as is sufficient to enable a person of common understanding to know what offense is intended to be charged, and enable the court to pronounce proper judgment. No information for a crime will be sufficient if it does not accurately and clearly allege the elements of the crime charged. Every element of the offense must be stated in the information. What facts and circumstances are necessary to be included therein must be determined by reference to the definitions and essentials of the specified crimes. The requirement of alleging the elements of a crime in the information is to inform the accused of the nature of the accusation against him so as to enable him to suitably prepare his defense. The presumption is that the accused has no independent knowledge of the facts that constitute the offense.[18]

Two offenses were charged, a violation of Section 13, Rule 110 of the Revised Rules of Criminal Procedure, which states, "A complaint or information must charge only one offense, except when the law prescribes a single punishment for various offenses." Section 3, Rule 120 of the Revised Rules of Criminal Procedure states, "When two or more offenses are charged in a single complaint or information but the accused fails to object to it before trial, the court may convict the appellant of as many as are charged and proved, and impose on him the penalty for each offense, setting out separately the findings of fact and law in each offense." As accused-appellant failed to file a motion to quash the Information he can be convicted of two counts of rape.

The CA modified the award of damages by the RTC, adding civil indemnity and exemplary damages. This is but proper,

---

[18] G.R. No. 168168, September 14, 2005, 469 SCRA 647, 666-667.

considering that was done to conform to prevailing jurisprudence. The award of civil indemnity to the rape victim is mandatory upon finding that rape took place.[19] As to the award of exemplary damages, it finds support in *People v. Dalisay*.[20] Art. 2229 of the Civil Code serves as the basis for the award of exemplary damages as it pertinently provides, "Exemplary or corrective damages are imposed, by way of example or correction for the public good, in addition to the moral, temperate, liquidated or compensatory damages." 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.[21] By subjecting a child to his sexual depredations, accused-appellant has displayed behavior that society has an interest in curbing. Thus, the purpose of exemplary damages to serve as a deterrent finds application to the present case, to protect the youth from sexual abuse.

Accused-appellant was found guilty of two counts of rape, rape under Art. 266-A, par. 1(d) and rape through sexual assault, under Art. 266-A, par. 2. The decision of the CA must therefore be modified. Accused-appellant would then be sentenced for one count of rape and another count for rape through sexual assault. For rape under Art. 266-A, par. 1(d), the imposable penalty is *reclusion perpetua*. For rape through sexual assault under Art. 266-A, par. 2, the imposable penalty is *prision mayor*; and applying the Indeterminate Sentence Law, accused-appellant would be sentenced to an indeterminate penalty of two years, four months and one day of *prision correccional* as minimum, to eight years and one day of *prision mayor* as maximum.

As to the damages awarded, considering that accused-appellant is guilty of committing rape under Art. 266-A, par. 1(d) and rape through sexual assault under Art. 266-A, par. 2 of the Revised Penal Code, the award should reflect that: for rape under

---

[19] *People v. Tablang*, *supra* note 15, at 774.

[20] G.R. No. 188106, November 25, 2009, 605 SCRA 807.

[21] *Id.* at 820.

Art. 266-A, par. 1(d), civil indemnity is pegged at PhP 50,000, moral damages at PhP 50,000, and exemplary damages increased to PhP 30,000, as per prevailing jurisprudence;[22] and for rape through sexual assault under Art. 266-A, par. 2 of the Revised Penal Code, the award of damages will be PhP 30,000 as civil indemnity, PhP 30,000 as moral damages, and PhP 30,000 as exemplary damages, in line with prevailing jurisprudence.[23]

Children should be protected from sexual predators, and the conviction of accused-appellant, with the award of damages as well to the victim, serves this purpose.

WHEREFORE, the Court *AFFIRMS* with *MODIFICATION* the Decision of the CA in CA-G.R. CR-H.C. No. 00283. Accused-appellant Lindo is found guilty of one count of rape under Art. 266-A par. 1(d), Revised Penal Code, and is sentenced to suffer the penalty of *reclusion perpetua*, and to pay the victim, AAA, PhP 50,000 as civil indemnity, PhP 50,000 as moral damages, and PhP 30,000 as exemplary damages. Accused-appellant is likewise found guilty of one count of rape through sexual assault under Art. 266-A, par. 2 of the Code, and is sentenced to an indeterminate penalty of two (2) years, four (4) months and one (1) day of *prision correccional*, as minimum, to eight (8) years and one (1) day of *prision mayor*, as maximum, and to pay the victim, AAA, PhP 30,000 as civil indemnity, PhP 30,000 as moral damages, and PhP 30,000.00 as exemplary damages.

SO ORDERED.

Corona, C.J. (Chairperson), Leonardo-de Castro, Del Castillo, and *Perez, JJ.,* concur.

---

[22] *People v. Ofemiano*, G.R. No. 187155, February 1, 2010; citing *People v. Pabol*, G.R. No. 187084, October 12, 2009, 603 SCRA 522, 532-533.

[23] *Flordeliz v. People*, G.R. No. 186441, March 1, 2010.

INDEX

INDEX

Writ of — May be issued upon the concurrence of the following essential requisites, to wit: (1) that the invasion of the right is material and substantial; (2) that the right of complainant is clear and unmistakable; and (3) that there is an urgent and paramount necessity for the writ to prevent serious damage. (St. James College of Parañaque *vs.* Equitable PCI Bank, G.R. No. 179441, Aug. 09, 2010) p. 452

— Purpose thereof is to prevent the threatened or continuous irremediable injury to some of the parties before their claims can be thoroughly studied and adjudicated. *(Id.)*

PRELIMINARY INVESTIGATION

Conduct of — Public prosecutors are afforded wide latitude of discretion in the conduct of preliminary investigation; exception. (Metropolitan Bank and Trust Co. *vs.* Reynado, G.R. No. 164538, Aug. 09, 2010) p. 208

— The continuance of the investigation does not necessarily mean that the result will be an automatic conclusion of a finding of probable cause. (Verzano, Jr. *vs.* Paro, G.R. No. 171643, Aug. 09, 2010) p. 330

Probable cause — A finding thereof does not require an inquiry on the sufficiency of evidence to procure a conviction; a reasonable belief that the act complained of constitutes the offense charged is enough. (Metropolitan Bank and Trust Co. *vs.* Reynado, G.R. No. 164538, Aug. 09, 2010) p. 208

— Defined as such facts and circumstances that will engender a well-founded belief that a crime has been committed and that the respondent is probably guilty thereof and should be held for trial. *(Id.)*

— Determination thereof is a function of public prosecutors. *(Id.)*

— The resolution of a prosecutor in the determination of probable cause may be appealed despite the filing of an information in court; effect. (Verzano, Jr. *vs.* Paro, G.R. No. 171643, Aug. 09, 2010) p. 330

RAPE

TRADEMARKS

WAGES

Service Incentive Law — Exclusion from its coverage of workers who are paid on a purely commission basis is only with respect to field personnel. (Serrano *vs*. Severino Santos Transit and/or Severino Santos, G.R. No. 187698, Aug. 09, 2010) p. 598

— There is a difference between drivers paid under the "boundary system" and conductors who are paid on a commission basis. *(Id.)*

WITNESSES

Credibility of— Determination of the trial court, especially when affirmed by the appellate court is accorded great respect; exceptions. (People *vs*. Castillo, G.R. No. 186533, Aug. 09, 2010) p. 570

(People *vs*. Beduya, G.R. No. 175315, Aug. 09, 2010) p. 399

— Not affected by discrepancies in their testimonies referring to minor details and collateral matters. (People *vs*. Campomanes, G.R. No. 187741, Aug. 09, 2010) p. 610

(People *vs*. Nazareno, G.R. No. 180915, Aug. 09, 2010) p. 503

(People *vs*. Beduya, G.R. No. 175315, Aug. 09, 2010) p. 399

— Not impaired by the delay in reporting the incident to the police authorities. (People *vs*. Beduya, G.R. No. 175315, Aug. 09, 2010) p. 399

— Stands in the absence of ill-motive to falsely testify against the accused. (People *vs*. Castillo, G.R. No. 186533, Aug. 09, 2010) p. 570

(People *vs*. Nazareno, G.R. No. 180915, Aug. 09, 2010) p. 503

— Testimony of a mentally deficient rape victim who can effectively communicate her ordeal is upheld. (People *vs*. Castillo, G.R. No. 186533, Aug. 09, 2010) p. 570

CITATION

Page

I. LOCAL CASES

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page

REFERENCES

I. LOCAL AUTHORITIES

A. CONSTITUTION

B. STATUTES

Page

Page

Page

Page

C. OTHERS

Page

D. BOOKS
(Local)

II. FOREIGN AUTHORITIES

BOOKS